
BY

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DISSEETATION

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ABSTRACT

This dissertation chronicles battles over the U.S. Federal Trade Commission’s regulatory powers, which took place from 1969 through 1980. Following a scathing report by consumer activist Ralph Nader, Nixon revitalized what had come to be known as “the little old lady of Pennsylvania Avenue,” and transformed the FTC into the most powerful regulatory agency in Washington. During the period, consumer right’s activists pressured government officials to significantly strengthen the agency’s power to regulate the U.S. telecommunications system and the structure of the U.S. economy as a whole. The FTC’s policies initiated to make advertisers accountable for false claims, as well as those that would limit advertising to children, were all a result of vigorous debates about how the U.S. media should serve in public interest. Using Antonio Gramsci’s theory of hegemony as a theoretical lens, this dissertation reveals the ways in which the Federal Trade Commission’s regulatory renaissance was evidence of an important moment of hegemony. Congress cemented and extended the FTC’s power in 1975 through a series of extraordinary legislative actions. Bolstered by these new laws, in 1977 the FTC voted unanimously for rulemaking to significantly limit advertising to children. These changes mostly took business leaders by surprise, and corporate America found itself on the defensive side of a debate with far-reaching consequences. By 1980, the national policy agenda was increasingly pro-business and effectively reduced the expansion of the welfare state: it favored management over labor, dismantled social welfare programs, and deregulated major industries—a shift generally referred to as neoliberalism. Chapter 1 describes the origins of the advertising reform movement, which began to ferment during the 1960s. Chapter 2 chronicles Nixon’s revitalization of the FTC. Chapter 3 begins with
Nixon’s second term when the FTC continued to gain bipartisan approval and public credibility. The time period of Chapter 4 overlaps somewhat with Chapters 3 and 5. This chapter describes the public relations tactics used by businesses to combat the regulatory reinforcement of the FTC and redirect policies in its favor. Chapter 5 describes in detail the most notorious aspects of the FTC during the 1970s when the FTC attempted to ban advertising to children in its oft called “kidvid crusade.”
To Finnegans & Sebastian.
I love you.
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INTRODUCTION: THE U.S. FEDERAL TRADE COMMISSION, WAR OF POSITION, AND A CRISIS OF HEGEMONY

1968 was a remarkable year in American history. The number of U.S. soldiers in Vietnam peaked at 541,000. The Tet Offensive launched an attack on the American Embassy in Saigon, representing a major turning point in the war. Martin Luther King Jr. was assassinated, leading to uprisings in several major U.S. cities, and 46 deaths. Abbie Hoffman and his followers disrupted the trading floor of the New York Stock Exchange, and women’s liberation groups protested by burning bras outside the Miss America Pageant. Police officers beat and sent hundreds of antiwar protestors to the hospital during the Democratic Convention in Chicago. Because of these dramatic events, 1968 is commonly understood as the peak of progressive social movements during the 60s, after which the Left and the New Deal order slowly unraveled when Richard Nixon won the 1968 presidential election by reclaiming independents and conservative Democrats in the South.

I argue that this view is inaccurate. Neither the demise of the New Left, nor the end of the New Deal order, nor the ascent of the New Right was inevitable by this point. Rather, the ruptures of 1968 opened up space where a wide range of possibilities for organizing the political economic order became possible. As a result, many of Nixon’s policies were very much aligned with the principles of regulated capital and social reform. He presided over the largest increase in government spending and regulation since the New Deal, including an expansion of Social Security and the expansion of the national food stamp program. Nixon signed into law measures to establish the
Environmental Protection Agency (1970), the Occupational Safety and Health Administration (1970), the National Traffic Safety Commission (1970), the Consumer Product Safety Commission (1972), and the Mine Safety and Health Administration (1973). ¹ All of these new regulatory agencies were created to make private enterprise more accountable to public interests, but none would cut to the core of corporate power as the revival of one of the nation’s oldest regulatory agency: the U.S. Federal Trade Commission.

With the exception of a few industries specifically regulated by other federal agencies, the FTC has wide-ranging authority to regulate the advertising industry and entire American economy. Despite these extensive powers, the FTC has been frequently regarded as an ineffective and inept agency throughout most of its existence. During the 1960s, there was a notorious joke that there were three museums on Pennsylvania Avenue: the National Archives, the National Gallery, and the Federal Trade Commission building.²

But in 1970, after its long period of hibernation, the FTC began to awaken. This dissertation chronicles battles over the FTC’s regulatory powers, which took place from 1969 through 1980. Following a scathing report by consumer activist Ralph Nader, Nixon revitalized what had come to be known as “the little old lady of Pennsylvania Avenue,” and transformed the FTC into the most powerful regulatory agency in Washington.

During the 1970s, the FTC was referred to as the “the policeman on the economic beat.”

The FTC’s most controversial activities focused on advertising practices and industrial concentration.

In 1970, the FTC created two new divisions: the Bureau of Consumer Protection and the Bureau of Competition. The Bureau of Consumer Protection put the advertising industry in the hot seat: it expanded definitions of false and misleading to include “puffery” and “implied uniqueness,” shifted the burden of proof to advertisers by requiring them to back up claims with scientific evidence, and forced advertisers to run corrective messages as a settlement for deceptive practices. The Bureau of Competition also targeted the ad industry, but in more structural ways by adopting a novel antitrust philosophy of “shared monopoly.” This bureau investigated powerful and well-established corporations, scrutinizing the anticompetitive effects of concentrated structural arrangements. The overall political interrogation of the role of big businesses in American society was not on the decline by the mid-1970s. In fact, Congress cemented and extended the FTC’s power in 1975 through a series of extraordinary legislative actions. Bolstered by these new laws, in 1977 the FTC voted unanimously for rulemaking to significantly limit advertising to children. These changes mostly took business leaders by surprise, and corporate America found itself on the defensive side of a debate with far-reaching consequences.

Existing scholarship has largely minimized the potency of these efforts by merely commenting on particular aspects of consumer activism and media policy within the array of this period’s political and cultural developments. For example, histories of

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consumer activism during this period have concentrated on the failed effort to create a Consumer Protection Agency in Washington, while broadcasting histories tend to focus on the Federal Communications Commission (FCC). In a broader way, American histories tend to overemphasize either the cultural or economic conditions of the 1970s. Because of the lack of attention to the FTC, this period’s important debates over advertising and industrial concentration have been missed.

I argue that this topic is of particular importance for communications historians and media reformers because of the FTC’s authority over advertising: the lifeblood of the communications system. The FTC’s policies initiated to make advertisers accountable for false claims, as well as those that would limit advertising to children, were all a result of vigorous debates about how the U.S. media should serve in public interest. More generally, the FTC is the agency within the U.S. federal bureaucracy that negotiates the relationship between the economic structure and the interests of the public. Thus, the FTC’s efforts to expand its authority in line with the demands of the public represented an important war of position during an overall crisis in hegemony.

A Gramcian Historiography

I use these terms in reference to theories outlined by the Italian Marxist Antonio Gramsci. Gramsci’s theory of hegemony provides a lens through which to analyze the significance of the FTC within the array of this period’s political and economic changes. Hegemony helps explain how the struggle over the FTC was crucial to the broader changes that occurred within this historical period. In the words of communications

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historian John Nerone, “Theory is a big story that can give more meaning to a lot of little stories.” Hegemony theory enunciates this study’s past and present-day significance by elucidating complex contours of power relationships while also accounting for antagonistic relations.

Gramsci emphasized the inextricable relationship between two important sites of investigation for this dissertation: economic and ideological forces. Gramsci suggested that these are interwoven: “material forces are the content and ideologies are the form, though this distinction between form and content has purely indicative value, since the material forces would be inconceivable historically without form and the ideologies would be individual fancies without the material forces.”

According to Gramsci, capitalism is not simply maintained through force, but through ideas. Economic power is infused within culture and upheld through an ideology of “common sense”—what he called hegemony. Gramsci used the metaphor of a circulatory system, or “capillary,” to describe the complex and all-encompassing network of diverse systems such as media, popular culture, education, and even religion, in the maintenance of hegemony. This is a complex process. Hegemony is powerful because it is covert—it does not reject alternatives, but instead integrates destabilizing forces into capitalistic values and norms.

Media studies scholar Stuart Hall described hegemony as

the struggle to contest and disorganize an existing political formation; the taking of the leading position over a number of different spheres of society at once—economy, civil society, intellectual and moral life, culture; the conduct of a wide and differentiated type of struggle; the winning of a strategic measure of popular consent; and thus the securing of a social

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8 Ibid., 93.
authority sufficiently deep to conform society into a new historical project.\(^9\)

What is at stake in studying these relations of force, insisted Gramsci, “is not the reconstitution of past history,” but “the construction of present and the future.”\(^{10}\) This contemporary consequence is particularly crucial when studying a general crisis of hegemony. Although resistance to hegemony is more often than not appropriated without lasting consequence, a crisis of hegemony arises when the sociopolitical terrain is challenged to such an extent that it is reconfigured for generations.

Gramsci outlined the conditions necessary for a crisis of hegemony. Compared to the conjunctural movements, which have “no far-reaching significance,” organic movements necessary for a crisis of hegemony “give rise to socio-historical criticism, whose subject is wider social groupings—beyond public figures and beyond the top leaders.”\(^{11}\) Such a movement stimulates a crisis of hegemony because it reveals “incurable structural contradictions” that have reached maturity. Intellectuals play a crucial role during crisis of hegemony. Although Gramsci considered all people as intellectuals, only a few were considered “organic intellectuals” who served as organizers of counterhegemonic resistance by establishing a war of position. These intellectuals are able to articulate structural contradictions, connect fragmented and subaltern movements, and ultimately offer viable alternatives to the status quo so that sociopolitical change can be realized.


\(^{10}\) Gramsci, \textit{Selections from the Prison Notebooks}, 169.

\(^{11}\) Ibid., 178.
In reaction to this exposed contradiction, according to Gramsci, “political forces which are struggling to conserve and defend the existing structure itself are making every effort to cure them, within certain limits, overcome them.” These political forces must establish their own intellectuals as “salesmen” of a new common sense. Following a crisis of hegemony, a “homogeneous politico-economic historical bloc, without internal contradictions, is successfully formed.”

This new historical bloc is successful, according to Gramsci scholar Thomas R. Bates, because it is able to “extend the worldview of the rulers to the ruled, and thereby secure the ‘free’ consent of the masses to the law and order of the land.” This new historical bloc is maintained through hegemony, until the contradictions inherent in capitalism are exposed again through an organic movement.

The 1970s as a Crisis of Hegemony

It is well known that the U.S. political economy changed dramatically by 1980. After the 1930s, the New Deal Order redirected government spending, taxation, and regulations to benefit many; but after 1980, these policies benefitted very few. Many scholars see the 1960s as the last possibility for real progressive change in the post-war period. Stuart Hall, for example, argues that the year “1969 represented the last moment when the ‘cultural revolution,’ as distinct from other strands of political struggle, might have crystallized as an autonomous political force.” I argue that the cultural revolution at the end of the sixties was not in decline; rather, it had become normalized within the dominant sociopolitical ethos during the 1970s. Corporate America was widely criticized

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12 Ibid.
14 Hall, *The Hard Road to Renewal*. 
by many of the nation’s top leaders. Political scientist David Vogel argues, “from 1969 to 1972, virtually the entire American business community experienced a series of political setbacks without parallel during the postwar period.”\(^{15}\) The reigning economic paradigm leftover from the New Deal suggested that industrial consolidation inhibited competition and was ultimately damaging to the economy. According to political scientists Jacob Hacker and Paul Pierson, “Nixon represented not backlash but broad acceptance of the liberal consensus.”\(^{16}\)

But by 1980, the national policy agenda was increasingly pro-business and effectively reduced the expansion of the welfare state: it favored management over labor, dismantled social welfare programs, and deregulated major industries—a shift generally referred to as neoliberalism. If there was not a crisis of hegemony during the 1970s, this major paradigmatic shift would not have taken place. Although communications scholarship often treats hegemony as merely a form of cultural power, Gramsci in fact argued that hegemony is exercised as a way to restore elite power by bringing relative harmony between the interests of the leading and subordinate classes.\(^{17}\) There are a number of strong economic indictors that the leading class made considerable gains after 1980, a point I return to in more detail in this dissertation’s conclusion. The U.S. media industry, along with many other sectors of the economy, experienced a “mergermania” after 1980. This concentration has resulted in more commercialization, a decline in the


\(^{16}\) Hacker and Pierson, *Winner-Take-All Politics*, 98.

\(^{17}\) For various critiques of the de-Marxification of Gramsci in communications scholarship, see: Lee Artz, Steve Mack, and Dana L. Could, eds., *Marxism and Communication Studies: The Point is to Change It* (New York: Peter Lang, 2006).
quality of journalism, and record profits for the largest media companies. Furthermore, the economic and political power of the wealthiest Americans was restored and intensified after 1980, and this long-term trend has not been altered by political or economic settings. From the post-war period until 1980, the richest 1 percent in America earned a stable 8 percent of the share of national income. This began to steadily increase after 1980, and today that share is nearly 25 percent. During the 1970s, the American public was told that markets were inherently rational and democratic, and that when freed of government regulation, profits would be shared by all. However, after 1980, the bottom 99 percent lost the ground they had gained during the post-war period.

I argue that the FTC’s transformation during the 1970s is a way to demystify this epochal transformation. The FTC’s renaissance is strong evidence these changes were hotly contested to such an extent that a crisis of hegemony occurred during the decade of the 1970s. By glossing over the significance of the FTC, this period’s crisis of hegemony has been missed. The FTC did not cause a crisis of hegemony, but this period’s political, economic, and ideological struggles cannot be fully appreciated without it.

Battles over the FTC signify that this period constitutes a crisis of hegemony for three reasons. First, a powerful organic movement, with its own intellectual leaders, advanced the public’s dissatisfaction with concentrated economic power into the

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19 For an excellent overview of these dramatic economic changes, see Hacker and Pierson, Winner-Take-All Politics. The authors make a similar argument that clues to these changes can be found in the politics of the 1970s.
prevailing sociopolitical realm. Although consumer activism had been a powerful political force since the turn of the last century, many of the reforms initiated during the previous waves of consumer activism remained unsettled, and challenges to corporate power surged again during the late 1960s. Consumer activists articulated the public’s concern over corporate power in precise political ways, forming powerful public interest organizations to ensure that government officials would formulate policy in the public interest. Second, the FTC brought into focus and exposed structural contradictions within the established order and it offered alternatives to the status quo. The agency epitomized the ways in which the public interest movement had become normalized within the bureaucratic structures of government itself. The FTC’s policies to make markets more democratic represented a liberal consensus of the New Deal order, and the agency’s power was fortified and extended by leaders in both political parties throughout most of the decade. Finally, businesses responded to the FTC and the movement it represented by organizing a massive project to reestablish hegemonic power. Together, business leaders formed their own intellectuals and employed more sophisticated forms of public relations techniques, and these efforts were successful in defanging the FTC and the popular consensus the agency represented. Many of the methods that proved to be successful were used to usher in a new historical bloc by 1980. A new common sense held, and continues to hold, this historical bloc together: free markets are more egalitarian than democratic governance itself.
The Maturation of an Organic Movement

Waves of Consumer Activism

Consumer activists played a central role in compelling government officials to strengthen the FTC during the 1970s. This dissertation helps to complete the narrative of U.S. consumer activism in the twentieth century. Furthermore, the broader history of consumer activism explains how the consumer movement during the 1960s and 70s was distinct from the pervious waves of consumer activism, enough so that it was important in generating a war of position during the overall crisis of hegemony. The U.S. economy had experienced three major stages of corporate consolidation: 1898–1902, 1925–1928, and 1967–1969. These periods have three major things in common. First, they were followed by surges of political activism, which directly targeted corporate power and consolidation. Second, in response to counterhegemonic forces, businesses marshaled resources to undermine these movements and therefore create a stable equilibrium. The birth of public relations itself, as Stewart Ewen details, was a response to the progressive movement’s critique of corporate power during the early part of the century. Finally, the FTC was a major player in each period. The establishment of the FTC in 1914, and its extension of powers in 1938, are both testaments to the strength of consumer movements during these two periods. The oscillation of progressive and corporate power during the first and second waves has been documented in some detail, but the crisis of hegemony during the 1970s has largely been ignored. A closer look at the common thread in the


history of consumer activism—the FTC—reveals that many of the issues during previous waves were left unsettled, and they reemerged during the post-war period.

As early as 1914, Walter Lippmann observed that consumer interests would be the “determining voice in government . . . destined to be stronger than the interests of either labor or capital.” Lippmann, however, did not account for strong opposition to the consumer movement’s demands. From the 1880s onward, businesses have been impressively skilled in adapting to, and capitalizing on, public criticism. Nonetheless, consumer activists have fought along a continuum of legislative battles, waging them particularly in moments of deep social and economic crisis. After the Civil War, the U.S. economy shifted from agriculture to large-scale manufacturing, and middle-class Americans organized around progressive ideals and instigated a wave of consumer protections, including for the first time federal regulations for food and drugs.

The Pure Food and Drug Act of 1906 prohibited false claims on labels and the FTC Act of 1914 established the FTC to curb unfair trade policies, but these reforms did nothing to address false claims made in advertisements. In the 1930s, according to Inger Stole, consumer activists for the first time pushed for federal regulations to place substantial restrictions on advertising. Through the Tugwell Bill, consumer activists hoped to restrict false and “ambiguous” advertisements—a restriction that would have had serious consequences on advertisers’ ambiguous and emotional appeals—a key strategy in oligopolistic markets. The ad industry considered such proposals draconian,

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22 Walter Lippmann, *Drift and Mastery*, 54.
23 Ewen, *PR!: A Social History of Spin*.
and responded with alternative legislation, along with broader PR strategies to discredit and smear consumer groups. Its efforts were largely successful in removing the teeth from the Tugwell Bill. A series of pro-industry changes and amendments were proposed and, with scant help from the Roosevelt administration, consumer groups were unable to resist them. The final result was the Wheeler-Lea Amendment, passed into law in 1938, which left the possibility of prosecution through the FTC, but only in a case in which an ad made an explicitly false statement. Stole notes that although the legislation did introduce restrictions, it did so in a way that actually bolstered the ad industry’s strategy of employing ambiguous and emotionally appealing messages.26

Despite the increase in false and ambiguous advertising tactics, structural critiques of advertising rarely reached the mainstream of public debate during the 1940s and 50s. During the 1960s, another wave of corporate mergers and acquisitions occurred. What was different about this concentration was an increasing tendency toward conglomeration, whereby unrelated firms merged together. By the mid-1970s, 200 companies controlled two-thirds of all industrial assets.27 In tandem with this increased concentration, the ad industry blossomed after the Second World War. Television, which was commercial from the start, brought a new form of advertising into the American home. The creative revolution in the ad industry during the 1960s meant that advertisers would supply even less information by using more ambiguous strategies. In addition, the onslaught of television commercials for cigarettes, a new type of “eco-advertising” alleging environmental responsibility, and a barrage of television ads on children’s programming provoked a public backlash. Starting in the late 1960s, discontent over both

26 Stole, Advertising on Trial, 157.
27 Green, “The Unmet Promises of Antitrust,” 11.
advertising and industrial concentration began to ferment, producing intense and heated debates about corporate power and industrial concentration throughout the 1970s. The reigning logic leftover from the New Deal—that government should play a major role in regulating capitalism—moved these debates from the margins into the political mainstream by 1970.

*The Third Wave: A Public Interest Movement*

Although there are a number of studies on consumer movements during the first two waves, very little work exists on the third wave of the consumer movement during the 1960s and 1970s. David Vogel explains the both the significance of consumer activism and the response by business interests. According to Vogel’s account, the consumer movement during the 1960s largely took businesses by surprise, and “In a remarkably short period of time, consumer and environmental organizations were able to take advantage of these changes to move from a peripheral position in American politics to become more active and effective participants in the making of public policies in the nation’s capital.”

What made consumer activism more influential than consumer movements during the progressive and New Deal eras was institutionalization of consumer activism into a broader and more powerful public interest movement after 1968. Consumer activists borrowed strategies of legal maneuvering from the civil rights movement, and this translated to direct forms of political action. Vogel attributes the strength of the public interest movement to economic prosperity for the middle class, demographic shifts toward greater numbers of younger college-educated Americans, and the extensive press coverage of corporate abuses.

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28 Vogel, *Fluctuating Fortunes*, 10.
29 Ibid., 93.
The public interest movement, according to Vogel, “transformed both the nature of the political agenda and the way in which administrative decisions affecting business were made. For the first time since the 1930s, business found its political influence seriously challenged by a new set of interest groups.” Even more striking was the various ways in which the public interest movement had become normalized by 1970. Vogel notes that stockholder meetings changed in tone during the 1970s. Rather than merely discussing ways to profit, corporate meetings “became a vehicle for politically oriented shareholders to challenge management’s commitment to the public interest.” Because of the scope of his project, Vogel only gives passing mention to the ad industry and FTC among the array of other important developments.

This dissertation discusses the public backlash to corporate power and the battles over the FTC in more detail. Starting in the late 1960s, the ad industry was the target of public criticism, but more importantly, the industry did not perceive itself as necessarily distinct from the countercultural movements of the 1960s. In fact, the ad industry marshaled resources and talent to protest the Vietnam War, and several prominent ad industry leaders agreed that its industry had gone too far. This is not a simple debate between big business and progressive causes. Rather, it was a period when the popular consensus was that government was needed to make capital more responsive to public needs.

During the 1970s, the consumer movement more precisely articulated the public’s concern over advertising and corporate power. Led by organic intellectual

30 Ibid., 112.
31 Ibid., 95.
leaders, particular public interest groups directly targeted the ad industry. For example, teams of young law students assembled by Professor John Banzhaf drove tobacco advertisers off the airwaves. But, more importantly, the debate over tobacco advertising signified a greater willingness on behalf of public officials to balance commercial with public interest. Ralph Nader was the epitome of an organic intellectual leader of the public interest movement. By the mid-1970s, Nader had amassed a “public interest conglomerate”—a legal team of seventy-five full-time employees and a budget of over $1 million. Nader resurrected many of the strategies used by muckraking journalists during the Progressive Era by publishing biting reports on the meat processing industry in *The New Republic.* After he gained public support from his auto-industry expose *Unsafe at Any Speed*, the FTC was his first target. For Nader, the agency’s responsibility to ensure competition and protect consumers was even more pressing because of the “rise of the corporate state through the growth of conglomerates and shared monopolies into an oligopolistic structure.” Nader’s report on the FTC was also a scathing critique of both political parties, which in his view had turned the agency into a “dumping ground for political patronage” that fostered “an aversion or upsetting friends on Capitol Hill by any radical moves.” Nader exposed the ways in which the FTC was beholden to politicians and business interests, and after his report, the FTC became the most powerful public interest organization in the country.

By accounting for the totality of antagonist forces surrounding the FTC, it becomes clear that this is not a merely a story of the so-called rise of the New Right in

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America, although politics played an important role in the FTC’s fortunes. Hegemony theory allows us to see that political parties function as agents, rather than makers, of hegemony. Political parties are important for this story because they carried out the national popular-collective will. By 1970, the counterhegemonic struggle had advanced alternatives into the dominant political realm. Nixon initiated the agency’s revitalization and, during his second term, he chose as the FTC’s chair Caspar Weinberger, a Republican and former aid to Governor Ronald Reagan. Weinberger re-staffed the FTC with a cadre of young lawyers, and reorganized the agency to make it more accountable to the public. By 1970, the counterhegemonic struggle had advanced alternatives into the dominant political realm. Throughout the 1970s, the FTC was at the forefront of decisive deliberations over government’s role in regulating the ad industry and the economy more generally.

**Challenging Advertising and Monopoly Power**

From our vantage point today, it is difficult to imagine that a sixty-year-old federal agency would offer alternatives to commercialization within the media system, or to structural arrangements within the American economy. Regulations and restrictions to advertising might seem relatively mild by comparison to the establishment laws for environmental standards, protections for workers, and safety standards for the automobiles, all of which were passed during the 1970s.

Scholarly work in political economy explains the structural significance of advertising to modern capitalism. Karl Marx, in his labor theory of value, sees wage labor as the crux of capitalism. In a Marxian understanding, the pressure to pay labor as little as possible is both the driving force, and the inherent contradiction, in capitalism.
Capitalism was useful insofar as it created surplus, but the inequality between those who produced and those who owned the means of production made it ultimately unsustainable.\(^{36}\) Because of this inherent tension, a traditional Marxist historical analysis tends to focus on the class conflict created by organized labor. Although the labor movement was undoubtedly an important source of instability during the 1970s, it alone did not generate a crisis of hegemony.

By accounting for the structural changes to capitalism since the time of Marx’s writing, it becomes clear that forms of power, resistance, and contradiction come in many forms. As firms moved from competitive to concentrated industries, advertising became a crucial element in the logic of capitalism. The selling of a commodity for profit—the most important step in capitalism—now hinges on advertising and marketing.

Baran and Sweezy explained the function of advertising in *monopoly capitalism*—an economic system characterized by industrial concentration, whereby only a handful of firms dominate in most markets. The rise of monopoly capitalism brought about distinct changes to selling practices. Advertising is a necessary outcome of monopoly capital, as firms constantly need to increase either private investment or consumption. Most notably, firms in concentrated markets no longer compete on the basis of price, and advertising instead maintains differentiation for existing products. Without competing by lowering prices, profits continue to rise, and thus advertising is the “very offspring of monopoly capitalism, the inevitable by-product of the decline of price competition” and it “constitutes as much an integral part of the system as the giant

\(^{36}\) Karl Marx, *Das Kapital*
corporation itself.”37 Or, as Inger Stole puts it, “the rise of the oligopoly is the gasoline that fuels the flames of modern advertising.”38 Although consumer activists in the 1930s had challenged this structural arrangement, the debate was not settled by the end of the New Deal Era. I argue that challenges to monopoly capital surged again thirty years. The FTC honed in on the ways in which advertising contributed to concentrations of power and proposed measures that would dismantle the oligopolistic structure within a number of well-established industries.

Statements peppered throughout the business trade press illuminate the uncertainty and alarm that business leaders experienced as a result of the public interest movement and the FTC’s vast expansion of regulatory power. As early as 1965, the government liaison from Proctor and Gamble observed that the consumer movement had “taken up permanent residence in our national political house.” By 1970, the FTC embodied the ways in which public interest groups had transformed Washington. In response to the FTC’s advertising regulations, the president of Pepsi-Cola stated, “the ultimate target is free enterprise itself” because advertising was “the highest silhouette, the most convenient aiming point.”39 Another business representative said that “the FTC has bitten off an enormous new theory of antitrust law, and if carried out, it would revolutionize the American economy and break up all kinds of industries.”40 The president of the Chamber of Commerce predicted that Americans would “witness the elimination of capitalism, and the substitution of state ownership of means of production

37 Baran, Monopoly Capital, 155.
38 Stole, Advertising on Trial.
and a centrally planned economy.” Although these statements can be easily dismissed as alarmist, the massive project businesses produced to regain the political power they had lost suggests that this period was a crisis of hegemony.

**A New Historical Bloc**

When the FTC was finally defanged in 1980 through congressional legislation, a Democratic president was in the White House, and Democrats had majorities in both houses in Congress. What happened between these years to shift politics in such dramatic ways? Businesses recovered the political influence they had lost. In 1978, an executive at Proctor and Gamble put it best: “it doesn’t really matter a whole lot which party is runs things . . . when businesses start marching lockstep, the government apparatus hunkers down.”

This recovery of hegemonic power did not occur merely by influencing government officials, although this was an important part of the overall strategy. This project shows that business interests implemented a massive ideological project to reestablish hegemonic power, ushering in a new historical bloc by 1980. Gramsci did not live to see the development of more sophisticated ideological strategies in the maintenance of hegemony, particularly the dramatic growth of corporate public relations after 1920. Alex Carey’s work provides historical insight and a theoretical model for corporate public relations. In Carey's view, the growth of democracy and the growth of corporate power during the twentieth century clashed to such an extent that business leaders needed to protect corporate power against democracy through corporate public relations. The emergence of PR at the turn of the century, and the development of more

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sophisticated techniques during the New Deal Era, supports the argument that public relations has been a powerful force in the politics of democratic governance. Carey viewed the 1970s through this theoretical lens.

The 1970s, Carey observed, “involved a great expansion of a more sophisticated form of propaganda” called “treetops propaganda, aimed at the leaders of society.” This new breed of propaganda came in form of private think tanks, which developed policy research for private organizations. The goal of these organizations was to recruit and assemble a new cadre of free-market economists, and Carey argued that think tanks “virtually created the neo-conservative movement of the 1970s.” Irving Kristol’s think tank, the American Enterprise Institute (AEI), began in 1970 with a budget of $1 million, and by 1978, its budget grew to $7 million. The Heritage Foundation and the Business Roundtable followed suit, and these think tanks together coordinate research with more aggressive lobbying. “With this final twist,” Carey insists, “the New Deal comes in full circle . . . complete hegemony over the American mind was reestablished.”

Carey also mentions the more sophisticated grassroots propaganda employed by businesses during the 1970s. For Carey, grassroots campaigns “contained little novel except for its scale and impact on U.S. politics.” A major player in this effort was the advertising industry, not only because of its vulnerability, but also because it was viewed as the most skilled in the art of persuasion. Carey is one of the few scholars who references the Advertising Council’s economics education campaign as important in

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43 Ibid., 95.
44 Ibid., 88.
“persuading the American Public that their interests were the same as business’s interests.”

This dissertation chronicles the Ad Council’s economics education campaign in great detail. During the Second World War, the U.S. Advertising Council was created to legitimize the ad industry and build an alliance between government and private industry during a period of crisis and uncertainty for the ad industry and its corporate clients. This alliance and popular consensus had unraveled by 1970. After 1975, powerful corporations and business trade groups put significant pressure on the Ad Council to address the FTC’s policy initiatives and the persistent anti-corporate attitudes the agency represented. In its “educational” campaign called the “American Economic System,” the Ad Council received more corporate donations than in any other time in its history, and its messages were disseminated on a massive scale, not only through mass media, but also through libraries, elementary schools, colleges, research reports, news articles, and nonprofit groups. The Ad Council helped coordinate treetops with grassroots efforts, which helped unite businesses around neoliberal ideals. A major goal of the ad industry’s crusade was to popularize a new brand of conservative economics, one that served as the basis for neoliberalism as a new historical bloc. Though influential, this campaign was extremely controversial. Together, a number of progressive groups organized a counter-campaign and argued for their right to rebuttal. This dissertation’s analysis of corporate PR illuminates a war of position that took place during this period’s overall crisis.

By the end of 1970s, the success of these massive PR efforts began to pay off when the FTC attempted to implement strict regulations for advertising to children.

President Carter’s election gave a temporary boost to progressive causes and he appointed Mike Pertschuk, a long-time consumer advocate, to chair the FTC. With the blessing of Carter, Pertschuk made a bold promise to “bring the structure and behavior of major industries and indeed, the economy itself, more in line with the nation’s democratic, political, and social ideals.”

To do so, Pertschuk and his fellow commissioners voted unanimously to pass rulemaking that would limit advertising to children, a practice he and his many supporters considered to be repulsive, unethical, and unfair. Major industries viewed it as an attack on all advertising, and a crucial test of the FTC’s powers to regulate unfair business practices. This regulatory empowerment threatened drastic changes for U.S. businesses, which marshaled significant resources to battle not only the FTC’s policy agenda, but also the existence of the agency itself. Advertising trade associations filed a lawsuit against Pertschuk to disqualify him from the rulemaking on children’s advertising. Congress launched an all-out attack on the FTC, and for the first time in American history, a regulatory agency was forced to close down.

Shortly before he left office, President Carter was between a rock and a hard place: he could let the FTC perish, or sign legislation to preserve the FTC but strip it of the power it had gained throughout the 1970s. He chose the latter. These dramatic events imply that 1968 was not the pivotal year in American history; it was ten years later, when business interests galvanized to finally displace policy efforts that attempted to structure business practices to be more in line with democratic principles.

Despite the eventual demise of the FTC’s regulatory renaissance, this remarkable story exemplifies the ways in which the 1970s was a period of great possibility for

change, both for the U.S. media system and for the political economy more generally. A Gramscian historiography helps to make connections with other theoretical and historical trajectories. Using Gramsci as connective tissue, this project also relies on studies of broader U.S. histories of the 1970s. Because of its importance for media history, this dissertation also draws on studies of media reform and the important economic role of information.

**Histories of the 1970s**

*Social, Political, and Economic Histories*

A major goal of this study is to connect the politics of the Federal Trade Commission to a grander historical narrative of the 1970s. Many histories of this period explain the ways in which those in power appropriated an emphasis on identity politics and individualism within social movements. A number of cultural histories argue that the social movements of the sixties created a more permissive and individualistic society, which fueled a conservative backlash and allowed for the ascendance of the New Right. Christopher Lasch psychologized this transition in his 1979 bestseller *The Culture of Narcissism*. In Lasch’s account, the hedonistic egoism of the 1960s, combined with the political traumas of the 1970s, created a culture of individualism and selfishness, whereby “Americans have retreated to purely personal preoccupations.”

More recent histories have elaborated Lasch’s theme, but also describe in greater detail the many political and cultural calamities of the 1970s. *Decade of Nightmares, 1973: Nervous Breakdown,* and *Nixonland* all describe the 1970s as period when

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rightward trends in American culture emerged shortly after Nixon took office. Bruce Schulman also sees the 1970s as an important historical period because of its great shift in culture and politics, when personal entrepreneurial freedom replaced the values of a “universalist vision.” In Schulman’s view, popular culture, through its emphasis on individualism and identity, helped reconstruct the nation into “congeries of many narrower units.” Jefferson Cowie sees the 1970s as a decade of possibility for the labor movement because the New Deal politics of the 1930s, combined with the social movements of the 1960s, had the makings for a “new era for the workingman.” But over the course of the decade, according to Cowie, the labor movement became fragmented and troubled with internal contradictions. More than economic factors like stagflation and deindustrialization, Cowie sees the eclipse of the labor movement as one derived mostly from the labor movement itself. Combined, these histories present a decline narrative of the decade, when political cynicism, identity politics, and fractured social movements provided a fertile seedbed for a new type of American conservatism to blossom during the 1970s.

In *Pivotal Decade*, Judith Stein pays closer attention to the political response to economic crisis during the 1970s. Stein argues that post-war liberalism of the New Deal—“assumptions that capital and labor should prosper together” and “high wages and regulated capital created and sustained U.S. prosperity”—was alive and well during the

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49 Vogel, *Fluctuating Fortunes*.
first years of the 1970s. After the economic crisis of 1973, the New Deal “age of compression” was steadily replaced by the “age of inequality” through a series of opportunistic and shortsighted political decisions by those in power. By looking at the underlying economic paradigms of the 1970s, it becomes clear that the 1968 election was not the beginning of a new conservative era. In fact, as Stein points out, Nixon during his first term in office advocated for progressive taxes, environmental laws, and a host of other regulations for businesses. After 1973, Stein argues that this consensus unraveled in large part because of the failure of Keynesianism to predict and offer solutions to the economic crisis. The political economic void, according to Stein, was filled with a new paradigm of conservative economics, one that continues to shape the politics of our time. Stein mostly views the age of compression as one derived from the economic crisis and the ensuing elite policy decisions. This study relies heavily on Stein’s work, but it accounts for the wider public debate by important organic movements. I argue that the economic crisis of the 1970s made conditions more favorable for the changes that took place during the 1980s; however, it alone does not account for the wider ideological war of position during the 1970s.

*Neoliberalism*

David Harvey refers to this paradigmatic shift as “neoliberalism.” Although Harvey and Stein differ in terms, they both account for the ways in which this shift compressed the economic prosperity for the working class and greatly expanded the power of the wealthy. Harvey, more than Stein, sees this sociopolitical shift as one that was planned and executed by those in power in response to geopolitical struggle. Harvey argues that a “sea-change” took place in the political economy around 1972 that was
constituted by “the rise of postmodernist cultural forms, the emergence of more flexible modes of capital accumulation, and a new round of ‘time-space compression’ in the organization of capitalism.”

In the wake of these economic and cultural shifts, neoliberalism became the prevailing economic and political logic. Harvey defines neoliberalism as the “theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade.”

Harvey makes clear that the rise of neoliberalism was not a natural occurrence; economic elites gravitated toward neoliberalism as a way to restore their class power amid the economic recession. In many cases, neoliberalism supports government involvement, and the ideology has adapted to an overall preference on behalf of elites for technocratic rule over democracy. As a result, according to Harvey, public institutions have been stripped public of democratic values when it was advantageous for those in power. Despite the pervasiveness of this logic in global government policies, Harvey concludes that we have little understanding of “where neoliberalism came from and how it proliferated so comprehensively on the world stage.” Because of the scope of Harvey’s project, he does not examine important developments within communications policy and media activism, which were also important sites of struggle during this period of extraordinary political and economic change.

54 Ibid., 4, emphasis added.
1970s Media Histories

The Information Economy

Dan Schiller, by considering the economic role of information, sees the 1970s as a decisive period in the telecommunications industry. According to Schiller, the years that followed 1970 were pivotal in exposing capital’s vulnerability: the manufacturing sector in the U.S. experienced a significant decline, and business leaders along with government officials touted the information sector as a solution to overproduction and stagnation. As a result, a process of accelerated information commodification took place and allowed for capital to be “freed to devise accumulation strategies for application across a much-widened domain.”

Schiller discusses the acceleration of information and communication technologies (ICTs) as “the largest category of corporate capital investment,” and this inspired a “radical overhaul of the structure and policy of telecommunications.” Because of this shift, information-intensive services like entertainment, data processing, advertising, and marketing have played an “increasingly critical role in overall U.S. investment, employment, and international trade.” Rather than view media merely in terms of content or policy, Schiller accounts for the ways in which information is a commodity produced through the wage labor relationship and, more crucially, “an essential site of market growth” since 1970.

This dissertation considers the various struggles within this economic shift, beyond top leaders in government and business. The FTC’s transformation is one clue, among others, which exposes the origins of neoliberalism. The FTC is not simply an

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56 Ibid., 40.
57 Ibid., 3.
agency that makes decisions over media ownership and content. Its powers are much broader. The FTC is responsible for ensuring that the entire economy is competitive and functions in the public interest. A powerful organic movement instigated the reform of the FTC, and after 1970, it created a number of policies to make business more accountable. The FTC’s regulations were offered amid economic crisis, political changes, and a shift toward investment in information communication. These broader uncertainties made the FTC’s policies even more foreboding for businesses. The FTC targeted advertising during this period when capital shifted from manufacturing to the information sector, and the agency honed in on the structural arrangements necessary for this accelerated commodification to take place.

**Critical Junctures**

Although existing scholarship has analyzed the importance of communication industries and technologies within these larger economic shifts, the hegemonic struggle over the advertising industry and industrial concentration during the 1970s has not been investigated in detail. In addition, the FTC’s role in media policymaking has not been fully appreciated, as studies of the history of media reform have tended to concentrate on the Federal Communications Commission (FCC), the agency established in 1934 to regulate media in the public interest. As Robert W. McChesney demonstrates, the creation of the FCC and the policies it first initiated were part of vigorous public debate over how to structure broadcasting during the late 1920s.\(^{58}\) Important public debates over media policy resurfaced within the FCC during the 1940s. Victor Pickard’s work reveals

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\(^{58}\) McChesney, *The Problem of the Media*. 

the ways in which the FCC’s progressive policy initiatives again offered alternatives to the commercial media system during the 1940s.\textsuperscript{59}

These debates constituted “critical junctures”—moments in which the entire media system is called into question when a combination of at least two of three elements converge: the rise of new technologies, dissatisfaction with the status quo, and broad social upheaval.\textsuperscript{60} Although a noncommercial broadcasting system would have fundamentally altered the U.S. public sphere, it would not have constituted, on its own, a complete reworking of the national political economy.

This dissertation aims to recover this important “crisis of consumerism” of the 1970s by showing the ways in which the FTC’s advertising regulation policies proposed significant challenges for the livelihood of the U.S. commercial media system—the advertising industry—within this turbulent and formative decade. While the FCC has clearly played an important role in shaping the contours of the U.S. media industry and its practices, the lack of scholarly attention towards the FTC mirrors the broader elision of monopoly capital’s role that characterizes much of the communications field. This history points to more dramatic moments—battles for hegemony—when the entire structure of American capitalism and culture were up for grabs.

The FTC’s proposals—including its advertising substantiation programs, the scrutiny of advertising practices in concentrated markets, and the proposals to restructure entire industry segments—offered alternatives and challenges to the commercial media system. As advertising plays an increasingly central role under “digital capitalism,”

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understanding the history of the FTC and its enormous potential is of crucial
importance. Although in recent years the FCC has been stripped of its power to regulate
cable and digital media content providers like Google, the FTC to this day has
jurisdiction to regulate advertising and marketing practices online. Thus, this dissertation
tells an untold story in media history—one that has bearing on contemporary media
reform.

Conclusion

This critical juncture for media policy was an important destabilizing force within
this period’s overall crisis of hegemony. The FTC represented widespread discontent
over commercial media and corporate power more generally. Its policies illustrate a path
not taken, one that would have made corporations more responsive and accountable to the
public interest. The FTC represented an important policy juncture, but more significantly,
the battle over the FTC occurred primarily on ideological turf. In response to the
challenges to the status quo, businesses implemented a massive PR campaign to instill the
idea that its interests were synonymous with democratic values. The enemy to democratic
liberty, businesses insisted, was government. Although there were certainly other
destabilizing forces, the FTC, which businesses eventually dubbed the “national nanny,”
was the most powerful regulatory agency. Thus, this study reveals a path not taken in
media and public policy and also exposes broader alternative understandings of the
relationship between democratic governance and corporate power.

By looking at the potential for the reforms proposed by the FTC, it is apparent
that the power of business became a central battleground in the war of position during the

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61 Dan Schiller, *Digital Capitalism: Networking the Global Market System* (Cambridge: MIT
Press, 1999).
1970s. From the perspective of the ad industry and major businesses, the FTC was by far the most formidable regulatory agency in Washington. The general failure of the reform efforts that sought to limit the power of advertisers, and the industry’s strategy that linked the free market to classical notions of liberty, brings this period’s crisis of hegemony into higher visibility. The battles over the FTC worked as an arena in which the ideological maneuvers that would prove to be successful were developed and auditioned. Thus, the disharmony of forces involved in U.S. Federal Trade Commission’s fortunes helps to demystify major shifts in the ideological temperament of American culture that very much remain with us in a new millennium. A Gramscian understanding allows us to see that while hegemony is powerful, it is not inevitable or permanent. Pluralization of the ideological terrain was possible during the 1970s, just as it is today.

**Sources**

This dissertation analyzes a number of important secondary and primary sources. The tensions and contradictions within the crisis that took place during the 1970s are clearly demonstrated in the business trade press, including *The Wall Street Journal, Advertising Age, Broadcasting,* and *Editor and Publisher.* Unlike more mainstream daily newspapers, the trade press reveals the extent to which the FTC’s proposals were threatening to the advertising industry, the commercial media system, and a number of established industries. The 1960s and 1970s has often been described as a “high water mark” for professional journalism. Because of this, major dailies and magazines covered the battles over the FTC extensively, especially during the early part of the 1970s. Without the excellent and comprehensive news coverage of the FTC, this dissertation could not have been written.
In addition to press clippings, this project cites an array of primary government documents, including FTC press releases and reports, court cases, congressional testimony, and presidential addresses. Archival collections have also been essential for this study. The group Action for Children’s Television was pivotal in spearheading the children’s advertising regulations in the late 1970s and this dissertation relies heavily on papers from the Action for Children's Television Collection from Monroe C. Gutman Library at Harvard University. Michael Pertschuk was particularly important in strengthening the FTC’s powers as a top congressional staffer, and after he was appointed to chair the FTC in 1977, Pertschuk spearheaded rules to restrict children’s advertising. I rely on Pertschuk’s detailed account of his time at the FTC in the book *Revolt Against Regulation*, his personal papers from the Library of Congress, and my personal interview with Pertschuk. In addition, this project utilizes the Advertising Council’s papers at the University of Illinois archives to determine the dynamics between regulators and the advertising industry, as well as the industry’s public relations tactics. Proctor and Gamble, the largest advertiser in America, was at the forefront of debates over the FTC’s powers. Bryce Harlow, who was known as the “unofficial dean of Washington corporate representatives,” was instrumental in building close ties with regulators and uniting trade groups during the 1960s and 1970s. During the 1970s, Harlow took a leave from Proctor and Gamble and worked as a close aid to President Nixon. This project cites many of Harlow’s statements and speeches, which are available online from the University of Oklahoma’s Carl Albert Center.
Chapter Abstracts

For the most part, the chapters in this dissertation are organized chronologically, with the exception of some topics, which overlap with the timelines of other chapters. Chapter 1 describes the origins of the advertising reform movement, which began to ferment during the 1960s. A number of social movements—the labor, civil rights, and feminist—drew attention to problems of advertising and commercialization. These were solidified when consumer rights gained legitimacy in Washington during the Kennedy and Johnson years. Bolstered by this political power, various consumer organizations drew attention to tobacco advertising on broadcast television, which set a bold precedent for counteradvertising under the Fairness Doctrine. Despite these accomplishments, the FTC—the agency responsible for regulating advertising—was written off as a corrupt and ineffective agency. In 1969, this all changed when Ralph Nader and his team wrote a scathing report of the FTC that resonated with President Nixon.

Chapter 2 chronicles Nixon’s revitalization of the FTC. Nixon’s appointees to the commission did not share Nader’s zeal, but they shared his conviction that the FTC should be gutted and reformed. It was during these first few years that the FTC would break new ground in advertising and antitrust reform. Using the tobacco case as a model, it ordered corrective advertising in cases of deception and greatly expanded its definition of “false and misleading” to include puffery. The FTC also targeted the concentrated structure within many industries, adopting a novel “shared monopoly” doctrine for its antitrust cases.

Chapter 3 begins with Nixon’s second term. Many in the business community predicted that Nixon would mollify the FTC’s initiatives, but the FTC stayed on course as
it continued to gain bipartisan approval and public credibility. During the mid-1970s, Congress cemented the FTC power through a series of laws. The FTC’s objectives were overshadowed by the political and economic traumas of the 1970s. As prices continued to rise, consumer activists and government officials turned their attention to lowering prices. This fixation on prices led to a landmark Supreme Court case in 1976, which ruled that advertising constituted free speech under the First Amendment. This left the FTC in a policy paradox. These troubles for the FTC were intensified when President Ford appointed commissioners who were less enthusiastic about the FTC’s continued revival.

The time period of Chapter 4 overlaps somewhat with Chapters 3 and 5. This chapter describes the public relations tactics used by businesses to combat the regulatory reinforcement of the FTC. Two mitigating factors—the cynicism in the wake of Watergate, and the challenge to the dominant economic paradigm following the economic crisis—provided an opportunity for business to redirect policies in its favor. Through the U.S. Advertising Council, the advertising industry helped to congeal various elements of “economics education” and set a template for a new type of conservative economics. The massive campaign on behalf of the Ad Council united businesses around neoliberal ideals, but created public controversy for the Ad Council. In response to the Ad Council, a diverse coalition of progressive groups created a counter-campaign called Americans for a Working Economy.” With the support of the FTC, a number of activists, prominent academics, and some high-ranking members of Congress fought for a right to rebuttal.

Chapter 5 describes in detail the most notorious aspects of the FTC during the 1970s. Under Mike Pertschuk, the FTC attempted to ban advertising to children in its oft
called “kidvid crusade.” The kidvid controversy is the best-known episode of the FTC during the 1970s, having been described as a radical initiative taken up by an agency gone rogue. But in 1977, the FTC appeared to have support from both Republicans and Democrats for a children’s advertising rule when Pertschuk took over the agency. This chapter demonstrates that the failure of kidvid was a result of organized response by businesses, which had gained considerable ideological power and political influence by 1978. By the end of the decade, Congress threatened the agency’s very existence. As a result, Washington regulators and lawmakers toned down their regulatory philosophies, paving the way for the Reagan era and the rise of neoliberalism during the 1980s.
During the 1960s, criticism of consumer society began to ferment as feminist, civil rights, environmental, and labor movements called into question the social, economic, and ecological costs of consumer society’s most visible portrait: advertising. In significant ways, advertisers themselves embraced the countercultural movements during the 1960s, which opened up a space for social critique to become normalized within the ad industry. Many of the criticisms of advertising and consumer society were subdued by changing advertising strategies, but far more threatening to big business was structural criticism of advertising’s broader economic role. As members of the business community grappled with how to address mounting public antipathy, the new wave of consumer rights entrepreneurs like Ralph Nader and John Banzhaf created powerful public interest organizations, calling attention to deceptive advertising and dangerous products. By the end of the decade, the consumer rights movement, with growing support in Washington, solidified these varied critiques of advertising and forced government officials to take a hard look at the U.S. Federal Trade Commission—the agency responsible for regulating the advertising industry and unfair trade practices.

In many ways, the dramatic changes to consumer society during the post-war years set the stage for a backlash. The advertising industry blossomed after the Second World War, when manufacturers transitioned from defense manufacturing and began to produce a number of new consumer goods, ranging from automobiles to frozen foods.  

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By looking at how consumer-based economy came to be viewed as part of American citizenship, Lizabeth Cohen describes ways in which the post-war era was unlike any other period in American history—consumption was embraced with seemingly no limitation. Consumer culture changed the entire physical, social, and political landscape in the United States: shopping malls replaced town squares and marketers divided people into profitable yet divisive segments along gender, race, and class lines.\textsuperscript{63} Television advertising revenues soared in the 1950s, bringing more and more advertising into the American home. By 1960, television had become the primary medium for national advertising, and revenues reached $1.5 billion. To maintain viewers’ focus, many television commercials used a repetitive hard-sell formula, and the onslaught of aggressive advertising had saturated the medium by 1960. Because of demographic and cultural shifts during the post-war era, the target market for advertisers during the 1960s was increasingly younger, better educated, and more affluent.\textsuperscript{64}

\textbf{Advertising and the Creative Revolution}

During the 1960s, advertisers began to solve the problem of clutter and at once appeal to the youth market by changing advertising strategies. Julian Sivulka comments that these changes resulted in “collages, psychedelic images, pop art blowups, and camp art parodies to sell everything from cars to catsup.”\textsuperscript{65} As advertising agencies began to use more innovative strategies, they also began to hire more young professionals from liberal arts backgrounds who were often sympathetic to the counterculture movement of the 1960s. Thomas Frank argues that advertisers and business leaders embraced

\textsuperscript{65} Sivulka, \textit{Soap, Sex, and Cigarettes}, 256.
countercultural elements in advertising messages and this helped to spur the creative revolution in the business world, leaving permanent changes in the advertising industry. Bill Bernbach, a copywriter at the agency DDB in New York, is credited with having launched the creative revolution in advertising in 1960 with a print ad for the Volkswagen Beetle. In stark contrast to the busy hard-sell ads for overly elaborate cars in the 1950s, the ad was filled with mostly blank space and featured a diminutive image of the car in the corner under the headline “Think Small.” These changes proved to be enormously profitable for the industry—advertising revenues in the first half of the 1960s were increasing about 5 percent a year. In 1964, advertising revenues rose to a record breaking $13.9 billion from $12.9 billion the previous year. In 1965, advertising revenues reached $14.7 billion, over 2 percent of the national GDP.

While the ad industry enjoyed unprecedented financial prosperity, the new generation of young advertising professionals took liberties in speaking out on controversial issues, many of them wholeheartedly joining the countercultural movement. More than the new design ethic in advertising, advertisers’ embrace of the countercultural revolution is best epitomized by their active involvement in protesting the Vietnam War. Young professionals from top advertising agencies formed the group Advertising People Against the War (APAG) in 1969 after Nixon first sent troops to Cambodia. Top talent from major U.S. agencies, including Bill Bernbach of the Volkswagen “think small” campaign, worked during spare time to create eleven print ads and seven commercials.

Several agencies supplied materials on a volunteer basis, and funds were raised to run the

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ads from antiwar organizations and several Democratic senators. One television commercial created by APAG portrayed a group of young boys playing in a field while an announcer reminded viewers that if the war continued, the boys could be one day fighting in it. Another print newspaper ad featured a photo of a flag-draped coffin below the headline “IT’S TOO HEAVY FOR ONE MAN TO CARRY.” Robert Colodizin, a member of the group, said their goal was to dispel the “great myth” that “only some Eastern radicals and long haired-kids are against the war.”

Other advertising professionals aided the antiwar group called “UNSELL,” which was initiated by Ira Nerken, a 20-year-old undergraduate at Yale. With the help of agency president David McCall, the group created 125 posters, 33 television commercials, and 31 radio spots. Those coordinating the effort estimated that over $1 million in time and expenses were donated in the first stage of the campaign. Among the most controversial ads featured Uncle Sam serving a pie to a black man, an elderly white woman, a white man in a hard hat, and a soldier. The soldier received three-quarters of the pie, while the others only a received a sliver. After the divvying was complete, the announcer said:

Most of your taxes go to pay for wars, past, present, and future. What does your money buy? It buys you Vietnam. And inflation, unemployment, disunity and death. It buys you bombs instead of schools, defoliation instead of clean air and water, tanks instead of trains and destroys homes instead of building them. Isn’t it time we got out of their country and back to ours?

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The group sent letters to over 8,000 media outlets, asking for free time “just as the Advertising Council does in cases of voluntary projects.” The letter was signed by heads of top agencies, including James L. McCaffey, Maxwell Dane, Edward Ney, and Robert S. Marker. Other members of the business community formed the group Business Executives Move for Vietnam Peace and ran weekly antiwar ads featuring the week’s latest casualties in major newspapers. In 1969, the group vowed to continue running the ads as long as the U.S. was involved in the war.

**Consumer Culture and its Critics**

Advertisers’ endorsement of the youth revolution was overtly articulated by their involvement in antiwar activism and tacitly reflected by changes to advertising styles and strategies. Although the advertising industry embraced some elements of the youth-led cultural revolution, the feelings, by and large, were not mutual. Criticism of consumer society came from a variety of social movements in the 1960s, including environmental, civil rights, educational broadcasting, and organized labor. These broader movements offered critiques of advertising based on its tendency to saturate the media system, promote negative stereotypes, exploit materialistic values, and contribute to environmental degradation. Advertisers adapted to many of these concerns during the 1960s, while others, by the end of the decade, continued to loom.

**The Mass Society Critique**

As early as 1957, Vance Packard’s bestselling tell-all *Hidden Persuaders* encapsulated the core of the mass society critique. Packard exposed the unpalatable

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techniques used by marketing researchers during the post-war era. These methods were inherently immoral to Packard because they preyed on consumers’ fears of inadequacy and acquisitive desire for status and wealth. His later book, *The Waste Makers*, lamented the throwaway culture created by planned obsolescence, which accelerated the plunder of natural resources. Rachel Carson’s *Silent Spring* (1962)—the book often credited for spawning the modern environmental movement—also questioned the ecological costs the throwaway society promoted by advertising. The 1950s car culture, with its constantly changing styles, was a prime example of the planned obsolescence and excessiveness of the 1950s. Herbert Marcuse took the big three automakers to task in his book *One Dimensional Man*, contrasting the car’s “beauty, shininess, power, and convenience” in to its tendency to “deteriorate and need repair… its beauty and surface are cheap, its power unnecessary, its size idiotic.”

The creative revolution in advertising was in many ways a response to the mass society critique. According to Thomas Frank,

Marcuse might well have been writing copy for a Volkswagen ad. Although Volkswagen, no doubt, wanted consumers to experience a “rather pleasant feeling,” their ads aimed to push the “tension between appearance and reality” to the point of breaking a bond between Americans and the Big Three, steering consumers toward what they repeatedly described as a “better car… made for less money.”

Because of the success of the Volkswagen campaign, other firms followed suit by jumping on the “think small” bandwagon. In 1970, Honda rearticulated the “keeping up with the Joneses” cliché with the headline “Onedownmanship” for its small coupe. These anti-status-symbol strategies resonated with the environmental movement’s

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concern with pollution and energy consumption. Advertisers also used less subtle strategies by using environmentalist messages in a new type of “eco-advertising.””78 In 1969, utility companies spent $300 million on advertising, more than eight times the amount on pollution research. Madison Avenue’s attempt to greenwash its clients would come under intense scrutiny a few years later during the 1970s.79

The Feminist Critique

Bestselling exposés about problems with consumer society also came from the feminist movement.80 In 1963, Betty Freidan’s The Feminine Mystique charged the advertising industry with exploiting women by diverting her guilt and disguising her growing emptiness. They have done this so successfully, employing the techniques and concepts of modern social science, and transposing them into those deceptively simple, clever, outrageous ads and commercials, that an observer of the American scene today accepts as fact that the great majority of American women have no ambition other than to be housewives. If they are not responsible for sending women home, they are surely responsible for keeping them there.81

Freidan’s account gave momentum to the feminist movement’s critique of sexist stereotypes in advertising. The National Organization for Women gained national attention for the issue by staging sit-ins in the New York editorial offices of The Ladies’ Home Journal and disrupting annual stockholder’s meeting at CBS. In a meeting with ad agencies, Gloria Steinem remarked, “40 percent of all our subcultural intake comes from

advertising.”

Women attempted to call attention to sexist stereotypes in advertising by placing stickers on publicly placed ads that said “This Ad Insults Women” and “This Exploits Women.” Ad agencies mostly dismissed the feminist movement’s outcry in the early years in the early 1960s, but near the end of the decade, advertisers took measures to avoid sexism by using agency checklists and hiring more female copyrighters. As a result of these internal measures, ads began to portray women in powerful managerial roles. Although many of these changes were inspired by the feminist movement, they also made economic sense because women were viewed by advertisers as the primary purchasers of household goods.

*The Civil Rights Critique*

The civil rights movement provided a model for ways to get direct government support though the creation of public interest legal teams like the NAACP Legal Defense Fund, which would fund important cases like *Brown v. Board of Education*. These public interest legal teams would serve as models for similar groups organized by the consumer movement. The civil rights movement, itself, was critical of advertising’s role in promoting stereotypes. According to Julian Sivulka, more than any other force, “the civil rights movement enlightened the nation and led to more cultural diversity throughout the advertising industry.” In 1963, The Congress of Racial Equality (CORE) focused its attention on the lack of representation of African Americans in television commercials.

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82 Sivulka, *Soap, Sex, and Cigarettes*, 275.
84 Craig, “Madison Avenue versus *The Feminine Mystique*”; Sivulka, *Soap, Sex, and Cigarettes*, 275.
85 Vogel, *Fluctuating Fortunes*, 100.
86 Sivulka, *Soap, Sex, and Cigarettes*, 269.
CORE threatened boycotts and organized a rally in Harlem, offering a silver dollar to each person in the crowd for every African American who appeared on screen. CORE was successful in convincing several advertisers to feature African Americans in several of their commercials, and their movement resulted in more diversity in television advertising and programming. The movement also successfully pressured companies to stop using unflattering stereotypes in advertising icons, such as Frito Bandito, Chinese Cherry, and Injun Orange. As advertisers began to make more specific appeals to target audiences, they conducted research on how best to appeal to the “black consumer.” Thus, removals of these stereotypes were profitable concessions by the industry.

The complaints about the ad industry from the civil rights movement went well beyond issues of racial stereotypes in advertising. David Caplovitz’s book The Poor Pay More (1963) illuminated commercial exploitation in inner-city neighborhoods. Beginning in 1964, hundreds of thousands of African Americans staged protests throughout the nation in reaction to various commercial abuses, including high prices and credit interest rates, exploitative installment contracts, and fraudulent advertising. Pillsbury Co. responded to criticism by promoting enriched flour to combat malnutrition in inner-city African American neighborhoods, but this did little to address the totality of commercial abuses against the poor. In sharp contrast to criticism of advertising’s content, the movement’s more structural critique about the inherent inequalities of consumer society were not as easily addressed by tweaking advertising messages.

87 Ibid., 272.
89 Cohen, A Consumers’ Republic, 356.
The Labor Movement

More than any other political force, the labor movement helped bolster consumer activism by institutionalizing consumer rights in Washington. Former FTC chair Michael Pertschuk comments that organized labor, “as the strongest organized political forced constituency” and dominant “source of campaign financing,” could, by the 1960s, turn “confidently to the pursuit of social welfare and consumer issues.” Since the 1930s, the labor movement had made significant strides in improving the workplace and promoting political candidates who were sympathetic to the labor movement’s cause. With relative security in wages and working conditions, the labor movement turned its attention to the need to improve the marketplace. David Vogel writes that “in the three decades following the New Deal, trade unions had represented the most important organized opposition to business” and had played “a critical role in the enactment of consumer-protection legislation during the 1960s.” Many unions began to create their own consumer information programs, and in May of 1965, the AFL-CIO organized a national conference in Washington, D.C., entitled “The Worker Is a Consumer.”

The consumer movement was bolstered by the broader goals of Johnson’s Great Society Program. Historian Michael Katz argued that the new type of social democracy instigated by the Great Society program “launched a new generation of leaders in government and social service.” During the 1960s, government’s role changed: It assisted the poor, lifting them out of poverty; guaranteed food and healthcare; and reinforced government’s active role in preserving civil rights. These changes together, according to

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Katz, pointed “unequivocally in at least one direction: the federal government has the resources and the administrative capacity with which to stimulate and sustain progressive social change.”

*The Educational Broadcasting Movement*

Propelled by broader criticism of commercialization and the principles of the Great Society program, government regulators began to grapple with ways to create noncommercial spaces in the advertising-saturated media landscape. Establishing a viable noncommercial media system dominated the media policy agenda in the last few years of the 1960s. Educational television was aligned with President Johnson’s Great Society programs, and Johnson, working with members of the U.S. Senate, led the charge to provide federal funds to public broadcasting with the National Defense Education Act of 1958. With support from the Carnegie Foundation, the Educational Television Stations (ETS) held a conference in 1964 to launch a commission to study the potential for public broadcasting, and ETS was to report its findings to President Johnson. After a year of studying and reporting on the issue, the report titled “Public Television: A Program for Action” (1967) was given to Johnson, who endorsed many of the report’s recommendations.

The educational broadcasting community was so captivated with the possibility of public broadcasting that reformers ignored some of the potential obstacles faced by noncommercial educational media. Some of the report’s recommendations were watered down or sidestepped entirely. For one, lawmakers adopted language that was

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supportive of the current system of commercial media supported by advertising, and did not maintain recommendations that would have made noncommercial media more viable. In the final act, there was no mechanism included to guarantee funding and, as a result, public broadcasting continues to struggle for its continued existence.\(^97\)

In November of 1967, Lyndon Johnson signed the Public Broadcasting Act into law as section 386 of the Communications Act. This marked the first federal mandate to encourage public broadcasting through the Corporation for Public Broadcasting (CPB).\(^98\) Johnson celebrated the law, and referred to the CPB as “carefully guarded from Government or from party control. It will be free, it will be independent—and it will belong to all our people.” From our vantage point today, Johnson’s statement seems remarkably naive. Nonetheless, the creation of the CPB was unprecedented, and reveals the growing discontent with the commercial media system in the 1960s. Robert K. Avery comments, “when viewed through the forty-year filters of ever increasing commercialization of everyday life, ever-growing mass media concentration, and the continued deregulation of the communications industries, one cannot help but be amazed that the legislation—flawed or shortsighted as it might have been—ever made it into law at all.”\(^99\) Despite the regulatory success of the Public Broadcasting Act, it did not fundamentally challenge systemic problems with the consumer society and advertising, especially advertising directed to children. New consumer rights entrepreneurs, dedicated to quality educational broadcasting, began to call attention to problems associated with advertising to children.

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\(^97\) Ibid., 360.
Action for Children’s Television

The three networks began to concentrate children’s programming on Saturday morning during the 1960s, which resulted in more time devoted to commercials along with more aggressive hard-sell tactics. During the late-1960s, researchers, through the direction of Congress, began to study the effects of television violence. Although the main objective was not to study the effects of television advertising, the findings showed that children under the age of 8 had difficulty distinguishing programming from commercials, and did not understand the persuasive intent of commercials. In 1968, four women—Lillian Ambrosino, Judith Chalfen, Peggy Charren, and Evelyn Sarson—organized a new group, Action for Children’s Television (ACT). The women watched the show Romper Room for one month and kept track of the time devoted to commercials. They found that broadcasters devoted over 50 percent of the broadcast time to commercials, and many ads promoted toys that were used in the show. ACT made headlines in 1969 when it staged pickets outside of CBS affiliates in Boston to pressure the station to devote more time to educational programming. Although the movement was initially concerned with promoting noncommercial educational programming, it brought attention to the issue of excessive advertising directed at children, and public debate over advertising to children would continue throughout the decade.

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The Broader Consumer Movement Gains Credibility in Washington

The wide-ranging critiques of consumer society contributed to the number of government officials supportive to the consumer rights movement in the 1960s. Mike Pertschuk has recounted his experience as a congressional staffer during the 1960s. According to Pertschuk, the early success of the consumer movement depended on the political climate of the early 1960s as a “fertile seedbed for the nourishment of consumer entrepreneurial politics.”102 Other progressive movements—labor, civil rights, and environmental—were strong, and big business was on the defensive side of the larger political debate. For the consumer movement’s success, Pertschuk credits strong consumer activists in the House and Senate, supportive journalists, a strong labor movement, and activists like Ralph Nader. The media helped reinforce the consumer movement’s cause. Pertschuk recalled that during his time as a staffer, “I could safely assume that virtually any national reporter assigned to cover the story of some piece of legislation or other would be unabashedly sympathetic with the aims of the legislation.”103 With the aid of sympathetic media coverage, the consumer rights coalition helped establish consumer rights in Washington during the 1960s.

During his campaign for presidency, Kennedy promised to institute a national consumer advisory board in the White House. Shortly after his inauguration in 1961, Kennedy wrote a letter to the Consumer’s Union praising the group for its product testing services and its “significant role in expanding the horizons of an informed public.”104 In 1962, Kennedy delivered the first presidential address to Congress on consumer rights, a

102 Pertschuk, Revolt Against Regulation, 13.
103 Ibid., 33–34.
ritual continued by Johnson and Nixon. \(^{105}\) Kennedy fulfilled his campaign promise and created the Consumer Advisory Council (CAC), and Lyndon Johnson continued to support Kennedy’s policies. Johnson referred to the contrast between the relatively low cost to taxpayers versus the savings for consumers “in dollars, in safety, and in peace of mind.” \(^{106}\) Johnson appointed Ester Peterson as his consumer spokesperson in the White House, and in his first consumer message to Congress, he continued to reiterate the importance of consumer regulations initiated by Kennedy: truth in packaging, truth in lending, new laws for cosmetics, and a stronger FTC. \(^{107}\)

Consumer groups, however, felt betrayed in 1967 when Johnson replaced Peterson with television actress Betty Furness. During the 1950s, Furness had performed on the daytime television series *Studio One* to promote Westinghouse products. It seemed unlikely to consumer groups that an advertising icon could adequately represent consumers in the White House. In an interview with *Advertising Age*, Furness assured consumers that “If Lyndon Johnson intended to drop consumerism, he would not have given the job to someone with so much visibility.” \(^{108}\) Furness described consumer activism in the late 1960s as

Growing more and more suspicious and more and more questioning. The myth that just because a product is on the market it has been tested and proved safe and okay has been exploded. Trapped by inflation and a growing awareness of pollution both personal and environmental, people are beginning to demand that the rules in the consumer game change. The consumer game is a game everybody plays whether they want to or not. \(^{109}\)


\(^{106}\) “LBJ’s Package for Consumers,” *Newsweek*, February 27, 1967, 69.


\(^{108}\) Ibid., 4.

\(^{109}\) “Key Question This Year: Is Your Business on a Collision Course with the Public?” *Business Management* 39 (January 1971): 37–40.
In 1967, Johnson signed his first consumer protection bill into law: an obscure bill that created a commission to study product safety. Johnson arranged to sign the bill with TV cameras and well-known progressives like Upton Sinclair. As he signed it, he avowed, “This is the first consumer bill I have signed this year, it should be the twelfth.”110 One year later, members of the Consumer’s Union organized the Consumer Federation of America, which would serve as the larger umbrella organization for labor and other consumer interest groups, and it became “the hub of expansion in the consumer movement.”111

Senator Warren G. Magnuson, a Democrat from Washington, was an outspoken advocate of consumer rights in Congress. In 1968 he published the book The Dark Side of the Marketplace, illuminating the many plights faced by the American consumer. The book was most passionate about the commercial abuses against the poor:

> When the law lags behind the needs of society, we can expect some ugly consequences. And in the area of consumer protection, the evils of allowing legalized thievery to flourish are nowhere more strikingly evident than among the poor, especially minority groups in the ghettos. The exploitation of these people by unscrupulous local merchants and fly-by-night operators is one of the silent shame[s] of our country.112

Mary Gardiner Jones, the commissioner to the Federal Trade Commission in 1968, shared many of Magnuson’s concerns, blaming advertising for keeping “poverty-stricken citizens” continually in debt with “constant urgings to buy now and pay later, with no money down or low weekly payments.”113 In December of 1968, under Jones’s

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111 Warne and Morse, 184.
113 Quoted in Magnuson and Carper, The Dark Side of the Marketplace, 33.
leadership, the FTC conducted nine days of hearings on ways to strengthen the FTC’s consumer protection programs with particular emphasis on minorities and the poor. That same year, the commission developed enforcement programs for fraudulent selling practices in inner city neighborhoods.\textsuperscript{114} Despite these efforts, the FTC was widely regarded as an ineffective agency. Ralph Nader, the intellectual and political leader of the consumer movement, would help to change this through his investigative work on the FTC.

\textit{Ralph Nader and the Public Interest Movement}

In 1965, Ralph Nader solidified the consumer movement’s various critiques of consumer society with the publishing of his bestselling exposé \textit{Unsafe at Any Speed}. The book quickly became a bestseller after it was featured on the front page of the \textit{New York Times}. Although the book was polemical and vehement, it was thorough and well documented, and thus lent public credibility to the consumer movement’s cause. Within a year, Congress passed the National Traffic and Motor Vehicle Safety Act, calling Nader as a witness. In 1966, \textit{Washington Post} reporter Morton Mintz broke a story that detectives hired by GM were stalking Nader. Nader sued GM for the incident, and he used the $450,000 settlement to establish the Center for the Study of Responsive Law in 1969.\textsuperscript{115} The law team hired by Nader, termed “Nader’s Raiders,” would choose the FTC as its first raid.

By the end of the 1960s, Nader had assembled broad support by what David Vogel refers to as a dual determination: “criticizing the irresponsibility of those who had abused their power and authority and calling upon the public to demand that they be held

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\textsuperscript{115} Vogel, “The Power of Business in America,” 102–103.
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accountable.” In 1967, Nader was present at Johnson’s signing ceremony for his first piece of consumer legislation. Upton Sinclair, Nader’s childhood hero, was also present. Nader said to Sinclair “we’re continuing your work,” to which Sinclair replied, “I see that you are, keep watching them.” Nader certainly did, but he went beyond what the muckraking journalists had accomplished during the Progressive Era by connecting consumer activism to direct forms of political action. Michael Pertschuk recalled Ralph Nader’s maverick-like influence on consumer politics:

More than an investigator and scholar, drawing upon, but transcending, his lawyer skills, he was an advocate skilled at seizing the symbols of the debate—not a traditional advocate but one finely attuned to the uses and the needs of the media: the beats, the deadlines, and the need for fresh “copy,” for conflict, for heroism if available, but certainly for villainy, and, above all, for clarity and simplicity. . . . For a very broad segment of the U.S. public, his [contribution] has been the voice and persona of a contemporary Old Testament prophet, not a political radical, but like prophets, deeply conservative, calling society to account for its drift from its own professed morality.

Nader was indeed widely popular among broad segments of the U.S. population, so much so that he was even praised by business leaders. The Chamber of Commerce named Ralph Nader among its list of “outstanding young men.” By 1967, the Chamber launched a program to initiate a series of local meetings between businesses and consumers to address areas of consumer discontent. In 1969, Winston H. Picket, the head of General Electric’s associate council, admitted that because of Nader’s work, “businessmen are taking consumerism very seriously and addressing themselves to it on a systematic and continuous basis.” Republicans and Democrats alike scrambled to show

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116 Ibid., 103.
117 Martin, Nader, 70.
118 Pertschuk, Revolt Against Regulation, 16.
their support for Nader and the consumer cause. The Democratic Study Group, an alliance of Democratic members of Congress, released a list of thirty proposed pieces of legislation for consumer protection, including vamping up laws for product safety, packaging and labeling, consumer credit, and insurance. Congressional staffers were making careers of consumer protection by drafting consumer protection bills and incorporating consumer rights into reelection strategies.¹²⁰

For most of the 1960s and 1970s, Ralph Nader threw his support behind the creation of a Consumer Protection Agency (CPA) in Washington. Between 1962 and 1972, versions of a bill to establish a CPA passed the House and the Senate five times, but it did not reach the president’s desk.¹²¹ Nader supported the CPA to establish government standards for product safety and to create more transparency in the marketplace, but his views on advertising were far from radical. In an interview with Advertising Age, Nader praised advertising as “critical to a free market system.” His objection was mainly with the type of advertising that “withholds vital information” and “deceives the consumer.”¹²²

On the surface, Nader’s concern with the advertising’s failure to provide information seemed relatively mild. But in reality, very few ads actually provided tangible product information, especially in those markets where products were relatively nondistinct. Advertising had used ambiguous strategies since the 1920s, and these tactics increased during the 1960s when advertisers developed new creative strategies by using more images and less copy about price and product attributes. As the consumer

¹²⁰ Ibid., 94–106.
movement continued to gain traction in Washington around the issue of product safety and efficacy, some elements of American society were calling attention to more structural issues, including advertising in concentrated oligopolistic markets.

**Advertising and Monopoly Power**

As people consumed more and more consumer products during the post-war era, the companies producing those brands grew more and more concentrated. The decade of the 1960s had the highest rate of mergers in American history. In 1965, there were 219 mergers in the manufacturing sector. By 1968, there were 2,407 mergers. Business had engaged in horizontal and vertical mergers since the Industrial Revolution, but in the 1960s, merger activity was more constituted by conglomeration—the consolidation of seemingly unrelated firms. Conglomeration represented 12 percent of merger activity in 1960 and grew to 39 percent by 1970. During this period, the total profits of the nine largest conglomerates increased from slightly over $2 billion to almost $17 billion.\(^{123}\)

Because of the increase in advertising and the decrease in the number of firms that advertised on a national scale, articles attending to advertising’s impact on the economy began appearing more frequently in academic journals during the post-war period.\(^{124}\) One view was referred to as “Advertising = Monopoly Power” was largely an outgrowth of the earlier work by Henry Simons from the University of Chicago School of Economics. As far back as 1948, Simons wrote “a major barrier to really competitive enterprise and efficient service to consumers is to be found in advertising—in national advertising

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especially, and in sales organizations which cover great national and regional areas.\textsuperscript{125}

The Advertising = Monopoly Power view was supported by a number of studies showing concomitancy between heavy concentration and high rates of return in industries with high levels of advertising.\textsuperscript{126}

This anticompetitive effect of high-volume advertising was axiomatic, but the question remained: How does advertising operate in concentrated markets? In 1958, University of California Economist Joe S. Bain published a study in \textit{The Journal of Marketing} discussing the promotional advances of firms in concentrated markets through the mechanism of product differentiation. Because of the tendency for firms to promote similar products as distinct, Bain outlined policy solutions to regulate the advertising content:

With unrestricted promotional effort, as at present, the pattern of promotional advantages of large firms supports and perpetuates high concentration even in the face of substantial growth of markets; this probably would not be so in an important degree if the bases of product differentiation were altered. In general, in these product-differentiated oligopolies, an effective and economical deconcentration policy would probably require some fundamental attack on the bases of contemporary product differentiation and sales promotion.\textsuperscript{127}

Baran and Sweezy, in their 1966 publication \textit{Monopoly Capitalism}, described how firms in concentrated markets compete by “exercis[ing] powerful influence upon the market for their output by establishing and maintaining pronounced differences between their

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products and those of their competitors.\textsuperscript{128} Rather than engage in price competition, 

advertising maintains differentiation for existing products in oligopoly markets.

These views did not just linger in the ivory tower; government officials during the 1960s were beginning to rely more on the monopoly view of advertising and 

competition.\textsuperscript{129} President Johnson appointed as U.S. Attorney General Donald F. Turner, a well-known economist and antitrust lawyer. In 1966, Turner made a speech before a conference on federal controls and blamed advertising for creating barriers to entry and conveyed his support for the use of advertising budgets in merger decisions.\textsuperscript{130} Turner held the advertising industry responsible for contributing to “high monopolistic prices” and launched antitrust investigations into several industries, including chemical, electronics, and soap and detergents.\textsuperscript{131} The investigation into the influence of heavy national advertising on market power in the soap and detergent industries inspired the FTC to dissolve a merger between Proctor and Gamble and Clorox. The FTC grappled with how Clorox was able to achieve its overwhelming share of market power because

Clorox is not sold to the consumer at a lower price than other bleaches; on the contrary it is sold as a premium brand that commonly sells for several cents per quart more than regional, local, or private brands. Nor is Clorox a better bleach than other brands; all liquid bleaches are chemically identical.\textsuperscript{132}

\textsuperscript{128} Baran, \textit{Monopoly Capital}, 116.


\textsuperscript{131} “New Watchdog for the Admen?” \textit{Business Week}, February 18, 1967, 94–96.

\textsuperscript{132} Opinion of Commissioner Elman, United States of America before the Federal Trade Commission, \textit{In the Matter of Proctor and Gamble Co.}, Docket 6901.
The explanation for Clorox’s share, according to the FTC, lay “in the way in which household liquid bleach is marketed.” Using Professor Bain’s studies, the FTC reasoned that the heavy rates of advertising for both Proctor and Gamble ($80 million) and Clorox ($3.7 million) would create significant barriers to entry for competing products.¹³³ The U.S. Supreme Court affirmed the FTC’s reasoning in the case.¹³⁴ Although the FTC used this reasoning for the first time to prevent mergers, it did not apply the monopoly theory for consumer protection or advertising regulation. The prominence of this theory in economics, as well as signs that this view was beginning to be accepted by political leaders, was an ominous sign for advertisers.

**Alarm Bells for Advertisers**

Compared to the ease with which advertisers had assimilated objections with problems of representation in advertising, more structural concerns were not easily addressed. Probing questions about advertising’s larger societal and economic role troubled advertisers. Major advertisers were the first among businesses to open up Washington offices following the establishment of the consumer rights coalition during the Kennedy years. Bryce Harlow helped to pave the roads of this migration. Harlow had been a close aide to President Eisenhower and knew the ins and outs of government. When Kennedy was elected, Harlow moved into the private sector to work as the congressional liaison for the nation’s biggest advertiser, Proctor and Gamble. Prior to the late 1960s, Proctor and Gamble “only observed and reported back what was happening on the federal level.” Under Harlow this changed, and by 1968 he was known as the

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“dean of corporate representation” on Capitol Hill. Harlow was concerned with the lack of unity among businesses during the 1960s. In a speech in front of major manufacturers in 1965, Harlow referred to “our problem of unity” because of the ways in which businesses had advocated for “self serving deals” but “cynically scuttle others.” Harlow hoped that

all of us may work toward that end with all whom we serve. Then we shall be doing what we should, each of us collectively, not simply to serve our own principals and ourselves, but more importantly, to serve our country by keeping what is really “great”—human freedom and limited government.

In January of 1967, approximately 400 members of the American Advertising Federation (AAF) met in Washington to discuss the growing discontent with their industry. Attorney General Donald Turner spoke at the conference, and was introduced to the group as the man who gives “admen indigestion and apoplexy.” Turner’s speech to the AAF was relatively mild, and he dispelled myths that the Justice Department would limit amounts companies can spend on advertising, and instead focused on the tendency for some advertising to serve as a “negative benefit to the consumer.”

Despite Turner’s assurance, his criticisms of the industry were wide-ranging. For Turner, advertising was guilty of two offenses. First, it “materially interfered with effective competition in a number of consumer goods markets”; and second, it failed to “provide consumers with anywhere near the kind of information they need in order to

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137 Ibid.
139 Ibid., 96.
make intelligent choices among competing products.” Turner cited examples of advertising’s anticompetitive tendencies, such as the radical decline in small breweries compared to growth in large national brands of beer. To solve problems with advertising’s inclination to create barriers to entry and provide useful information, Turner proposed ways to develop new independent sources of information for consumers supported by substantial research funds.

In 1967, Representative Benjamin Rosenthal had made similar proposals by pressing for legislation to establish a National Consumer Information Foundation (NCIF) to test products and provide tangible information for consumer goods. The Senate’s minority leader, Everett M. Dirkson, strongly opposed such standards, stating his plans to obstruct the legislation “so far as feeble power will enable me to stop it.” The President of the National Biscuit Co., who attended the convention, opposed the NCIF on the basis that it would “take the fun out of shopping,” especially for women who “love to shop and express their taste—often in a nonmathematical and intuitive way.”

Not all members of the advertising community were as defensive. E. B. Weiss, former senior vice president of Doyle Dane Bernbach and a columnist for Advertising Age, referred to advertising’s triple economic threat: (1) advertising was a wasteful expenditure that increases prices without offering values, (2) advertising gives companies an unfair competitive advantage, and (3) advertising for identical products represents a large percentage of the product’s overall costs. Weiss cautioned advertisers against an intransigent attitude because of the possibility that regulations could “set advertising back

140 Ibid.
141 Ibid.
for years.” Instead, Weiss called for a “posture that combines piety with unyielding confrontation."

Advertising trade associations were well aware of the potential for government regulations because of ever-increasing criticisms of their industry. As a response, advertisers began to focus their attention on government regulators. In 1968, two top advertising trade organizations—the American Association of Advertising Agencies (4As) and the American Advertising Federation (AAF)—opened offices in Washington, D.C. Howard Bell, the president of AAF referred to the opening of Washington bureaus by advertising trade groups as merely a “precursor of an organization [in Washington] representing all advertising.” 4As president William J. Colihan was responsible for creating the Washington outpost. By the end of the decade, Colihan was hopeful, and reassured his members that “we don’t seem to have any more trouble in Congress. I used to scout 10 bills. Now only one: the Consumer Protection Agency.” Similarly, Bell referred to the consumer movement as “a fad that will soon pass. Throughout history, consumerism has had a tremendous influence on business and government. The only thing new is the label.” Bryce Harlow of Proctor and Gamble knew better. In May of 1967, he warned advertisers about the rising crescendo across America. It is being argued that, while advertising may induce people to buy, while it may elevate the aspirations and improve the tastes of the less privileged, while it may even stimulate economic activity, it unavoidably falls critically short, because it fails to enable the consumer to discriminate wisely among products.  

144 “Colihan’s Talents Will Be Missed as He Leaves 4As,” Washington Post.  
Harlow’s admonition was prescient. During the last few years of the 1960s, new public interest organizations began to put more and more pressure on government to regulate advertising.

**Banzhaf’s Bandits and Nader’s Raiders**

As the ad industry grappled with how to respond to the mounting public antipathy, the consumer movement’s broader focus on problems associated with product safety and efficacy translated to a direct response to the advertising industry. Cigarette advertising served as a felicitous example of advertising’s worst offenses, and the anti-smoking movement began to pressure government officials to regulate the promotion of cigarettes. Robert F. Kennedy joined the anti-smoking crusade wholeheartedly and emerged as a leader, pushing for warning labels and bans on sponsorships of professional sporting events. John F. Banzhaf III, a young law professor at George Washington University, formed a consumer activist group called Action for Smoking Health (ASH). Banzhaf’s group sponsored a petition to the FCC to pressure broadcasters to give free time to anti-smoking messages under the Fairness Doctrine.147 FCC commissioner Nicholas Johnson agreed with this proposal because cigarettes represented “a controversial case of public importance.”148 The application of the Fairness Doctrine to this issue meant that broadcasters had to show anti-smoking messages at their own expense, and as a result, there was an overall decline in smoking and an increase in anti-smoking attitudes in general. This was the first time that the Fairness Doctrine had been

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applied to commercial messages. Reformers weren’t satisfied with this policy and pushed on for an all-out ban, but some argued that reformers failed to realize the potential of anti-smoking messages. For vastly different reasons, the industry preferred a ban on cigarette advertising on television because the anti-smoking messages were hurting their sales; for broadcasters, the time allotted to anti-smoking messages was costly. Thus, in 1969, tobacco companies announced that they would pull ads voluntarily and President Nixon signed the ban into law in 1970. 149

Although the ban was in some ways a concession to tobacco companies and broadcasters, the removal of an entire product category from the airwaves was remarkable. The success of Banzhaf’s student-led advertising reform group in the cigarette case inspired Time magazine to refer to them as “Banzhaf’s Bandits.” Following the cigarette ban, Banzhaf continued to push the issue of corrective advertising, but focused on deceptive, rather than controversial, advertising strategies. Banzhaf recruited law students from his class to join the group TUBE (Termination of Unfair Broadcasting Excesses) to petition the FCC to suspend licenses for any station airing deceptive commercials. 150 Disenchanted by the FCC, two other Banzhaf-inspired groups—SOUP (Students Opposed to Unfair Advertising Practices) and Students Against Misleading Enterprises (SAME)—appealed to the FTC. The group SAME honed in on “uniqueness claims” in industries where products were relatively nondistinct, including aspirin and bleach. 151 Banzhaf’s group SOUP intervened in the FTC’s provisional acceptance of a

149 Ibid., 169.
deceptive Campbell’s Soup advertisement. The company made the soup appear as if it had more vegetables by adding marbles. In a 3-2 vote, the FTC rejected Banzhaf’s proposal for Campbell’s to run corrective ads for its deceptive image. Banzhaf was unimpressed with the somnolent FTC and thought the agency should be eliminated altogether.

Ralph Nader would draw more attention to the corruption and lassitude within the agency. In September of 1968, Nader along with six of his Ivy League–educated “Nader’s Raiders” decided to investigate the inner workings of the FTC. While conducting the study, the raiders made several public statements about the FTC, including charges of insufficient funds and unqualified staff to investigate false advertising claims. The FTC’s chairman Paul Rand Dixon responded furiously to the investigations. He threatened to bar Nader’s investigators from the building and slammed the door on John Schulz, a 29-year-old lawyer involved in the study. Commissioner Phillip Elman, who had long been dissatisfied with the agency, was less bellicose: he gave Nader’s team office space and access to his files. Elman, unlike Dixon, was convinced that an analysis of the FTC would “arouse the public attention it had lacked for so long.”

After much controversy, the report was finally released on January 1, 1969, after Nader spent New Year’s Day persistently delivering copies of the report to Washington bureaus of newspapers and magazines with early deadlines.\(^{157}\) The report was scathing. It disparagingly referred the FTC the “little old lady of Pennsylvania Avenue” because of its tendency to be “manipulated by the agents of commercial predators, impervious to governmental and citizen monitoring.”\(^{158}\) Although the report pointed out the ways the agency was used opportunistically by both political parties, it was most critical of the Democrats in more recent years. Out of the 500 FTC lawyers, Nader’s report found that only 40 were Republicans.\(^{159}\) The Nader report was particularly vituperative about a chairman Paul Rand Dixon, one of Kennedy’s appointments. Nader recommended that Dixon “resign from the agency that he has so degraded and ossified.” Among other things, it accused Dixon of political cronyism and opportunism because he had 

faithfully denuded agency contributions to the Democratic party, listened attentively to signals or calls from the White House, and assiduously cultivated powerful trade interests by disseminating the myths that most large businesses are honest and law abiding, that the problem is the few unscrupulous hucksters who give industry and hucksters a bad image.\(^{160}\)

The report was peppered with unfavorable vignettes. It described one incident in which the assistant of the general council was found asleep on the office couch with his face covered by the sports section of the *Washington Post*, and alluded to excessive drinking among commissioners.\(^{161}\) More serious claims included information from an unpublished study of the FTC by the Civil Service Commission, which included


allegations that many of the FTC’s positions were duplicative and thus unnecessary. The Civil Service report called attention to the lack of minorities on the FTC. Dixon dismissed Nader’s report, referring to the young lawyers involved in the study as “pipsqueaks” and “squirts.” Even more damning was Dixon’s fanatical response to the accusations: “Are they talking about Jews? We’ve got Jews all over the place. Are they asking about black people? I’ll admit we haven’t enough, but we’re doing our damnedest to hire them.”

The heart of the Nader Report was criticism of the agency’s regulatory track record—its protracted and haphazard processing of complaints, acceptance of business’s voluntary codes, and its kid-gloves treatment of major corporations. The best example of its preoccupation with trivia was the FTC’s picayune textile and furs division. Although consumer complaints had risen from 6,399 in 1966 to 9,000 in 1969, the report found that investigations during those years fell from 1,557 to 561. And, rather than initiate major investigations based on consumer complaints, the report concluded that the FTC’s primary means for detection was to “wait for the virtuous businessman to inform on his wicked competitor.”

The report was most passionate about the subject of deceptive advertising by flatly accusing the FTC of refusing to prosecute for flagrant violations of the law. Some of these false and misleading advertising messages, according to the report, were “far more damaging to contemporary America than all of the depredations of street crime.”

Some examples of false advertising claims included: detergent makers repackaging old

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163 “FTC Gets a Nader Needling,” 36.
164 “Consumers: Nader’s Raiders,” 72.
products as new, cigarette advertising headlines comparing smoking to “fresh air and cool mountain brooks,” and a dog food advertisement claiming that butchers were unable to differentiate between its brand of dog food and high-quality beef. Many statements about advertising deception were similar to earlier criticisms by the feminist and civil rights movements. The most conspicuous victims of deception, according to the report, were “the ghetto dweller whose home has just been lost to a fraudulent aluminum-siding swindle. . . . [and] the American housewife exploited by games, gimmicks, and deception who is in need of protection.”

Though the report’s focus was agency malfeasance and indolence, it called attention to the structure of inequality within the U.S. economy. The agency’s long purpose to reign in the excess of business was more pressing in what Nader called the “new marketplace”—a “rise of the corporate state through the growth of conglomerates and shared monopolies into an oligopolistic structure.” This wave of concentration, according to the report, delivered new forms of deception like “contrived distinctions between identical products.”

By solidifying many of the critiques of consumer society, the Nader report gave new hope and momentum for advertising reform. Shortly after the study was released, an article from *The Nation* reported that

The Schulz-Nader report may signal the beginning of the rise of a new social ethic in the United States. A group of young lawyers and law professors, inspired by a successful crusader against the untrammeled evils of business, have here taken their social responsibilities seriously and put a negligent agency on the spot.

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166 “FTC Gets a Nader Needling.”
168 Ibid., 16.
Although several newspaper articles made analogies between Nader and Progressive Era muckrakers like Upton Sinclair, Ida Tarbell, and Lincoln Steffens, Nader was more than an investigative journalist. Nader and his followers considered themselves to be a part of a larger social justice mission to “stop the violence of man against man.” One of the law students who aided Nader’s study of the FTC used the word “jihad” to describe their staunch support of consumer safety.170

Analogies to holy war aside, Nader was not up against fierce popular opposition. The FTC report was released against the backdrop of broad public support for Nader and the consumer movement’s cause. In fact, many business leaders responded to Nader’s FTC report with mild admissions of culpability and the need for more responsible business practices.171

Richard Nixon was sworn into office a week after the Nader report was released, and he appeared to be supportive of Nader’s mission. In one of his first addresses to Congress, Nixon affirmed, “Consumerism—Upton Sinclair and Rachel Carson would be glad to know—is a healthy development that is here to stay.” He went on to propose to Congress a “Buyer’s Bill of Rights”:

The buyer has the right to accurate information on which to make his free choice. The buyer has the right to expect that his health and safety is taken into account by those who seek his patronage. The buyer has the right to register his dissatisfaction, and have his complaint heard and weighed, when his interests are badly served. This “Buyer’s Bill of Rights” will help provide greater personal freedom for individuals as well as better business for everyone engaged in trade.172

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Nader publicly praised Nixon’s plan, commenting that the buyers’ bill of rights “would not have been approved by William McKinley.”173 Although Nixon, during the election, assured Wall Street that he would put an end to the “heavy handed” regulation of the Kennedy and Johnson years, Nixon did more for consumer protection than his two Democratic predecessors.174 For instance, Virginia Knauer, Nixon’s first consumer adviser, outlined a bill to allow consumers to bring class-action lawsuits into federal courts.

The Nader report fell on many sympathetic ears in Washington, and Congress immediately initiated hearings on the FTC. Congress encouraged President Nixon to ask the American Bar Association to study the FTC, and Nixon complied with the recommendations.175 The ABA responded quickly to Nixon’s requests and released its report in September of 1969. The ABA report was less derisive in tone than Nader’s, but the ABA echoed the major findings from the Nader report by pointing out the ways in which the FTC had “mismanaged its own resources” and filled top-level staff positions with “insufficient competence.”176 The report concluded that:

…drastic changes were essential to re-create the FTC in its intended image. The case for change is plain. What is required is that changes now be made and in depth. Further temporizing is indefensible. Notwithstanding the great potential of the FTC in the field of antitrust and consumer protection, if change does not occur, there will be no substantial purpose to be served by its continued existence; the essential work to be done must then be carried on by other government institutions.177

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175 *Hearings on the FTC before the Subcommittee on Independent Offices and Department of Housing and Urban Development of the House Committee on Appropriations, 91st Congress, 1st session* (February 15, 1969).
176 “Regulation, Nixon Style.”
One member of the ABA’s team, Richard A. Posner, had dismal hope for the FTC and recommended that the agency be phased out of existence. The other fifteen members of the ABA commission were more hopeful, suggesting sweeping reforms and the immediate resignation of Paul Rand Dixon. Many consumer activists and their allies in Washington assumed that the ABA’s report to Nixon meant that the FTC’s days were numbered. John Banzhaf was more hopeful, and predicted that the “sleeping giant is awakened.”

**Conclusion**

Maintaining the FTC in its current state appeared to be the least viable option. But whether the FTC would be dissolved or revitalized was ultimately up to President Nixon. Nixon was ambivalent about adopting some of the consumer movement’s demands, particularly the creation of a Consumer Protection Agency, which was strongly opposed by business trade groups, many of whom supported Nixon’s election. Nixon, however, was no friend of the ad industry. The ad industry’s public attack on the Vietnam War likely created a rift between the ad industry and the president. Furthermore, by strengthening the existing FTC, Nixon could throw a bone to powerful consumer groups and at once avoid marginalizing businesses. By commissioning the ABA report, it was clear that Nixon did not intend not ignore Nader and the influential public interest coalitions who backed him.

The countercultural movements of the 1960s provided a critique of advertising and consumer society during a period of prosperity for corporate America that included the largest wave of conglomerate mergers in American history and an extraordinary

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period of growth for the ad industry. Although the ad industry adapted to some of its critics, the end of the 1960s was not the end of efforts to reform and restructure corporate America. Nader swiftly became an intellectual leader of a broader political movement to make big business more accountable to the public interest. Advertising was a visible portrait of the worst types of consumer abuses: it promoted dangerous products, deceived consumers, and prevented competition. With fame and popularity on his side, Nader raided the agency responsible for regulating advertising and preventing anticompetitive and unfair business practices. More than a probe into the FTC itself, Nader’s report exposed the ways in which advertising practices and the concentrated structure of the American economy were incompatible with the public interest. If the FTC were to capably attend to these complaints, the change in government’s regulatory role would be significant for both businesses and consumers. Nixon chose to preserve and revive the agency, and indeed, the sleeping giant was awakened.
“Advertisers have been engaged in a business in which there has been virtually no regulation. For the 50 years of the Federal Trade Commission’s existence, they’ve had a free ride. We intend to change that.”  
—Robert Pitofsky, FTC Bureau of Consumer Protection

President Nixon took seriously the advice from the Nader and ABA reports. In his consumer message to Congress, Nixon stated: “the time has now come for a reactivation and revitalization of the FTC.” The FTC’s regulations during the three years following Nixon’s mandate were unprecedented in both number and scope. The FTC offered three significant changes for major industries. First, the FTC greatly increased the number of advertising deception complaints. In many of these cases, the FTC required advertisers to back up claims with evidence and instituted corrective advertising for consumer redress. Second, the FTC expanded the definitions of deception to include “puffery” and “implied uniqueness” of a particular brand or product. Finally, the FTC addressed the anticompetitive nature of “shared monopolies,” including the ways in which advertising in concentrated markets creates barriers to entry. In both its advertising and antitrust actions, the FTC during these few years would blaze new terrain for regulation of advertising and the American economy as whole. Some leaders in the business community saw the wave of government regulations as a threat to their hegemony and began to etch out a long-term plan for ideological success. But for the most part, these proposals were still on the margins. During the first few years of the 1970s, businesses

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were acquiescent and uncertain about how to respond to the wave of FTC regulations, leaving open a distinct opportunity for far-reaching changes for the advertising industry and the broader U.S. economy.

Although the initial revitalization was certainly appealing to consumer groups, it went largely unnoticed. Their ultimate goal was to pass legislation for a separate Consumer Protection Agency (CPA), and during the years between 1970 and 1973, it would almost make it out of Congress. Nader hoped that the new agency would oversee all other government agency activity, making government as whole more accountable to the public interest. Lizabeth Cohen writes that Nader hoped it would level “the playing field between consumers and corporate America.” The bill was endorsed by over 200 consumer groups and had the support of organized labor. 181 Because of its implications for consumer rights, broad support, and narrow passage, the battle to pass the CPA has been chronicled by a number of scholarly studies. 182 Though the FTC during the early 1970s did not have the power over other regulatory agencies, it was transformed into an agency that represented consumer and public interest groups. More than any other government agency, public interest group, or political leader, the FTC would force private companies to be more responsive to public concerns.

The FTC Awakens

To create an effective consumer watchdog out of the FTC, both the Nader and ABA reports advised Nixon not to designate any FTC incumbents to chair the

commission. The ABA called for the appointment of an “outstanding chairman,” who, unlike Paul Rand Dixon, personified “sufficient strength and independence to resist pressures from Congress, the Executive Branch, or the business community that tend to cripple effective performance of the FTC.” To fulfill this lofty role, Nixon appointed Caspar Weinberger, a California lawyer and former aid to Governor Ronald Reagan as his Director of Finance. In a personal conversation at the White House, Nixon told Weinberger to “go in there and clean it up and you won’t have any trouble from me.”

Weinberger was well known for enthusiastically supporting Reagan’s fiscal policies, and because of his pro-industry background, many in the business community doubted that Weinberger would embody the characteristics of an effective leader as outlined by the ABA report.

The confidence on behalf of businesses was shaken when Weinberger immediately began to “clean up the agency” by closing some 600 trivial investigations followed by zealous reorganization and restaffing. He filled many of the positions with young lawyers from prestigious law schools. By cutting away the dead wood, Weinberger hoped the FTC would finally serve its intended purpose: to regulate trade in the best interests of consumers. A headline from an Advertising Age article in 1970 proclaimed, “Marketers Who Staved Off Old FTC Now Find ‘Little Old Lady’ Has Teeth.” The Wall Street Journal colorfully observed: “The little old lady was languishing with a bad

183 “FTC Gets a Nader Needling,” 34, 36.
186 Clarkson and Muris, “Introduction,” 3. See also Magnuson, Committee on Commerce, Appointments to the Regulatory Agencies, 296.
case of tired blood. But a recent transfusion has the old gal kicking up her heels like a liberated woman.” In addition to a complete restaffing, Weinberger reorganized the FTC by creating two new divisions: the Bureau of Competition (to look into the ways in which industrial concentration affects pricing, competition, and advertising) and the Bureau of Consumer Protection (to study deceptive advertising). As the FTC transformation began to appear more and more in the headlines, it caught the attention of consumer groups. Although the passage of the CPA was the ultimate goal, the FTC was viewed as a small step for consumer rights.

To the surprise of these skeptics and the disappointment of many in the business community, Nixon replaced Weinberger with Miles W. Kirkpatrick, the same lawyer who had headed the ABA’s study of the FTC two years prior. Kirkpatrick promised to continue to revive the agency, but cautioned that his role would not represent an anti-business vendetta. Although Kirkpatrick’s rhetoric embodied caution, his immediate course of action was radical, at least from the standpoint of major industries. Rather than become entangled in trivia (as the FTC had been accused of in Kirkpatrick’s own study), he pledged to target major industries because “touch more consumers than minor industries do, and the more consumers the commission ultimately touches, the more we’ll be enforcing the law. . . . You don’t give traffic tickets when the bank is being robbed down the street.” Kirkpatrick continued to retire and restaff the FTC, replacing a third

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of the middle- and lower-level staff. By 1971, Nearly 200 FTC staff members were fired and replaced by young attorneys from prestigious law schools, many of whom were passionately committed to progressive causes. Kirkpatrick maintained the two bureaus created by Weinberger, and appointed New York University Professor Robert Pitofsky as the director of the Bureau of Consumer Protection and Alan S. Ward as the director of the bureau of competition. For the FTC’s top staff position of executive director, Kirkpatrick took a different approach by choosing Basil Mezines, a twenty-year veteran of the FTC. Mezines had a reputation for chastening top FTC staffers for “giving the commission’s corporate victims a hard time,” but nonetheless, Pitofsky and Ward took on their roles as leaders of the two new bureaus with fervor.

Consumer advocates like Banzhaf had long been critical of the FTC’s protracted process of investigating false claims—investigations that often only resulted in cease-and-desist orders along with a signed consent by the advertiser not to err in the future. Pitofsky offered change: “Advertisers have been engaged in a business in which there has been virtually no regulation. For the 50 years of the Federal Trade Commission’s existence, they’ve had a free ride. We intend to change that.” Under the leadership of Pitofsky, the Bureau of Consumer Protection took tougher steps to curb false advertising by immediately forcing the withdrawal of false ads and requiring advertisers to publicly confess.

**Expanding Definitions of Deception**

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196 “Advertising: Promoting Self-Policing.”
In early 1971, the FTC adopted provisional consent orders to forbid three leading detergent makers (Lever Brothers, Colgate-Palmolive, and Proctor and Gamble) from making any stain-removal claims for one year. The FTC also ordered the detergent makers to include a list of specific stains the product will not remove on all packaging. Although Proctor and Gamble had initially planned to contest the charges, the company eventually decided that “no useful purpose can be served by prolonging a controversy about the interpretation of this advertising.”

Two well-publicized cases of deceptive advertising taken up by the Bureau of Consumer Protection included the order for Coca-Cola to stop advertising its drink Hi-C as a nutritional drink rich in vitamin C, and for Standard Oil to bring to an end its promotion of Chevron F-310 gasoline as nonpolluting. As a settlement, the FTC requested that the companies prominently include the FTC’s findings in 25 percent of future ads for a twelve-month period. The FTC also targeted an infamous television commercial for DuPont’s brand of antifreeze called Zerex. The FTC took an unprecedented step with the Zerex case by threatening to order the product off the market if DuPont did not comply with the FTC’s orders. Initially, DuPont’s executives responded to the allegations with vehemence because the product made DuPont $23

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million in 1970. Most damaging for DuPont was the press coverage about the FTC’s complaint against Zerex. Although the FTC eventually dropped the charges against the makers of Hi-C and Zerex, the damage to the brands was already done.\textsuperscript{202} The FTC’s press department submitted news releases and held press conferences about Zerex and other cases in which the FTC had reason to believe that the law had been violated.\textsuperscript{203} Because of the negative publicity, companies had strong incentives to settle cases with the FTC rather than engage in drawn out legal battles.

The FTC’s complaint against ITT Continental Baking Co. was the most significant case of deception taken up by the bureau in its first year.\textsuperscript{204} The company was found to have falsely implied the uniqueness of Wonder Bread by emphasizing its nutritional value in a series of ads with the headline “That’s how big I want to be.”\textsuperscript{205} This was deceptive, the FTC reasoned, because most enriched loaves had the same nutritional value.\textsuperscript{206} What’s more, Continental ads claimed the brand Profile was lower in calories than ordinary bread, but failed to mention that the slight difference was due to its thinner slice. Continental was alarmed by the FTC’s complaint:

It now appears that the FTC has adopted a new theory which would prohibit a company from advertising any of the qualities of its product unless they are unique. This would effectively rule out much of today’s advertising, including nutritional advertising, since few foods are unique.

\textsuperscript{202}John Revett, “Hi-C Ads Lauded as FTC Judge Rule They Didn’t Mislead,” \textit{Advertising Age}, October 2, 1972, 80.


In effect, the FTC now proposes to punish Continental for violating a concept which has never been expressed as a rule of law.\textsuperscript{207}

Although the FTC had considered implied uniqueness deceptive prior to the 1970s,\textsuperscript{208} it had not previously targeted such claims in entire industry segments, and advertisers were wise to be concerned about its wider implications. This concern was shared by University of Chicago Economics Professor Yale Brozen, a well-known critic of the FTC. In speeches presented to advertising trade groups, Brozen accused the FTC of broadening its definition of false and misleading to include a new “implied uniqueness doctrine.”\textsuperscript{209}

*Barron’s* purchased full-page ads in the *New York Times* with excerpts from Brozen’s vitriolic speech and distributed 35,000 copies of the text.\textsuperscript{210} After the release, the *New York Times* reported that Brozen was a paid consultant for public relations agency Harshe-Rotman and Druck, the same PR agency representing ITT Continental Baking Co.\textsuperscript{211} Despite his ties to the industry, Brozen correctly observed that the case against Continental signified a change in existing antitrust laws. If the so-called implied uniqueness doctrine applied to other product categories, it could potentially threaten the key advertising strategy in most concentrated markets with relatively nondistinct products. Although the Bureau of Consumer Protection was not explicitly targeting industrial concentration, it was essentially targeting product differentiation, a common advertising strategy. This tactic is perhaps best epitomized by legendary 1960s adman

\begin{thebibliography}{9}
\item 211 Ibid.
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Rosser Reeves, who is well known for holding up two identical shiny silver dollars while
telling his copyrighters: “Never forget that your job is very simple. It is to make people
think the silver dollar in my left hand is much more desirable than the silver dollar in my
right hand.” Pitofsky cut to the core of this type of advertising when he said, “If the
product had nothing going on for it but its advertising, if it is just a figment of its
advertising manager’s imagination, I see no reason for its continued
existence.” Although Pitofsky scoffed at accusations of extremism, the implied
uniqueness doctrine was indeed a radical concept, and advertisers grappled with how to
respond to the FTC’s new guidelines.

**New Remedies for Deception: Corrective Advertising and Claim Substantiation**

Other advertisers currently under investigation by the FTC, including Chevron, Ocean
Spray, and Hi-C, had used various legal loopholes to delay the FTC’s proposal for
corrective ads. Continental was the first company to agree to run corrective ads in major
national publications constituting no less than 25 percent of its budget for one year. Continental’s concession set a precedent for corrective advertising as a viable settlement,
worrying other advertising agencies. Walter Bergman, president of the agency Norman,
Craig & Kummel, Inc., expressed his concern that Continental’s consent decree to the
FTC would be “played back to us by the FTC many times in the future.” Despite this

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212 Quoted in Hannah Holleman, Inger L. Stole, John Bellamy Foster, and Robert W.
http://monthlyreview.org/2009/04/01/the-sales-effort-and-monopoly-capital#fn33b. For other
213 “Advertising: Promoting Self-Policing.”
(Washington, DC, 1979).
possibility, Continental’s compliance was in some ways a welcome concession for the company because the FTC sought to ban the trademark altogether.

The Continental case did set a bold precedent. In December 1971, the FTC challenged the claim made by a sugar trade group, Sugar Assn., Inc, that eating sweets before meals can help control weight. The trade group had spent close to $1 million on the campaign from 1969–1971 in national magazines, including *Life, Look, Seventeen,* and *McCall’s.* The corrective advertising order in the sugar case was harsher than the settlement for Continental because the sugar trade group was ordered to run at least one retraction in each magazine in which the ad originally appeared, costing the sugar association about $20,000. Following this settlement, the FTC continued to pursue cases of explicit deception and ordered corrective advertising in cases where it found such deception occurred. The problem for the FTC, however, was determining what constituted deception because so many claims merely expressed subjective qualities about the uniqueness of a brand or product.

Despite a few success stories in the FTC’s orders for corrective advertising, the cases were time consuming and expensive. Although a few companies consented, others challenged the FTC’s complaints in court. One solution to this problem was to allow time for counteradvertising messages created by independent consumer groups under the Fairness Doctrine. This would fall under the FCC jurisdiction, and Kirkpatrick proposed a block of time (15–30 minutes a day) to the FCC for counter commercials. Fresh in the minds of advertisers and broadcasters was cigarette counteradvertising, which eventually

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drove tobacco advertisers off the air. Two well-known nonprofit organizations began to
prepare counter-commercials: the Center for Auto Safety, to criticize claims made by
Chevrolet, and the Medical Committee for Human Rights, to express concerns about the
overuse of analgesics.  

The advocacy group Stern Concern Center, representing Nader’s Center for Auto
Safety, sought free air time for public service messages about a major recall of
Chevrolet’s faulty engine mounts. The ads were provocative and took aim at the
company’s failure to protect drivers: “Now General Motors has announced they won’t
give you new engine mounts, but they will install a free safety cable. . . . I urge you to get
to a Chevrolet serviceman—slowly.”  

Broadcasters, with little opposition from the
FCC, turned down the groups’ fairness rationale, arguing that they had already covered
the case in newscasts.

Corrective advertising and counteradvertising were viewed quite differently by
businesses. The U.S. Chamber of Commerce feared that counteradvertising would result
in “vigilante action” with an onslaught of anti-business messages. While corrective ads
were paid for and created by the individual companies and advertisers,
counteradvertising, broadcasters predicted, would push advertisers off the air. NBC
responded to the counteradvertising proposal, arguing that corrective ads were sufficient
and did “not signify a need for intrusion by the FCC,” adding that if the FCC became

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220 Thomas De Baggio, “Counter Commercials: The Customers Fight Back,” Nation, October 22,
221 Ibid.
involved, “appeals should be made to Congress.”

The National Association of Broadcasters put it more succinctly: “If the FCC is seriously entertaining any thought of implementing the FTC proposal, it would be emasculating the commercial base of the world’s finest system of broadcasting.”

Robert Pitofsky scoffed at these dire predictions and warned members of the FCC that they “should be taken with a grain of salt.”

Top aids in the Nixon Administration were split on counteradvertising proposals. Vice President Spiro Agnew and Pat Buchanan (Nixon’s top speech writer at the time) supported some extension of the Fairness Doctrine for “use against the networks to devise some kind of new antitrust doctrine to break up their control over the news.” Although Nixon found public broadcasting to be his true nemesis in the news media, Nixon was not a fan of the commercial networks either because of the negative press coverage and the antiwar efforts by the ad industry (see Chapter 1). At the FCC’s panel on counteradvertising, Nixon’s top telecommunications adviser, Clay Whitehead, voiced strong opposition to counteradvertising because he worried that the FTC was “trying to require the medium to become a vehicle of public education.”

Robert Pitofsky responded facetiously: “I wasn’t aware that the FCC was supposed to regulate radio and TV with the welfare of the advertiser in mind. I assumed it was responsible to

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223 Ibid.
225 “Anti-Advertising?” The Economist, April 1, 1972, 46.
227 Ibid.
the consumer.”228 FCC commissioner Richard Wiley agreed with Whitehead, stating his conviction that “the primary purpose of advertising is to sell . . . there is nothing sinister or malevolent about advertising per se.”229 The FCC consistently ruled that while some tobacco advertising constituted controversy under the Fairness Doctrine, most product advertising did not.230 This, however, still left open the possibility that issue-based advertising would leave some room for counteradvertising under the Fairness Doctrine, especially because major advertisers were more and more addressing public policy–oriented concerns through advertising.231

The FTC Tackles Environmental Advertising

The FTC’s targeting of Chevron’s antipollution claims represented the growing concern among environmentalists, consumer activists, and government officials that businesses were treating pollution as merely a public relations problem to be dealt with through advertising campaigns. A former advertising executive, Jerry Mander, drew attention to this new type of advertising, which he called “ecopornography” in an article in Communication Arts. Mander, admittedly regretful of his time as an advertising exec, drew attention to the ways in which advertising and public relations had become intertwined in new ways:

Whereas corporate ‘institutional’ advertising used to show pictures of labor and capital shaking hands, now it’s “business and ecologists working together to control the environment,” as a bank ad recently put it.

228 Ibid.
Technology will take care of everything. Man’s ingenuity will win out. Even the Ford Foundation says so.\(^{232}\)

The head of Carl Ally, Inc. reported that the ads were a reactionary response to the environmental movement, because “businessmen see their corporations threatened for fouling the environmental and realize that they have to do something about it.” Companies, however, were spending much more on eco-advertising than on eco-responsibility. In 1970, utility companies had spent over $88 million in promoting “an environmentally responsible image.”\(^{233}\) Large national advertisers like General Motors, Shell, Westinghouse, International Paper, and Proctor and Gamble began to weave environmentalist messages into their advertising. The so-called “eco ads” caught the attention of public interest groups like the Council on Economic priorities, which found that energy and utility companies spent $21 million on pollution research and development compared to the $126 million on advertising and promotion.\(^{234}\)

An advertisement from Potlatch Forests, Inc. featured an image of nature’s beauty—trees and blue skies framing a clear rocky stream, with the headline: “It cost us a bundle but the Clearwater River still runs clear.” The ad neglected to mention that the photo was taken 50 miles upstream from the company’s Ohio-based paper processing plant. The plant was notorious for polluting the Clearwater River with sulfur and other industrial by-products. In fact, the mill was reported to have installed a car wash for employee vehicles that were covered with industrial sludge after each workday. Another ad for a nuclear plant in Southern California featured a healthy-looking lobster with the


\(^{233}\) “Utilities Forego Promotional Ads; Seek Ecologically Responsible Image,” *Advertising Age* 43 (May 1, 1972): 20.

\(^{234}\) Ibid.
headline “He likes our nuclear plant.” A local marine biologist blew the whistle on the ad by explaining that the lobster was borrowed from his own research tanks. A television campaign by Standard Oil depicted a balloon filled with clear, clean exhaust from its Chevron Gasoline and compared it a balloon with dark grey exhaust from a competitor’s product with the message: “Cleaner air, better mileage, Chevron with F-310 turns dirty smoke into good clean mileage. There isn’t a car on the road that shouldn’t be using it.”

Broadcasters were alarmed at the possibility of countercommercials because they worried “if the licensee were required to present any matter brought before it,” it would result in “a wholly different broadcasting system which Congress has not chosen to adopt.” The Chevron ad inspired the environmental group Friends of the Earth to petition the FCC for free time for its own environmental messages to counterbalance ads for gasoline and cars under the Fairness Doctrine. On May 12, 1971, the FCC turned down the complaint, stating:

The Chevron F-310 announcements do not argue a position on controversial issue of public importance, but rather advance a claim for product efficacy. It is true that this claim relates to a matter of public concern, but making such a claim for a product is not the same thing as arguing a position on a controversial issue of public importance."

FCC Commissioner Johnson, the sole dissenter in the Chevron decision, quoted a Chevron ad: “Standard Oil has taken a step toward solving a growing national problem.

235 “Pollution: Puffery or Progress?”
238 “TV Commercials: The Right of Rebuttal.”
Use Chevron gasoline with F-310. You’ll be doing your part toward cleaner air.”

Johnson found that the eco ads “practically shout that they are dealing with a controversial issue of public importance.” Johnson warned that supporters of counteradvertising faced strong opposition from nearly all fronts:

My Colleagues have unanimously rejected even the proposal to open a proceeding to consider these and other suggestions. So I do not think you are going to see any changes or reforms being initiated by the F.C.C. … Yet, like the White House and the F.C.C., the Congress is also subject to powerful corporate pressures—including pressures from the drug industry. As a result, the people have a great fight ahead of them if they are truly to make their voices heard above the din of the special interests, if they are really going to recapture their government from the corporations that stole it from them.

Despite Johnson’s lack of confidence, the revitalized FTC provided hope for advocates of counteradvertising. Stern Concern, the same group who had petitioned the FTC in its counteradvertisement for Chevron, created an ad that took aim at the “400 industrial polluting plants in the country operating outside of the law.” The ad advised people to send in complaints about water pollution to the NRDC, because “the best way to fight pollution is to make your own waves.” An aide to the FTC interviewed by Newsweek said, “Many advertising campaigns are capitalizing on the new ecological concern, and our purpose is simply to make sure they are not misleading anyone.” Kirkpatrick agreed, and viewed counteradvertising as a way to for citizens to “dispute claims with which they disagree. . . . Some broadcasters are saying that their right of free speech will be unconstitutionally burdened by requiring them to run counteradvertising.

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239 Ibid. This article also discusses the growing weakness of the Fairness Doctrine, and the claims by broadcasters to First Amendment rights.
240 Ibid.
242 “Stern Concern Offers Counter Ads to Print Media.”
243 “Pollution: Puffery or Progress?”
The trouble with this argument is that it ignored the question of whose First Amendment rights are at issue.²⁴⁴ Although Nixon had stated his aversion to counteradvertising, the proponents found support from congressional Democrats like Frank Moss. But, in the summer of 1972, the possibility became less viable when the Democratic Party announced its campaign platform without any endorsement of counteradvertising. Instead of explicitly throwing support behind counteradvertising and truth in advertising legislation, the Democrats avoided an advertising regulation plank altogether, and instead pledged to support the rights of consumers to initiate class actions suits for dangerous business practices.²⁴⁵

Although the concept of counteradvertising seemed to be defunct because of a lack of support by the FCC and both political parties, the FTC continued to pursue cases of explicit deception and ordered corrective advertising in cases where it found that such deception occurred. The problem though, for the FTC, was how to determine whether an advertiser made an explicitly false statement. Many advertisements simply used “puffery”—claims that expressed subjective qualities of the uniqueness of a brand or product. How would the FTC, with its limited resources, test and compile evidence for such claims? As the FTC grappled with such obstacles in substantiation, the advertising reform movement was questioning the broader societal impact of advertising, especially advertising to children.

**Advertising and Society: No More Kid Gloves for Sugar Coating**

Consumer crusader Robert Choate played an important role in initiating investigations into the problematic aspects of advertising to children by the breakfast

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²⁴⁴ “Counter Commercials: The Customers Fight Back.”
cereal industry. Choate began his activist career in Washington in 1966 by working on anti-hunger programs. During the 1968 election, Choate served as a hunger-program consultant for Nixon, who later appointed him to the Department of Health, Education, and Welfare. In July of 1970, Choate testified at the Senate’s Consumer Subcommittee Hearings on the cereal industry. Choate came to the hearings with detailed studies on the marketing practices of the top U.S. cereal manufacturers, rating the top sixty cereals in terms of nutritional content. Most troubling for Choate was that those cereals ranked as the lowest in nutritional content were the most heavily advertised on children’s television. To Choate, advertisers essentially viewed people “not as beings to be nourished, but suckers to be sold.”  

As a result of the hearings, Senator Frank Moss asked both the Federal Trade Commission and the Food and Drug Administration to investigate the charges. General Mills swiftly responded with a press release by Dr. W. Henry Sebrell, the former director of the National Institutes of Health, insisting that “breakfast cereals are a significant contributor to the diet, particularly in the case of children and young people.” Despite the industry’s defense, Senator Moss was deeply troubled by Choate’s studies and promised to continue to investigate nutritional claims in advertising because “consumers have a right to be free from a barrage of misinformation, and they have a right to information about nutrition.”

In early 1971, Senator Moss introduced a bill to the Senate to create a watchdog group called the National Institute of Advertising, Marketing, and Society within the federal government. Moss initially envisioned the group to be part of the U.S. Public

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246 “Snap, Crackle, Pop? Antitrust Charges Against Cereal Companies,” *Newsweek* 79, 66-7 F 72
247 Ibid.
Health Service or the National Science Foundation. The final draft of the bill was watered down, but still gave the FTC authority to hold hearings on advertising, which it called “Modern Advertising Practices.” Under direct supervision of the FTC’s chair, the FTC would call witnesses and gather evidence to study the role of advertising on society as a whole, including advertising and marketing as broad political forces and the impact of commercialization on other social institutions. Moss praised the FTC’s more aggressive approach to deceptive advertising, but said that the commission had “barely scratched the surface in developing new approaches to our consumer protection responsibilities.”

The hearings were necessary, said Moss, because “we are approaching the end of the 20th century knee deep in a marketing economy and a consumer culture which we barely comprehend.” Moss’s vision was to “make creative use of the vast store of data generated by private market research, and for the universities to develop an over-all picture of the role of advertising and marketing in our society.”

In October and November 1971, the FTC conducted fifteen days of hearings on advertising’s impact on society. In addition to delving into the economic aspects of advertising, the hearings explored the relationship between advertising and drug abuse, and advertising’s impact on the alienation, knowledge, and attitude of teenagers and children. Although a number of topics addressed at the hearings were relevant to broadcasting regulation, the FCC remained silent during the hearings, exposing a

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249 “FTC Ad Hearings: Bigger and Bigger,” Broadcasting 81, October 4, 1971, 21.
widening rift between the FTC and FCC—one that had been developing since the FCC’s rejection of the FTC’s proposal for counterads. In fact, FCC Chairman Burch had been scheduled to testify at the hearings, but failed to appear.253

The lack of support from the FCC was good news for advertisers, but the scope of the investigations was nonetheless unprecedented. As soon as the possibility of hearings was announced, the advertising industry formed a top-secret joint taskforce—so secret that the ad industry’s witnesses were unaware of one another’s identities.254 A memo from Association of National Advertisers (ANA) president Peter Allport was leaked in the Washington newsletter Consumer Newsweek, revealing the extent to which the 4As prevented the FTC from scheduling critical government officials hostile to advertising during the hearings. Allport also claimed credit for having stacked the deck in advertisers’ favor by having docketed more than 25 percent of hearing time for opinions of the industry and having persuaded the FTC to take off the table questions about the relationship between advertising and industrial concentration.255 Advertisers were indeed allotted four days to present their views, including testimony planned by the 4As and the ANA.256 The 4As and ANA hired public relations expert Robert Mullen, who chalked up

255 De Baggio, “Advertising’s Image.”
256 “FTC to Hear Advertising Story: 4As, ANA Will Be among the First to Testify at Hearings for Lengthy Run,” Broadcasting, October 18, 1971, 81, 92. Witnesses appearing on behalf of the advertising included the chairman of General Foods, the president of Pepsi Co., the chairman of Time Inc., and the editor of Saturday Review.
the efforts on behalf of advertisers as successful. Advertisers also flooded news organizations with “reports heavily favorable to advertising.”

Although the anticompetitive effects of advertising in concentrated markets were said to be off the table, this issue was raised during the fifteen-day hearings. Criticism focused on the techniques used by advertisers aimed to give products an allusion of distinction where there was often none. Since 1914, the FTC had consistently ruled that puffery by advertisers did not constitute deception. Comments between the FTC and advertisers at the hearings on Modern Advertising Practices showed a widening gap between advertisers and the FTC on what constituted deception. An advertising executive who testified at the hearings cited an ad with a ten-foot tall washing machine, arguing that the ad was merely using metaphor and was thus not intended to deceive. Commissioner Jones insisted because every claim in advertising was intended to be believable to some extent, “there is no such thing as puffery.”

The Hearings on Modern Advertising Practices suggested that puffery’s legal status was untenable. This left open the possibility that regulations would force advertising to guide consumers with information instead of with ambiguous distinction. The FTC staff feared Allport, “hold the view that advertising’s only economic and social justification is to provide ‘information’ from which consumers make ‘rational purchasing decision... Persuasion or any appeal to emotion or sentiment and the like is

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257 Stanley Cohen, “This Week in Washington: Contrary to Some Fears, Madison Avenue Is Safe as FTC Hearings End,” Advertising Age, November 22, 1971, 4, 52, at 52.
258 Bernstein’s comments are summarized by Ivan L. Preston in “Challenges Stand That Puffery May Be a Low-Priority Problem,” Advertising Age 43 (November 27, 1972): 47.
taboo.” If this view of advertising prevails, worried Allport, “admen had better start looking for new trades.”

**The Burden of Proof Shifts from Regulators to Advertisers**

If the FTC was going to broaden its definition of “false and misleading” to include puffery, how would it manage to test the hundreds of thousands of such advertising claims? Despite the FTC’s attempts to foster more truth in advertising, the investigations into product efficacy and claim substantiation were time consuming and costly. A possible solution to this was to shift the burden of truth from the FTC to advertisers.

Prior to the FTC’s reorganization, the burden for proving a claim was true fell on the shoulders of the agency. This was still the case in the first few years of the FTC’s reorganization. Consumer activist groups from New York state were not satisfied with the FTC’s process of identifying false claims, and they pressured the state’s Consumer Affairs Department to take more drastic measures. The proposed regulation in New York would require all advertisers to keep on file sound, scientific evidence to support their claims. Ralph Nader spoke at the hearings in New York, referring to the initiative as “one small step to require advertisers to put up or shut up.”

Inspired by the events in New York, the FTC’s Bureau of Consumer Protection announced its plans in the summer of 1971 to launch an Advertising Substantiation Program. Under the new program, advertisers would be required to collect and to keep on file scientific evidence to support their claims, and they would have to make such studies public if the FTC questioned the safety, quality, or efficacy of their claims. Robert Pitofsky promised to “proceed in our legal capacity with litigation” if the FTC found any

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unsubstantiated claims. Rather than deal with ad substantiation on a case-by-case basis, the FTC made clear that it would use its authority to challenge broad advertising strategies within entire industries. In total, the FTC asked for evidence to support more than fifty-seven claims made by automakers, including Volkswagen’s “89 ways to tell an old one from a new one” and Ford’s “700 percent quieter.” “We chose auto first,” reasoned Pitofsky, “because they are a consumer’s major expense and because they make a good deal of factual claims.” Although shifting the burden of proof to advertisers was a dramatic move by the FTC, Chairman Kirkpatrick saw “nothing radical or controversial” about the advertising substantiation program. Rather than view the new program as a way to regulate businesses, Kirkpatrick instead framed the issue as a way to “replace, to some extent, the need for government intervention with free-market incentives in the form of greater consumer awareness and sophistication with regard to ad claims.”

By September 1972, the FTC received documentation for advertising claims from makers of various products, ranging from autos and tires to electric razors. In the FTC’s staff report to the congressional consumer subcommittee, the FTC found that, of the 232 substantiations requested by the FTC, 60 percent were either inadequately documented or found to be too technical for consumers to understand. The Advertising Substantiation

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263 “Regulation: Tell It Like It Is,” Newsweek, July 26, 1971, 63.
264 “FTC Stops Short of Requiring ‘Adequate’ Ad Proof: Kirkpatrick,” Advertising Age, 2, 16.
Program identified a number of unsubstantiated claims in auto advertisements.\(^{266}\) For example, GM claimed that its Chevrolet Chevelle had ten advantages over competitors to keep the car “from becoming old before its time.” Many of these so-called advantages in GM’s studies were required by law and thus similar to features in other models. Similarly, a Chrysler ad claimed that its suspension gave the vehicle “ease in handling,” but the studies submitted used language like “braking attitude test chart” and “dynamic beam and twist” that was incomprehensible to members of the FTC.\(^{267}\)

One of the most widely publicized instances of claim substantiation by the FTC was its allegations that the three leading makers of pain relievers (American Home Products Corporation, Bristol Meyers, and Sterling Drug, Inc.) had not offered proof of any real difference among analgesics.\(^{268}\) For example, although Bayer aspirin made claims of superiority, the FTC maintained that all aspirin was the same. The FTC also charged analgesics makers for making unsubstantiated claims that the drugs “relieve nervous tension and similar symptoms and will enable persons to cope with the ordinary stresses of everyday life.”\(^{269}\) The FTC suggested stiff penalties: the three drug companies would have to spend 25 percent of their advertising budget for two years to correct false


claims. The corrections would cost a total of $40 million. The analgesic makers contested the settlement in court.

The FTC also targeted Warner Lambert, the manufacturer of Listerine, for misrepresenting its mouthwash to prevent colds and as a remedy for sore throats. The FTC relied on Warner Lambert’s own studies and found that its evidence did not support claims that people who gargle with Listerine twice a day have fewer and milder colds. Initially, Warner Lambert belittled the FTC’s complaints as mere “harassment.” Listerine had made cold-fighting claims for decades, and while the FTC and FDA had investigated such claims since 1944, the transparency of the substantiation program allowed the FTC to finally put an end to Listerine’s cold-fighting fabrication. Despite of company’s appeal, the courts maintained the FTC’s order for corrective advertising. The FTC made a similar complaint against the makers of Lysol Spray for touting the product as a way to prevent colds and the flu. Although the spray disinfected household surfaces, studies showed that most cold and flu germs are airborne. Both the makers of

Lysol and Listerine promised to continue to fight the FTC’s consent order for corrective ads in courts, but the companies modified cold-fighting claims voluntarily.\textsuperscript{276}

Although the Nixon administration had initiated the reorganization of the FTC, not everyone in the Nixon administration was satisfied with the FTC’s aggressive agenda. Herbert G. Klein, Nixon’s communications director, publicly announced his dissatisfaction with both the FTC’s ad substantiation program and the commission’s hearings on the impact of advertising on American society. Klein conveyed his apprehension at the Public Relations Society of America, telling members of the business community that the FTC’s new initiatives could possibility lead to “further restrictions on an economic basis of the press and broadcast industry” without considering the dire economic impact for the media system and the advertising industry.\textsuperscript{277} Klein worried that advertising reforms would “be a very great danger to a free press.”\textsuperscript{278} Despite hesitation from Nixon’s communications director, the Senate Commerce Commission was working on bills to cement the FTC’s new authority.\textsuperscript{279}

The ad substantiation program, however, caught the attention of consumer groups and public officials. Senator Frank Moss, a Democrat from Utah, was an outspoken critic of the ad industry. Moss had led the movement to require warning labels on cigarette packages and the ban on advertising for cigarette commercials on TV and radio. Moss charged advertisers with “wide spread and flagrant” use of deception and saw the report as a key piece of evidence to support a truth in advertising bill, and he formalized a “truth in advertising” bill, which would require advertisers to send substantiation directly to

\begin{thebibliography}{99}
\bibitem{277} “An Ally for Admen against the FTC,” \textit{Business Week}, June 19, 1971, 39.
\bibitem{278} “Klein Views Ad Probe as Press Peril,” \textit{Editor and Publisher} 104 (June 19, 1971): 8.
\bibitem{279} “Advertising: The Burden of Proof,” 76.
\end{thebibliography}
consumers and to include references to relevant studies in advertisements themselves.\footnote{280} During July of 1972, Moss’s consumer subcommittee held hearings on the proposed Truth in Advertising Act and explored the findings of the FTC’s ad substantiation program in detail. After reading the FTC’s report, Moss concluded that the program “has been successful, indeed startling, in revealing the widespread and flagrant absence of adequate substantiation claims and the overriding need for a systemic means of holding advertisers’ feet to the fire of public scrutiny.”\footnote{281} Senators Moss and Warren G. Magnuson also sought to extend the FTC’s power with a Warranty/FTC Improvement Bill. Among other extensions of the FTC’s legal power, the bill would allow the FTC to get cash settlements for consumer redress and write industry-wide trade regulation rules. With crucial amendments for consumer protections, the bill was overwhelmingly passed in the Senate, 72-2, in November 1971. Although this was a hopeful sign for consumer groups, the Consumer Protection Bill had passed through the Senate by a vast majority, only to be stifled by the House. \footnote{282} As president William J. Colihan assumed that the Truth in Advertising and FTC Improvements Bills would evaporate in the House like the Consumer Protection Bill.\footnote{282}

In addition to legislative confirmation, the U.S. Supreme Court was increasingly “redirecting the law of the future in favor of the consumer.”\footnote{283} The Court validated the extension of the FTC’s authority in March 1972 in \textit{Federal Trade Commission v. Sperry}

This ruling suggested the FTC could act as a “court of equity” and consider “public values beyond simply those enshrined in the letter or encompassed in the spirit of anti-trust laws.” This ruling was significant for two reasons. First, it permitted the FTC to prevent a business practice even if it did not explicitly violate existing antitrust law, and, second, it gave the FTC discretion in defining “unfairness” and “public values.”

**Taken by Surprise: Apprehensive Advertisers Join the Fray**

The possible extension of the FTC’s power through Congress and the courts sent shock waves throughout the business community. The FTC’s more aggressive approach to regulating advertising occurred amid other uncertainties for the ad industry. In 1970, agency profits began to slow for the first time in twenty years, and agencies cut an estimated 10 percent of the workforce. In its investigation of claims in the market for drugs, automobiles, food, and home cleaning products, the FTC was targeting the 8 of the nation’s top 10 advertisers.

Advertisers and the businesses they represented expressed deep-seated fear that regulations of the $20 billion ad industry would lead to dramatic changes to established selling practices, and many, like the president of Pepsi-Cola, feared that “the ultimate target is free enterprise itself” because advertising was “the highest silhouette, the most

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convenient aiming point.” Edward L. Bond, the chair of the ad agency Young and Rubicam, spoke at the 1971 Conference Board in New York. He invited those critical of advertising to:

Show me a country without a free enterprise system and I will show you a country without free art, free elections, free speech. The wealth of our society—much of what we give in foreign aid and in assisting developing nations—is due to the ingenuity found in such profusion in our marketplace.

Advertising was indeed the most visible portrait of free enterprise, but proselytizing for the free market was not enough to quiet consumer activists and their allies in the FTC. In the words of marketing executive E.B. Weiss, “The public is saying that industry—and especially the ad industry—has abused this freedom.” An op-ed in the June 1972 issue of the Commercial and Financial Chronicle epitomized the defeated mindset of major business after the first two years of the FTC’s agenda:

The business community has suffered serious and perhaps irreparable harm from the criticisms and lack of internal organization to counter the current thrusts. All too often it accepts the proposed orders of the FTC without resorting to its maximum legal recourse, and this has had serious impact on goods, services, and morale in several industries.

Advertisers like Richard Lord, the president and creative director at a New York agency, admitted that advertising had simply gone too far:

Consumerism isn’t a vengeance movement. It is a reaction, long overdue, to the arrogance of the marketplace. The consumer (you, me, they) wants a dollar’s value for a dollar surrendered. The consumer wants claims

290 “Key Question This Year.”
substantiated, promises kept and products to perform the way he, she, we have been led to believe they should.\textsuperscript{293} Advertising was so unpopular that the U.S. Chamber of Commerce distanced itself from the industry, issuing a formal “Statement on Advertising” on July 11, 1971: “The business community and consumers alike are the losers when advertisers use tactics and appeals which impeach the good standing, repute, and credibility of the business world.” In addition to its plea for advertisers to be “truthful, accurate, informative, and relevant,” the Chamber expressed its support for the FTC’s advertising substantiation program and called for advertisers to be prudent by making accurate claims.\textsuperscript{294} The president of Ford Motor Co. echoed this sentiment, saying that the FTC’s concern “has made top management more responsive to pleas for more straightforward, honest ads.”\textsuperscript{295} Some advertisers themselves admitted that the industry had taken too many liberties. Creatives who spoke at the 4As meeting in October 1971 blamed the ad industry for the consumer backlash and expressed favorable views of government regulation. Mary Wells Lawrence, the head of Wells, Rich and Greene, said she was delighted about the FTC’s ad substantiation because it will “increase our credibility with the public.”\textsuperscript{296} John Emmerling, a creative director at New York’s Richard K. Manoff, was troubled by advertising’s bad reputation among young people: “I’m 32 years old and plan to spend about the next 30 years of my life hanging around advertising agencies. Now it appears that the time has come for regulations. As someone who has a lot of years left in this

\textsuperscript{293} Richard J. Lord, “Admen, Is It Smart to Be Shifty?” \textit{Advertising Age}, October 16, 1972, 71.
\textsuperscript{294} “FTC Finds a Friend: Chamber of Commerce,” \textit{Advertising Age}, July 19, 1971, 27, 28.
\textsuperscript{295} “Madison Avenue’s Response to Its Critics,” 47.
business, I’m actually looking forward to it.”\textsuperscript{297} Cliff Einstein, also a 32-year-old creative
director, saw the “youth revolution” as largely instigated by the advertising community.
These same young people, he said, will “bring us to our senses” and will force advertisers
to “return to digging deeply into a product to find its human personality.”\textsuperscript{298}

Other advertisers were less acquiescent. In a speech before the Magazine
Publishers Association, James L. McCaffrey, the chair of the 4As, took the FTC to task:

And through all this, we’re forced to listen to the ever-increasing
quackings of people whose view of life in America as it really is makes
Don Quixote sound like history’s most practical man. They at [the FTC]
lack any semblance of what a Bahamian friend of mine likes to refer to as
“mother’s wit.”\textsuperscript{299}

Who was responsible for what McCaffrey referred to as the “ever-increasing quackings”? To a large extent, advertisers blamed the news media for fanning the flames of the advertising reform movement by publicizing the FTC’s complaints. Advertisers recognized that the FTC’s hot line news releases were getting the attention of the press and the public, and the negative publicity was affecting the public’s view of the industry as a whole.\textsuperscript{300} A study backed by the National Association of Broadcasters exposed a sharp increase in those who agreed with the statement: “I would prefer TV without commercials.” The increase in negative feelings about advertising was more substantial among younger, college-educated audiences—the same audiences most attractive to advertisers. Thirty-eight percent of college-educated individuals found advertisements to

\textsuperscript{297} “Two Young Admen Tell 4As They Favor More Regulation,”\textit{Advertising Age} 42 (October 25, 1971): 43.
\textsuperscript{298} Ibid.


\textsuperscript{300} Stanley Cohen, “FTC Determined Not to Make Dog-and-Pony Show of Hearings,”\textit{Advertising Age}, October 11, 1971, 4.
be offensive.\textsuperscript{301} There was also change in the way people felt about government’s regulatory role. In 1970, one-fourth of those polled supported some form of government regulation of the advertising industry.\textsuperscript{302} A year later, a study backed by the 4As found that more than half of college students favored more government regulation of advertising.\textsuperscript{303} Sol Goldin, chairman of the trade group Brand Names Foundation, credited the “forces marshaled against advertising” for “shifting the previously favorable opinion it once enjoyed.”\textsuperscript{304} The ad industry was amid a public relations crisis not seen since the 1930s.

Edward M. Thiele, the vice chairman of Leo Burnett, spoke at the 4As meeting on March 4, 1972, advising advertisers to open a dialogue with the press before “the chirping of crickets drowns out the sweet music of free enterprise.”\textsuperscript{305} Thiele pointed out the joint interest between advertising and the press in preventing the FTC from regulating the industry and had some advice for the advertising community:

Since we are in the business of persuasion, one of the basic tasks facing us is to persuade the media that, if they want advertising to be better, and public life to be better, then they cannot hold themselves exempt from this demand upon all of us. This persuasion cannot be achieved by cursing or whining. It can only be done, ultimately, by insisting that the press begin to scrutinize itself and its own professional standards with the same cold-eyed candor with which it scrutinizes every element of our society.\textsuperscript{306}

\textsuperscript{301} Ivan Wyden, “Parameters, AA to Probe How Consumers View the Ad Scene,” \textit{Advertising Age}, February 28, 1972, 1, 61.
\textsuperscript{303} “College Students Believe There Are Too Many Outdoor, Broadcast Ads, Survey Finds,” \textit{Advertising Age}, May 15, 1972, 54.
\textsuperscript{304} “Advertising’s Friends Kill It, Golden Says,” \textit{Advertising Age} 43 (March 6, 1972): 31.
\textsuperscript{305} Walker Jr., “Advertisers Ask Fairness in Consumerism Reports,” 9.
\textsuperscript{306} Ibid.
Dan Seymour, the president of J. Walter Thompson, also held the news media responsible for contributing to advertising’s “great wasteland of cynicism,” and added that advertisers had made a grave mistake by “turning the other cheek” because “not to fight has been our basic error.” Seymour called upon members of the advertising community to lead a massive public relations campaign to combat the advertising reform movement.307

Howard Bell, the president of AAF, agreed with Seymour’s proposal to improve the public impression “to tell the positive story of advertising,” but in doing so, he stressed the need first for advertising trade groups to improve “government relations” through consolidation of 4As, ANA, and AAF into a central Washington headquarters.308 Bell’s proposal for a centralized advertising trade group received support from Carl Nichols, the head of New York’s Cunningham and Welsh, who spoke at an AAF meeting and said:

> The time has now come for us to forget our parochial interests as members of individual associations and really come together as an industry to combat crippling legislative and regulatory proposals at the federal and state levels—proposals which would deprive us of the freedom which is basic to our ability to serve both our clients and the public.”309

Some in the ad industry voiced skepticism of Bell’s unification proposal, because “the egos at the top of those organizations are fantastic.”310 Others were unconvinced because they feared it was simply too late to articulate a response to the FTC.311 The advertising industry clearly saw the negative publicity as a significant obstacle, but disagreed on

307 Ibid.
308 “Government Relations Should Get United Effort, Bell Says,” Advertising Age, May 1, 1972, 3, 84.
311 Ibid.
whether it would be possible to consolidate resources and talent to revamp advertising’s image.

**Self-Regulation by Advertisers**

One solution that unified advertising and business trade groups was the potential for instituting formal self-regulations to obviate further FTC action.\(^{312}\) In 1971, the three leading advertising trade associations (AFA, 4As, and ANA), in cooperation with the Council of Better Business Bureaus (CBBB), announced the creation of a National Advertising Review Council (NARC).\(^{313}\) Offices of the NARC around the country began accepting complaints about advertising from consumers. If the complaint was found to be legitimate, the NARC’s review board (NARB) would attempt to convince advertisers to correct the claim or to drop the offensive ad and to provide feedback to advertisers in creating new campaigns.\(^{314}\) In 1974, in response to growing criticism of advertising targeted to children, the NARC added the Children’s Advertising Review Unit (CARU).\(^{315}\)

The ad industry hoped that the industry’s self-imposed guidelines would bolster its reputation and make obsolete the FTC’s regulations. The economic woes within the ad industry made placating the FTC and the pacifying the anti-advertising sentiments a pressing matter. Elisha Gray II, the chairman for the CBBB, made no pretense about the goals of the self-regulation organizations, stating, “It is pure, unadulterated self-interest. This discipline must be made effective if only to reduce the outrageous discount rate that


\(^{314}\) “Advertising: Promoting Self-Policing”; Sivulka, *Soap, Sex, and Cigarettes*, 283.

our customers now put on our advertising messages."\textsuperscript{316} Neal W. O’Connor, a member of the NARB’s steering committee, expressed his hope that “these complaints will be settled in private,” adding, “If we really work well the public won’t know we’re around.”\textsuperscript{317}

Some regulators in Washington were hopeful about the ad industry’s own guidelines, including FTC commissioner Mary Gardiner Jones, who saw potential for self-regulation to help solve many of the problems with deception in advertising, particularly advertising to children. If industry could assume a “high level of responsibility,” she hoped it could solve problems more efficiently and unilaterally, by comparison to the notoriously slow FTC.\textsuperscript{318} Other government officials were less optimistic. Nixon’s consumer affairs adviser, Virginia Knauer, had reservations about the NARB because of the lack of significant representation from the public. Knauer, however, suggested that she could be sold on the idea if the group better represented interests of consumers by changing the group’s composition to give the public equal footing and by releasing its reports to the public.\textsuperscript{319} Advertisers were opposed to equal public representation, but they adopted some recommendations, including a policy to provide public announcements of all decisions in cases involving truth and accuracy.\textsuperscript{320}

Not surprisingly, consumer activist Ralph Nader saw little hope for advertisers’ self-regulation efforts and threw his support behind the FTC’s new tough standards for ad substantiation. As was typical of Nader’s scrutiny of business associations, he noted that several influential companies currently under investigation by federal agencies for

\textsuperscript{316} Ibid, 81.
\textsuperscript{317} De Baggio, “Advertising’s Image,” 82.
\textsuperscript{318} “Start Self-Regulation with Ads Aimed at Kids, FTC’s Jones Says,” 18.
\textsuperscript{319} “Self Regulation Efforts Suspect: Nader, Knauer,” Advertising Age, June 28, 1971, 42.
\textsuperscript{320} “NARB’s Full Disclosure Move Boosts Self Regulation Hopes,” Advertising Age, November 20, 1972, 1, 116.
deceptive practices (Lever, Ford, General Motors, Bristol-Myers, and Sterling Drug) also happened to be members of the NARC’s board of appeals. Young and Rubicam had several of its employees on the Council for Better Business Practices (the group sponsoring the NARC), but the agency was also responsible for the deceptive ad for Excedrin currently in question by the FDA. “If the Four A’s was serious about enforcing their own code,” said Nader, “the group would have taken action on Y&R and other advertising agencies responsible for the deceptive ads.” Even if the NARC could potentially weed out some false claims made by advertisers, it would not solve, according to Nader, problems associated with “product differentiation, otherwise known as competitive ferocity over profound trivia, which can have, as in autos, serious anticompetitive effect.” Although self-regulations had united advertising trade groups, intellectual leaders like Nader were not satisfied with advertisers’ willingness to compromise. Leaders in the powerful consumer movement maintained pressure on the FTC to stay on course.

The Powell Memo

As a response to these pressures, some other intellectual leaders in the business community began to advocate for an aggressive and organized effort to combat the forces driving government regulation. In August of 1971, Lewis F. Powell, a prominent corporate lawyer and member of the boards of eleven powerful corporations, wrote a memo to the chair of the education committee at the U.S. Chamber of Commerce titled “Attack on American Free Enterprise System.” Powell’s began his memo stating, “No thoughtful person can question that the American economic system is under broad

321 “Self Regulation Efforts Suspect,” 42.
322 Ibid., 51.
Powell characterized consumer advocate Ralph Nader as “the single most effective antagonist of American business,” and went on explain more fully the “dimensions of the attack” on the “free enterprise system”:

There always have been some who opposed the American system, and preferred socialism or some form of statism (communism or fascism). Also, there always have been critics of the system, whose criticism has been wholesome and constructive so long as the objective was to improve rather than to subvert or destroy. But what now concerns us is quite new in the history of America. We are not dealing with sporadic or isolated attacks from a relatively few extremists or even from the minority socialist cadre. Rather, the assault on the enterprise system is broadly based and consistently pursued. It is gaining momentum and converts. . . . Many do enter the enterprise system—in business and the professions—and for the most part they quickly discover the fallacies of what they have been taught. But those who eschew the mainstream of the system often remain in key positions of influence where they mold public opinion and often shape governmental action. In many instances, these “intellectuals” end up in regulatory agencies or governmental departments with large authority over the business system they do not believe in.

Powell was strongly critical of what he saw as the “apathy and defiance” of the many business trade groups, which in his view had “shown little stomach for hard-nose contest with their critics, and little skill in effective intellectual and philosophical debate.”

Powell’s alarmist tone did not differ from what others in the business community were expressing at the time, except that he understood the scope of the problem, and the solution, in broader hegemonic ways. Powell suggested that the Chamber “consider establishing a staff of highly qualified scholars in the social sciences who do believe in the system. It should include several of national reputation whose authorship would be widely respected—even when disagreed with.” Powell suggested a massive ideological campaign to influence college campuses, through scholarship in academic journals.

323 “The Powell Memo,” also known as “The Powell Manifesto,” was written by Lewis Powell to Eugene Sydnor on August 23, 1971. It was leaked by a reporter Jack Johnson after Powell was nominated to the Supreme Court. The text of the memo is widely available online through search.
conferences, textbooks, faculty hires, and graduate programs. In addition to higher education, Powell proposed that the Chamber create “high school education Action programs.”

Powell, like others, saw the news media as a major obstacle because it often included “the most insidious type of criticism of the enterprise system.” His idea was to monitor and influence changes in news content:

This monitoring, to be effective, would require constant examination of the texts of adequate samples of programs. Complaints—to the media and to the Federal Communications Commission—should be made promptly and strongly when programs are unfair or inaccurate. Equal time should be demanded when appropriate. Effort should be made to see that the forum-type programs (the Today Show, Meet the Press, etc.) afford at least as much opportunity for supporters of the American system to participate as these programs do for those who attack it.

Powell worried about the “anti-business views now being expressed by several leading candidates for President of the United States.” The unelected leaders on the Courts, however, offered “the most important instrument for social, economic and political change.” This massive program, according to Powell, would require time, tough commitment, and deep pockets: “if undertaken long term and adequately staffed, it would require far more generous financial support from American corporations than the Chamber has ever received in the past.”

Powell ended his memo with a call for “American business—which has demonstrated the greatest capacity in all history to produce and to influence consumer decisions—to apply their great talents vigorously to the preservation of the system itself.” He admitted that his ideas were “tentative and suggestive” and emphasized the preemptive need for a “thorough study.” “But this would be an exercise in futility,” Powell concluded, “unless the Board of Directors of the Chamber accepts the
Two months after Powell sent the memo to the Chamber, Nixon nominated Powell to the Supreme Court, where he served until 1987. Powell’s memo has been credited for “marking the beginning of the business community’s multi-decade collective takeover of the most important institutions of public opinion and democratic decision-making” by essentially “inspiring the founding of many conservative think tanks, including the Heritage Foundation, the Cato Institute and the Manhattan Institute.” The true influence on the memo remains unclear; but later, during the mid-1970s, his idea would be fulfilled through the group both most threatened by regulations and most well equipped to persuade: the ad industry. But in the early part of the decade, advertisers and many powerful trade groups remained relatively submissive, uncertain of how to respond to government regulations. During this brief phase of uncertainty and disorder on behalf of businesses, the FTC continued to confront the structural fundamentals of the ad industry and the U.S. economy.

**Cutting to the Core: The FTC’s Bureau of Competition**

These structural critiques came to fruition through the FTC’s new Bureau of Competition. The FTC Bureau of Consumer Protection’s new guidelines for advertising puffery were certainly threatening to the status quo, but the newly formed Bureau of

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Competition addressed more fundamentally the concentrated structure in which puffery thrived.\footnote{325}{“FTC Says Study of Cereal Industry Does Not Imply Crackdown on Ads,” \textit{Advertising Age}, May 4, 1970, 36.} Alan Ward, the director of the bureau, expressed his commitment to determining whether industries constituted by only a few companies “tend to compete through advertising gimmicks rather than price.” If these industries were not responsive to competitive pressures, “then I am certain that the FTC will wage increasing and effective warfare against such industrial concentration.”\footnote{326}{Shafer, “A Watchdog Growls,” 1.} In its preliminary studies of seven major industries (cereals, drugs, automobiles, steel, electrical machinery, chemicals, and energy), the bureau found that fewer than 100 companies were responsible for 75 percent of the advertising industry’s expenditures.\footnote{327}{De Baggio, “Counter Commercials.”} As a response to the rising fuel costs, two Democrats—Senator Philip Hart from Michigan and Representative Joe Evins from Tennessee—prodded the FTC to investigate the anticompetitive practices in the energy industry. The study launched by the FTC was broader than antitrust studies conducted by the U.S. Department of Justice, because it went beyond isolated cases of mergers within the energy industry to investigate the consequences of having only a few companies control nearly all of the nation’s reserves of natural gas, uranium, coal, and oil.\footnote{328}{“The FTC Is Staring at Fuel Companies,” \textit{Business Week}, May 22, 1971, 25.}

In April 1972, the FTC pursued complaints against the “big four” breakfast cereal makers (Kellogg, General Mills, Quaker Oats, General Foods) for representing a “shared monopoly”—a structure that created barriers to entry by artificially promoting different
brands through advertising. The commission chose the breakfast cereal industry as its first target not only because of its high level of concentration, but also because children were a major target of its advertising. The cereal report reflected the larger questions of structural concentration in other American industries, as well as the ethical problems associated with advertising to children. The FTC relied on several instances in which the companies created new brands of cereal by artificially promoting differentiation between similar products. For example, between 1950 and 1970, the big four created 150 new brands and increased annual advertising budgets from $26 million to $81 million. Although there were 150 new brands, the cereal industry had become heavily concentrated and exercised “monopoly power” by keeping prices artificially high. Barriers to entry were also represented by the collusion between the big four and grocers, who gave them a privileged place on supermarket shelves. The companies were also, according to the FTC, employing unfair methods of competition by targeting children. Some of this advertising made claims that certain brands of cereal, would, among other hyperboles, make children better athletes. The commission wanted the two biggest companies—Kellogg with 45 percent, and General Mills with 21 percent—to divest some of their holdings in the market. Kellogg, under the FTC’s plan, would be required to create three new competing companies with its brands Special K, Product 19, and Cocoa Crispies; General Mills would do the same with Total and Wheaties.

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329 “Text of Key Section of FTC Complaint Against Cereals,” Advertising Age, January 31, 1972, 78.
Conclusion

Needless to say, the implications for the suit against the big four went well beyond breakfast. *Business Week* ran an article on the cereal suit titled “FTC Declares a War on Oligopoly.” One industry executive responded to the FTC charges against cereals makers, stating “The FTC has bitten off an enormous new theory of antitrust law, and if carried out, it would revolutionize the American economy and break up all kinds of industries.”333 By the end of 1972, the advertising industry was shaken to the core by its critics who had strong allies in the FTC. In the first two years of its reorganization, advertisers had only contested 40 of the more than 450 complaints issued by the FTC. The real threat to advertisers was not individual cases of deception, but the FTC’s targeting of industrial concentration and its symbiotic relationship with the type of advertising in which it thrived. “The danger to advertising,” said ANA president Gilbert Weil, is that it “has reached a point critical to its continued existence.”334 The head of a large agency in California prepared a tongue-in-cheek “ad of the future” that he said “Eliminates everything that’s ever been attacked in advertising.” The ad was a large grey square with the words “for sale.”335 The future of advertising was indeed grey. It seemed that the decks were stacked against advertisers, and despite various attempts to bolster their image, the FTC was largely untrammeled and advertisers were on the defensive side of a debate with far-reaching consequences. Thomas De Baggio, the editor of the Washington newsletter *Consumer Newsweek*, said it best: “What was once only puffery is

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333 “Regulation: Snap, Crackle, Precedent,” *Newsweek*, February 7, 1972, 66–67. This article appeared next to a short piece by Milton Friedman entitled “The Case A Monetary Rule.”
334 Gilbert Burck, “High Pressure Consumerism at the Salesman’s Door.”
now seen effrontery.” Demand for more accountability from advertisers was on the surface minor, but major questions loomed for the FTC, the ad industry, and the major businesses it represented. For advertisers, had they simply pushed too far and already set the stage for a major backlash by the FTC? For the FTC, would its allies in Congress, like Senator Moss, extend the limits of the FTC’s power to regulate advertising for entire industries? And for major businesses in concentrated markets, if advertising was viewed by regulators as merely a tool to maintain a semblance of competition where little existed, would advertising messages become limited to straightforward information and thus compromise the privileged and powerful position of major corporations?

“Today, the FTC is, for all practical purposes, a brand-new organization, established in 1914, but reborn in 1969. In three controversy packed years it has become a militant advocate of consumer rights and fair play in the marketplace.”337 —Alexander Auerbach

Introduction

At the beginning of 1973, the FTC was the epitome of post-war liberalism’s faith in regulated capital. In the first three years of the 1970s, the FTC had evolved from the “little old lady of Pennsylvania Avenue” to the “policeman on the economic beat.”338 The Bureau of Consumer Protection targeted advertising practices that had been commonplace for decades. In three years, the commission investigated more cases of advertising deception than it did during the ten years prior.339 Prior to 1970, cases of deception were settled with a slap on the wrist. After 1970, the FTC began to order companies to run corrective ads, and advocated for counteradvertising created by independent consumer groups. As these cases progressed, the commission expanded the definition of false and misleading to include advertising puffery, and demanded that advertisers back up their claims with evidence. With broader definitions of false and misleading, the FTC began to target entire industry segments, including automobiles, over-the-counter drugs, and a variety of foods. The ad industry heralded the FTC’s Hearings on Modern Advertising Practices as a success for the industry, but the hearings also left open questions about the obligation for advertisers to consider the larger societal

338 “Business: A Regulator to End All Regulators.”
effect of commercial messages, particularly those aimed at children. Consumer crusaders like Robert Choate helped mobilize support for regulations to advertising to children and also drew attention to industrial concentration in the cereal industry. By charging the big four cereal makers with monopolizing market power, the FTC’s Bureau of Competition confronted the hegemony of oligopoly structure in the U.S. economy. Both of the new bureaus in the FTC were challenging the most valuable asset of the major U.S. corporation—its selling practices—during a period when companies were shifting their investments from production to marketing and advertising.\(^{340}\)

By 1973, the FTC’s renovations were remarkable but tentative. The continued vigor of the FTC depended on a number of factors, including FTC budget appropriations, validation of the FTC’s authority through legislation and court decisions, and last but not least, the continued appointments of FTC commissioners who were sympathetic to the consumer movement’s progressive principles. Business had not yet articulated a coherent response to the FTC, which continued to gain momentum through congressional action after 1973. The Magnuson-Moss FTC Improvements Act (FTCIA) of 1975 would greatly expand the power of the agency. The law gave greater representation to the public by allowing consumers to file class action suits through the FTC. Prior to the passage of the law, the FTC was restricted to regulating explicitly false and misleading practices by single firms. FTCIA cemented the agency’s jurisdiction over broadly defined “unfair” businesses practices, and provided the FTC carte blanche to issue sweeping trade rules for entire industries.

\(^{340}\) Field, “Reading the Fine Print in the Social Contract.”
During the period between 1973 and 1976, however, the FTC’s objectives were complicated by an oil crisis and economic stagflation. Government officials came to a rough consensus for combating inflation through wage and price controls, tax reforms, and federal monetary policies, but the economic crisis also produced debates over industrial concentration. Along with riders to the Trans-Alaskan Pipeline Act, The Hart–Scott–Rodino Act of 1976 strengthened the FTC’s role in regulating mergers and acquisitions. Coinciding with the FTC’s legislative reinforcement over issues of deceptive advertising and antitrust, the landmark Supreme Court decision *Virginia Pharmacy v. Virginia Council* was initiated by consumer advocates with the goal of promoting price competition through advertising. Ironically, the Court’s decision left constitutional uncertainties for the sweeping trade regulation rules granted by the FTC’s legislative reinforcement.

**A Decade of Contradictions**

This paradox for the FTC occurred in tandem with this period’s broader political incongruity. The 1970s was an interregnum in the history of U.S. politics, and Nixon was swept up in this decade of contradictions. In the words of historian Jefferson Crowie, “Richard Nixon was simultaneously the last president to work within the logic of the New Deal material politics, the first post-war president to try to recast the ways in which workers appeared in American presidential strategy, and the last to court labor seriously.”

Nixon won 60.7 percent of the popular vote in the 1972 election, the largest margin of victory in a presidential election in American history. Although his victory was unambiguous, it was in no way an ideological triumph of the New Right. Historian

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Judith Stein refers to the 1972 reelection of Nixon as a referendum on McGovern, not a rejection of New Deal ideology. Despite the Republican presidential victory, Democrats maintained control of both houses of Congress. And while Republicans gained twelve seats in the house, most of them were for liberal Republicans.

Nixon’s second term win was not a clear victory for businesses either. A startling majority of Americans, many of whom voted for Nixon, supported the basic tenet of the New Deal. For example, a Gallup poll in 1973 revealed that 72 percent of Americans agreed with the statement “the federal government has a responsibility to do away with poverty in this country.” The poll also revealed that a majority of the public thought that Nixon, more than McGovern, would “keep big interests from having too much influence over government.” And businesses, in some respects, were supportive of government’s role in regulating the marketplace in the interests of consumers. In fact, the president of the Chamber of Commerce stated that consumer advocate Ralph Nader helped make “the free-enterprise system work.”

The complex political struggles during the years between 1973 and 1976 reveal the ways in which competing visions of marketplace regulation were not yet determined. The FTC’s transformation by Nixon, and its support by a number of prominent Republicans in 1973, attests to the fact that there was nothing natural or inevitable about the rise of neoliberalism and the New Right.

343 Ibid., 73.
344 Ibid., 73.
345 Ibid., 72.
346 Ibid., 72.
347 Quoted in ibid., 72.
**Stagflation Takes Hold**

Debates over the possibility of more advertising regulations were eclipsed by the political economic imbroglios that coalesced in 1974. Judith Stein refers to the oil crisis as the “alchemy that transformed optimism and gloom to doom”\(^3_{48}\) and the recession as a development that “destroyed the rough consensus of affluent society.”\(^3_{49}\) The dual troubles of high prices and stagnant growth created, for the first time in America’s history, stagflation. Between 1972 and the end of 1974, the stock market lost half its value, and rising oil prices increased the cost for many household goods, particularly the price of raw agricultural food sources. In 1974, food prices rose 13.3 percent and energy costs increased 31.3 percent.\(^3_{50}\)

In 1973, there was a rough consensus, even among the most conservative economists, that government needed to solve the problem of inflation. Nixon’s wage and price controls imposed in 1971 were failing. Furthermore, Republicans realized that price controls had cost them key constituents in the farm states. And, for consumers, prices rose despite price controls. The reasons for the failure of price and wage controls are complex and varied. For one thing, Nixon’s control policies were difficult to sustain along the entire chain of production. For example, processors lowered supply by killing livestock rather than selling at lower prices. In 1973, labor responded to higher prices with demands for higher wages, resulting in the highest strike rate since 1959.\(^3_{51}\)

In order to reduce energy consumption in the short term, laws were swiftly passed for yearlong daylight savings times, reduced speed limits for large vehicles, and mileage

\(^{348}\) Ibid., 102.
\(^{349}\) Ibid., 111.
\(^{350}\) Ibid., 111.
\(^{351}\) Ibid., 106.
standards for new vehicles. In 1974, Nixon signed legislation to create the Federal Energy Administration, assigning government authority over oil inventories, distribution, and consumption.\textsuperscript{352} Despite these measures, by mid-1974, inflation was close to 13 percent, creating a 16-month recession and nearly 9 percent unemployment, a level higher than any other period during the post-war era.\textsuperscript{353} The rough and muddled consensus, by 1975, appeared to be more government control of the energy industry. The Energy Policy and Conservation Act of 1975 lowered the price of oil, but allowed room for the president to raise prices to spur production. It also required some conservation standards, such as mileage settings for new vehicles. Congress also attempted to lower oil prices by increasing domestic supplies, including the multibillion-dollar Trans-Alaskan Pipeline project. These did little to address to what many in Washington thought was the root of the problem: the concentrated structure of the oil industry. Two bills were introduced by Congress to break up the oil industry, and the FTC’s power over antitrust cases would be expanded.\textsuperscript{354}

**A New Term, a New Commissioner**

In 1970, Nixon appointed Miles Kirkpatrick to chair the FTC amid uncertainty from consumer groups and businesses, but Kirkpatrick proved to be an unequivocal advocate for consumer protection during his term. The *Washington Post* commented on Kirkpatrick’s crucial role in transforming the agency:

> In 1969, after 8 years under the Democrats, it was hard to find an agency that could match the Federal Trade Commission for ineptitude and addiction to trivia. Consumer protection was something consumers did for themselves, with little help or guidance from the commission. Yet, 4 years

\textsuperscript{352} Ibid., 109.


\textsuperscript{354} Vogel, *Fluctuating Fortunes*, 128–129.
later, the FTC has experienced a remarkable conversion, a turn toward the public interest that has seen the birth of solid achievements and a new attitude. Much of the credit for this institutional renewal is owed to Miles W. Kirkpatrick.\footnote{This \textit{Washington Post} excerpt is quoted in Magnuson, Committee on Commerce, \textit{Appointments to the Regulatory Agencies}, 348.}

This praise was certainly deserved—Kirkpatrick played an essential role in the FTC’s renaissance. But this was a double-edged sword. If the strength of the FTC depended heavily on regulatory appointments, selecting commissioners with less enthusiasm for consumer rights could easily enervate the FTC. And this ball was in Nixon’s court.

In 1973, consumer groups were hopeful that the new Congress would pass a law to establish a Consumer Protection Agency, but second on their agenda was legislation to broaden the FTC’s powers.\footnote{John Morris, “Consumer Horizon Hazy,” \textit{New York Times}, January 7, 1973. 205.} Despite the FTC’s efforts under Kirkpatrick, a member of Ralph Nader’s team said, “there’s a feeling generally that Kirkpatrick has been too pro-consumer or pro-antitrust, but in our view he wasn’t pro-consumer or pro-antitrust at all.” Mark Silbergeld, the head of the Consumer’s Union Washington Office alleged that the FTC’s advertising cases had “little effect on the economy,” and added that “more attention should be directed at monopoly situations.”\footnote{Phillip Dougherty, “Advertising: Kirkpatrick Praise,” \textit{New York Times}, January 12, 1973, 51.} Nixon was under intense pressure by consumer groups to stay the course and preserve the FTC’s regulatory vigor.

Despite these pressures, many powerful forces in the business community hoped Nixon would move in a new direction. Businesses had in some ways acquiesced to the FTC during the first three years, but the FTC’s proposals had stirred the ire of advertisers and businesses. During the beginning of Nixon’s second term, the Watergate Scandal was merely a murmuring and the newly elected Democratic majority in Congress was “at a low ebb.” President Nixon was described as being at the “height of his power” and
businesses predicted that he would soften his appointments to regulatory commissions.\textsuperscript{358}

An article from the \textit{New York Times} forecast that “of all regulatory agencies, the Trade Commission, under sharp attacks by advertisers, broadcasters and other business interests for allegedly overstepping its authority, appears to be the most likely second-term retrenchment target.”\textsuperscript{359}

It came as little surprise then, when on the morning of January 10, President Nixon’s press secretary Gerald Warren announced the resignation of FTC chairman Miles Kirkpatrick with a half-hearted “appreciation of his contribution.”\textsuperscript{360} Warren conveyed no regret on behalf of the president, which created suspicion that Kirkpatrick had been coerced to resign. Consumer groups demanded an explanation. President Nixon responded by releasing a letter he had written to Kirkpatrick expressing both admiration of Kirkpatrick’s time in the FTC and his deep regret about the resignation. Nixon’s press secretary took the blame for the mishap and made a public apology to Kirkpatrick.\textsuperscript{361}

Regret or no regret, many consumer advocates feared that Kirkpatrick’s replacement would moderate the FTC’s brief period of regulatory strength. These fears were validated when Nixon appointed Lewis Engman, a long-time Nixon loyalist and staff member. Although Engman had been part of Nixon’s Office of Consumer Affairs and a member of his Domestic Council, little was know of him publicly. His age and credentials fit well with the new blood in the FTC—he was 37 years old and a graduate

\textsuperscript{358} Magnuson, Committee on Commerce, \textit{Appointments to the Regulatory Agencies}, 349.

\textsuperscript{359} Morris, “Consumer Horizon Hazy,” 205.


\textsuperscript{361} Ibid.
of Harvard Law School and the London School of Economics.\textsuperscript{362} An article in the \textit{New Republic} predicted that the appointment signified an extension of presidential command and control to the theoretically independent regulatory agencies, beginning with the FTC. It is difficult to associate Nixon command and control with the vigorous policing of the market that the FTC attempted under Kirkpatrick, to the intense annoyance and discomfort of some of the President’s most formidable corporate and individual constituents.\textsuperscript{363}

The skepticism was shared by members of Congress, who grilled Engman relentlessly before his appointment was finally confirmed two weeks later. Senator Frank Moss, who considered the continued vigor of the FTC as the “solemn duty” of Congress, set the tone of the confirmation hearings by praising the agency for providing a “credible countervailing public force to the enormous economic and political power of huge conglomerates which today dominate American enterprise.” Republican Senators largely echoed Moss’s sentiment. Alaskan Republican Ted Stevens expressed hope that Engman would “become a real zealot in terms of consumer affairs” and concern that “some of these big business people will complain to us that you are going too far.” Moss reminded Engman that he had a tough act to follow because both Weinberger and Kirkpatrick had “taken on new life, beginning with the search for strong and rigorous developers and enforcers of the law and reaching out with innovative programs to restore competition and make consumer sovereignty more than chamber of commerce rhetoric.”\textsuperscript{364}

\textsuperscript{363} Osborne, “The Nixon Watch,” 18. 
As Moss had indicated, the real test for Kirkpatrick was whether he would replace
the FTC’s top staff—Robert Pitofsky and Alan Ward. To the dismay of consumer
advocates, Pitofsky resigned after a few months and was replaced with Paul A. Jamarik
as the Director of Consumer Protection. Pitofsky’s bluntness had given him a notorious
reputation among advertisers, and the replacement, to some, signified mitigation.\(^{365}\)
Engman, however, maintained Alan Ward’s position as head of the Bureau of
Competition, and in an interview with *Time*, Engman expressed his commitment to
strengthening the FTC’s role to keep in check businesses that claimed to “love free
enterprise but hate competition.”\(^{366}\) Engman was under intense pressure from nearly all
fronts to continue to serve the interests of consumers, and he assured them that the FTC
“fully endorses” projects begun by Weinberger and Kirkpatrick, and added, “I expect
we’ll be even more vigorous.”\(^{367}\)

**First on Engman’s Agenda: Curb Children’s Advertising**

Part of this pressure came from a new advocacy group, Action for Children’s
Television (ACT), which was beginning to make headlines by calling for stricter
guidelines for advertising to children.\(^{368}\) ACT formed in 1968, and by 1970 had nearly
1,000 members.\(^{369}\) During the period between 1970 and 1974, the group mostly sought
regulations to children’s advertising through the FCC. By 1974, ACT had garnered public
support for regulations to children’s advertising by posting flyers and sending press
releases to major newspapers.

\(^{368}\) Clark, “The Birth of an Advocacy Group.”
\(^{369}\) Ibid.
Stanley Cohen, the Washington editor of *Advertising Age*, asked “If you were Engman, fresh into the chairmanship of the Federal Trade Commission, anxious to build an image for the new regime, where would you start?” Cohen predicted that “advertising to children would be a prime candidate.”

The FTC continued to make use of testimony from the FTC’s 1971 Hearings on Modern Advertising Practices. Two professors who were involved in initial hearings—John Howard and James Hulbert—prepared a report for the FTC in 1973 entitled “Advertising and the Public Interest.” Drawing on evidence from the hearings, the report concluded that complaints about stereotyping of women and minorities were best left to advertisers’ self-regulations, but recommended that the FTC take more seriously the issue of advertising targeted to children. Because children under the age of six represented a “special audience” that has “less capacity to discriminate, both perceptually and cognitively” the report recommended an hour of noncommercial programming on Saturday morning staggered among the three television networks.

The FTC invited both advertisers and well-known members of consumer groups, like Robert Choate, to offer suggestions for writing specific codes for children’s TV ads. Initially, businesses objected to the FTC’s decision to allow consumer groups to take the initiative in writing the code, but they eventually conceded. The new guidelines offered by Choate proposed restrictions on children’s advertising, including bans on:

testimonials, celebrity endorsements, cartoon characters, children as salespersons, ads for

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372 “Children’s Ads, Self Concept Themes Need More Regulation,” *Advertising Age* 44 (March 12, 1973): 1, 76.

vitamins, over-the-counter drugs, claims about enhanced stamina or growth from edibles, and ads with racial or gender stereotypes. AAF president Howard Bell referred to the proposals as “very controversial” because they were threatening to the “underpinnings of an entire industry—particularly broadcast advertising.” In response to the intensified public scrutiny, the advertising industry extended role of the NARB—its self-regulation group—to include guidelines for children’s advertising. Companies who advertised heavily to children, including Coco-Cola, General Mills, M&Ms/Mars, and McDonalds all had representatives in the NARB and they worked together to write the new guidelines. Chester La Roche of the 4As saw potential for the NARB to demonstrate the ad industry’s willingness to cooperate to improve children’s advertising, but consumer advocates were skeptical and continued to support FTC guidelines as a supplement for industry self regulation.

Engman praised self-regulation, telling the 4As that he thought the NARB had been “great.” The industry’s self-regulation, however, was not without its critics. Dissatisfied with the FCC’s support of industry self-regulations, Robert Choate wrote a passionate letter to Engman in 1974, outlining his concerns about advertising to children,

376 “Big Spenders Ask to Set Guides for Children’s Ads,” Advertising Age 45 (January 21, 1974): 1, 73.
377 “Little Sweet Talk Expected,” 69.
most of which had been unaffected by self-regulation. In his response, Engman praised the “NARB’s actions with respect to advertising to children” and made a case that “important progress has been made.”

Peggy Charren, the head of ACT, arranged a personal meeting with Engman in 1974 to discuss the FTC’s role in regulating advertising to children. After listening to Charren’s concerns, Engman, filling his pipe, said, “Well, I have a seven year old, so I do know what you are talking about, but I don’t have much time to watch television.” In response, Charren reminded Engman that few parents have time to supervise every minute of television that their children are watching, thus making it even more important for broadcasters to be held accountable. Engman ended the conversation with ambiguity: “This is one area we’d like to get into . . . one we might introduce in rule making . . . but we shall wait for the court decision first.”

**Trade Regulation Rules for Entire Industries**

Engman was referring to the FTC’s legal right to make a trade regulation rule (TRR) for an entire industry, which was tied up in Appellate Court. Although he praised some industry self-regulations, Engman still wanted to pass a TRR to ban the promotion of premiums—often in the form of trinkets or toys in cereals—from children’s television commercials. Although this seemed like a minor change to children’s advertising, the initiative faced sharp criticism from television networks, the cereal industry, and

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advertising agencies. Cereal manufacturers spent about $60 million per year on premiums and premium promotions were a major part of their overall marketing strategy. The industry also feared that the premium rule would be a slippery slope for other restrictions of advertising to children, like the use of cartoon characters. The promotion of premiums in general had increased due to the economic woes, as sellers began to use new promotional selling techniques. If the FTC went beyond cereals and approved restrictions on premiums altogether, it would effectively suspend, as one estimate suggested, a $5–10 billion industry.  

Businesses made less-than-compelling arguments to oppose the premium ban. For example, the president of a large manufacturer of premiums wrote a letter to Engman, saying, “Perhaps you and Mrs. Engman can control the TV which your lovely children watch—but TV is a way of life and a Saturday baby-sitter for many working mothers.” Despite businesses efforts to defend the practice, consumer advocacy groups had been successful in pressuring Engman to take a stand on the issue. Premium promotions, according to Engman, were a hard-sell technique that deceived children. In June of 1974, the FTC’s commissioners voted unanimously to ban references to “a premium, such as a prize, toy, game, or other promotional device having significant appeal for children under 12 years of age and unrelated to the merits of the product or service being promoted.”

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385 This excerpt from the FTC’s statement is quoted in Joel Dreyfuss, “Restricting Advertising on Children’s TV,” The Washington Post, June 28, 1974, B1, ProQuest Historical Newspapers.
Because this type of broad rule would require further validation of the FTC’s authority, the issue of regulating children’s advertising was temporarily put on hold. While the issue of TRRs were being settled by the Courts and Congress, Charren’s advocacy group maintained its pressure on the FCC to formalize guidelines, but ACT would later become a key player in FTC children’s advertising regulations in the last few years of the 1970s (see Chapter 5).

Trade regulation rules in advertising began with inquiries by the FTC’s Ad Substantiation program, which continued to target major advertising themes within entire industry segments after 1973. The Courts had been inconsistent on the constitutionality of broad trade rules by the FTC. The FTC’s two earlier TRRs—care labels on all clothing, and Octane ratings for gasoline—were successfully changed in 1971 only to be later reversed by the court of appeals. In 1973, the Ad Substantiation program ordered the eight largest manufacturers of deodorants and antiperspirants to submit data to substantiate claims. Because of problems interpreting the data submitted in the past, the FTC requested that material be put in “plain language so the average consumer will be able to understand it.” For example, the FTC’s ad substantiation program ordered eleven makers of shampoo and conditioner to substantiate their claims. The Wall Street Journal paraphrased some of the FTC queries, which included:

How much and what kind of juice is in that “average lemon” that Gillette’s Lemon Up shampoo supposedly contains? What are those “crinkles” that Clairol says its Great Body protein-conditioner shampoo helps get rid of?

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What are those “very special organic proteins” in RK organic shampoo that provide “maximum conditioning,” and what proof does Redkin Laboratories have for that claim?\textsuperscript{388}

Although the FTC had increased its scrutiny of entire industries, it still used traditional case-by-case adjudications, which, according to Engman, was on par with “trying to kill flies with a rubber ice pick. It was hard to get them; and it was hard to hurt them when we did get them.”\textsuperscript{389}

In 1975, Congress answered Engman’s pleas for support with the passage of the Magnuson-Moss Warranty-FTC Improvements Act (FTCIA). The law shored up the power in a number of ways. First, it broadened the FTC’s authority in the original FTC Act by supplanting the words “in or affecting commerce” for the original “in commerce.”\textsuperscript{390} This meant that the authority was no longer limited to interstate activities and could apply to activities within a single state. Second, the law expanded the FTC’s authority to investigate corporations, including individuals and corporate partnerships. Third, it granted the FTC the authority to pass rules for entire industries with respect to unfair or deceptive practices.\textsuperscript{391} Thus, the FTC would not have to prove that an act was deceptive or unfair, but that a trade rule—as broadly defined by the FTC—had been violated. This, according to marketing professor Pricilla La Barbera, was “the most far-

\textsuperscript{388} These queries are reprinted in “Eleven Shampoo Firms Told by FTC to Prove Claims in Advertising,” \textit{Wall Street Journal,} June 19, 1973, 20.
\textsuperscript{389} “FTC’s Tougher Tactics for Regulating Business,” \textit{Business Week,} May 19, 1975, 66.
\textsuperscript{391} Priscilla La Barbera, \textit{Consumers and the Federal Trade Commission: An Empirical Investigation} (Division of Research, Graduate School of Business Administration, Michigan State University, 1977), 21–23.
reaching extension of the FTC’s power to affect marketers since the FTC Act was passed in 1914.”

Finally, the law specified the procedures for FTC rulemaking in three significant ways. The first part would create more transparency and public participation, requiring the commission to publish notices, allow all interested parties to testify, cross-examine witnesses, and submit all relevant data. This abolished the chance for companies to settle a consent decree before the complaint was released to the public. Second, the FTC would be responsible for legal and witness fees for those who could not afford costs of participating in the procedures. Third, the commission could go directly into federal court to bring civil penalties for its own legal costs and seek large sums money for consumers in class action settlements. Senator Moss described the significant and historic implications of the FTCIA:

As early as 1938, a minority of the House Committee reporting on the Wheeler-Lea Act criticized the inadequacy of the limited enforcement powers of the Federal Trade Commission. The recent awakening of the agency to its consumer protection responsibilities has made this lack of adequate regulatory tools even more apparent. The law will give the Commission the tools it needs.

Engman concurred with Moss, stating that the new law signified a change in the “entire thrust of consumer protection law enforcement.” Following the law’s passage in 1975, the FTC unveiled a ninety-five-page report for new trade regulation rules within specific industries. As part of the new effort for industry-wide rules, the FTC issued guidelines for endorsements and testimonials in ads. Experts used in ads must, according

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392 Ibid., 19.
393 Ibid.
394 Moss’s statements are quoted in Udell and Fischer, “The FTC Improvement Act,” 85.
395 “FTC’s Tougher Tactics for Regulating Business,” 66.
to the rules, have expertise in evaluating the specific products or features. Every endorsement had to also “reflect the honest views of the endorser” and be a “bona-fide user of the product.” When actors or other paid endorsers were used, the advertiser had to disclose any connections that might “materially affect the weight or credibility of the endorser.”396 Although the FTCIA had extended the FTC’s powers, some were skeptical of whether celebrity endorsement rules signified a major change. To verify the fact that endorsers were actual users of a product was hard to prove, and furthermore, as an article from *Time* stated, “Does anyone really care? The hype of advertising works on such a different plane from conventional truth that it is a form of American Dada.”397

**Bolstering the FTC’s Antitrust Enforcement**

The rising prices and oil shortages consumed the nation’s political leaders during the years between 1974 and 1976, overshadowing many of the FTC’s concerns over truth in advertising. The political debate over the Alaskan pipeline project redirected the economic debate from price controls and environmental protection to issues of industrial concentration and monopoly privileges. According to historian Joshua Ashenmiller, the pipeline debate “continued a heated argument that had raged since the administration of Theodore Roosevelt, a time when corporate monopolies were making most of the nation’s infrastructure decisions.”398 To help prevent the pipeline from creating an unregulated monopoly, Democratic Senator Henry Jackson from Washington pushed for greater antitrust enforcement and jurisdiction by both the Interstate Commerce

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Commission and the FTC. Nixon, though less enthusiastic about antitrust issues, was under pressure to take swift action on the oil crisis and signed the Trans-Alaskan Pipeline Act (TAP) into law along with the riders to amend the original FTC Act. Prior to TAP, the FTC’s antitrust cases were not authorized to secure an injunction for a proposed merger in district court. In essence, the law filled this void, allowing the FTC to seek injunctive relief in district courts using its own attorneys. The law did not increase the FTC’s jurisdiction over antitrust cases, but it provided a way for the FTC to move more quickly and effectively in cases where it found violations of the law. Language in the law made it clear that the law was not intended to “impose a totally new standard of proof different from what is required.”

The TAP’s deliberation over industrial concentration and monopoly privilege was merely the beginning of a wave of new antitrust proposals. Lewis Engman was a staunch supporter of the FTC’s role in fighting industrial concentration. In a speech to the Commonwealth Club in San Francisco, Engman conveyed his commitment to investigating the ways in which concentrated industries contribute to price inflation. He added that the solution is “tough enforcement of the antitrust laws” in order to “attack the abuses of economic power.” In June of 1973, the FTC’s antitrust chief James Halverson conducted a report on the seventeen largest U.S. oil companies. The report found that the seven largest firms—Texaco, Gulf, Mobil, Standard of California, Standard of Indiana, Shell, and Atlantic Richfield—ranked in the top 25 of Fortune 500 companies, had assets of $76 billion, and profited $4.6 billion in 1972. The report also

found that these companies were vertically integrated to such an extent that they
controlled refining and distribution, allowing the industry to “maintain and reinforce a
noncompetitive market structure.” Most troubling to the FTC were the ways in which the
oil industry used depletion allowances and tax regulations to profit enormously amid
anxiety for consumers over rising prices and shortages.401 Although the report did not
charge the oil companies with conspiracy, it did accuse the companies of “conscious
parallelism” by coordinating price, production, and marketing. Senator Phillip Hart, a
Democrat from Michigan, went a step further and introduced the Industrial
Reorganization Bill to provide a new legal basis for breaking up concentrated industries
in a number of sectors, including automobiles, iron, steel, metals, chemicals, drugs,
machinery and equipment, computing, and energy.402

The Senate’s Republican minority leader, Senator Hugh Doggett Scott from
Pennsylvania, cooperated with Hart and Democratic Representative Peter Rodino to
strengthen the FTC’s antitrust authority. The Hart–Scott–Rodino Antitrust Improvements
Act (HSR), passed into law in 1976, added a section to the Clayton Act requiring parties
seeking mergers or acquisitions to file notifications to the FTC and the Justice
Department for approval. HSR went a step further than TAP by removing the opportunity
for parties to seek informal advice from the FTC prior to official notification and gave the
FTC the power to delay mergers while it considered the mergers’ competitive effects.
The required “Notification of Report Form” would include full disclosure of all financial
information related to the planning and transaction of the proposed merger. The act also

401 “Antitrust: Going After the Oilmen,” Time, July 30, 1973,
http://www.time.com/time/magazine/article/0,9171,907636,00.html.
402 “The Hart Bill Could Provide a Basis for Breaking Up Companies Because of Size,” Business
gave the FTC the discretion to enjoin an “early termination” of the merger prior to a full-scale hearing.\textsuperscript{403} 

Congress, through the FTCIA, TAP, and HSR, had considerably bolstered the FTC’s regulatory authority. Although Democrats lacked a clear economic platform, they profited from the recession during the November 1974 elections by gaining forty-three seats in the house and three in the Senate. Many, like Democratic Senator Henry “Scoop” Jackson, had earned political capital by blaming the oil companies for profiting from false crisis.\textsuperscript{404} Republicans, under political pressure to support smaller refiners in the Midwest, mostly supported efforts to reign in the excess of big oil.

**Criticism of Institutional Advertising**

The public’s faith in oil companies was at an all time low, and oil companies were trying to win over the public with institutional advertising. This was not an easy task. According to Stein, “not since the days of Ida Tarbell were oilmen raked over the coals in this manner.”\textsuperscript{405} In January 1974, six members of Congress petitioned the FTC to investigate ads by energy firms that claimed they were combating the energy crisis. Representatives Benjamin Rosenthal and Les Aspin charged the energy and utility companies with launching “an unprecedented campaign designed to convince the American people that they are innocent of responsibility for the current energy crisis and aren’t trying to undercut the environmental movement.” They added “we are very sure some of them . . . should be taken off the air.” Members of Congress pressured the FTC


\textsuperscript{404} Stein, *Pivotal Decade*, 115.

\textsuperscript{405} Ibid., 109.
to require substantiation of claims of environmental responsibility and to issue specific
guidelines for corporate-image advertising more generally.⁴⁰⁶

Senator Thomas J. McIntyre, a Democrat from New Hampshire, asked the NARB
to establish a policy on energy advertisements in light of the energy crisis. Rather than
endorse a formal censorship program, the NARB’s chair Edwin D. Etherington defended
the right of energy companies to continue to run image advertisements but cautioned
against “taking advantage of current national concern over the energy matter in such a
way as to increase an apparent sense of public mistrust of statements from those who
have economic interests tied to energy production, sales, and consumption.”⁴⁰⁷ He
suggested some guidelines for energy ads, but ultimately defended such ads, claiming
“that strict observance of the First Amendment guarantees the best assurance of ultimate
public enlightenment. I say this knowing some people argue that the First Amendment
does not cover advertising.”⁴⁰⁸ Etherington was correct. In 1941, the U.S. Supreme Court
drew a clear distinction between commercial and other forms of protected speech when it
established the Commercial Speech Doctrine. By 1975, however, the issue of free speech
rights for advertisers began to be tested from unlikely sources and strange bedfellows.

**Promoting Price Competition through Advertising**

Engman’s commitment to ensuring competition did not come from a lack of faith
in free enterprise, but instead from an Adam Smith–like faith in competition. An article
from *Time* in 1975 aptly described Engman’s regulatory philosophy:

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January 10, 1974, ProQuest Historical Newspapers.
⁴⁰⁷ “NARB Chairman Defends Rights of ‘Image’ Ads,” *Editor and Publisher* 107 (March 16,
⁴⁰⁸ Ibid.
In his two years as chairman of the Federal Trade Commission, Lewis A. Engman, 39, has adopted what seems like a wildly improbable posture. On the one hand, he is an outspoken champion of the free enterprise system and is leading a frontal attack on the federal bureaucracy that he believes is subverting it. At the same time he is an aggressive regulator of business. Yet Engman’s self-appointed role as a sort of Ralph Nader out of Adam Smith involves no serious contradiction. He simply believes consumers are best served by a highly competitive business community, and happens to be in a job that allows him to press that case forcefully.  

Although Engman’s dual faith in consumer protection and free enterprise did not appear to be contradictory, the promotion of price competition through advertising would eventually create a paradox for the FTC. Where competition existed, Engman believed that advertising promoted price competition and helped guide consumers to make informed decisions.

This view of advertising translated to an effort to promote advertising where little or none existed: prescription drugs. “It is a curious set of values,” said Engman, “that says the consumer may be given full information about discretionary purchases such as deodorants and mouthwash but cannot be given information that will help him save money on drugs that a doctor has prescribed as essential to his good health.”

Prior to the 1970s, pharmacists and other professionals such as doctors and lawyers had largely refrained from advertising because they considered their professions above the practice of selling consumer products. In other words, advertising degraded their professional social standing. Doctors, for instance, were either forbidden by law or strongly discouraged by professional organizations from advertising beyond phonebook entries or small office signs.

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409 “Business: A Regulator to End All Regulators.”
Consumer advocate Ralph Nader pushed to overturn such restrictions so that doctors and other medical professionals could provide information to consumers. It was “just as important,” argued Nader, “to know about different qualifications and standards of physicians as with autos and drugs.” Nader’s organization, The Health Research Group, published a directory of doctors in Prince George’s County, Maryland, listing information such as willingness to make house calls, fees, and medical training. Doctors, who were opposed to such a directory, argued the directory constituted advertising, and was therefore illegal in Maryland. In January 1974, Nader’s group filed suit to contest the advertising ban in Maryland and succeeded in legalizing such publications.411

The same professional mentality held true for small, independent pharmacists. Twenty-seven states had laws restricting pharmacists from advertising, including California, Maryland, and Virginia, and the American Pharmaceutical Society strongly discouraged the practice. Consumer organizations were critical of the opacity and inconsistency of prescription prices. Consumer Reports, for example, conducted a study demonstrating an 840 percent price spread for the same drug in different pharmacies.412 The conclusion by Consumer Reports was that “honest-to-goodness price advertising is much needed. Only the law stands in the way.”413

In 1974, the FTC launched an industry-wide investigation of prescription drug prices “to determine whether retail druggists or others have been or are engaged in unlawful practices under the FTC act—including, but not limited to, deceptive and unfair

413 Ban Rostenthal’s testimony for hearings on Prescription Drug Labeling and Price Advertising, quoted excerpts from the Consumer Reports study, p. 122.
acts in connection to the disclosure or non-disclosure of price information relating to the sale of prescription drugs anywhere within the United States.\textsuperscript{414} To bolster the FTC’s authority, the House of Representatives drafted the “Prescription Drug Price Information Act” to require the FTC to oversee “procedures to implement the advertising, at the discretion of vendors, of prescription drug prices and in eliminating any legal impediments to such advertising.”\textsuperscript{415} The new law would have not only made industry advertising bans illegal, but would have also gone a step further, requiring rules for price information for commonly used pharmaceutical drugs in all advertising of such products.

The Pharmaceutical Society of New York represented small pharmacists in the state and opposed the movement to lift the advertising ban, arguing, “Pharmacy is a profession” and advertising violated the ethics of the business by reducing drugs to “just another commodity.”\textsuperscript{416} Small, neighborhood pharmacies had been staples in the U.S. since the turn of the century, and these smaller businesses feared that advertising by bigger retailers would prevent them from competing. Large chain pharmacies, however, saw it differently, and began to challenge the professional status quo and the legal constraints that slowed large-scale retailers’ domination of the market.

Large pharmacy chains like Pathmark, Osco, and Walgreens ingeniously borrowed the language of consumer organizations. Walgreens launched its own “consumer information program” by making its prices available for customers.\textsuperscript{417} The president of Pathmark cited the Consumer Reports study and attempted to align his

\textsuperscript{414} “FTC Acts to Compel Pharmacies to Promote Their Rx Prices,” \textit{American Druggist}, June 15, 1974, 23.

\textsuperscript{415} H.R. 884, 94th Cong., §4(b) (1975).


\textsuperscript{417} American Druggist, November 1, 1974, 22.
interests with those of consumers, announcing, “what we are doing is good business” by lifting that “veil of secrecy” for prescription drug prices.\textsuperscript{418} Pathmark filed suit in New York, New Jersey, and Connecticut in an attempt to overturn state laws restricting advertising for prescription drugs. Pathmark’s lawsuit charging that state bans violate “due process, goes beyond state police powers, and violates free speech laws.”\textsuperscript{419} By the time Pathmark filed, courts in Pennsylvania and Florida had already overturned laws prohibiting advertising for prescription drugs. In May of 1976, the \textit{Wall Street Journal} reported that “up until recently, there hadn’t been much study given to the effects on the public of government controls on commercial speech, perhaps because the issue was fairly dormant before the ‘consumerist’ uprising of the 60s produced a new spate of control attempts. . . . the thrust of serious economic studies of those attempts has been that the public interest is ill-served by most curbs on commercial speech.”\textsuperscript{420}

\textbf{The Commercial Speech Doctrine Discarded}

Following this set of logic, in 1976, the Virginia Citizens Council Inc., the Virginia State AFL-CIO, and consumer advocate Lynn B. Jordan challenged Virginia’s prohibition on prescription drug prices.\textsuperscript{421} The plaintiffs, represented by a lawyer from Ralph Nader’s Citizen Litigation Group, objected to regulations in Virginia because bans on advertising violated consumers’ right to obtain important price information. Virginia’s state board of pharmacy defended its laws based on the possibility that pharmacists would promote unnecessary drugs.\textsuperscript{422} The case was turned over to the U.S. Supreme

\begin{itemize}
\item \textsuperscript{418} Lichtenstein, “Pathmark Seeks to Advertise Prices of Prescriptions,” 35.
\item \textsuperscript{419} Ibid.
\item \textsuperscript{422} “Giving Advertising a Right to Free Speech,” \textit{Business Week}, February 2, 1976, 21.
\end{itemize}
Court, and in May 1976, the Court ruled in favor of consumer groups 7-1 and discarded the Commercial Speech Doctrine, essentially extending First Amendment Protection to purely commercial speech. The New York Times referred to the decision as a “landmark victory for the consumer movement and a major reinterpretation of the free speech guarantee.”

Justice Harry A. Blackmun, representing the majority opinion, justified his interpretation of the First Amendment as an “instrument to enlighten public decision making in a democracy.” He went on to say:

Advertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination of information as to who is producing and selling what product, for what reason, and for what price. So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent as well as informed. To this end, the free flow of economic information is indispensable.

Although the Virginia case is often cited as an affirmation of the marketplace logic in legal interpretation, the Court also brought commercial advertising under the First Amendment because they assumed advertising promoted price information for consumers:

Those whom the suppression of prescription drug price information hits hardest are the poor, the sick and particularly the aged. A disproportionate amount of their income tends to be spent on prescription drugs; yet they are the least able to learn, by shopping from pharmacist to pharmacist, where their scarce dollars are being spent. When drug prices vary as they do, information as to who is charging what becomes more a convenience. It could mean the alleviation of pain or the enjoyment of basic necessities.

Ibid.


Ibid, 763
Chief Justice William Rehnquist was the sole dissenter in the decision, cautioning against the dangers of promoting prescription drugs “in the same manner as hair creams, deodorants, and toothpaste” because of the possibility that “they may be advertised on television during family viewing time.” Rehnquist feared that the ruling “could not be limited merely to dissemination of price alone” and furthermore “cannot possibly be confined to pharmacists without likewise extending to lawyers, doctors, and all other professions,” including advertising for liquor and cigarettes. His apprehensions were legitimate. A year later, in a 5-4 decision, the Supreme Court struck down Arizona state laws barring lawyers from advertising. Justice Blackmun echoed his same marketplace and consumer-rights rationale for *Virginia Pharmacy*, claiming that Arizona’s restriction “serves to inhibit the free flow of commercial information and to keep the public in ignorance.” Laws that restricted doctors and other medical professionals from advertising were also swiftly discarded.

In the months that followed the *Virginia Pharmacy* decision, Congress continued to hold hearings on the possibility of requiring the FTC to mandate specific TRRs for prescription drug advertising because the Court’s decision “still leaves room for discussion of its impact on the second section of H.R. 884, the section which would mandate posting of prices in pharmacies.” In his testimony, Dr. Geoffrey Gordon, a representative from the California Public Interest Research Group, called attention to the

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“profiteering of the pharmaceutical industry.” Gordon was especially critical of pharmaceutical advertising for doctors in medical journals, which he said, “leaves a lot to be desired.”

Gordon admitted that he “believed in advertising” but that “there must be supervision to prevent false and distorted advertising, and as these ads in medical journals point out, there is a lot of that going on, and I think if we do have advertising, there has to be some constraint in its wild natures.”

Gordon’s words of caution fell on deaf ears, and his represented the only testimony to support explicit mandates for price information for prescription drug advertising in addition to lifting industry-wide bans. The FTC submitted a testimony as well, arguing that specific trade regulation rules were obviated by the *Virginia Pharmacy* decision:

In conclusion, the [Federal Trade] commission notes that it is unclear at this time whether, in light of the *Virginia* decision there is a need for further action on the issue of drug price disclosures. Further action by the Commission has been postponed pending public comment to the Commission on the effect of the *Virginia* decision on the need for such a TRR [trade regulation rule]. Congress may wish to consider postponing final action on a legislative decision until the effects of the *Virginia* decision have been analyzed.

Bruce Chadwick, the FTC’s deputy assistant director of the Bureau of Consumer Protection, echoed this sentiment, testifying that the recent Supreme Court case would be sufficient in addressing “The most important way to assure that pharmacists pass on to

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430 Id., 21. Dr. Gordon introduced himself as a Harvard trained physician, the chairman of the American Public Health Association, the National Association of Public Health Workers, the president of the visiting nurses association, and an experienced administrator for a number of community clinics, to which Rep. Van Deerlin replied: “The temptation is to ask what you do in your spare time.”

431 Id., 26.

432 Id., 14.
consumers a healthy portion of the cost savings” by assuring that “consumers have adequate price information.”433

Consumers, however, were less-than-pleased in the aftermath of *Virginia Pharmacy*. The *New York Times* reported that, since the ruling, price promotion was “spotty at best.” Betsy Mikita, the director of Philadelphia’s Consumer Council, protested: “Almost none of the stores in this area are advertising. People are looking for ads . . . but they’re not finding many.”434 Consumers weren’t necessarily looking for more advertising—they were looking for price information about prescription drugs. Although consumers were dissatisfied with the amount of price advertising after the ruling, advertisers celebrated the victory. *Advertising Age* published a piece in the aftermath of the decision titled “High Court ruling points up consumer, ad goals are same.” The article commended the ruling as

more than merely an accolade for advertising, the decision established that commerce ranks equally with other activities and professions in its contribution to public welfare. . . . We find it ironic, yet encouraging, that this significant case originated with consumer groups, pleading that the absence of price advertising deprives them of information they need to operate efficiently in the marketplace. For a moment, the court has discovered doctrines which illuminate the common interest of consumers and advertisers.435

In the wake of *Virginia Pharmacy*, ad industry executives began maintaining that commercial advertising was synonymous with other libertarian principals. Less than two months after the ruling, the head of the agency BBDO, Tom Dillon, asked his fellow board members, “What does advertising contribute to the world?” Citing the First

433 Id., p. 269
Amendment throughout, Dillon venerated the freedom to advertise as similar to other foundational democratic freedoms:

To exercise true freedom of choice, we’ve got to know what we’ve got a choice of. This is the function of advertising. We do not have free choice of religion unless there are speakers for a variety of candidates. We don’t have economic choices unless there is some way in which our alternatives can be brought forcibly to our attention. What the orators and preachers are to politics and religion, advertising is to economics. Advertising presents in the best possible way the best possible case for an economic decision to buy certain products. 436

Although the ruling had united advertisers, it left constitutional uncertainties for the FTC. 437 Long-time FTC commissioner Phillip Elman admitted that FTC actions after the ruling would need to withstand “strict judicial scrutiny” and “must be the least restrictive available.” 438 In 1975, the FTC had ordered the company Beneficial Tax Corp. to drop the slogan “instant tax refund” because it was deceptive and misleading. After Virginia Pharmacy, the U.S. Circuit Court of Appeals rejected the FTC’s order, even though it agreed that the slogan was misleading. The Court reasoned that the Virginia Pharmacy decision “established, beyond dispute that there is no commercial speech exception to the First Amendment.” 439 Although this beneficial case was minor, it was unclear what effect the case would have on other pressing and unsettled issues, including trade regulation rules in advertising for entire industries, and the regulation of unfair advertising to children.

436 Tom Dillon, “Freedom Must Advertise,” Vital Speeches of the Day, 681 (need v, date)
437 Kathryn M. Fenton and Betsy J. Grey, “First Amendment Limitations on FTC Corrective Advertising Orders,” Georgetown Law Journal 66 (1977): 1473. The authors conclude that the conflict between the two movements of legislative reinforcement and First Amendment limitations would be “inevitable” (p. 1473).
439 Quoted in “Ad Slogan Held Protected by First Amendment,” Advertising Age, May 2, 1977, 4.
The Politics of the FTC Come Full Circle

By 1976, the FTC was at the crossroads of a policy paradox. The FTCIA had significantly strengthened the FTC’s ability to protect consumers, but *Virginia Pharmacy* and the cases that followed created constitutional uncertainties for the very rules granted by the law. This paradox occurred within a broader political pivot toward neoliberalism. After Nixon resigned, his handpicked successor, Gerald Ford, pardoned him from criminal prosecution. The Watergate scandals opened up a space for a critique of the role of big business in government, and of government itself (see Chapter 4). Ford was much more of a libertarian conservative, and he was a critic of the type of government regulations and spending enacted under Nixon. In his State of the Union address in 1975, Ford outlined the fundamentals of his economic plan, including a one-year tax reduction of $16 billion, which, he argued, would “point us in the right direction” by “allowing taxpayers rather than the Government to spend their pay.”440 For the first time since 1960, the Republican National Committee’s (RNC) strategy in 1976 did not include a platform for consumer protection.441 And, for the first time since 1916, Republicans excluded a specific proposal for labor.442 Instead, Republicans created a new platform called “bureaucratic over-regulation,” which, they argued would prevent the federal

government’s “interference in the lives of the American people.” Under Ford’s leadership, the RNC was beginning to abandon its earlier pledge to revitalize the FTC by building a new political base of support.

In December of 1976, Lewis Engman announced his resignation to seek the Republican nomination for Michigan’s Senate race. In an ironic twist, Ford filled the vacancy with Paul Rand Dixon as the FTC’s acting chair. Dixon, appointed by President Kennedy, served as chair from 1961–1969, and had been a major target of the Nader and ABA reports. During Congressional Oversight hearings in 1976, Representative Edward Mezvinsky (D-IA) lambasted Dixon’s FTC for its long delays:

*I think it’s clear that we are telling you—if you did not get the message—that we are worried about the effect of the long delays on the public interest and consumers. We are disturbed, also, that it takes 5 to 10 years after filing a complaint to get it resolved. . . . I am embarrassed not only for you, but I am embarrassed for the public. . . . It is terribly disturbing.*

After less than three months, before the appointment could stir up too much controversy, Ford replaced Dixon with Calvin Collier, a 34-year-old former director of the Office of Management and Budget. Collier had worked with the FTC and members of Congress to advocate for the FTCIA and was supported by consumer advocates on the Senate’s Commerce Committee.

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Despite his role in helping to pass the FTCIA, Collier, during his thirteen months as chair, mostly stayed out of the headlines by avoiding controversies. When a *New York Times* reporter probed Collier on his priorities, he answered vaguely: “My major priority is to promote free and fair competition.” In fact, Collier stayed clear of passing any new TRRs altogether. In 1976, Collier halted the FTC’s earlier plans to pass TRRs banning testimonials and premiums from children’s ads. Instead, Collier preferred regulations of children’s ads on a smaller-scale, case-by-case basis. Collier’s reticence echoed Ford’s overall plan to avoid controversial initiatives that might alienate his promising base of support among businesses.

**Conclusion**

Contradiction and incongruity defined the years between 1973–1976, for the FTC and the political economy in general. Compared to Nixon, who had unabashedly ordered the FTC to protect consumers, Ford’s reelection platform hinged on libertarian principals: “less government, less spending, less inflation.” This new libertarian rhetoric epitomized the shifting political paradigms of the mid-1970s. When Engman was appointed in 1973, both Republicans and Democrats were committed to ensuring that the FTC would continue to protect consumers. Advocacy groups like ACT began to mobilize more support for regulation of children’s advertising, and Congress significantly strengthened the FTC’s ability to regulate advertising and protect consumers through the FTC Improvements Act in 1975. Children’s advertising initiatives were put on hold, as

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government regulators grappled with how to solve the nation’s economic crisis. Rising energy costs put the oil companies under the microscope, and the HSR Act shored up the FTC’s jurisdiction over mergers, mandated detailed premerger notifications, and allowed the FTC to bring a halt to mergers in early stages.

Amid this extraordinary legislative reinforcement, consumer activists and their allies in the FTC drew attention to opacity and inconsistency in the market for doctors and pharmaceuticals. Propelled by these broader forces, the Virginia Pharmacy case ironically aligned the interests of consumers with those of businesses. Although advertisers were tentative about asserting First Amendment rights prior to 1975, the ruling gave advertisers justification for opposing further government restraints offered by the FTCIA. Virginia Pharmacy was the first of several interpretations of the First Amendment that would destabilize the FTC’s authority and help unite its adversaries around a libertarian ideal.

More important than the issue of jurisprudence, this libertarian view of the marketplace would serve as the central tenant of businesses’ massive public relations campaign, which would continue throughout the rest of the decade. The Virginia Pharmacy decision, which was initiated with the goal of protecting consumers, opened up the floodgates for businesses to sell the idea that business interests were synonymous with democratic ideals. Many of Ford’s political positions were consistent with this belief, and as a result, the FTC shied away from passing laws to make industries more accountable for the public interest. The year 1976, however, was the in no way end of the FTC’s renaissance. Instead, it was the peak of this period’s overall crisis of hegemony. Watergate, stagflation, and the energy crisis exposed both government and corporate
malfeasance. In rhetoric, Ford affixed business interests with those of the public, but his conservative libertarianism did not have the traction it would later in the decade. Ford’s days appeared to be numbered, and businesses worried that a new administration would result in even more direct forms of government support for making private interests accountable. Would corporate America be able foster a backlash against the type of government regulations offered by the FTC? With a fresh face in the White House, would the public interest movement redirect the debate to preserving the powers of the FTC? Here, Gramsci’s observation that “the war of position demands enormous sacrifices by infinite numbers of people” helps theorize vigorous debates between businesses and the public over how to structure the American political economy in the public interest. As the following chapter details, businesses and public interest groups would continue to clash over this the war of position, and the outcome of this ideological struggle would determine the fate of the FTC.

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448 Gramsci, Selections from the Prison Notebooks, 161.
“If economists could manage to get themselves thought of as humble, competent people on a level with dentists, that would be splendid.” —John Maynard Keynes

In June of 1975, President Ford made his views on the FTC clear in front of the National Federation of Independent Businesses when he vowed to remove the “shackles of Federal red tape” by government, which he dubbed the “big daddy of all businesses.” In response to Ford’s promises to curb government regulation, the 1,500 members broke out in boisterous applause and ovation. Ford’s assurances to businesses, however, did little to change public opinion. By 1976, the public’s approval of business was at an all-time low. The number of people who expressed confidence in businesses was a mere 15 percent, down from 55 percent a decade prior. In addition, the recently enacted legislative reinforcement of the FTC gave the agency unprecedented levels of powers to regulate the advertising industry and the entire American economy. The Federal Trade Commission Improvements Act made “rulemaking a whole new ball game,” according to the director of the powerful trade group Grocery Manufacturers of America. Peter A. White of the Chamber of Commerce called FTC the “second most powerful legislative body in the United States” because the recent congressional powers granted it the power to “alter the structure of an entire industry.” Despite the extension of powers, a number of FTC initiatives were unsettled by 1976: 749 investigations, including probes into the

449 James M. Naughton, “President Vows He Will Reduce Industry Curbs” New York Times, June 18, 1975, 1, ProQuest Historical Newspapers.
450 Cowie, Stayin’ Alive, 229.
shared monopoly in the cereal and oil industries, and trade regulation rules for entire industries, were ongoing.

Although Ford’s appointees had managed to steer clear of making waves, members of Congress continued to pressure the FTC to move on unsettled cases. It seemed likely that many of these cases would result in more government oversight over issues of deceptive advertising and antitrust because the FTC, by 1976, appeared to have won the favor of the press and the public. Starting in 1970, the FTC was the first government agency to hold televised press conferences and install phone-in systems for reporters to obtain a daily update. Business executives frequently found out that their industry was under investigation through FTC press releases. An article in a 1976 issue of Business Week referred to the FTC’s press operation as “one that it would be hard for some of the country’s largest companies to match.”

Articulating a consistent and effective response to the FTC and the growing anti-business sentiment dominated the corporate agenda during the last half of the 1970s. The epitome of such efforts was the Advertising Council’s largest campaign in its thirty-four-year history—a massive drive that began in 1976 to educate the public on the subject of economics called the American Economic System (AES). This campaign was circulated to millions of Americans and successfully solidified various elements of the conservative economic movement. Despite its success, the AES campaign stirred controversy over the Advertising Council’s version of economics because of its alleged

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corporate-industry bias.\textsuperscript{454} In response to the Ad Council, a broad coalition of progressive
groups launched its own version of economics education, which stressed the notion that
government regulation was the only way to direct corporate activity to preserve
democratic freedom and human rights.\textsuperscript{455} Backed by the Public Media Center, this
coalition filed a petition for the FCC to review its policies on public service
announcements.\textsuperscript{456} Both groups relied on the First Amendment: while the Public Media
Center argued that the logic of a free press guaranteed broadcasting time for its own
economic campaign, the Ad Council maintained that setting guidelines for PSAs would
violate its individual First Amendment rights.\textsuperscript{457} Progressive groups and advertisers
offered contrasting views of democratic ideals and of the political economy in general,
and the debates between businesses and reformers produced sharp ideological currents
that would set the parameters of political debate for the next thirty years.

**Challenging Existing Paradigms**

These debates occurred within this period’s overall crisis of hegemony. During
the mid-1970s, the post-war consensus—that businesses, labor, and government work in
tandem to balance prosperity for all—was beginning to erode to make way for a new
social order. Gramsci described such a crisis as one that “consists precisely in the fact
that the old is dying and the new cannot be born: in this interregnum, morbid phenomena

\textsuperscript{454} Michael J. Connor, “Ad Campaign That Seeks to Explain Workings of Free Enterprise System
\textsuperscript{455} Americans for a Working Economy, “The Public Media Center,” 1976. Box 28, Record Group
August 12, 1976.
Advertising Council’s papers, University of Illinois Archives, Urbana.
of the most varied kind come to pass."\textsuperscript{458} In such a crisis, according to Gramsci, intellectuals, through ideological tools like education and the media, become central to the broader political struggle for hegemony. This was no easy task. Gramsci observed the problems presented by “creating a new stratum of intellectuals,” which required a massive innovation of the “physical and social world” toward a “new equilibrium.”\textsuperscript{459} Gramsci elaborated on what this creation required:

One of the most important characteristics of any group that is developing towards dominance is its struggle to assimilate and conquer “ideologically” the traditional intellectuals, but this assimilation and conquest is made quicker and more efficacious the more the group in question succeeds in simultaneously elaborating its own intellectuals.\textsuperscript{460}

As Gramsci foresaw, the creation of new intellectuals was crucial element of the war of position. Bryce Harlow, Proctor and Gamble’s government relations chief, understood this as well. Harlow referred to the “debilitating regulatory schemes,” and said that it was to “pontifications of academics long ago that most of these schemes owe their origins.” He went on to explain:

Yes, we can win this or that skirmish now, and we can triumph in a major battle here or there, as recently we have—but if we want to win not mere skirmishes but the war, if we want to regain the luxury of spending less not more time struggling with governmental vexations, we must rally . . . research and scholarly activities that are genuinely consecrated to the advancement of capitalism and free, competitive, private enterprise.\textsuperscript{461}

The advancement of new intellectuals was a fundamental strategy on behalf of businesses during the mid-1970s. The expansion of a new type of economic paradigm preoccupied

\textsuperscript{458} Gramsci, \textit{Selections from the Prison Notebooks}, 276.
\textsuperscript{459} Ibid., 9.
\textsuperscript{460} Ibid., 10.
businesses during this period. The political and economic traumas of the mid-1970s fueled these ideological shifts.

The political scene in the wake of Watergate provided an extraordinary opportunity for both businesses and public interest groups to redirect government policies in their favor. The Watergate scandals exposed more than a cover up of the illegal break-in at the Democratic headquarters. The investigations of Watergate also revealed that corporations had illegally contributed to campaigns for federal offices. David Vogel writes that the “break-in and the illegal campaign contributions were, in fact, closely tied: it was the company funds—many dispersed in cash—that financed many of the unethical and illegal activities associated with the president’s reelection campaign.”

A number of corporate political scandals were revealed during the years between 1973 and 1976. Most horrifying, was the ways that the International Telephone and Telegraph Company (ITT) lobbied for the State Department to prevent socialist Salvador Allende from becoming the President of Chili. This exposure, according to Vogel, “made the conglomerate multinational the most widely criticized corporation in the United States during the mid-1970s—a status previously held by General Motors.” By 1975, public hostility toward corporations was at an all time high.

This public disenchantment with the Republic party helped Democrats gain forty-nine seats in the house and five in the Senate during the 1975 elections. Although Watergate gave a temporary boost to progressive causes, it also provided an anti-government platform for conservatives. Historian Bruce Schulman describes the political scene in the wake of the 1976 election:

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463 Ibid., 117.
In 1976, enough resentment persisted that Gerald Ford, Nixon’s pardoner, narrowly lost the presidency to an unknown whose platform consisted of a fairly convincing promise that he would never lie to the American people. But the general trends bolstered conservatives. The ultimate lesson of Watergate remained “you can’t trust government.” The scandal reinforced a generalized antigovernment passion whose main effect worked against Democrats and liberals and for Republicans and Conservatives. 464

Watergate alone did not cause this political shift; it merely provided a fulcrum for businesses to oppose government regulation. Businesses could take advantage of the collapse of faith in government institutions and tout the market as the best way to overcome a number of social problems.

This rupture occurred in tandem with continued economic woes. With inflation still high and unemployment at nearly 8 percent, the debate over how to solve the nation’s economic crisis continued throughout the latter half of 1970s. 465 According to Judith Stein, “When economies do poorly, reigning economic paradigms are questioned. Keynesianism was in trouble, but the alternative was not evident.” 466 This debate was evident in the 1975 congressional conference called “Long-Range Economic Planning in a Free Society.” 467 Top business executives from General Motors and the NAM were present, alongside Paul Sweezy of the Monthly Review and the president of the progressive Public Interest Economic Center. 468 The 1976 Nobel Prize for Economics went to Keynesian Wassily Leontief and libertarian Milton Freidman. A New York Times article aptly described this period as an “intellectual vacuum” caused by the “theoretical

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464 Schulman, The Seventies.
465 Cowie, Stayin’ Alive.
466 Stein, Pivotal Decade, 117.
paralysis” in economics. John Cobbs, the editor of *Business Week*, captured this split in economic paradigms:

As the scope of economics widens, so does the battlefield. But like the classic feud between the Hatfields and the McCoys, the fight between those who want government intervention and those who believe in laissez-faire continues from generation to generation. Today’s battles between the Keynesians and the monetarists are fought as bitterly as anything that went on in Appalachia.

Cobbs concluded that the disputes in economics opened up a “great opportunity for thoughtful presentation of economic ideas” on behalf of businesses. Friedman’s economic theory was attractive to businesses because at its core was the assumption that free markets, not governments, were the best regulator of economic activity. The emerging Chicago School trend in economics challenged the reigning logic of Keynesian economics, which assumed that government spending and regulation would create economic stability and prosperity. The Chicago School trend was as much an economic theory as a moral theory, according to economic historian Jeff Madrick, because it was “nearly a utopian or religious promise . . . a moral call for the protection of personal freedom.” Businesses began to grapple with how to create a new equilibrium within the period’s interregnum, and this played out in the academy and in the press.

Treetops Propaganda and the Academic–Journalistic Complex

Changes in public relations fueled businesses’ success in popularizing the free market trend in economics. According to the late Australian sociologist Alex Carey,
businesses during the 1970s established “complete business hegemony over the American Mind” with a massive public relations program of “conservative economic education.”\(^473\)

Two types of corporate propaganda grew tremendously during the 1970s: grassroots, aimed at influencing the public at large, and treetops, aimed at influencing government officials and other opinion leaders. A new breed of lavishly funded conservative think tanks like the American Enterprise Institute for Public Policy Research, the Heritage Foundation, and the Business Roundtable began to, in Carey’s words, “focus on the mobilization of intellectuals on behalf of corporate interests.”\(^474\)

By the mid-1970s, trade associations admitted that they made a number of missteps by underestimating the influence of consumer activists. First, during the early 1970s, they had focused too heavily on influencing the outcomes of individual pieces of legislation. As part of this overall strategy, many trade groups and large organizations moved their headquarters from hubs of manufacturing in the Midwest to Washington, D.C., to keep careful watch on lawmakers. From 1968–1978, corporations with offices in Washington, D.C., increased fivefold.\(^475\) This strategy was often effective in shaping legislation, but it did not produce a consistent ideology and, in some cases, it merely solved one problem by producing another.\(^476\) In its fervent campaign to squelch the Cabinet-level Department of Consumer Affairs, businesses made that case that the proposed department would overlap and eventually absorb the FTC. In doing so, some businesses came out in support of strengthening existing federal agencies instead of

\(^{473}\) Carey, *Taking the Risk out of Democracy*, 89.

\(^{474}\) Carey, 93


adding a new bureaucracy to the federal government. This tacit support of the FTC, as the last three chapters have shown, proved unsuccessful. When the FTC’s powers were bolstered by the Magnuson-Moss FTC Improvements Act, businesses were mostly taken by surprise. The chief lobbyist for the Chamber of Commerce recalled that the law “was done with a business community mostly unaware. We just started getting called from major businesses around the country saying, we just heard that this bill passed, what is it?” He explained that “business didn’t want to try to fight against something with a consumerist handle on it. They weren’t sophisticated, they weren’t well organized.”

More than a lack of internal organization, businesses, during the first few years of the decade, had lacked solidarity. Rather than rallying together, broadcasters and manufacturers distanced their industries from the publicly disgraced advertising industry. For example, in 1971, the U.S. Chamber of Commerce blamed the ad industry for a number of deceptive practices and expressed some support for the FTC’s advertising regulations. Finally, businesses in some ways had legitimized consumer activists by celebrating their achievements. In 1973, for example, the Chamber of Commerce chair Edward R. Rust declared, “Business should be grateful for Ralph Nader. He is single-mindedly committed to making the free enterprise system work as it’s supposed to—to making marketplace realities of the very virtues that businessmen ascribe to the system.”

By the mid-1970s, however, the Chamber was changing its tune. Its chairman, Charles H. Smith, in 1974, opened a speech to National War College with the story of

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477 Quoted in Vogel, *Fluctuating Fortunes*, 135.
478 “FTC Finds a Friend,” 27, 28.
479 The U.S. Chamber of Commerce is quoted by Michael Pertschuk in *Revolt Against Regulation*, p. 16. In 1966, the Chamber named Ralph Nader as one of its outstanding young men.
Napoleon Bonaparte, whose major weakness was a misunderstanding of basic economics. Smith blamed the “so-called regulatory agencies” for “decreasing productivity and raising costs to the consumer.” Smith warned that the future generations of Americans would “witness the elimination of capitalism, and the substitution of state ownership of means of production and a centrally planned economy.” He ended his speech with a call to action: “The longer we procrastinate in changing course, the more dangerous becomes our position. It is high time that we begin to identify and seek to avoid currents that carry us downstream at an ever-accelerating pace until we reach a channel from which there is no possibility of return.”

Who did businesses blame for the backlash against them? The chairman of Westinghouse Corporation blamed the “ripple of hostility” on “college professors to their students, citizens’ groups to governments, government to the news media and the media to the general public.” In 1977, Henry Ford announced his resignation from the Ford Foundation, reminding that his foundation was a “creature of capitalism” but that it was “hard to discern of this fact in anything the Foundation does [or in] the universities that are beneficiaries of the Foundation’s great programs.” William Simon, who served as treasury secretary under Nixon and Ford advocated for business foundations to “rush by multimillions . . . to funnel desperately needed funds to scholars, social scientists, writers and journalists who understand the relationship between political and economic liberty.”

480 Smith, “Can Private Enterprise Survive in America?”
481 Quoted in Vogel, Fluctuating Fortunes, 213.
482 Vogel, “The Power of Business in America,” 221.
W. Allen Wells, the Chancellor at the University of Rochester, had a solution to the “movement away from limited government and individual freedom . . . toward pervasive government control of all activities.”\textsuperscript{484} Dismissing attempts at persuading members of Congress, Wells saw great potential in influencing what he called “the academic-journalistic complex,” which he defined as:

the people who get their data second hand and their experiences vicariously, and who write and talk; the professors, school teachers, ministers, commentators, columnists, novelists, dramatists—even poets and lyricists. These are, of course, also the chief carriers of the prevailing tides of opinion. These are the people who disseminate ideas.\textsuperscript{485}

In the end of his address, Wells cited the University of Chicago’s Economics Department as a fruitful area of pro-business academic work. According to economic historian Alfred Malabre, Friedman’s theories during the early 1970s were “gaining ground on campuses where Keynesian economics had long reigned supreme.”\textsuperscript{486} At the University of Chicago, Friedman recruited a number of like-minded economists, including Michael Darby, who later became an important economic adviser for Presidents Reagan and Bush. Many of the Chicago School’s protégés would later take up leadership positions at prestigious economics departments like Carnegie-Mellon and Brown.

Starting in the mid-1970s, businesses began to form partnerships with the Chicago School to help disseminate and popularize its theoretical approach. For example, in 1975, ITT Continental sponsored a lecture series called “Advertising and Society” edited by University of Chicago economics professor Yale Brozen. It was an ideal marriage: ITT had been a major target of the FTC since its revitalization, and Brozen was an outspoken

\textsuperscript{484} W. Allen Wells, “What Can We Do about It?” May 9, 1975. Box 1, Record Group 13/2/220, The Advertising Council’s papers, University of Illinois Archives, Urbana.
\textsuperscript{485} Malabre, \textit{Lost Prophets}, 5.
\textsuperscript{486} Ibid., 155.

The Chicago School’s brand of economics was also gaining more credibility in the popular press. More than any other force, Malabre argues “the role of journalism—and particularly that of \textit{The Wall Street Journal}—appears, in retrospect, to have been a crucial element in Washington’s adoption of supply-side economics.”\footnote{Malabre, \textit{Lost Prophets}, 175} The monetarist policies were receiving wider recognition because of the growth of columns devoted to economics. Friedman and other economists rotated columns in \textit{Newsweek}. \textit{Time} magazine organized a board of economists and the \textit{Wall Street Journal}’s regular economic contributors included a number of Friedman supporters.\footnote{Malabre, \textit{Lost Prophets}, 153.} Although
Freidman’s economic theories were gaining attention in academia and the press, this “dismal science,” according to one ad industry exec, would “not be readily gobbled up with enthusiasm by the public at large.” The Chancellor at the California State University and Colleges echoed this concern to the Commonwealth Club over what he called “a nation of economic illiterates.” He concluded that despite the “many organizations [that] have been involved in the front line battle against economic illiteracy, an all-out coordinated, comprehensive, fully integrated effort has yet to be achieved.”

**The Ad Council Steps In**

The Ad Council was certainly qualified to take on this colossal task. Since its inception during World War II, the Ad Council had been the leading producer of a variety of public service campaigns. As many historians have demonstrated, the Ad Council was in large part formed as public relations vehicle for the ad industry itself. During the 1960s, its President Robert Keim viewed the Ad Council as an organization that addressed “democracy’s unfinished business.” It tackled issues of racial inequality in America’s urban areas, ways to assist minority-owned businesses, and launched one of its longest running campaigns in support of the United Negro College Fund. According to Robert Jackall and Janice M. Hirota, the Ad Council during the late-1960s and early 1970s “took on somewhat religious like tones. Its watchwords became ‘volatility’ and...

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‘relevancy’ . . . council leaders saw themselves as ‘roof raisers,’ lending a helping hand to neighbors in need.”

The Ad Council’s campaigns, however, emphasized social and individual responsibility at the expense of social reforms. A *Washington Post* op-ed from 1973 described the Ad Council’s opportunistic agenda:

Since radio and television stations broadcast Ad Council propaganda at license renewal time, their stuff blankets the country and probably does affect people’s thinking, if not their behavior, which is really all the authorities want. They don’t really care if you stop throwing trash in the streets, but what they do want you to believe is that, “people start pollution. People can stop it.”

As the article implies, the Council’s anti-litter campaign blamed litterbugs, in lieu of institutions, for causing pollution. In the same vein, the first drug abuse prevention drive omitted any discussion of legal drugs, and stressed the idea that parents were responsible for problems of drug abuse among America’s young people. The Ad Council’s Inflation Campaign used similar tactics. With slogans like “America. It only works as hard as we do,” the Ad Council suggested that inflation could be combated with increased productivity, rather than decreased consumer spending or increased competition. And, it was perhaps not a coincidence that the Council’s messages about highway safety, which focused on drunk and distracted driving, came out shortly after the debut of Nader’s *Unsafe at Any Speed*.

Despite the various ways in which the Ad Council had woven subtle pro-industry messages into its various public service campaigns, it did little to quell the continued

496 Ibid., 59.
public support for government regulations. Like many other business leaders, the Ad Council recognized the ways in which heavy-handed public relations resulted in a “negative impact” and a “corresponding loss of credibility.” Instead, the Ad Council supported the existing efforts on behalf of businesses to become “seriously involved in our society” to explain the ways in which “the community, the people and their dignity, and the rights of others” are “inextricably interwoven with sales, profits, dividends and business success.”

Howard Morgans, a long time supporter of the Ad Council and the CEO of Proctor and Gamble, was instrumental in persuading the Council to initiate the AES campaign. In December of 1973, Morgans was given the Ad Council’s award for public service. During his acceptance speech, Morgans surprised his audience by criticizing the ways in which business leaders had tried to become “statesman” by engaging in and promoting “their ‘good works’—in aiding education, in helping to solve social problems of all kinds.” Instead, he called upon business leaders to respond to the growing “attacks on profit motive” by promoting the notion that profit motive “is the mainspring of our whole economic structure and one of the greatest instruments of public service ever devised.”

Rather than the assiduity with which businesses had worked to oppose various regulations, this argument provided a unified front for all actions that set limits on big business. And, it served as the major impetus for the Ad Council’s largest campaign since its inception during World War II.

Morgan’s assertions were crystallized in October of 1974, when the Secretary of Commerce, Fredrick Dent, spoke to the Ad Council:

The public is now being asked to make critical and informed judgments on vastly complex economic issues related to public politics, actions and legislative proposals. It is being asked to evaluate the many and diverse points of view being debated across the whole breadth of this nation. The question is, do we have the basic understanding of our American economic system to make these judgments and help decide these critical issues? It is clear that economic ignorance as well as political apathy is what caused less than one-half of voters to participate in off-year election of Congress—our federal budgeters. This is our crisis of America. We do not understand basic economics. We do not understand political responsibility. If we understand the former, I am sure the latter will follow.501

The speech from Dent provided a strategy for the Ad Council: a campaign to educate the public about economics.

**Funding the Campaign**

The Department of Commerce supplied the Ad Council with initial grants from reserves in its Minority Enterprise budget ($125,000) and from its allocation for Economic Development ($114,000). These grants would allow the Ad Council to compile and evaluate existing survey data on public attitudes about the American economy.502

Compton Advertising enthusiastically volunteered its agency to take on the task of data analysis and creative execution. Barton Cummings, the head of Compton, estimated that the campaign would cost the agency $250,000–300,000 per year in resources and time spent on “planning the campaign, designing and analyzing the research, writing campaign materials, and preparing print and broadcast

This was an investment with high return. Cummings believed that it would receive support from many of its clients, including Proctor and Gamble. The Ad Council and Compton projected that the total expenses for a campaign would cost about $25 million—more than its total expenditures for all campaigns in 1974 and more than the budget for any campaign in the Ad Council’s history.  

On September 29, 1976, Aldo Podesta, the vice president of the Advertising Council, stressed the importance of the campaign to 400 local business leaders at the National Conference for Better Business Bureaus: “It is a privilege for me to present to this distinguished group what we believe to be one of the most exciting, the most challenging, and probably the most important campaign conducted by the Advertising Council in its 34 years of existence.” The AES campaign was a catalyst to stimulate more financial support from 1976–1977 than any year prior to the Ad Council’s founding. In 1977, the Ad Council celebrated the $1.9 million it had raised from private companies as a “feat unparalleled in Council history.”

**Opinion Polls Offer Opportunities**

The campaign was officially launched in 1976 after two years of detailed assessment of the existing survey data. As far back as 1972, the AAF commissioned a study about trends in opinion toward businesses. The computerized results coded from 3,000 face-to-face interviews revealed a sharp decrease in approval for the “free

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503 Ibid., 15.
504 Ibid., 16.
506 A.C. Podesta, interoffice memo to R.P. Keim, 18 July 1976, Box 12, Record Group 13/2/219. The Advertising Council’s papers, University of Illinois Archives, Urbana.
enterprise system.” Young, affluent, college-educated professionals were among those with the sharpest decline in approval of business. More alarming to businesses was the attitude of teenagers, the “future adults and future consumers.” High school seniors who reported that the “bad outweighed the good” in the free enterprise system increased fivefold. In terms of consumer issues, the AAF study found an increase in those who supported “legislation for control, for getting government involved in business, based on this awareness of consumerism.” Without the public’s approval, businesses’ goals of deregulation and tax cuts were uncertain. The report called upon business to stem a flood tide of adverse public opinion if it is to continue to prosper. The business community must educate those areas where half-truths dwell and must hold itself accountable in those areas where it has fallen down in its responsibilities. . . . Business must, by its deeds and words, correct these basic feelings of suspicion and resentment about contributions to American life.  

Although the surveys revealed that confidence in business was at an all time low, some of the study’s findings provided a way for corporate interests to enter into the public debate. For one, favorable opinions about other institutions, including government, labor, and religion, had declined as well. Although government regulations were viewed in positive ways, Americans were for the most part not “asking for fundamental structural change in the economic system.” The Ad Council’s campaign, thus, could emphasize “tweaking” over more sweeping changes. Survey respondents also overestimated the amount of profits earned by corporations per every dollar—a falsehood the Ad Council hoped to correct. When respondents were prompted to speak to the positive aspects of the economy, they framed the issues mostly in terms of “freedom and economic mobility of 

508 Ibid., 25.
The study also concluded that many people felt disconnected from profits; when asked, nearly 37 percent of Americans could not think of any way that their lives were directly affected by the rise and fall of business profits. These results would serve as a basis for the strategic planning of the entire campaign.

Strategies and Themes

The Ad Council recognized the limitations of conveying all economic information in advertising alone, which is why it used advertisements to prompt readers to send in for a free booklet entitled The American Economic System and Your Part in It. The twenty-four-page book was colorful and illustrated by Charles Schulz, the creator of Peanuts comic strip. The overall goal of the booklet was to champion the idea that profit motive was the engine of the American economy and prosperity in general. Relying on extensive survey data, the Council hyped the idea that individual freedom was the foundation of free enterprise and the American economy and used as platform the lack of faith in government to frame government regulation as an adversary to economic prosperity.

Individualism as the Engine of the Economy

First, as the title would suggest, the booklet stressed the significant role of each individual in the American Economy. Omitting mention of consumer groups or a lengthy discussion of labor unions, it emphasized the idea that “[t]he key role that makes everything work is played by you, in your role as a consumer.” It also drew connections between consuming and other forms of democratic participation, declaring that each American plays a part as a “consumer, producer, and a voter” by exercising “freedoms of

economic choice.” By performing labor and work, the booklet referred to workers themselves as producers, with similar goals as larger corporate producers:

Who are these producers in the American Economic System? You may think only in terms of large businesses, but, in all probability, you are a producer yourself. *Workers are producers.* They apply their basic skills and energies to change resources into goods and services.\(^\text{510}\)

By calling attention to the role of individual consumers, the AES booklet made clear a direct relationship between “what was produced and what was consumed.” During the first half of the 1970s, the FTC had relied on theories of competition to regulate advertising and antitrust. Contrary to the theories of competition upon which the FTC had relied, the booklet omitted discussing the ways in which concentrated industries inflate prices, and relied instead on supply and demand as the “forces that ultimately determine the levels of production and employment in the economy.” Supply, according to this logic, was determined solely by the consumer, “who may decide that a product is not worth the cost of producing it, and then this happens, and if the situation continues very long, the product will be forced off the market.”

*Big Government*

The booklet included a breakdown of government expenditures in 1975: $531 billion or roughly $7,500 per household. Research revealed that most people tend to overestimate the amount of business profits, and the booklet sought to correct this understanding with a chart showing that over 76 percent of the earned income went to wages and benefits for individuals, while only 7.6 percent went to corporations. It also addressed the fact that “debt of all government units beginning in 1975 was estimated at

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almost $644 billion” by comparison to the mortgage debt on private homes, which was $524 billion. Although it did not blame one single factor, the booklet included a chart of the “large increases in public employees.” It also stressed the fact that 3.6 cents on every dollar of sales by corporations went to corporate income taxes, while corporations retained only 2.4 cents.

*Profits Are Good for All*

Those profits, the booklet claimed, were “typically used for business expansion, for new plants and equipment, or to repay loans.” A major theme in the booklet was that profits ultimately benefit everyone by increasing competition and creating new jobs. One claim throughout was that increased profits result in more competition:

Profit margin, if it’s large enough, encourages new businesses to enter this field. Now there’s more competition among sellers, and this tends to reduce prices and or improve products—or both. And it means larger supply.

Quoting the U.S. constitution, the booklet underscored the ways in which the constitution was a doctrine of individual liberty. The AES booklet ended with a patriotic theme for the bicentennial:

For 200 years, America has prospered, defended individual freedoms, offered hope and opportunity for to people from many lands and of many beliefs, and met challenges with confidence and determination. Our economic system has been a major element of this tradition. The system must continue to be a vital source of strength and achievement if we are to maintain our progress in the years to come.511

The upcoming bicentennial celebrations provided the Ad Council with a patriotic theme of freedom and hope. The booklet’s overall tone was, as the Ad Council and its government sponsors had wanted, relatively “reasoned, friendly, and involving” by

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“avoiding propagandizing or defensive statements.” In order to meet the goals of distributing the booklet to millions of Americans, the Council knew it needed cooperation from many groups, including government, labor groups, businesses, and mass media.512

**Mass Media Support**

In order to make the campaign a success, the Ad Council knew that it first had to convince media outlets to run the ads free of charge. Council president Robert Keim gave a passionate speech to a variety of press officials at the National Symposium of Business and the Media. He began his speech with an oft-cited quote by media scholar Marshall McLuhan:

> All media work us over completely. They are so pervasive in their personal, political, economic, aesthetic, psychological, moral, ethical, and social consequences that they leave no part untouched, unaffected, unaltered. The medium is the message.513

Using Theodore Peterson’s theory of social responsibility of the press, Keim made a case that it was the press’s responsibility to correct the public’s “incomplete and fragmentary” understanding of economics: “If the social responsibility theory of the press—which can be extended to business and education as well—does indeed prevail, and I believe it will, we should then see more clearly the beginning of the end of economic illiteracy.”514 Using Peterson’s theory as the backbone, the Ad Council arranged to have speakers stress the importance of the campaign to major newspapers and press associations. In Wisconsin, ad clubs helped to distribute the Ad Council’s message on a massive scale by convincing newspapers to run free, full-color reproductions of the

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513 Robert Keim, “The Media and Economic Understanding.”

514 Ibid.
booklet. Frank Flood, the advertising manager for *New York Daily News*, spoke to the International Newspaper Advertising Executives in 1976 and pitched the campaign as a way for newspapers to “really show our pull and influence” by “combat[ing] our nation’s widespread economic illiteracy.”

### The Multiplier Effect

With the cooperation of mass media, the Ad Council hoped that the “ultimate pay-off” would mean influencing other opinion leaders, including “corporate chief executive officers, school superintendents, presidents of labor unions and trade associations, members of Congress, heads of college and university economics departments, chambers of commerce, Better Business Bureaus, libraries, and others.” By keeping track of similar corporate programs, the Council provided materials for speakers, offered advice on strategy, and assisted in localized efforts.

Another goal was to create an “economics reading rack display” with the AES booklet in every library and school. The American Library Association agreed to work with over 10,000 libraries across the country to prominently display the ads with the AES booklet request cards. A children’s version of the booklet was distributed to a number of school boards, PTAs, and teachers to use for teaching material, and more sophisticated versions were widely distributed to colleges and universities. The Council’s booklet and other classroom material served as the basis for a new class, “Free-Enterprise—

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516 Robert Keim, “The Media and Economic Understanding.”
Understanding the System” in the New York public school system.\(^{519}\) The Ad Council also sent its materials to major universities, including Yale, Purdue, and Washington University. With help of the Tulsa AAF Chapter, the AES booklet was distributed to 5,000 eighth graders and used as part of its core economics curriculum. The state of Utah required economics in public schools, and the Salt Lake City AAF arranged forums to promote its booklet as part of Utah’s economics curriculum.

The effort to shape economic education in school systems was widely successful, but influencing adults presented more challenges. The Ad Council reported that

Undue attention goes to reaching children in school, largely in the belief that only young people are susceptible to having their ideas shaped. But recently adult ideas have shifted dramatically on many questions, and the threat to the business system is acute now—not 10 years from now.\(^{520}\)

The only practical way to reach the adult population, according to Ad Council vice president Al Podesta, was “by mass communications.” This, however, was a problem for the Ad Council, because only a few months into the launch of the campaign, the Ad Council’s effort was stirring controversy and backlash from progressive groups and government officials.

**AES Campaign Under Fire**

*Government Officials and Economists*

Despite the fact that the $239,000 given to the Council by the Commerce Department was a drop in the bucket compared to the millions it had raised in private donations, Representative Benjamin Rosenthal, a Democrat from New York, referred to the expenditure as “the most wasteful and obscene thing I’ve ever seen” and urged

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\(^{519}\) Advertising Council, *Economic Communicator*.

\(^{520}\) Ibid.
networks to refuse the air Ad Council’s campaigns. Rosenthal was a high-ranking member of Congress, Chair of the Government Operations Consumer Subcommittee, and a well-known consumer advocate. Because of the campaign’s clear “corporate-industry bias,” Rosenthal questioned the Ad Council’s tax-exempt status as a nonprofit organization. In addition, Rosenthal, through letters to networks, pressured CBS, NBC, and ABC to not run the campaign:

the Commerce Department took $239,000 earmarked for the creation of jobs and minority business opportunities and turned that money over to the Ad Council to produce an economic understanding booklet that reflected the economic view of the Nixon-Ford administrations. Economics and politics are so interrelated that no government agency should be involved in an economic understanding campaign and no booklet setting forth an allegedly balanced view of our economic system should carry a Federal “seal of approval” under the guise of a public service message.

The AES campaign drew flak from scholars as well, among them, Professor James Tobin, a Yale University economist, former adviser to President Kennedy, and 1981 Nobel Laureate. Tobin worried that “many will be deceived because smooth Madison Avenue language gives the impression of telling how the economy works without ever doing so.” The Ad Council, according to Lester Thurow of MIT, “has chosen to ignore all of our society’s economic problems.” Paul Davidson of Rutgers commented, “At best, the booklet represents a Panglossian view of the American economy.”

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522 Pertschuk, Revolt Against Regulation, 92.
Economy, and at worst it diverts attention from the hard economic issues that our nation will face in the coming years.”

Progressive Organizations Join the Fray

A number of other progressive groups made public condemnations about the Ad Council’s campaign. The director of a nonprofit agency, the Public Media Center, labeled the AES campaign as a “sham” because it “represents corporate interest, not the public interest.” Terry Henderson of the National Education Association called it a “subtle, insidious—but very sophisticated—propaganda device.” The Consumer Federation of America claimed that the AES booklet gave a “fuzzy view of the economic system, and there are a lot of gaps.”

The Ad Council also faced criticism from a progressive organization, the People’s Bicentennial Commission (PBC). Jeremy Rifkin, the founder of the group, had earned the reputation as “the best P.R. man in town” among his Washington, D.C., political counterparts. In 1973, during celebrations for the 200th anniversary of the Boston Tea Party, the group dumped oil barrels into Boston Harbor to protest political influence of the big oil companies. The PBC also launched “Campaign Corporate Exposure,” whereby it sent letters to the homes of thousands of corporate executives and offered a $25,000 reward for secretaries who would provide information about illegal corporate

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526 Public Media Center, September 8, 1976. Box 1, Record Group 13/2/305, The Advertising Council’s papers, University of Illinois Archives, Urbana.
527 “Campaign to Explain Free Enterprise in Ads Attacked,” Editor and Publisher 108, August 9, 1975, 10.
misconduct. The PBC had made enemies in the corporate world, but plenty of friends as well. By 1976, the PBC had raised close to $1 million.

Rifkin gained media attention for his opposition to the Ad Council drive when he organized a press conference on the same day that the Ad Council unveiled the AES campaign. The PBC accused the Ad Council of trying to teach economics from a “Chamber of Commerce perspective” without “discussing the policies that adversely affect the industrial health and safety of workers” or “issues of pollution or the flight of capital.” Keim defended the AES campaign on the basis that it did not advocate for “capitalism,” but merely for “free enterprise.” The PBC pledged to monitor the stations that aired the AES campaign and draw on the U.S. Fairness Doctrine to promote its own economics education campaign.

Rifkin boasted about the skillful way his group had conducted PR, claiming, “one woman on our staff writes better ad copy than J. Walter Thompson.” One of PBC’s ads juxtaposed a gas station worker, who was jailed for ten years because of stealing a few hundred dollars, with a corporate chairman, who received no jail time for stealing $48 million. PBC’s print ads mimicked the Ad Council’s strategy by asking for people to mail in to get their own free booklet called A Working Economy for Americans.

Compared to the full color Ad Council booklet adorned with characters from the Peanuts comic strip, Working Economy addressed the dim realities of the American

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531 Ibid.
534 Hyatt, “Radical Fireworks.”
economic system: the continuing problem of boom and bust cycles, the ways in which concentrated markets inflate prices, a media system saturated with advertising, and persistent inequality. The working economy campaign clung to Keynesian principal, referring to government regulation as the “only real route for controlling and channeling corporate activity so as to meet human needs while at the same time, preserving democratic freedoms we all cherish.”

The Ad Council and the Public Media Center offered Americans contrasting views of the world. While the Ad Council emphasized individual freedom, consumerism, and free enterprise, the progressive groups involved with the Public Media Center campaign clung to collective values like social justice, equal rights, and democracy. Roger Hickey, the director of PMC, explained that he was not opposed to “corporations putting forth their views,” but instead he wanted “to make sure that all views are heard.”

The Right to Rebuttal

Alleging that the AES campaign represented one side of a controversial issue, PBC sent its campaign materials to the television networks to level the playing field. The Ad Council insisted that its campaign was not controversial because they presented a straightforward and unbiased approach to economics. The networks were split on how to deal with the controversy. The vice president of CBS, Gene Matter, saw the AES campaign “as one side of a controversial issue.” ABC’s broadcasting director announced that it would sit tight and explore the issue of whether the campaign was controversial.

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535 Americans for a Working Economy, “The Public Media Center.”
and this would be “more appropriately discussed in news or public affairs programs.” NBC took a different take and saw “nothing controversial” about the AES campaign.\footnote{Egan, “Counterads Asked.”}

Ad Council president Keim accused the PBC of trying to “abridge our First Amendment right” and urged networks to “let them get the time on the merit of their own claims rather than trying to deny us time.”\footnote{Jack Egan, “Networks Balk at Ad Campaign: TV Networks Balk at ‘Service’ Ads,” \textit{The Washington Post}, July 23, 1976, 79.} The Advocates for the Working Economy Campaign stressed that the amendment protects more than just the “right of each speaker” to include “the right of the public to receive information and ideas, including the right to receive contrasting views on controversial issues of public importance.”\footnote{Public Media Center, “Title.”}

Maintaining that the PBC’s ads were too controversial and not a direct response to the AES campaign, NBC turned down the PBC’s request.\footnote{Egan, “NBC Won’t Give Time to Counter Ad Council Spots.”} In its response letter to Rifkin, NBC maintained that it did believe that the “fairness doctrine is called into play by running of the Ad Council PSA” and could itself “stimulate a substantial number of requests for free time from groups or individuals holding viewpoints different from yours.” NBC also listed the number of experts representing a variety of economic views it had used on its new stations, including John Galbraith, William Buckley, and Milton Friedman.\footnote{National Broadcasting Company to Jeremy Rifkin, 11 August 1976. Box 28, Record Group 13/2/305, The Advertising Council’s papers, University of Illinois Archives, Urbana.} In September of 1976, Representative Rosenthal admitted that it was “too late to stop this double-think campaign.” Instead, Rosenthal began seek the support for
the enforcement of the Fairness Doctrine so that broadcasters would be obligated to air alternative points of view to the “enormous audience that will hear the Ad Council.”

In June of 1976, the Public Media Center, along with the PBC, Action for Children’s Television, Friends of the Earth, National Gay Task Force, National Black Media Coalition, Congressman Rosenthal, and sixty other national and local interest groups, filed a petition to the FCC to review its policies on PSAs. Under their proposal, broadcasters would be required to air three public service announcements per hour, 23 percent of which would be local in origin. The Ad Council, and other single sources, would only be allowed 20 percent.

In its 1976 press release titled “The Advertising Council Responds to Efforts to Violate its First Amendment Rights,” the Ad Council stressed that the Public Media Center, “a so-called public interest group,” was demanding something other than public service announcements (PSAs). They are seeking what could be labeled public debating announcement (PDAs)—announcements that at a minimum would be highly controversial, at a maximum would be politically partisan and designed to influence legislation. In our opinion, the question of how much PSA time should be allotted to any organization or causes should be the editorial prerogative of the broadcaster concerned.

After considering the arguments in favor and opposing the proposal, in October of 1977, the FCC concluded that the adoption of such standards for PSAs would be “an intrusion into the sensitive area of programming” and thus declined to propose specific PSA guidelines. The Public Media Center pressed on, and a year later, submitted new evidence

in a formal appeal for the FCC to reconsider its earlier ruling. This time, members of Congress as well as the FTC supported the appeal.\textsuperscript{545} Evidence submitted from a Federal Energy Administration report concluded that the Ad Council completely dominated the development and implementation of PSAs and thus had the “unique capability to encourage national and local media to contribute public service time on television and radio.”\textsuperscript{546}

The AES campaign was the epitome of the Ad Council’s power and influence. By 1977, AES ads had appeared in over 3,000 daily newspapers and 400 magazines. More than 400 television stations and 1,000 radio stations aired the spots and outdoor advertisers ran 110,000 transit cards and posters. The booklet had been distributed to 9 million people. Six percent of the adult U.S. population claimed to have written for or received the booklet. By 1978, an estimated $35 million in free time and space had been provided by various media outlets. The multiplier effect was a success. The booklet was widely distributed to 1,800 schools and colleges across the country.\textsuperscript{547} Over fifty daily newspapers published a complete text of the booklet and it was distributed to 800 college newspapers and 3,400 employee publications.\textsuperscript{548} In 1977, Compton Advertising conducted a benchmark study to measure the overall effectiveness of the Council’s AES campaign. The study revealed that the campaign was a success. Compared to the year

\textsuperscript{545} Notice of Inquiry and Proposed Rule Making on the Airing of Public Service Announcements by Broadcast Licensees, 81 FCC2d 346 (1980), 347. This FCC report includes a comprehensive history of the FCC’s PSA guidelines.  
\textsuperscript{548} “Council Ads Make Dent in Economic Illiteracy,” \textit{Editor and Publisher}, November 26, 1977, 18.
before, adults displayed more positive appraisals of the “free market system” and had “less desire for government regulations.”

Although roughly a third of Americans reported that there was not enough government regulation, there was an overall “decline in the size of the group who feel there is ‘not enough’ government regulation (41% in 1976 vs. 36% in 1978).” In a series of press releases, the Ad Council celebrated “the 7.5 million fewer Americans who think economic activities need more government involvement.”

When presenting the benchmark study, an executive from Opinion Research Corporation concluded, “the climate seems right for speaking out. People remain very critical of business, but that is leveling off. The heat is now on big government . . . those in the business community only have themselves to blame if they do not capitalize on the signs that the public opinion tide is turning.”

**Conclusion**

Although the Ad Council was not shy about taking credit, it difficult to say whether the shift in public opinion was caused by the Ad Council’s campaign. Considering the massive scope of its project, it likely had some effect. In tandem with the AES campaign, a host of other corporate PR activities were taking place, a point elaborated in the next chapter. The AES campaign did help translate a new economic conservative movement in the academy to millions of Americans, taking treetops PR down to grassroots levels. More importantly, the Ad Council congealed various strands of corporate public relations and provided businesses with a unified front. At its core, the

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Ad Council made the case that profit motive alone—free from the constraints of organized labor and government regulations—benefited every individual. The cynicism in the wake of Watergate provided momentum for the argument that government was the enemy to the innovation, productivity, and progress offered by the marketplace. Businesses were able to drown out and marginalize progressive voices, but this should not diminish the significance of the offering of an oppositional stance.

This period’s war of position was epitomized by the two campaigns: the Ad Council argued that the free market would translate to individual freedom and prosperity, and the progressive coalition maintained that government needed to regulate the excesses of the market to preserve democratic ideals. Although the PBC had failed to disseminate its message through the television networks, it, too, had solidified diverse groups into a forceful movement. This progressive coalition continued to pressure broadcasters to serve the public interest by limiting children’s advertising, and by 1977, they turned their attention to the FTC. Business trade groups had been taken off guard by the FTC’s initial revitalization in 1970, and again when it was reinforced by legislation in 1975. After 1977, however, business interests were organized in opposition to the mighty FTC. Against this backdrop of ideological rivalry, President Carter appointed Michael Pertschuk, a well-known and outspoken ally to the consumer movement, to head the FTC. While the Ad Council celebrated its success, the right to rebuttal was still on the table. Under Pertschuk’s lead, the FTC proposed further regulatory reforms for the ad industry. The FTC’s few years of somnolence under the Ford Administration were over. As the following chapter will demonstrate, the contrasting views of the world instigated
by the Ad Council’s AES campaign played out in the FTC’s final push for reform during in the last few years of the 1970s.
“After all, it wasn’t too long ago—say, 50 years—that business sort of ran this country. And then came the—shall I call it the interregnum?—In which President Roosevelt and the New Deal virtually destroyed the influence of business on the ground that we are public-baiting, people hating “economic royalists.” But now, half a century later we begin to recover not only our confidence but also influence in the public arena somewhat commensurate with our native strength.”\textsuperscript{552} —Bryce Harlow, Washington Chief for Proctor and Gamble, 1977

On January 20, 1977, President Jimmy Carter began his inaugural address with an optimistic message: “This inauguration ceremony marks a new beginning, a new dedication within our government, and a new spirit among us all.”\textsuperscript{553} It appeared to be a turning point in American politics—for the first time in eight years, Democrats controlled the White House and both houses in Congress. This was an especially promising sign for the FTC, which had been hushed under President Ford. As the previous chapters have demonstrated, the president and Congress had the power to change the course of regulatory agencies. Although the Ad Council’s campaign for economics education had united businesses, Congress had granted the FTC unprecedented levels of power in 1975. The fresh face in the White House might mean that the FTC’s lull under the Ford years was a minor blip for the agency. Carter, however, moved into the White House along with a new generation on Capitol Hill. By 1977, trade groups had a greater presence in Washington and were more united and confident. Businesses were taken off guard when the FTC was first revitalized in 1970, and again when its powers were extended in 1975,

\textsuperscript{552} Bryce Harlow, “Remarks at the First Annual Government Relations Food Service Manufacturers Association.”

but over the course of the last half-decade, business interests had assembled a vast network of power and influence. The free market fundamentalism espoused by the Advertising Council had made its way into the dominant sociopolitical ethos. Consumer rights activism appeared to be in decline as well, deflated by the failure to create a consumer protection agency in Washington. Businesses had marshaled resources and talent to defeat the consumer protection agency, but the FTC stayed on course, and voted unanimously for significant restrictions on advertising to children. This was viewed by businesses as more than just a restriction for children’s advertising, although this alone would have cost millions for advertisers, broadcasters, and related industries. It was a major test of whether the FTC could go beyond the scope of regulating explicitly deceptive advertising to police unfair trade practices that it found contradictory to the public interest.

This war of position—whether government or private interests best serve the public—came to a head during the last few years of the 1970s. The year 1978 was pivotal year for the FTC, and the American political economy in general. It was during this year that the assemblage of power built by businesses over the course of the decade was truly unveiled. By 1978, the FTC was under siege by the populist anti-government movement, which had swayed leaders in both political parties. During the first half of the decade, major newspapers had been sympathetic to the consumer movement’s cause. This network of support began to crumble after 1977, as broadcasters and newspapers became united in opposition to government regulation of advertising. More confident and unified, businesses engaged in a direct attack of the FTC.
In 1977, on the eve of this political fulcrum, President Carter appointed Mike Pertschuk, a long-time consumer advocate, to head the FTC. Pertschuk was committed to using the powers granted by Congress and broke new ground by proposing trade regulation rules for unfair advertising to children. This so-called “kidvid crusade” would embroil the agency in public controversy, similar to the level of notoriety for the agency following the Nader’s scathing expose in 1969. In 1980, public officials would once again question the agency’s very existence, but for very different reasons.

A Familiar Face in the FTC: Mike Pertschuk

Carter’s appointments to regulatory agencies and top-level cabinet positions signified that the public interest movement was still a powerful force in American politics in 1977. In fact, Carter sought the council of his friend and ally Ralph Nader for his top staff and regulatory appointments. Carter appointed Joan Claybrook, who had been the head of Nader’s Congress Watch, to head the National Highway Traffic Safety Commission. Carol Foreman, the executive director of the Consumer Federation of America, became the Assistant Secretary of Agriculture for consumers. To head the FTC, Carter considered two Nader-approved candidates: Mike Pertschuk and Bella Abzug. As a former member of Congress, Abzug was a liberal Democrat from New York and she was strongly opposed by businesses; therefore, Carter’s advisers suggested the less controversial pick, Mike Pertschuk. Unlike the heads of the FTC appointed by Nixon and Ford, Pertschuk was well known on Capitol Hill. He had served as the staff director and chief council to the Senate Commerce Committee for almost a decade and had earned

554 Mike Pertschuk, interview by Molly Niesen, July 12, 2012.
the not-always-flattering title of the “101st Senator.” As a top congressional staffer, Pertschuk was an outspoken advocate of consumer rights and he helped spearhead the Magnuson-Moss FTC Improvements Act. An article in the New York Times described Pertschuk as caught in a “crossfire of praise” when he was appointed in 1977. Ralph Nader was pleased with the appointment and said, “rarely has there been a more perfect match between the technical requirements of a government post and the talents of a nominee.” Virginia Knauer, Nixon’s former consumer adviser, complimented Pertschuk’s commitment to consumer rights, saying “every industry lobbyist will scream for more staff and more money when Mike is appointed . . . they’re all afraid of him.”

Carter’s choice to appoint Pertschuk, however, did not ignite a strong reaction from industry. The consumer rights coalition, although waning in strength by the late 1970s, was still strong and the possibility for reform was not yet lost in 1977. In fact, most of the opposition to Pertschuk came from fringe left-wing consumer groups, who worried that Pertschuk was too tied to the Senate’s Commerce Committee and not independent enough to represent consumer interests. At Pertschuk’s swearing in ceremony, President Carter tempered his enthusiasm for consumer protection with some reassurances for businesses:

Another appointment that I make this afternoon with a great deal of pride is to the Federal Trade Commission. This is ostensibly or by reputation the battleground between the business community on one side and consumers on the other. But the man that I’ve chosen to serve as a member is one that’s been almost unanimously supported by both the business community.

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558 Pertschuk interview.
community and consumers. Mike Pertschuk comes to us as a distinguished member of the Senate staff. He has a background that’s broad and, I think, has demonstrated his sound judgment and his own integrity. And I’m very grateful that he has been willing to come and serve with us.\textsuperscript{559}

In private conversations, however, Carter indubitably expressed loyalty to the FTC.

Pertschuk recalled his initial meeting with the president:

Carter was very probing in his questions and asked me what my priorities would be, and I said they were consumer protection focused, on exploitation of the poor and of children. Carter was very supportive. The last thing he said to me was, if anyone in his administration tried to ever interfere with the independence of the FTC, he wanted me to let him know and he followed through on that. I had no interference from anyone in the administration.\textsuperscript{560}

Pertschuk appeared to have the support of the White House, Congress, and most prominent consumer activists for his rulemaking plans. Aside from a few testimonies to Congress, Pertschuk remained relatively quiet for the first six months on the job and made no public speeches. Pertschuk’s appointments to top staff positions and his internal management style signified that the FTC would be an even stronger and more independent agency than it was during the first half of the decade. Bill Baer, one of Pertschuk’s advisers, recalled Pertschuk’s thoughtful consideration of FTC positions:

What he [Pertschuk] was really looking for initially was people who were outstanding lawyers, with some clear evidence by their past activities that they had a sense of public interest activities, and an appreciation for consumerism. He really wanted to have a feel that these were the people that knew right from wrong and had a sense of purpose and commitment.\textsuperscript{561}

\textsuperscript{560} Pertschuk interview.
Albert Kramer, Pertschuk’s appointment for the Director of the Bureau of Consumer Protection, was a well-known foe to the television industry. During his time as chief of the public interest law firm the Citizens Communication Center, Kramer had battled broadcasters over FCC licensing policies and was well-known as a communications consumer advocate. Margery Waxman Smith, the FTC’s new executive director, criticized the FTC’s previous emphasis on “line-by-line substantiation” because the FTC had “missed TV advertising and the implications of mood advertising.”

Pertschuk understood the problem of outside pressure on the agency, and he was dedicated to preserving the independence of the agency. During his confirmation hearing, Pertschuk affirmed his commitment to

> keep to an absolute minimum social contact with those who had an economic stake in the commission activities. In some cases, this will mean curtailing social relationships which I value, but cynicism and public skepticism of the integrity of government is at a fever pitch, and I believe that it is essential for government servants to scrupulously avoid even the appearance of collusive relationships.563

Members of the business community took notice of the FTC’s cold shoulder. Prior to 1977, an executive at the Grocery Manufactures of America recalled, “the commission as whole used to meet with regularly with different industries, sit down, have lunch or something, and discuss what was going on. . . . That was perceived as bad when Mike came in.” The Chamber of Commerce’s chief lobbyist waited two years for a meeting with Pertschuk, and later recalled that Pertschuk “didn’t need to talk with business. He set

the stage. All we could do in business is say, look, if you won’t talk to us, we’ll find some other way to get your attention.”⁵⁶⁴

Although Pertschuk was more committed to the FTC’s independence from business interests than previous heads of the FTC, he was guided by a similar philosophy as the previous Republican appointees. Hanging in his office was a framed quotation from Adam Smith’s *The Wealth of Nations*: “The interest of the producer ought to be attended to only so far as it may be necessary for promoting the consumer.” An article in the *New York Times* commented on the dual meanings of this message:

> For consumer advocates paying a call on the FTC chairman, this message is obviously a cheering portent. But businessmen, particularly those familiar with Mr. Pertschuk’s long war against marketplace abuses while he was chief of staff of the Senate Commerce Committee, may find the quotation somewhat ominous.⁵⁶⁵

More ominous signs for businesses would come when Pertschuk broke his silence in November. At a conference organized by Action for Children’s Television, Pertschuk assured his many supporters that he would make the FTC the “best public-interest law firm in the country” by refusing to “shrink from tough targets.”⁵⁶⁶ Pertschuk went on to affirm his commitment to the issue of children’s advertising:

> If there is one salient public policy issue which rises commandingly from centuries of common and statutory law, it is that the commercial exploitation is repugnant to a civilized society. . . . With food this often means instant pleasure and the danger of malnutrition. . . . It may be that only a ban on the advertising of these products on programs directed towards the young child can help remedy their inherent defect.⁵⁶⁷

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⁵⁶⁶ Langdon, “FTC Chairman Mike Pertschuk Is the Bureaucrat Who Makes Some Businessmen Turn Blue.”
Pertschuk began to convey his views in the press as well. In an interview with the *New York Times*, Pertschuk bluntly stated, “I am an activist and the staff people I brought in are activists. It’s a gut thing.”\(^{568}\) These statements might have earned Pertschuk political capital during the first half of the decade, but Pertschuk was appointed amid striking political shifts, including a new generation on Capitol Hill, a much more organized coalition of businesses interests, a disillusioned consumer movement, and a changed media landscape. In a personal conversation, Ralph Nader, who understood these obstacles, offered a warning to Pertschuk: “If you take on advertisers you’ll end up with so many regulators—with their bones bleached—in the desert.”\(^{569}\)

**A New Generation on the Hill**

*Congress and the White House*

Pertschuk had the support of many consumer activists and Capitol Hill, but the FTC lost key allies in Congress in the 1976 general election. Republicans defeated Democratic Senators Vance Hartke, Gale McGee, and John Tunney. Republican Orrin Hatch defeated the Senate’s most loyal advocate of the FTC, Frank Moss. Democratic Senator Philip Hart of Michigan, who was nicknamed “the conscience of the Senate,” died while serving his term and was replaced by Republican Donald Reagle. Although Mike Mansfield and John Pastore retired and were replaced with Democrats, they had both been strong supporters of the FTC’s continued revival and occupied high-ranking positions on important committees responsible for appropriations and oversight of the FTC.\(^{570}\)


The Senate’s Commerce Consumer Subcommittee had been the FTC’s most essential ally. The chair of the committee, Senator Magnuson, had helped sponsor the legislation to bolster the FTC’s powers. Magnuson remained until late 1977, when he resigned to head the appropriations committee. Senator Wendell Ford, a Democrat from Kentucky, succeeded Magnuson as the chair of the subcommittee. Earl Clements was originally instrumental in persuading the Senate to appoint Ford to the subcommittee. Clements was well connected to the Democratic National Committee: he was a former Democratic member of the House and Senate, and governor of Kentucky. During the 1960s and 70s, Clements used his connections in government to work as a chief lobbyist of the tobacco industry. Pertschuk, who was on the staff of the consumer subcommittee at the time, recalled a phone conversation he had with Clements:

When I was on the staff of the consumer subcommittee, he [Clements] called me, and among other things, he said Wendell Ford was interested in being on Senate Commerce Subcommittee. I said there were no vacancies, and he said, “I’ll worry about that.” He had enough power to convince the Senate’s policy committee to expand the committee to include Ford, all of which was designed to protect the tobacco industry.571

Under Wendell Ford’s leadership, and absent the FTC’s strongest supporters, the powerful Senate Consumer Subcommittee began to demonstrate an increasingly bellicose attitude toward the FTC.572

As the previous chapter demonstrated, the Ad Council pooled resources to help popularize a new paradigm of conservative economics. In 1977, public opinion polls suggested that the public’s approval of business had increased, along with an overall decrease in approval of government regulation. The ascendance of conservative

571 Pertschuk interview.
economics was evident in the bureaucratic structures of government as well. Ford, much more a proponent of the free market ideology, had surrounded himself with a group of the so-called “free market Mohicans” like Dick Cheney, Donald Rumsfeld, and Alan Greenspan.\footnote{Meg Jacobs, “The Conservative Struggle and the American Energy Crisis,” in Rightward Bound: Making America Conservative in the 1970s, ed. Bruce Schulman and Julian Zelizer, (Harvard University Press, 2008).}

Although Carter was a fresh face in the White House, he won by a narrow margin and in public speeches had expressed ambivalence about the government’s role in economic matters. According to historian Jeff Madrick, in economic matters Carter was “known more for his vacillation than his conviction, at one moment worried about unemployment, at the next inflation, all the while referring to the nation’s lack of confidence in government.”\footnote{Jeff Madrick, Age of Greed: The Triumph of Finance and the Decline of America, 1970 to the Present (Knopf, 2011), 144–145.} Although he expressed ambivalence, Carter was not simply an extension of Ford; he was no “free market Mohican,” although he inherited these ideological changes. In fact, Carter refused to accept corporate money for his general election campaign, and he consistently expressed to Pertschuk his moral commitment to protect vulnerable consumers from unfair business practices.\footnote{Pertschuk interview.} For the FTC, there appeared to be a real political opportunity for even more rigorous rulemaking power. Business interests, poised to respond to unfavorable regulations, were ready and on the front lines.

*The Great Migration: Trade Associations and Corporate PACs Ascend on Washington*

Business trade groups were also part of this new generation, which for a decade had been migrating from New York and the nation’s manufacturing hubs to the nation’s
capitol, blocks away from the White House and the Federal Trade Commission building. From 1968–1978, the number of corporate affairs offices in Washington grew from 100 to over 500.\(^{576}\) Among the trade groups was the Aluminum Association, which moved from New York to Washington in 1978. According to one executive in the Aluminum Association, trade groups had built a “vast intelligence network for exchanging information, and the lunch table talk at the Association Club in the Capital Hilton Hotel might concern the new lawyer at the Federal Trade Commission or a successful court suit against the Consumer Product Safety Commission.” Bernard Falk, president of the National Electrical Manufacturers Association, described reasons for the migration: “The manufacturer controlled the makeup of his own product, and Washington could be ignored. Now we all have a new partner, the federal government.” The vice president of the American Society of Association Executives explained the strategy in dealing with government: “You have to be helpful, be dependable, keep in contact. The good association executive builds friendships, takes people out to lunch, takes them to the ballgame, builds trust.”\(^{577}\) Forming partnerships, rather than “sassing the cop,” was becoming the new mantra for businesses during the late 1970s.

By 1978, these lobbying efforts were well-funded through the growth of corporate-funded political action committees (PACs), which were spending just shy of a billion dollars per year.\(^{578}\) Organized labor had invented PACs, and it used these groups to help influence elections and policymaking in its favor. In 1974, there were 1,284 PACs

\(^{576}\) Stole, Advertising on Trial, 193.


\(^{578}\) Pertschuk, Revolt Against Regulation, 59.
sponsored by business interests, compared to 217 associated with organized labor. The greater presence and power that businesses had assembled in Washington throughout the 1970s bolstered businesses influence over the political process. The grassroots efforts by the Ad Council had helped build public faith and disenchantment with business and government respectively. These ideological changes toward neoliberalism worked against the grain of what the public interest movement had worked to accomplish over the course of the decade: an agency dedicated to consumer protection in Washington.

A Defeated Movement: Consumer Activism and the CPA

The migration of trade groups to Washington and the growth of business PACs were used to defeat the Consumer Protection Agency, which was finally struck down by Congress in 1977 before it reached Carter’s desk. The fierce and successful lobbying efforts on behalf of trade groups provided a model and a strategy for continued efforts to squelch further consumer rights legislation. By 1978, business leaders were licking their chops over the victory. Bryce Harlow, Proctor and Gamble’s chief of government regulations, celebrated the victory, observing that

It doesn’t really matter a whole lot which party is runs things . . . because when businesses start marching lockstep, the government apparatus hunkers down . . . we proved it 31 years ago with Taft-Hartley; we proved it 18 years ago with Landrum-Griffin; we proved in a year ago with situs picketing; but now we have proved it in spades by our eight year torment with the CPA.

Harlow called upon businesses to “retrieve a small measure of humility” and learn from the mistakes made in the early part of the decade. He went on to explain:

As to the lessons, one is that the scope of a victory like this can be gauged only by visualizing what would have been said and thought around town

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579 Stole, Advertising on Trial, 193.
580 Glickman, Buying Power.
had we lost. If Ralph and Ester . . . Speaker O’Neill, Rosenthal and such as John Moss had won, the business stance around town would have suffered terrible injury and our most virulent foes in and out of government would have been fired up as never before to force-feed us gallons more of other kinds of hemlock. Our friends on the Hill would have been spooked, our enemies elated, and we ourselves would have been shattered and in disarray.\footnote{Bryce Harlow, “Remarks at the P&G Consumer Issues Working Group,” March 3, 1978. Box 3, Folder 27, Bryce N. Harlow Collection, The Carl Albert Center, University of Oklahoma, http://www.ou.edu/special/albertctr/archives/HarlowInventory/harlowbox.htm.}

The demise of the CPA had in many ways left the consumer movement spooked and in disarray. The passage of the bill had preoccupied the resources and energy of the Consumer’s Union and many consumer advocates like Ralph Nader. According to historian Lawrence Glickman, “by depicting the CPA as a synecdoche for liberalism in general, opponents of the CPA not only defeated the bill, they succeeding in deflating American liberalism, which was for decades closely aligned with the consumer movement.”\footnote{Glickman, Buying Power, 278.} Nader was dissatisfied with the CPA as merely another regulatory agency like the FTC. He wanted the agency to have broad authority to act as an umbrella organization to ensure that other regulatory agencies and government activities represent consumer interests. Business used this one aspect of the proposal to make the case that the CPA would simply add a layer of bureaucracy and complexity to existing agencies. This argument certainly had an element of truth on its side, and businesses were successful in finally defeating the bill.

Carter himself had indicated that he would support a consumer protection agency without the power to oversee all regulatory activity. Thus, the last stages of the battle over the CPA illuminated a division between the consumer movement and the president.

In a series of public statements, Nader blamed the Carter Administration for his
preoccupation with “foreign policy and worrying about business confidence.” Through his congressional raids, Nader had also made many enemies within the Democratic Party, which did not help the consumer movement’s backing in Congress. For example, Nader made an enemy of Senator Ernest Hollings (D-SC) after Nader listed him as “the most disappointing member of the Senate.” Pertschuk recounted a phone call he received from Hollings in which he avowed, “I want to tell your friend Ralph Nader, from here on out I am going to vote against everything that the FTC wants.” Nader’s political power was beginning to crumble.

Members of Congress began to criticize Nader publicly. Representative David Obey, a Democrat from Wisconsin, said “members are just fed up with being equated with evil if they vote against Nader.” Nader’s image was also tainted by his appearance on Saturday Night Live in January of 1977, when he, according to Time magazine, “deadpanned his way through a comic turn satirizing none other than Ralph Nader.”

The deflation of the consumer movement was not helped by reports of Nader’s expressions of grief, when he was brought to tears after the final defeat of the CPA. An op-ed in the Wall Street Journal titled “Cheer Up, Ralph Nader” mocked him over his emotional response to the defeat of the CPA. The article concluded: “Well, look at it this way. You still have the Federal Trade Commission.” And he certainly did. Although the CPA never successfully passed through both houses of Congress, the FTC had been actively working to protect consumer rights for nearly a decade. Congressional legislation passed over the course of the decade had given the agency broad powers to issue rules for

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583 Pertschuk interview.
entire industry segments to make businesses better serve the public interests. With Pertschuk at the helm, consumer rights policies did not die out with the defeat of the CPA. The consumer movement’s preoccupation of the CPA, however, meant that it missed an opportunity to pool time, talent, and resources to support the continued vigor of the well-regarded and established FTC. By 1978, the writing was on the wall. Changes within the news media—a lack of sympathetic coverage for consumer rights, a greater collusion between advertisers and newspaper owners, and more unity among America’s media owners—set the stage for a major backlash to the FTC.

Changes in the News Media

Structural Changes to the Newspaper Industry

Structural changes within the Washington Post added to the lack of sympathetic press coverage of labor and consumer rights issues during the late 1970s. During the 1960s and for most of the 70s, the Washington Post had helped reinforce the consumer movement’s cause. The Post was the epitome of quality investigative reporting—it had originally leaked the Pentagon Papers in 1971, and a year later it exposed the Watergate scandal. The Post’s investigative reporting was not limited to coverage of malfeasance within government. Morton Mintz had been a reporter for the post since 1958, and he broke stories on the birth defects caused by the drug thalidomide, exposed GM’s hiring of detectives to stalk and intimidate Ralph Nader, and wrote numerous exposés about the tobacco industry. Pertschuk recalled the significance of Morton Mintz for consumer rights:

The Post was really a major influence . . . in fact Morton Mintz’s articles, many of which originated with Nader, were as important a factor for our ability to pass consumer legislation in the sixties and early seventies as anything that Nader did. It wasn’t just the Post editorials, which were
supportive, and they were, but it was pro consumer reporting, and the Post was the primary power in the media at that time.

Behind the scenes of this excellent investigative reporting, the Post became a publically traded company and it purchased the Trenton Times and several television stations during the late 1970s. Shortly after Pertschuk was appointed to FTC, Katherine Graham, the publisher of the Post, invited Pertschuk to lunch. She wanted to discuss the children’s advertising regulations and FTC’s plans to investigate newspapers giving quantity discounts to large corporate clients. Pertschuk recalled his meeting with Graham:

So we had lunch, and she brought her general council just to make sure I didn’t bite her and one of things she said was that if we don’t make enough money, we can’t afford to have Morton Mintz reporting the way you’d like him to do it. So she was balancing her own reporting with the need to make money. And there was a succession of editors during my time in Washington who were increasingly more conservative and open to corporate arguments.

The Post, as Graham insinuated, was under pressure to appease advertisers and therefore was beginning to minimize pro-consumer, anti-business reporting. Morton Mintz also recalled the chilling effect at the Post, which radiated “from the top down” making it an unwelcome “atmosphere to cover business misdealings.” As previous chapters demonstrated, investigative journalism played a crucial role in bolstering consumer activism and the public interest movement during the 1970s. After Pertschuk officially announced controversial plans for rulemaking in 1978, the Post would wholeheartedly join the cause of the budding anti-FTC movement. A greater reliance on institutional advertising added to greater collusion between corporate interests and journalistic

587 Martin, Nader, 196.
practices, which helped weaken the consumer movement and fortify the anti-FTC movement.

The *New York Times* also experienced a change in leadership in 1977, when Abe Rosenthal took over. Ralph Nader recalled that Rosenthal “literally told reporters and Washington bureau chief that they should not cover me, unless there was a thorough response by corporations.” Nader later called Rosenthal “one of the nastiest Canadians who has ever come to the United States.” Nader’s vitriol aside, Rosenthal was responsible for sectioning the paper into arts, business, science, and regional sections for advertisers interested in targeting affluent and more-specific audiences. The type of newspaper advertising was also changing dramatically during the late 1970s, from ads selling products and services, to ads promoting a new type of corporate image advertising.

*A Growth in Institutional Advertising*

According to political scientist David Vogel, by the end of the 1970s, businesses were spending nearly one-third of all of their advertising on selling a corporate ideology rather than products themselves. A study sponsored by *Time* showed that companies who engage in corporate advertising have a better image. This was especially true of print advertising, which was perceived as more believable than television. According to Inger Stole, this onslaught of advocacy advertising “worked to counter the anti-corporate attitude that business claimed to have detected in the mass media.” As the previous chapters demonstrated, this new type of ideologically driven advertising was as effective

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588 Ibid.
590 “Corporate Ads Help Improve Reputation,” *Editor and Publisher* 110 (October 22, 1977): 38.
591 Stole, *Advertising on Trial*, 194.
as it was controversial. The regulation of advertising content and the proposals to apply the Fairness Doctrine to issue-orientated advertising posed a threat to this growing trend toward business-sponsored advocacy advertising. This did not sit well for newspapers, which were beginning to profit more from creating privileged space for institutional advertising. Not only did the growth in ideologically driven advertising by corporations work to change public opinion, but it also aligned newspapers other more powerful interests in opposition to the FTC.

Although institutional advertising had drawn flak from advocacy groups and public officials in broadcasting, these types of ads were unregulated in print. Starting in 1972, the New York Times began trying to profit from this trend by experimenting with creating privileged space for businesses to run institutional advertising on the lower right corner of the op-ed page. Texaco and Mobil Oil were among the first advertisers to buy up this space. Fred Thompson, the New York Times VP of advertising, decided, “we have been so successful in the opinion ad hole that we decided to open up another area of the paper for this type of advertising.” On March 15, 1977, the Times made this permanent by establishing the “corporate corner”—a space devoted to corporate institutional ads—on the lower left corner of the first national news page. The cost of the premium space would be 75 cents per line in addition to the $5.68–$6.68 rate on weekdays and Sundays, respectively.592 Walter Annenberg, the publisher of Triangle Publications and former ambassador to the UK, ran the first ad in this space: a letter, urging the citizens of New York to create a third Annenberg School of Communications. Citing the letter, the same issue of the Times ran a story on the controversy over Annenberg’s proposal to join the

Metropolitan Museum of Art with the Annenberg School. Texaco ran an ad the next day urging citizens to support “a workable national energy policy.” In another not-so-surprising coincidence, the same issue of the Times featured two articles criticizing the Carter’s plans to close tax loopholes for energy firms and establish a cabinet-level Department of Energy. In an interview with Editor and Publisher, a spokesperson for Texaco was surprisingly candid about the company’s goal to “disseminate our point of view prior to President Carter disseminating his point of view on the energy situation.”

Broadcasters and Newspapers: Uniting over a Common Cause

Broadcasters had been divided over the Public Service Announcement controversy, but they began to organize among themselves, and with newspapers, during the late 1970s. Newspapers, unlike broadcasters, were not subject to the rules of equal time under the Fairness Doctrine. During its annual meeting in March of 1977, the National Association of Broadcasters created a “First Amendment Survival Kit” to distribute to newspapers. This packet included a mock newspaper from 1984 with the slogan “All the news we’re fit to print.” The front-page article was titled “Congress Created Newspaper Commission.” The mock paper was meant to inspire fear that newspapers would be subject to the same rules of fairness as broadcasters. According to this logic, newspapers would be subjected to government licensing, limits in space

devoted to advertising, educational features for children without ads, and space allocated to groups who opposed controversial advertising. The NAB’s messages drew parallels with the FTC’s consumer protection enforcement in its prediction that in FCC newspaper licensing decisions, “the federal government will pay for groups which attack newspaper performances.”

Much more united in their opposition to proposals for counteradvertising, broadcasters clearly hoped to sound alarm bells for newspapers. It is perhaps not coincidental that major newspapers had limited coverage of debates that continued to ensue over the Fairness Doctrine’s application to counteradvertising.

*Aiming for Journalists’ Weak Spot: Professional Integrity*

The Advertising Council’s American Economic System campaign had helped organize the various public relations programs on behalf of businesses, but this campaign, according some businesses, was not enough. A new rising star of the neoconservative movement, Irving Kristol, saw the campaigns for economic education as limiting because advertising is precisely the wrong vehicle for any type of education. Education, properly understood, induces a growing comprehension of abstract ideas and concepts: advertising, properly understood, aims to move people to do something definite and unambiguous. Education is always raising questions; advertising is always giving answers. These are two radically different modes of communication, and their admixture is corrupting to both.

The attitudes of “less learned folks” and “young people,” Kristol observed, were shaped by “songs, the books they read, the movies and TV programs they see, the paintings they admire, and the schooling they receive.” Influencing the wide array of these cultural factors shaping “value formation” was an “alien territory where they [corporations] are not likely to encounter much hospitality, and into which they best not intrude.”

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did, however, see one potential area in the struggle to influence value formation—the news media, which he said was biased against the business community. Kristol observed that most journalists “don’t give a damn about what the business community thinks of them,” but they cared “very much about what kind of professional reputation they have among their peers.” Kristol called upon businesses to go on the offensive by targeting journalists’ weak spot: “When they [journalists] commit a flagrant error they are at least mildly disturbed; when they are publicly exposed as having committed such an error they are embarrassed; and when the public exposure occurs repeatedly they feel humiliated.” Instead of the type of “issue-oriented advertising” that corporations had employed in the past, Kristol called upon corporations to challenge journalists’ integrity in the form of paid advertising in newspapers with national standing that “the reporter and his colleagues read.” This strategy would “persuade the public that, where one situation was able to generate so much smoke, there must also be fire.”

Kristol’s plan to influence journalists came to fruition in 1976 with the establishment of The Media Institute, which was organized by major corporations to monitor media coverage. The Media Institute published summaries of reporting on business practices and the economy, and complaints over a journalistic bias grew. David Vogel concludes that the favorable coverage did less “to have shaped changing public attitudes” than it did in reflecting them. As the last chapter demonstrated, the Ad Council took credit for changing public attitudes by 1977. Combined with changing public

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attitudes, greater influence by businesses over mass media resulted in more favorable coverage of businesses during the late 1970s.\footnote{599 Vogel, \textit{Fluctuating Fortunes}, 220.}

\textbf{The FTC’s Policy Agenda}

\textit{First Amendment Considerations}

As discussed in Chapter 3, policy changes between 1973 and 1976 situated the FTC in a policy paradox. On one hand, Congress granted the FTC an unprecedented level of power. Riders to the Trans-Alaskan Pipeline Act of 1973 gave the agency some additional powers to protect consumers, and the Magnuson-Moss FTC Improvements Act (FTCIA) of 1975 in many ways gave the FTC carte blanche to regulate businesses in the consumer interests, allowing the agency to represent consumers in lawsuits for consumer abuses, gave the agency the power to preemptively issue cease-and-desist orders, and broadened the FTC’s powers to order restitution. This jurisdiction went well beyond specific instances of consumer abuses. The FTC, for the first time in its history, was given power to implement structural changes in entire industry segments in order to protect consumers and restore competition.\footnote{600 Udell and Fischer, “The FTC Improvement Act.”}

On the other hand, the Supreme Court \textit{Virginia Pharmacy} decision in 1976, had, for the first time, granted First Amendment protection to purely commercial speech. The constitutionality of sweeping trade regulation rules (TRRs) in advertising had not been tested, but it threw a wrench in the FTC’s plans to pass TRRs. More important, the passage of \textit{Virginia Pharmacy} handed advertisers a trump card in opposition to the FTC’s regulation of advertising content. The First Amendment protection of commercial speech was an important rhetorical and legal maneuver used by advertisers during the late 1970s.
As the FTC moved on unsettled cases after 1977, advertisers became more assertive about their First Amendment rights, both in public statements and in the courts. Relying on the *Virginia Pharmacy* decision, Warner Lambert appealed its right to run corrective ads for Listerine’s deceptive cold fighting claims. Although consumer activists initiated the 1976 *Virginia Pharmacy* decision, an AAF exec saw nothing dissimilar between the Listerine case and *Virginia Pharmacy*. The AAF and ANA joined Warner Lambert in its appeal to the U.S. Circuit Court. The Circuit Court upheld the FTC’s order. Although the consumer protection rationale was used in *Virginia Pharmacy*, the FTC’s ongoing cases would have to withstand greater judicial scrutiny. The recent shifts in First Amendment protection, according to *Advertising Age*, would have “major implications for other cases still in the FTC pipeline.”601

*Antitrust Cases*

The constitutional limits of *Virginia Pharmacy* applied to the regulation of advertising content, but not to the regulation of anticompetitive structural arrangements. Along with the FTCIA, the Hart–Scott–Rodino Act helped secure the FTC’s power over preventing and mitigating concentrations of corporate power. The new leadership in the FTC suggested that the agency would follow through with its antitrust cases, which had been in the FTC’s pipeline since the first years following the FTC’s revitalization. Pertschuk publicly voiced opposition to mergers and acquisitions that led to “huge concentrations of power.” Like his predecessors in the FTC, Pertschuk insisted that his job was to protect consumers by promoting “open competition, with informed buyers

acting as regulators.”

602 Convinced that the “current antitrust policies lack clarity and conviction,” Pertschuk promised to “bring the structure and behavior of major industries and indeed, the economy itself, more in line with the nation’s democratic, political, and social ideals.”

603 At Pertschuk’s lead, the FTC continued hearings on the Big-4 Cereal Makers, a controversial case that began eight years prior. As Chapter 2 demonstrated, this case broke new ground because the FTC had called into question the legality of the concentrated oligopolistic structure in major industry segments. Although a judge refused to dismiss the cereal case, Pertschuk did not receive unanimous support from the commissioners to continue with the antitrust allegations against the big four. Pertschuk admitted that his expertise was not in antitrust violations, and as a result, he paid less attention to activities within the FTC’s Bureau of Competition. In 1977, the FTC announced plans to narrow its four-year-old monopolization investigation into the oil industry. A year later, the FTC announced that it had ended a study of whether IBM had monopolized the typewriter industry. For the case against the oil industry, the FTC submitted a truncated version of a previous a subpoena for evidence, which meant that it would abandon 499 allegations in the original investigation.

604 Rather than pursue breaking up “shared monopolies,” the FTC’s bureau of competition changed course and decided to make better use of industry-wide trade regulation rules granted by the FTCIA. Passing trade regulation rules within concentrated

602 Langdon, “FTC Chairman Mike Pertschuk Is the Bureaucrat Who Makes Some Businessmen Turn Blue.”
604 Pertschuk interview.
industries, the FTC hoped, would help it move on lengthy unsettled cases.\footnote{Timothy D. Schellhardt and Burt Schorr, “Moving Against Monopolies” \textit{Wall Street Journal}, January 11, 1978, 38; “FTC Faces Key Decision on Scaling Back Its Antitrust Case Against 8 Oil Firms,” \textit{Wall Street Journal}, January 10, 1977, 2; Burt Schorr, “FTC Antitrust Case Against 8 Oil Firms Narrowed as Fringe Issues Are Dropped,” \textit{Wall Street Journal}, January 13, 1978, 6.} Those cases included probes into several industries: insurance, funeral, over-the-counter drugs, and vocational schools. The FTC had President Carter’s support for these investigations, particularly its far-reaching, but short-lived, probe into the dominance of Blue Cross/Blue Shield. Pertschuk recalled his conversations with Carter about the insurance industry investigations:

I got one phone call from Carter, he called and said he had read an article in the \textit{Washington Post} that we were investigating the dominance of Blue Cross/Blue Shield, for their ability to fix prices and avoid competition. He said “I am very glad you are doing that,” and wished me good luck.

Something like six months later he invited each of the consumer protectors, the agency people, to report on what they had done and what issues were pursuing. He asked me, “What happened to the investigation of Blue Cross/Blue Shield? What happened was it had dragged along, the staff had not done much. So that was his frustration. He was committed to consumer protection and the independence of the agency.”\footnote{Pertschuk interview.}

Indeed, these antitrust cases had dragged on, and by 1978 they were outshined by the FTC’s notorious kidvid rulemaking proposal. Although Pertschuk paid little attention to the FTC’s Bureau of Competition, he was unequivocally committed to consumer protection. This was particularly true for preventing consumer abuses against what he considered to the most vulnerable groups: the poor, the elderly, and children.

\textit{The Gray Panther Awakens}

By 1978, it was clear that the FTC was committed to consumer protection through the regulation of advertising. In 1978, Pertschuk announced that he was not satisfied with the pace of the FTC during his first year because he had “erred on the side of the riding...
herd in every case.” He hoped for a better year in 1978, insisting, “We’re trying to turn the gray lady into a gray panther. We will be doing some tough things.”608 Pertschuk wanted to take full advantage of the FTC’s new powers to regulate “unfair” advertising. Margery Waxman Smith, the FTC’s executive director, hoped the commission could make a case against a campaign that “encourages materialism” by convincing consumers to buy products that they do not necessarily need. This broad interpretation of unfair, according to Business Week, would go “far beyond anything that Washington regulators have tried in the past.”609 Major targets of this type of unfairness were cigarettes and junk foods, which Pertschuk felt targeted vulnerable groups like the elderly, the poor, children, and the non-English speaking.610 Pertschuk’s commitment to protecting vulnerable audiences culminated in a decision to significantly limit advertising to children. The FTC’s set of kidvid rulemaking would embroil the FTC in an unprecedented level of public controversy for the rest of the decade. Despite its notoriety, the FTC’s kidvid proposals were not new. They were merely a culmination of what had been a controversial topic for nearly a decade.

**Children’s Advertising: A Decade-Long Debate**

During the 1960s, the three networks began to concentrate children’s programming on Saturday morning, which resulted in more time devoted to commercials along with more aggressive hard-sell tactics. During the late-1960s, researchers, through the direction of Congress, began to study the effects of television violence. As mentioned earlier, although the main objective was not to study the effects of television advertising,

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the findings showed that children under the age of eight had difficulty distinguishing programming from commercials, and did not understand the persuasive intent of commercials. Although children’s advertising had been around since the early days of commercial radio, it was mostly ignored by researchers and policymakers. Because this intensified commercialization was derived mostly from the broadcast television networks, it made sense for public interest groups like ACT to focus their efforts on persuading the FCC to pass specific guidelines for advertising to children.

Thus, prior to the FTC’s kidvid proposals for children’s advertising, advocacy groups like Action for Children’s Television (ACT) mostly focused on regulations of commercials directed at children through the FCC. The FTC and FCC had overlapping power to regulate commercial media, but the specific jurisdiction of the two regulatory agencies differed in important ways. The FCC is broadly responsible for regulating media structure and content in the public interest, whereas the FTC is responsible for regulating advertising content. Pressured by Congress and advocacy groups, the FCC, in 1974, established two policies for advertising for child audiences. First, the FCC adopted limitations on the number of commercials—9.5 minutes per hour on weekends and 12 minutes per hour on weekdays. These rules did not change the status quo, as they were already in place through the self-regulatory standards created by the networks. Relying on the empirical data, the FCC also adopted a “separation rule” to help children distinguish regular programming from commercials. This rule consisted of three parts. First, broadcasters were required to create “bumpers” between programming and commercials. Second, characters on shows were prohibited from promoting products

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611 Surgeon General’s Scientific Advisory Committee on Television and Social Behavior, *Television and Growing Up*. Other research on commercials as an addendum to this study is reviewed by Kunkel and Roberts, “Young Minds and Marketplace Values.”
related to the programming during the shows. This would mean, for example, that a G.I. Joe cartoon could not show a commercial for a G.I. Joe toy during the program. Finally, the separation rule prohibited program-length commercials (product pitches that were weaved into the entertainment content).\textsuperscript{612} The FCC endorsed these regulations rather than all-out bans because it reasoned that significant restrictions would lead to a decline in children’s programming. Although these rules were relatively mild compared to complete bans on advertising to children, it signified an inclination on behalf of policymakers to consider the empirical data on advertising to children and impose guidelines to protect children as a special audience.\textsuperscript{613}

**Kidvid: FTC Announces Rulemaking for Children’s Advertising**

By comparison to the FCC, which is responsible for regulating broadcasting in the public interest, the FTC had authority to regulate advertising that it found to be unfair or deceptive. This was particularly salient in 1977, not only because of Pertschuk’s commitment to the issue, but also because the FTC’s powers over unfair advertising had been cemented by Congress a few years prior. Although ACT had been disenchanted by the children’s advertising regulations by the FCC, ACT had a new ally in Pertschuk’s FTC. ACT had been gaining membership for a decade and had a formidable presence by 1978. Its membership had increased six fold since 1975. In addition to its membership of 12,000, ACT had united a coalition of groups concerned with children’s advertising, which included labor unions, organizations representing 30,000 health professionals, and


\textsuperscript{613} Kunkel and Roberts, “Young Minds and Marketplace Values.”
the support from over 20 million concerned parents.\textsuperscript{614} In 1977, ACT petitioned the FTC to promulgate trade regulation rules for children’s advertising. The petition was supported by a broad coalition of groups, including the American Parents’ Committee, the Dental Health Association of America, the Public Health Association, the Association for Childhood Education, the Black Child Development Institute, Head Start, the National Council of Negro Women, and the National Women’s Political Caucus.\textsuperscript{615} The effort seemed to have the support of the Senate Appropriations Committee, which in 1977 had stated that it “shares the Commission’s growing concern about the effects of advertising to children” and expressed interest in funding “a viable program in this critical area.”\textsuperscript{616}

On February 28, 1978, the FTC voted unanimously to initiate a trade regulation rulemaking proceeding to investigate all television advertising to children.\textsuperscript{617} With over 300 pages of research, the FTC made a straightforward case that advertising directed to children was unfair because children do not understand the persuasive intent of advertising.\textsuperscript{618} The arguments made to support the restrictions were simple. First, children were heavy television viewers and targets of numerous commercials, and these commercials influenced children’s preferences. Thus, television was an important source of information for children, especially in terms of nutrition. According to the FTC’s

\textsuperscript{614} ACT, Annual Report 1978. Carton 1, Box 1. The Action for Children’s Television Collection, Gutman Library Special Collections, Harvard University.
\textsuperscript{615} Action for Children’s Television, Annual Report, 1977, Carton 1, Box 1. The Action for Children’s Television Collection, Gutman Library Special Collections, Harvard University.
\textsuperscript{616} These comments by the Senate’s Appropriations Committee are summarized by ACT, Appropriations Fact Sheet, Carton 33, Folder 7. The Action for Children’s Television Collection, Gutman Library Special Collections, Harvard University.
\textsuperscript{617} Action for Children’s Television, “Closing Act: A Report to the Lilly Endowment,” date unknown. Carton 1, Box 4. The Action for Children’s Television Collection, Gutman Library Special Collections, Harvard University.
compilation of studies, the average child from the ages of two through eleven saw about 20,000 TV commercials per year. More than half of these commercials were for heavily sugared food products with little nutritional value. These ads were problematic because studies showed that obesity was on the rise, and sugar consumption “has given a rise to pandemic tooth decay.” Unlike ads for sugary products for adults, the FTC reasoned, children did not understand the persuasive intent of advertising, a fact that was supported by numerous studies.  

The majority of children in the two-to eleven-year-old market were particularly vulnerable because they lacked the sophistication “necessary to evaluate either the fantasy or morality characteristics of advertising practices.”

The FTC’s proposals would later come to be nicknamed “kidvid.” In its Notice of Proposed Rulemaking (NPR), the Commission proposed three areas for consideration:

1. Ban all television advertising for any product, which is directed to, or seen by, audiences with a significant proportion of children too young to understand the selling purpose of advertising;
2. Ban television advertising for food products posing the most serious dental health risks, which is directed to, or seen by, audiences with a significant proportion of older children; and
3. Require that television advertising for sugared food products not included in the ban, but directed to, or seen by, audiences with a significant proportion of older children, be balanced by nutritional or health disclosures funded by advertisers.

Pertschuk assumed that these proposals would receive broad bipartisan support. For one thing, President Carter consistently supported FTC’s mission to propose rulemaking for children’s advertising. In addition, even some of most conservative Republican members of Congress expressed support for kidvid. Pertschuk recalled a letter of support he had

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received from Republican senator Strom Thurmond:

I got a letter from him [Senator Thurmond], shortly after we proposed kidvid, urging me to go ahead with it, he was recently married to a woman with two young children, and he was very upset about the bad cereals that children wanted to eat after watching the television ad.

About six months later, Pertschuk got a corrective letter from Senator Thurmond, stating that kidvid was an overreach of federal power and ultimately a state’s rights issue. “So obviously the lobbies got to him,” Pertschuk concluded. 622

Stop the FTC Movement

The aggressive and organized lobbies against kidvid were most likely a factor for Thurmond’s change of heart. Pertschuk observed that the opposition to kidvid was far broader than he expected: “it wasn’t just food or toy advertisers, it was everyone who advertised, looking at it as a threat to their freedom.” 623 Much was at stake for the industries affected by the FTC’s kidvid proposals. The Television Bureau of Advertising reported that advertising expenditures for sweets and soft drinks alone were estimated to be $500–600 million. 624 Within a month after the announcement of the hearings, Broadcasting reported that the manufacturers, broadcasters, and advertisers had a closed-door meeting to swiftly raise $30 million to oppose the FTC’s rulemaking. 625 This coalition of business interests hired Burston-Martseller, the nation’s largest PR firm, which organized a massive public campaign effort before the hearings even started. 626

The publisher of the toy manufacturers trade magazine Playthings issued a letter urging

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622 Pertschuk interview.
623 Ibid.
625 Action for Children’s Television, “Closing Act.”
“every industry affected by a potential ban on TV advertising of its products to marshal its men and money—and document the disaster which would follow a ban.”

Many of these sentiments were featured in pages of major newspapers. Jean Carper, a writer for the Washington Post and a long-time consumer advocate, described the new “stop the FTC” movement:

Businessmen, who used to cozy up to the agency, now find it about as approachable as an unleashed tiger. Some in Congress have begun to call it a runaway agency that needs its powers trimmed. After a watch-and-wait period, a definite “stop the FTC” movement is erupting and into the open. Though it is still a small backlash, it is vigorous and deserves notice.

As Carper keenly detected, the watch and wait period for businesses was over. A speaker at the annual 4As convention in 1978 told the audience not to go to Washington as “supplicants,” but instead as “militants: equals, demanding equal rights in the free enterprise systems.” The head of McCann-Erikson described the FTC as “comparable to a swarm of locusts converging on a swarm of golden crop . . . they have unfettered power to control the marketplace.” In public, advertisers were less pugnacious. In a series of press releases, the coalition of business interests who opposed the FTC made a series of arguments to undermine the FTC’s kidvid proposals.

*The First Amendment and Children’s Programming*

To no surprise, the coalition of industries made the case that the FTC’s rulemaking for children’s ads violated the First Amendment. In October 1978, the Toy Manufacturers of America organized a press conference in Boston. They argued that the

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628 Carper, “The Backlash at the FTC.”
629 Carla Marie Rupp, “Ad Agencies to Battle FTC on Ad Regulations,” *Editor and Publisher* 111 (May 6, 1978): 64.
proposed ban would be a violation of the First Amendment because it was a “sweeping indictment against truthful advertising of a legitimate product.” Lawyers from the National Association of Broadcasters armed themselves with lawyers to fight restrictions on children’s advertising based on the First Amendment. In addition to allegations of First Amendment violations, broadcasters made the case that curbing the $600 million would result in a loss of children’s programming altogether. This argument appeared prominently in a *New York Times* article titled “TV Faces Dim Future.” Quoting industry spokespersons throughout, the article featured smiling images of Scooby Doo characters with the caption: “Scooby Doo . . . and friends: Will they last?”

Pertschuk pointed out the red-herring fallacy in the industry’s arguments:

> All we hear from industry is fierce defense of the First Amendment, the nutritional blessings of sugar, the educational benefits of toys and the technical complexities which attend any scheme of regulation. But I have heard very little talk of the central social and ethical concern which we have raised. At what age does a child in our society become a fit subject of commercialization?

Pertschuk attempted to draw attention back to the main issue of protecting children, but businesses were able to capture this argument in an oft-cited article that appeared in the *Washington Post*.

*The National Nanny*

The most compelling and widely used argument was that the FTC was an example of government overreach because it was interfering in the lives of families. In the weeks following the FTC’s announcements, the *Washington Post* published an

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editorial titled “The FTC as the National Nanny,” which made the case that the FTC’s proposals would “turn the agency into a great national nanny” by usurping the decision-making power by of individuals and “make parents less responsible, not more.”633 The derogative “National Nanny” was born, and it was repeated in op-eds in major newspapers across the country. Pertschuk later wrote that the Post editorial was a major turning point for the Federal Trade Commission:

> It would have been damaging enough if the Post had raised sober questions about the implications of the contemplated advertising ban, but to trivialize the children’s advertising issue was devastating—a sign to the broadcast, grocery manufacturing, and advertising industry that the Federal Trade Commission’s proceeding was fair political game—and to any congressmen tempted to legislatively abort the proceeding, a sign that the political risks would be minimal.634

Most fundamental to Pertschuk, the National Nanny symbol “ceded to the opponents of such a rule making the single most powerful political symbol upon which we had depended for our political shield against congressional interference—the defense of the family.”635 Shaun Sheehan of the NAB said that the fundamental question was “who controls the media?” If the FTC was successful, it would result in a dangerous government intrusion into “how parents should conduct family life.”636 Vincent Wasilewski echoed this sentiment when he said “the ultimate responsibility and decision to purchase products rests on parents.”637

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635 Pertschuk, *Revolt Against Regulation*.
637 Ibid.
With new ammunition, the coalition of businesses launched vituperative assaults on Pertschuk himself. In one of these attacks, broadcasters distributed a facetious “Letter to George Orwell”:

Well, George, you would be pleased to know that you’ve got some converts here on Spaceship Earth diligently working out the details of your fondest expectations. There is a fellow at the FTC, one Mike Pertschuk, who labors under the title of Chairman of the Federal Trade Commission. When you wrote your book, only the Soviet Union had a Chairman. Not so any more. Well Mike hasn’t quite organized the children yet but he has the beginnings of a real thing going.

The letter went on to pronounce that Pertschuk was treating people like “dumfoundies” who “may not realize that all this health for their kids is being worked out in Washington.”

**Pertschuk Disqualified**

This direct attack on Pertschuk went well beyond op-eds in major newspapers.

The AAF, 4As, ANA, the Toy Manufacturers of America, and Kellogg Corporation filed a lawsuit against Pertschuk in district court. The groups, armed with numerous public statements by Pertschuk, charged him with prejudging the issue of children’s advertising.

One piece of evidence was a letter by Pertschuk to FDA commissioner Donald Kennedy, which included Pertschuk’s statement:

Setting legal theory aside, the truth is that we’ve been drawn into this issue because of the conviction, which I know you share, that one of the evils flowing from the unfairness of children’s advertising is the resulting distortion of children’s perceptions of nutritional values. I see, at this

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638 Ken Greenwood, Letter to George Orwell: Big Brother is Watching Over the Kids’ Sugar Intake, September 11, 1998. Carton 34, Box 2. The Action for Children’s Television Collection, Gutman Library Special Collections, Harvard University.
point, our logical process as follows: Children’s advertising is inherently unfair.\textsuperscript{639}

The petitioners also included a number of vitriolic statements that Pertschuk had made to the press, including, “Advertisers seize on the child’s trust and exploit it” and “Children lack the judgment to see that something that looks good to them in the short run can hurt them in the long run . . . they cannot protect themselves against adults who exploit their present-mindedness.”\textsuperscript{640}

On November 6, 1978, U.S. district Judge Gerhard Gesell disqualified Pertschuk from participating in any FTC proceedings related to children’s advertising. Gesell concluded that because of Pertschuk’s “emotional use of derogatory terms and characterizations,” his “affirmative efforts to propagate his settled views made his further participation improper.”\textsuperscript{641} This case set a bold precedent. Following the decision, other groups under scrutiny by the FTC, including the National Funeral Directors and the American Medical Association, moved for Pertschuk’s recusal from participating in the commission’s rulemaking decisions.\textsuperscript{642}

Later, a court of appeals reversed the decision and allowed Pertschuk to participate in the proceedings. Pertschuk, however, reluctantly resigned from the kidvid proceedings, reasoning that it would be in the best interests of the FTC:

\textsuperscript{639} Pertschuk’s statements are summarized in Richard Gordon, “Foes Fire New Ammo at Pertschuk,” \textit{Advertising Age}, October 23, 1978. Carton 34, Box 4, The Action for Children’s Television Collection, Gutman Library Special Collections, Harvard University. 


\textsuperscript{642} Federal Trade Commission, “Transcript of Conversation between Pertschuk and Senator Young,” date unknown. Folder 2, Box 1-65, Michael Pertschuk’s Papers, Library of Congress, Washington, DC.
I am concerned that that continuing controversy regarding my participation could become the focus of the debate, instead of the far more important issue—whether the proceeding itself should be allowed to continue. This is a painful decision, perhaps the most difficult decision I will make as a member of the FTC. However, I believe the public interest is better served if I remove any issue of my personal participation from the legislative debate.\footnote{Michael Pertschuk, Memorandum to Carol Thomas, date unknown. Folder 7, Box 1-60, Michael Pertschuk’s Papers, Library of Congress, Washington, DC.}

From February to March of 1979, the FTC began public hearings on the children’s advertising proposals with only three FTC commissioners present. Commissioner Robert Pitofsky disqualified himself because of his experience in a public interest law firm, which represented a conflict of interest. The three remaining commissioners—Paul Rand Dixon, David Clayton, and Elizabeth Hanford Dole—were all leftovers from Republican administrations.\footnote{Amy Sharpe and Jeff Nesmith, “Fight Over TV Ads Aimed at Children Goes into Federal Court on Monday,” \textit{The Atlanta Constitution}, October 29, 1978. Carton 34, Box 3, The Action for Children’s Television Collection, Gutman Library Special Collections, Harvard University.} Dixon and Clayton in particular were not expected to be strong advocates for the kidvid rules because they had indicated concerns of First Amendment violations.\footnote{“Court Disqualifies Pertschuk from Role in FTC’s Proposal to Outlaw ‘Sweet’ Kidvid Ads,” \textit{Variety}, November 8, 1978. Carton 34, Box 3, The Action for Children’s Television Collection, Gutman Library Special Collections, Harvard University.} ACT brought in thirteen witnesses to testify at the hearings, which took place in San Francisco and Washington.\footnote{Action for Children’s Television, “Annual Report: 1979.” Box 1, Carton 1, The Action for Children’s Television Collection, Gutman Library Special Collections, Harvard University.} Testimony and arguments from the hearings were a replay of debates in the press. Proponents of children’s advertising relied on research studies demonstrating connections between sugary products and health problems, like obesity and tooth decay. While the relationship between heavy advertising of sugary foods and health problems might have been common sense, it was easy to cast doubt in a direct causal relationship by raising the host...
of other mitigating variables. To undermine the validity studies, business interests were armed with their own lavishly funded studies. For example, one study showed that tooth brushing was a more important factor in preventing tooth decay than abstinence from sugary foods. Another study showed that dried fruits contributed more to dental decay than heavily advertised foods. Proponents of regulations also argued that advertising to children was inherently unfair, citing studies clearly demonstrating children’s lack of capacity to understand the persuasive intent of commercial advertising. This argument was not as easily challenged, but businesses nonetheless argued that limitations on children’s advertising were a constitutional violation, a problem of government overreach, and a matter best dealt with by individual parents and families. The debates from these legislative hearings produced hearing transcripts of more than 6,000 pages.647 The hearings, however, were overshadowed by numerous legislative debates, which put into question the FTC’s continued existence.

**The FTC Appropriations Crisis**

Public relations efforts to discredit the FTC were starting to pay off, as members of Congress were increasingly hostile toward the FTC. On April 27, 1978, Senator Lowell Weicker (R-CT) lambasted Pertschuk for the children’s advertising rulemaking, stating, “I think this preoccupation with what children hear . . . is a waste of taxpayers’ money. . . . I’m not going to have a bunch of idiots going around trying to discover the sugar content

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of cereal. “Weicker was a member of the Senate’s appropriations committee, and he pushed for reduced appropriations for the FTC.

Republican members of House echoed Weicker’s anti-FTC sentiments. On May 2, 1978, Republican Mark Andrews of North Dakota convinced the House Appropriations Subcommittee in a 5-4 vote to pass an FTC appropriations bill that would prevent the Commission from spending resources on trade regulation rules for the advertising of any food product that contains ingredients determined safe by the FDA. This, of course, would include sugar. It would also restrict the FTC from bringing antitrust allegations against agricultural cooperatives. A significant constituency of sugar beet growers from North Dakota pressured Andrews to include these riders, and his amendment was passed through subcommittee quietly and no transcripts were preserved. On May 24, the full Appropriations Committee passed the Andrews Amendment with an additional setback: the FTC’s jurisdiction would be limited to “false and deceptive” rather than simply “unfair.”

A month later, in June, the full House struck down the entire FTC budget on procedural grounds. The Senate also passed resolutions to reduce the FTC’s funding by 25 percent. These delays in appropriations meant that Congress commenced with regular

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funding of the FTC and required the agency to “live hand to mouth on temporary appropriations.”

**The Authorizations Bill**

In November of 1979, the House formalized an authorizations bill that included amendments to end a number of the FTC’s ongoing investigations and proposals, including the funeral industry regulations, as well as those on used cars, hearing aids, and mobile homes. It also gave the Congress the ability to veto any proposed rulemaking of an entire industry by the FTC. The bill sailed through the House by a 5-1 margin, with many Democrats on board. Democratic representative Elliot Levitas of Georgia was a strong advocate of the legislative veto, saying, “it sends a signal to the bureaucracy and to the American people that the trend to more government and less control by the people has ended.” Pertschuk, alarmed by the congressional assault, wrote an urgent letter to Carter asking for his support. Carter responded in solidarity: “Standing up for common sense is sometimes difficult in these times, but we must persevere nevertheless.”

In February of 1980, sixty-seven senators voted to support a similar bill with a veto provision for both houses of Congress and the president. Senator Wendell Ford (D-KY), who spearheaded the bill, said that the only way to make the FTC accountable was through congressional oversight. The Senate’s version was more far-reaching because it would terminate the children’s advertising proceedings; stop the commission from prescribing trade regulation rules in antitrust cases; restrict the FTC from using subpoena

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652 Foote and Mnookin, “The ‘Kid Vid’ Crusade,” 93.
653 Ibid.
654 Sulzberger, “House Votes, 321 to 63, to Allow Congress to Veto F. T. C. Rulings.”
655 Stuart Eizenstat, Assistant to President for Domestic Affairs and Policy, Memorandum for Michael Pertschuk, 16 November 1979. Folder 6, Box 147, Michael Pertschuk’s Papers, Library of Congress, Washington, DC.
power; remove the FTC’s authority to reimburse participants who could not afford legal costs; force the agency to give one week notice and hold a public meeting for any rulemaking; and forbid the commission from investigating any profession regulated at the state level. The latter amendment would “insulate doctors, lawyers, dentists, as well as used car salesmen, hearing aid dealers and others from enforcement of consumer protection and antitrust laws.” The FTC argued that the requirement for a one-week notice followed by a public hearing was a way to tame the FTC’s staff members, who were seen by industry as activists who had “unfairly influenced the commission.” Responding to the notice/public hearing amendment, the FTC drew parallels to lawmaking procedures:

The easiest way to visualize what difficulties this will create is simply to consider what would happen if Congressmen were required when drafting a law to hold every discussion with their staff experts in public, with one week’s advance notice. The resulting loss of both candid advice and flexibility will cause long delays in rulemaking, which is already a very lengthy process.

In an exhaustive and earnest letter to Senator Ford, the FTC outlined its concerns over the bill and asked the senator to consider the ways in which “unprecedented limitations on its statutory authority and methods of operation . . . could, for years to come, impair the agency’s ability to protect competition and the consuming public.”

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referred to the Senate’s bill as a “legislative prefrontal lobotomy.” Much like the House, many leading Democrats in the Senate supported amendments to limit the FTC’s power. During the hearings, Senator John Durkin (D-NH) commended the appropriations crisis as a “shock therapy for bureaucrats.”

All of the proposals would significantly cripple the ongoing investigations by the FTC, and it was unclear whether Carter would sign the bill into the law. The final version of the House bill included veto power from either House, and the Senate’s bill required a veto by the House, Senate, and President. In initial conference proceedings over the House and Senate bills, Carter indicated that he would veto any bill that would make the FTC subject to a “veto by one or two houses of Congress.” In a press conference on January 21, 1980, Carter condemned the congressional attack on the FTC:

This last year has seen Congress besieged by assaults on various important regulatory statutes, especially the Federal Trade Commission Act, seeking groundless exemptions, crippling loopholes, and unprecedented Congressional interference with ongoing proceedings. I will resist strenuously all such efforts to confuse special interest pressure with regulatory reform.

The FTC Fights Back on Primetime

Carter maintained his conviction, but there was not broad public knowledge about the FTC’s predicaments. This began to change when the drama of congressional debates over kidvid and the future of the FTC caught the attention of the television news divisions. From January through March of 1980, Pertschuk spoke out publicly about the

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congressional proposals. In early 1980, the Phil Donahue Show aired a show devoted to
the kidvid controversy with Pertschuk as a guest. The program, with a sizable audience of
mothers at home, inspired thousands of letters of support for the FTC. Pertschuk’s
appearance on Bill Moyers’ Journal followed, with a probing analysis of the kidvid
crusade and the ensuing crisis on PBS. Initially, Moyers was prepared to run a negative
piece on the FTC after his local druggist on Long Island complained to him about the
over regulation of the pharmaceutical industry. When Moyers interviewed Pertschuk and
began to understand the scope of the issue, he became interested in what was happening
to the FTC.\footnote{Pertschuk interview.} The show was sympathetic to the FTC and Moyers concluded the episode
by stating, “The Federal Trade Commission itself isn’t likely to be an issue in this
“had a truly transformative impact. . . . The commission was not seen as the ‘National
Nanny,’ but as the honest cop on the consumer beat, punished for daring to question
powerful economic interests.”\footnote{Michael Pertschuk, Revolt Against Regulation, 70.} In addition to television appearances, the FTC began to
disseminate an avalanche of press releases and editorials to major newspapers and White
House staff members. This media blitz was beginning to resonate more with the White
House. The day after the 60 Minutes appearance, political affairs counselor Ann Wexler
commented on the appearance: “When the president speaks about the FTC, forty million
people will know what he is talking about, who until this week had barely heard of the FTC.”

**A Bottom Line in the Eleventh Hour**

By March of 1980, the FTC’s funding had run out, and the House adjourned without acting on an emergency appropriations bill. Carter was under pressure, and he brought Pertschuk into his office for an urgent meeting on April 24. The president affirmed his earlier promise to Pertschuk: he was prepared to veto any bill which would limit the FTC’s power, but he forewarned Pertschuk that a veto might mean the agency would go out of business. Carter said to Pertschuk, “you have to tell what your bottom line is.”

Pertschuk contemplated the consequences of continued legislative gridlock, and finally divulged that he would accept a compromise on veto powers over the FTC, as long as the agency could maintain its robust rulemaking powers under the FTCIA. Carter promised unity with Pertschuk, but the president was distracted by other pressing matters. The same day as the meeting with Pertschuk, Carter covertly sent eight helicopters into Iran to rescue the American hostages. Due to a sandstorm, the mission failed and eight service members lost their lives in a helicopter crash. The fact that Carter made time to meet with Pertschuk on that important day was a strong indication of Carter’s concern about the FTC. The tragedy of the mission captivated the news media and the public, and this overshadowed the FTC’s continued struggles.

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666 Quoted in ibid., 110.
668 Pertschuk interview.
On May 1, 1980, the FTC’s funding had officially run out, and it was directed to take steps to close down shop.\footnote{A.O. Sulzberger Jr., “Conferees Back Funds for F.T.C.,” \textit{New York Times}, May 1, 1980, ProQuest Historical Newspapers.} The \textit{New York Times} ran a story which began “At 12:01 this morning the unimaginable happed in this town: The Federal Trade Commission, one of the nation’s major agencies, went out of business.” It was the first time in U.S. history that a federal agency officially closed its doors due to a lack of funding. Federal agencies had gone into the red before, but none had ever shut down completely. What made this case different was the use of a long forgotten law from 1870 called the Antideficiency Act. Invoked by Attorney General Civiletti, the law required the shutdown of any federal agency without sufficient funds except to “to bring about the orderly termination of an agency’s function.” Court appearances were cancelled, traveling employees were called home, and the FTC’s library was dark and empty. Long-time commissioner Paul Rand Dixon sat in his office, surrounded by boxes, and smoked a cigar. Finally, on May 2, through emergency funds from the State Department, the FTC was back in business, but the funds would run out in thirty days.\footnote{A.O. Sulzberger Jr., “After Brief Shutdown, F.T.C. Gets More Funds: Temporary Funding Approved Long Ignored Act Enforced,” \textit{New York Times}, May 2, 1980, D1, ProQuest Historical Newspapers.}

\textbf{The FTC Improvements Act}

On May 21, only a few weeks before the funding was set to expire again, the House and Senate reached a compromise on a three-year authorizations bill. The final legislation included a two-house veto on any industry-wide trade regulation rules.\footnote{A.O. Sulzberger Jr., “House, in Compromise, Votes to Restrain F.T.C.,” \textit{Special to the New York Times}, May 21, 1980, ProQuest Historical Newspapers.} A defeated Carter signed the ironically titled “Federal Trade Commission Improvements Act” into law on May 28, expressing his dissatisfaction with some aspects of legislation,
including the two-house congressional veto of FTC rules. Carter was clearly under pressure; he signed the “bill despite the congressional veto provision, because the very existence of this agency is at stake.” Carter lightened his averseness with some praise:

This bill contains some valuable features patterned after my program to eliminate excessive regulation. It requires that FTC rules be based on sound economic analysis. Another provision directs the agency to find the least burdensome way of achieving its goals. 672

Although it did not explicitly halt ongoing investigations per se, the law essentially restricted the FTC from regulating advertising on the basis of “unfairness,” and instead limited advertising regulations to tactics deemed explicitly deceptive. Because unfairness to children was the chief rationale for the kidvid proposals, the FTC, a year later, abandoned the kidvid proposal. 673 The final termination report stated:

While the rulemaking record establishes that child-oriented television advertising is a legitimate cause for public concern, there do not appear to be, at the present time, workable solutions which the Commission can implement through rulemaking in response to the problems articulated during the course of the proceeding. 674

The lack of the agency’s authority to regulate unfair advertising made the passage of kidvid rules impossible. During the remainder of the kidvid hearings, industry leaders called into question research studies showing that children’s advertising posed a serious health risk. Unconvinced of research studies showing links between certain food advertising and health problems, the FTC concluded, “there currently exists no scientific methodology for determining the cariogenicity of individual food products which is

674 This statement from the FTC’s Final Staff Report and Recommendation from March 31, 1981, is quoted in Federal Trade Commission, “Advertising to Kids and the FTC.”
sufficiently scientifically accepted to justify formulation of a government-mandated rule.” Restrictions for children’s advertising, based on unfairness to the audience, or the consequences for children’s health, were officially off the table.

**Conclusion**

Gary Cross refers to the defeat of kidvid as “a turning point in the consumer rights movement.” This spectacular turn of events leading to the FTC’s legislative slaughter sent a chilling message to other government agencies, and as a result, members of several agencies dramatically toned down their regulatory philosophy. Thus, in a much broader sense, the confrontations over the FTC signify a major pivot toward neoliberalism in general. Although businesses had been organizing a counterattack since the mid-1970s, their assemblage of power was finally revealed in 1978.

The intense debates following the FTC’s kidvid proposals reveal the extent to which debates over how to make businesses better serve the public interest did not end with the demise of legislation to establish the Consumer Protection Agency. The FTC’s regulatory powers had been extended during the 1970s to make it the most powerful consumer protection and public interest agency in Washington. Congress, however, still had influence over the agency through authorizations and appropriations, and the scene in Washington had changed dramatically by the end of the decade. The kidvid initiative did not fail merely because of the political ascendance of the New Right, just as it cannot be blamed entirely on a fractured left and a disillusioned consumer movement. Kidvid was not a radical proposal by an agency gone rogue. Since the mid-1960s, lawmakers on both

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sides of the political isle were sympathetic to critiques of commercial advertising directed at children. Reforms for children’s advertising had been proposed, and supported to some extent, by all of the Republican and Democratic commissioners during the 1970s. As late as 1977, the FTC appeared to have the support of Congress, the president, and the public for its kidvid proposals. In many ways, the kidvid proposals were less radical than the FTC’s earlier initiatives, including investigations of industrial concentration and its relationship with advertising puffery. Plus, the FTC had not ordered an all-out ban on advertising to children; kidvid was among an array of proposals for children’s advertising that would be considered in public hearings, with advertisers and businesses present.

The major difference was that kidvid was proposed in a very different political climate. More than any other factor, the organized and well-funded campaign launched by major corporations put the nail in kidvid’s coffin. Businesses were so poised to respond that they captured the political debate before the FTC could hold open, public hearings on the issue. As soon as the possibility of rulemaking was announced, business interests swiftly organized, pooling resources to discredit Pertschuk and demonize the FTC. The lack of key allies in Congress, which the FTC had enjoyed for most of the decade, made this victory easier. Another crucial ally—the print news media—was mostly absent by 1978. Anti-government reporting replaced the pro-labor and pro-consumer reporting of the early part of the decade due to more aggressive public relations aimed at influencing news content, structural changes within the newspaper industry, and a greater collusion between newspapers and commercial interests. Pressured by the potent cadre of private interests who opposed the FTC, Congress created a storm over what were formally humdrum and routine agency authorizations. By holding the agency hostage,
Congress forced into law measures that completely defanged the FTC, resurrecting the little old lady of Pennsylvania Avenue.

By the time the hearings were finally held, the thousands of pages of testimony, including opinions, arguments, and research gathered and presented on children’s advertising, were irrelevant and extraneous. The agency, by 1980, was too crippled to proceed. For a few months in early 1980, the kidvid cause and the FTC’s decimation by Congress captivated the White House and the public through the FTC’s media offensive. Although fallout from the kidvid proposals was devastating, this story can teach reformers important political lessons. More important than his lack of attention to garnering media attention, Pertschuk regrets that he did not begin his rulemaking of kidvid by first building support from members of Congress through authorizations. He recollected, “None of them had a stake in defending the FTC. It wasn’t their problem. If they had supported it, I would have been in a much stronger position. That was the most serious mistake.”\footnote{Pertschuk interview.} Whether or not a tactical effort by Pertschuk to build congressional and public support would have changed the outcome will never be known. What is clear is that there was still a window of opportunity, however slim, for a change to the status quo in 1977. As the conclusion of this dissertation will illustrate, that window closed after Reagan was elected.
CONCLUSION: RETHINKING THE LEGACY OF THE FTC

The congressional revolt unleashed on the FTC in 1980 led to a downfall of a number of its initiatives, which the agency first began during the early part of the 1970s. This regulatory revolution, which congealed during the 1980s, remains with us in a new millennium. This study of the battles between the FTC and businesses challenges the myth that these changes were natural and inevitable. By looking at the FTC, it becomes very clear that there was a possibility for far-reaching alternatives to the status quo during the 1970s. From our vantage point today, the FTC’s initial revitalization was remarkable. Ralph Nader, through a single work of investigative scholarship, changed the course of the nation’s most powerful regulatory agency. The consumer rights constituency was so influential that Nixon was forced to revitalize the FTC. Nixon’s appointees, who shared Nader’s conviction, broke new ground in advertising reform in a number of ways. If continued, corrective advertising for deceptive practices would have changed the entire advertising industry. Furthermore, this narrow focus on deceptive advertising was greatly expanded when the FTC began to consider advertising puffery, a common tactic in concentrated markets. The FTC also drew attention to ways that advertising is inextricably linked with oligopolistic markets in its antitrust cases. Through both its advertising and antitrust policies, the FTC called into question this symbiotic and structural relationship.

This study does not suggest that corporate power was not formidable during the early 1970s. In fact, this study answers how and why corporations were able to recapture the politics in their favor. Existing scholarship has minimized this point by focusing too
heavily on the slow unraveling of the left and ascendance of the New Right during the 1970s. Following a Gramscian approach, hegemony can only be understood by looking at resistance. The rise of neoliberalism was not a slow evolution, but instead a rupture in the politics of marketplace regulation, one that came to life largely through the U.S. Federal Trade Commission. The very reason business trade groups relocated to Washington and created concerted public relations campaigns was the wave of regulatory reform during the 1970s. If progressive reform was on the run by 1968, this massive undertaking would not have been necessary. As this dissertation has demonstrated, the FTC proposed alternatives to the sweeping political and economic changes that took place during the 1980s. Through this lens of resistance, the often clandestine and complex public relations tactics on behalf of business becomes more transparent. During the 1970s, sharp hegemonic currents began to crest, and business trade groups worked together to arm themselves with new political strategies.

Thus, this study reveals that the dismantling of the New Deal order during the 1970s was fought on primarily ideological turf. The rise of neoliberalism and the New Right was not a simple matter of political cynicism in the wake of Watergate. Nor was it purely an opportunistic political response to the economic crisis during the 1970s, although these political and economic crises certainly greased the wheels of a hegemonic victory. Rather than merely suggest that what took place was a massive conspiracy, this dissertation describes the ways in which multifaceted elements of hegemonic forces congealed together, some decisively, and others by chance. The great migration of trade groups to Washington was part of a broader trend in treetops propaganda. Advertising trade associations and the nation’s top advertisers, like Proctor and Gamble, paved the
roads for this migration—they were among the first generation of trade groups to open offices in Washington, largely in response to the advertising reform offered by the FTC’s initial revitalization. Lobbying, as effective as it may have been to squelch the long battle for the Consumer Protection Agency, did not stop the FTC. Massive grassroots efforts were necessary. As early as 1971, Lewis Powell, a prominent corporate lawyer, and later a Supreme Court justice, understood this when he mapped out a long-term plan for hegemonic power in his memo to the Chamber of Commerce. The ad industry and powerful trade groups were still in disarray during the first few years of the 1970s, and Powell’s strategy would not be fulfilled until the later in the decade, when the corporate-sponsored programs for conservative economic education were employed on an unprecedented scale. Leading the way was the U.S. Advertising Council, which through its massive campaign for economics education, united businesses around neoliberal ideals and popularized the Chicago School’s economic trend. Political cynicism and economic woe provided an opportunity for corporate interests to recapture the symbol of individual freedom and prosperity from progressive forces. President Ford began to espouse this anti-regulatory creed in speeches and surrounded himself with a new generation of so-called free market Mohicans. However, when Ford left office, the FTC’s powers to regulate unfair business practices were stronger than at any other point in the agency’s history. The FTC, and the consumer movement in general, lost key allies in 1977 through changes in the news media and in Congress. A shortage of opposition, along with the consolidation of power, allowed for business leaders and their political allies in Congress to attack the FTC more directly. With the neologism of the “national nanny,” the enemy to this liberty was the FTC as the epitome of government regulation. When a reluctant
Carter signed into law measures to eviscerate the FTC, his hands were tied. The buzzword “nanny state,” born out of the crisis over the FTC’s kidvid controversy, is still used by politicians today to attack government bureaucracy and contest government regulations.

I now to turn to changes to the political economy that took place during the 1980s and in the decades that followed: industrial concentration, the demise of the Fairness Doctrine, and further protection for commercial speech. These events bring to light the path not taken by the FTC. Businesses during the 1980s continued to have success by marching to the beat of the same drum. The principles of conservative economics espoused by Ad Council were infused into the educational system during the 1980s, and political candidates began to rely more on corporate money from political action committees. This dissertation ends with a discussion of this study’s contemporary relevance. Unresolved issues from the 1970s provide entry points for reformers to challenge the contradictions inherent in intellectual and ideological ascendancy of neoliberalism.

The FTC after 1980

President Reagan, within his first days in office, launched an all-out assault on the FTC. For Reagan, the agency was the quintessence of big intrusive government that interfered too much with private enterprise. As the FTC’s chair, Reagan appointed James Miller, a free-market fundamentalist straight from the American Enterprise Institute think tank. Miller lobbied aggressively for senior staff members who shared his free market philosophy. As a result of its leadership, the FTC’s resources were cut in half, and it
closed down a number of regional offices during the 1980s. In a speech before members of the Association of National Advertisers, Miller praised advertising for its “important role in the economy” as the “key element in maintaining competition and assuring an efficient allocation of the nation’s resources.” He went on to explain that:

Advertising benefits producers as well, for it enables them to match their own unique offerings with those consumers who find their particular services most attractive. Of especial importance is the role of advertising in facilitating the emergence of new competitors, and thus the maintenance of a viable competitive environment. Although serious debate within the economics profession continues, there is substantial and increasing evidence that advertising facilitates the entry of new firms and products. Even advertising’s harshest critics would probably agree that without advertising there would be a slowing of the rate of entry of new firms and the rate of introduction of new innovative products.

Miller’s statements on advertising were a far cry from the views of the previous heads of the FTC during the 1970s, even those appointed by Ford. Pertschuk remained as a commissioner on the FTC until 1984, and he was a strong voice of dissent during these years. The differing philosophies of Miller and Pertschuk are clearly evident in Pertschuk’s congressional testimony on the performance of the Federal Trade Commission in 1984. Saddened by the FTC’s decay under Miller, Pertschuk stated “we expected ideology; we did not expect incompetence. We got both.” He lambasted Miller for his “single minded determination to undo the past—not just the immediate past—but the very foundations of antitrust and consumer protection law laid down by Congress in

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678 Remarks of Chairman Miller before the ANA, November 10, 1981. Box 1, Folder 11, Michael Pertschuk’s Papers, Library of Congress, Washington, DC.
Pertschuk went on to describe the FTC’s major regulatory shift during the 1980s:

The Nixon/Ford/Carter Commissions sought to enforce the antitrust laws—including the laws against anticompetitive mergers, monopolizing and retail price fixing—vigorously and consistently. This commission has encouraged and facilitated the largest mergers between competitors in history. It has refused to enforce the law against retail price fixing. It has abandoned challenges to predatory price-fixing. It has substituted ideologically driven economic debate for clear and forceful law enforcement policies.

During the years between 1980–1984, the commission did not bring a single case against a product defect, even in an instance when fatal flaws were found in playground equipment. For advertising deception, Miller stated that the agency could only pursue cases in which “consumers had been hurt—cases where consumers relied on something in the ad and suffered because of it.”679 In lieu of the strict advertising substantiation criteria of the FTC of the past decade, Miller championed “industry’s own self-regulation” as the “most significant inducements to truthful advertising.”680 A number of state-level agencies complained to the FTC about the increase in false and deceptive advertising, including tobacco ads targeted to children, with little interest from the FTC.

Miller, along with FCC chair Mark Fowler, adopted a hands-off approach when it came to children’s advertising. As a result, program-length television commercials for toys like He-Man, The Care Bears, The Transformers, and My Little Pony blossomed during the 1980s. During the years between 1983 and 1988, the number of program length commercials increased from thirteen to over seventeen, and the sales associated with these commercials were a whopping $64.6 billion. Advertisers, manufacturers, and

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680 Chairman Miller before the ANA, November 10, 1981.
broadcasters had united over opposition to the kidvid proposal. This collusion was cemented when Fowler’s FCC passed a rule permitting stations to share profits with manufacturers for toy sales.681 In addition to this increased commercialization during the 1980s, the Reagan Revolution left its mark on broader structural elements of U.S. political economy in the decades that followed.

**A Wave of Conglomeration**

The FTC’s most radical initiative—its attempt to redefine antitrust through a theory of shared monopoly in the cereal industry—officially came to a halt in 1982.682 If the FTC had succeeded, the shared monopoly doctrine might have been used in a number of concentrated industries, including autos, health insurance, banks, and telecommunications. The ending of the cereal case was a prime example of Reagan’s antitrust philosophy. The FTC’s probe into the oil industry case, which began in 1972, was dismissed in 1981.683 Although the FTC still has the power to block proposed mergers, it could not break apart existing firms based on the monopoly competition theories used during the 1970s. Reagan’s appointees to the Justice Department and the FTC shared his lax antitrust enforcement. Miller insisted “we’ve got to understand that some mergers are conductive to economic efficiency, result in lower prices and better products to consumers.”684 As a result this hands-off approach, the U.S. economy experienced a wave of mergers and acquisitions not seen since the turn of the

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This was particularly true in conglomeration, whereby unrelated businesses merge together.  

Antitrust polices were even more lenient during the 1990s. Under President Clinton, massive consolidations took place. In the oil industry, mergers included Exxon with Mobil, and BP with Amoco. This restored a concentration of power in the energy industry not seen since the days of Standard Oil, which ironically had provoked the establishment of the FTC in 1914. During the late 1990s, the world’s largest financial service was created when Citicorp merged with Travelers Group. By 2007, the big banks were too big to fail. This was true in the pharmaceutical industry as well: in 1999, Pfizer and Warner Lambert merged to create the largest pharmaceutical company.

Nowhere was this trend more evident than in the telecommunications market, a change well documented by existing scholarship. Ben Bagdikian was troubled by this concentration when he wrote *Media Monopoly* in 1983. At the time of his writing, fifty firms controlled nearly all telecommunications in the United States. Seven years later, this number reduced to less than half that. By the end of the 1980s, this was number nine, which inspired the Herman and Chomsky’s publication of *Manufacturing Consent*. Herman and Chomsky created a theoretical model to explain the ways in which media content largely reflect corporate and conglomerate interests through five filters. Reliance on advertising not only fueled structural concentration, but it also influences content

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because advertisers yield tremendous power in determining the nature of media content. The proposed restrictions on advertising during the 1970s would have likely mitigated this collusion. Herman and Chomsky go into detail on what they call “flak machines”—think tanks designed to produce flak to curb a perceived “liberal bias” in the media. As this dissertation demonstrated, many of these strategies were initiated during the 1970s, and influencing journalists through their professional obligations continues to be a rallying cry for conservatives. Robert W. McChesney has also documented the impact of this structural change in the media industry. In 2004, when McChesney published *The Problem of the Media*, there were only six companies controlling the telecommunications market. This concentration continues to take its toll on U.S. journalism. While business trade groups and PR firms have sent more and more lobbyists to Washington, the number of reporters in Washington has been dwindling rapidly since the late 1970s. There was a relative balance between public relations specialists and journalists in 1970. In 1980, public relations specialists outnumbered journalists for the first time. By 2008, there were almost four times as many PR specialists as journalists. These changes together have resulted in more and more reliance by newspapers on corporate press releases. As this study has documented, the enormous growth in corporate public relations and its influence on journalistic practices can be traced to a great extent to businesses’ reaction to the FTC. Although it the FTC was not the only threat to businesses during the 1970s, it was certainly the most alarming, not only for commercial media, but also for the oligopoly structure more broadly.

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The Fairness Doctrine’s Demise

As this dissertation has demonstrated, the Fairness Doctrine served as a basis for the FTC’s advertising regulations during the 1970s. Until 1980, there was some degree of protection for progressive points of view through the U.S. Fairness Doctrine. In addition, the Fairness Doctrine’s application to advertising was initially inspired during the late 1960s, when John Banzhaf convinced policymakers of the problems associated with cigarette advertising, which eventually drove them off the air. Inspired by this policy, the FTC supported counteradvertising and ordered corrective advertising as a remedy for deception. The fairness policies for advertising were used throughout the decade, finally invoked for the last time when the FTC proposed counteradvertising for sugary products advertised to children. The Fairness Doctrine was exercised by the Public Media Center and a broad coalition of progressives who argued for their right to rebut the Advertising Council’s AES campaign. The FCC continued to consider the Public Media’s case until September of 1980, when it finally terminated the proceedings. Broader debates over the Fairness Doctrine would continue throughout the 1980s, when Congress sought to codify the FCC policy into law. It narrowly came close to passing.

Reagan voiced strong opposition to the Fairness Doctrine, which helped unite conservatives over a formerly bipartisan issue. In 1982, Senator Packwood held hearings about the both the constitutionality and practicality of the Fairness Doctrine. Dan Rather and Bill Monroe testified that the doctrine reinforced a “chilling effect” and also allowed for certain groups to intimidate news anchors with fairness complaints. In 1982, broadcasters, advertising trade groups, and major manufacturers formed a front group called “The Freedom of Expression Foundation.” The well-funded organization hired
lobbyists and think tanks to garner public support for the repeal. By the time hearings began in 1984, the Freedom of Expression Foundation had provided countless numbers of articles to new outlets to lend credibility to the cause. The FCC finally suspended the Fairness Doctrine on August 4, 1987. This decision outraged consumer activists like Ralph Nader, and proponents of the Fairness Doctrine had some support from members of Congress. Democratic senators sought to codify the Fairness Doctrine into law with the Fairness in Broadcasting Act of 1987. The bill received overwhelming support in the Senate with a vote of 59-31, and in the House, 302-102.689 Regan vetoed the bill, and the Senate did not have enough votes to override the veto. After the decision, the editors of Broadcasting issued a twenty-page insert titled, “The Decline and Fall of the Fairness Doctrine.” The demise of the Fairness Doctrine indicted an entirely new market of advertising for broadcasters, which they called “advocacy advertising.” Broadcasters in 1987 predicted that issue-oriented advertising by private organizations “could ultimately become a $100 million-a-year business.” Despite the possibility, broadcasters were timid about testing the waters by opening up the airwaves to advocacy ads during the 1980s. This reticence would slowly evaporate as the Supreme Court continued to validate commercial speech.

**Continued Protection for Commercial Speech**

Both in rhetoric and in the courts, businesses relied again and again on the First Amendment to protect commercial speech during the 1980s. As this dissertation demonstrated, we can partly attribute responsibility for this trend to consumer activists. In a shortsighted effort to get pharmacists to post prices for prescription drugs, the Supreme

Court protected advertising under the scope of the First Amendment in the landmark *Virginia Pharmacy* decision. This decision made advertisers more assertive and regulators more timid.

*Virginia Pharmacy* has had implications for direct-to-consumer pharmaceutical advertising. Today, the United States is one of two countries in the world that allow direct-to-consumer prescription drug advertising on television. The influx in advertising was initiated by a decision in 1997 to allow prescription drug advertising on television. These advertisements rarely include information on pricing or alternative, less-expensive generics. Instead, they often rely on emotional appeals; happiness from relief of symptoms, success in the workplace, and acceptance from peers are but few examples of such advertising tropes. This growth in pharmaceutical advertising has resulted in a shift from research and development to the repackaging of existing drugs with multimillion dollar marketing campaigns. If the FTC had succeeded in regulating prescription drug advertising without the constitutional limits from *Virginia Pharmacy*, these direct-to-consumer ads on television would likely not exist.

After 1976, with few exceptions, the court continued to protect commercial advertising under the First Amendment. In 2001, in *Lorillard Tobacco Co. v. Reilly/Altadis U.S.A. Inc. v. Reilly*, the Supreme Court ruled that Massachusetts’s restrictions on tobacco advertising were unconstitutional even though the state insisted that its regulations would deter underage smoking. Beyond its dramatic consequences for advertising regulation, the *Virginia Pharmacy* decision served as justification for reinterpretations of other forms of corporate speech. In 1978, a Massachusetts statute was

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challenged that prohibited corporations from making contributions to influence state referenda. In *First National Bank of Boston v. Bellotti*, the Supreme Court ruled that such expression—even on behalf of corporations motivated by financial self-interest—was fully protected by the First Amendment. The *Wall Street Journal* reported that the *Bellotti* decision went beyond *Virginia Pharmacy* and “greatly broadened First Amendment protections for commercial speech.” Critics referred to the *Bellotti* decision as one that allowed the already privileged greater freedom to wield influence at the expense of the less privileged. Labor groups, for instance, condemned the decision for giving unneeded clout to corporations. Ironically, the AFL-CIO opened the door to the *Bellotti* decision by supporting First Amendment protection for advertisers in *Virginia Pharmacy*.

The final blow was delivered on January 21, 2010, when a bitterly divided Supreme Court ruled that it is unconstitutional for government to limit the amount of money corporations can spend on political advertising. The ruling in *Citizens United* dismantled years of campaign finance reform laws, and has had dramatic consequences for U.S. elections. The Court was not alone in its division over the ruling. President Obama called it “a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans.” The major advertising trade publication *Advertising Age* projected that the ruling would “put political ad spending on steroids.” And it certainly has. The 2012 presidential election is predicted to be the most expensive in history because of the amount spent by super PACs.

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Conservative Economics Reigns Supreme

The Advertising Council’s campaign for American Economics helped popularize the Chicago School economic trends and unite businesses around libertarian principals. As Chapter 4 demonstrated, the Ad Council relied on a strategy called the “multiplier effect,” whereby it tried to infuse its campaign into the news media and educational institutions. During the 1980s, this brand of conservative economics became more pervasive within major institutions, including mass media, education, and in the highest levels of government.

The labor beats—once a hallmark of U.S. newspapers—has nearly ceased to exist, a trend that began during the late 1970s. Replacing coverage of workers has been supplanted with trend toward “business journalism.” With constant updates on the stock market, this new type of journalism caters to the upper classes, without fully contextualizing the economic crises, unemployment, and the competitive effects of mergers and acquisitions.

Starting in the late 1970s, the Chicago School trend began to gain more legitimacy in the courts, a change documented by legal scholar William Kovacic. Friedman simplified his economic theories in a book, Free to Choose, which would serve as the basis of a new television series in the United States and the UK during the 1980s. During the 1980s, the courts relied heavily on scholarly work from the Chicago School, which resulted greater permissiveness for industrial concentration. Competition,

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696 McChesney and Nichols, The Death and Life of American Journalism, 50–51.
697 Mark Blyth, Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century (Cambridge: Cambridge University Press, 2002), 159.
once the basis for antitrust enforcement, was steadily supplanted by theories resting on
the argument that greater profits would lead to more efficiency and lower prices.698

The ascendance of conservative economics is also evident in higher education.
For the first time, in 1980, business majors outnumbered majors in all the liberal arts
combined. By the mid-1980s, smaller colleges began to form more partnerships with
think tanks, where they “did virtually no research but did undertake considerable
corporate fund-raising and advocacy.” During the late 1970s, corporate-funded Small
Business Development Centers (SBDCs) formed closer ties with schools like the
University of Georgia and Cal-Poly. In 1981, Congress institutionalized this practice,
appropriating $20 million for SBDCs.699

Since the 1980s, public expenditure on research and development has been
decreasing rapidly, while industry investment in research has soared. In 1975, there was a
relative balance between public and private investment for research. In 2008, industry
investment in research was $350 billion, compared to $100 billion through public
grants.700 The type of research conducted is undoubtedly influenced by the unprecedented
amount of private investment in research. Research projects that delve into controversial
topics—from the effects of children’s advertising to the impact of industrial emissions on
global warming—are less likely to be funded by these private grants.

Century of Economic and Legal Thinking,” SSRN eLibrary (October 1999),
699 Shulman, Rightward Bound, 68.
700 Mark Hirschey, Hilla Skiba, and M. Babajide Wintoki, “The Size, Concentration and
Evolution of Corporate R&D Spending in U.S. Firms from 1976 to 2010: Evidence and
Implications,” Journal of Corporate Finance 18, no. 3 (June 2012): 496–518.
Entry Points

From the progressive perspective, the political and economic changes during the years following the 1970s are discouraging. Although each period of industrial consolidation since the turn of century was followed by a wave of reform, there did not appear to be the same progressive energy after the 1980s (although this period is a fruitful area for continued research). This brings us to an important question: How does this study of the FTC inform the present? In light of the amount of special interest money in politics, several activists and scholars argue that little can be addressed until the money is taken out of politics. While this is true, money in politics is a symptom of a root cause, one that was part of vigorous policy debate in the 1970s: corporate consolidation of power. How do we put this back on the table? The story of the FTC illuminates a number of unresolved contradictions in neoliberalism. This study ends with more questions than it answers, but the following contradictions, born but unresolved since the 1970s, can provide future reformers with points of entry.

Protecting Children: The Paradox of Conservatism

Most existing scholarship on consumer culture mentions the FTC’s proposed ban on advertising to children as the height of advertising reform during this period. This study’s detailed account of the kidvid crusade adds a layer of complexity to existing scholarship. The eventual demise of the FTC was not a result of idealistic activists on the FTC, but instead an organized response by businesses, which had gained considerable power and influence by 1978. Much can be learned from this imbroglio. Businesses were able to capture the argument that it was defending family values from a big and intrusive government. By the time the FTC initiated the kidvid rulemaking, it was too late, but the
victory was narrow. Solidified during the Reagan years, the preservation of family values has become the mantra for conservatives. Although effective at the time, it has its weak spots. With more commercialization directed to children today than ever before, how can businesses continue to claim to be proponents of family values? The unparalleled level of childhood obesity and illness due to consumption of high-calorie and heavily advertised foods conflicts with the core arguments by the New Right.

Recently, debates over advertising and marketing to children have resurfaced, when Michelle Obama made childhood obesity her primary cause. In 2010, the First Lady spoke to the Grocery Manufacturers Association conference and said:

So it’s just gotten to the point where we as parents know that things have gotten out of balance. And we know that many of our kids aren’t as healthy and active as they should be. And we desperately want to do the right things. But we’re inundated with conflicting information. Our kids sometimes are bombarded by ads for unhealthy products. And many folks in this country are struggling to find foods that are both healthy for their kids but affordable for their families.701

Michelle Obama, perhaps unknowingly, was resurrecting a provocative issue. In response to her initiatives, Obama has been called “the first nanny,” but she is certainly not the first to be labeled with this derogative. The question remains as to whether this accusation works as well as it did during the 1970s. For example, the Washington Post ran an editorial on the First Lady’s cause, but with a much different tone than the “National Nanny” piece three decades before. In fact, the 2010 editorial in the Post cited its earlier piece and concluded that the failure of kidvid instigated “30 years of expanding

waistlines, decaying teeth and skyrocketing rates of diabetes.” Michael Pertschuk sees hope in this editorial, and said when he read the piece, “all I could really think of was that the writers of the story and some editor wanted to stick to the publisher, so consumerism isn’t entirely dead.” Pertschuk is optimistic because new initiatives to regulate children’s advertising have congressional and interagency support (something he regrets not having prearranged before he announced the FTC’s kidvid rulemaking).

Through direction from the White House, Congress in 2010 created an interagency task force with the FDA, FTC, USDA, and CDC to develop industry-wide guidelines for child marketing and advertising. Representative Lynn Woolsey, a Democrat from California, recently introduced legislation to remove junk food from schools by creating guidelines for nutritional standards for foods not included in regular school lunch programs. Whether these efforts will succeed is unknown, but the FTC’s failure to pass kidvid rulemaking can teach reformers important political lessons.

*Balancing Power: The Paradox of Patriotism*

More than any other creed, the New Right has been able to capture the ideological symbol of American freedom. Although this happened over the course of many decades, starting during the McCarthy era with anti-Communist rhetoric, it has persisted and was resurrected in new ways during the 1970s. The recent Tea Party Movement used these same principles to bolster conservatism during the midterm elections. The Advertising

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703 Pertschuk interview.
Council’s AES booklet, its cover adorned with stars and stripes, made a case that American freedom is inextricably linked with the free market. The continued reliance on the First Amendment by corporate interests, from *Virginia Pharmacy* to *Citizens United*, has been infused into the collective consciousness of America. The core principle imbedded in the U.S. Constitution is individual liberty, which corporations have used to argue against regulations by big government. There is an element of truth here. The framers were concerned about government overreach, but more than anything else, they were concerned about concentrations of power. The recent Supreme Court cases that treated corporations as people and money as speech subvert these core values. There is an opportunity for progressives to recapture this symbol of patriotism, in a bipartisan way, by highlighting the skewed balance of power following the *Citizens United* decision. John McCain and President Obama have both criticized *Citizens United*. Much like the *Virginia Pharmacy* decision, policymakers have been timid in how to deal with the avalanche of super pak political advertising. *Citizens United* has deflated these efforts. But the there is room to remind that the Constitution, above all, wanted to strike a balance of powers. If the Supreme Court was infallible, its most repugnant decisions—from *Dredd Scott* to *Plessy v. Ferguson*—would still be the law of the land today.

*Biting Its Own Tail: The Paradox of the Free Market*

Another contradiction, unresolved since the 1970s, rests on anti-government, free-market rhetoric of neoliberalism. Businesses were able to simplify complex regulatory schemes into a false dichotomy of “free market versus government regulation.” Pertschuk captured this paradox in his 1984 report when he said: “hatred of government in a democracy is self-hatred. And government which makes itself its own enemy is as
effective and responsive as a dog ferociously pursuing and biting its own tail.”

The rhetoric of free market fundamentalism contradicts with the fact that favorable policies for businesses often hinge on a host of government projects, including subsidies, tax incentives, and government contracts for large infrastructural projects.

Gramsci identified this false dichotomy between “political society and civil society” in which “it is asserted that economic activity belongs to the civil society and the State are one in the same.” Here, Gramsci makes clear that notion of the free trade is a:

a deliberate policy, conscious of its own ends, and to the spontaneous, automatic expression of economic facts. Consequently, laissez-faire liberalism is a political programme, designed to change—in so far as it is victorious—the State’s leading personnel, and to change the economic program of the State itself—in other words the distribution of national income.

Elizabeth Warren also captured this paradox of the free market when she famously said:

There is nobody in this country who got rich on their own. Nobody. You built a factory out there—good for you. But I want to be clear. You moved your goods to market on roads the rest of us paid for. You hired workers the rest of us paid to educate. You were safe in your factory because of police forces and fire forces that the rest of us paid for. You didn't have to worry that marauding bands would come and seize everything at your factory. . . . Now look. You built a factory and it turned into something terrific or a great idea—God bless! Keep a hunk of it. But part of the underlying social contract is you take a hunk of that and pay forward for the next kid who comes along.

The very existence of successful start-ups championed by conservatives—Google, Amazon, and Facebook—would not have been possible if it were not for the massive public undertaking to establish the World Wide Web. In many respects, businesses benefit from government regulations, even those that impose limits. Drawing attention to

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707 Vilsack, “The New Face of Agriculture.”
ways in which businesses benefit from public investment is a way to highlight a fundamental contradiction in free market fundamentalism.

_A Rational Economy: The Paradox of Neoclassical Economics_

This leads to another major entry point: the paradox of neoclassical economics. Friedman’s economic arguments were seductive, but the analysis underlying those arguments is unconvincing. The free market ideology of the Chicago School, which is very much with us today, hinges on two arguments found in neoclassical economic theory: first, prices, and the economy in general, are regulated by supply and demand; and second, rational consumer preferences determine the outcomes of what a firm produces. By freeing these forces from government regulation, the economy will continue to grow. This view does not explain the current economic crisis, which is based largely on a bubble in the housing industry. Neoclassical economics also assumes that the power rests on the individual consumer, who has agency and choice. Firms therefore compete by catering to consumer preferences on the basis of price. The barrage of affordable consumer products, which line the superstore shelves, beguiles the concentration of power underlying the production of consumer goods. Proctor and Gamble, the nation’s largest advertiser, owns around half of the market share for razors, laundry detergent, diapers, shampoo, and batteries. Highlighting issues of labor and environment, Annie Leonard’s _The Story of Stuff_ project illuminates a host of ecological and labor problems associated with modern consumer society. Leonard’s documentary

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709 Lynn, _Cornered_, 43.
continues to be one of the most-watched environmental-themed online movies of all time.\footnote{Story of Stuff, “About the Project,” http://www.storyofstuff.org/about/about-the-project.}

More than anything else, the current state of industrial concentration contradicts the logic of conservative economics. If the very existence of a firm depends on consumer preferences, why were banks too big to fail? Why was it necessary to bail out the auto industry? The recent collusion between business and government is also apparent in the recent health care law, in which the most controversial provisions added were to preserve the health insurance industry giants. These changes in corporate power and its partnership with government resonate with both sides of the political isle, but for different reasons. Thus, this unlevel playing field provides reformers with a point of entry, one that is informed by the story of the FTC during the 1970s.

**Contemporary Relevance of the FTC**

A recent wave of political activism has surged again, with a Democratic president in the White House. The hundreds of thousands of demonstrators, who ascended on Wisconsin to protest the governor’s stripping of collective bargaining, and the Occupy Wall Street movement, indicate the continued spirit of activism, despite the legislative setbacks in Wisconsin. Just as they did after final blow to the CPA in 1977, some political leaders are quick to trivialize these movements as ephemeral. But as this study shows, Pertschuk, and the FTC, stayed on course during the last few years of the 1970s. The popularity of Elizabeth Warren and her fierce battle for the Consumer Protection Agency is another hopeful sign. Obama in some ways distanced himself from these movements, remaining silent during Wisconsin recall election, and acquiescing to the
powerful interests who opposed Elizabeth Warren’s appointment to the CPA. In the latter case, Obama’s hands were tied, and he needed to make an appointment to preserve the agency. The story of the FTC during the 1970s reveals the extent to which the power of a regulatory agency depends on its leaders, budget, and congressional powers. During the late 1970s, the lack of political unity over the establishment of a CPA and the FTC’s continued strength contributed greatly to the fracturing of the consumer movement and the regulations it generated. Businesses, however, were more united than ever. The new CPA’s clout remains to be seen, as is whether this ball is still in Obama’s court.

This story of the FTC during the 1970s is also relevant for the present-day media reform movement. During the 1970s, the FTC took steps to make advertisers accountable for their claims through its advertising substantiation programs and its policy of corrective advertising for false advertising claims. The policies initiated to limit advertising to children were a result of vigorous debates about how the U.S. media should serve in public interest. The rationale was simple: Children represent a vulnerable audience, and public policies should be in place to protect this vulnerable audience from advertisers. Ralph Nader and the broader consumer movement he represented were narrowly focused on creating a new consumer advocacy agency in the federal government, but this narrow focus drew attention and resources away from the fact that such an agency already existed.

Over the course of the last decade, media reform activism has surged again, calling into question the logic of the commercial media system. The public participation and advocacy in the most recent wave of media reform has focused its energy on media
reform through the FCC, and has mostly ignored the FTC. Unfortunately, the FCC’s jurisdiction over new forms of media has been limited, but the FTC’s oversight over digital media offers some hope. It is clear that companies like Google are no longer just search engines, but also major media content providers. In failing to comply with the FTC’s standards for online advertising and marketing standards, Google enabled the advertising company DoubleClick to track and gather information from users online. The FTC has recently taken steps to hold Google accountable. In August of 2012, the FTC fined Google $22.5 million for misrepresenting its privacy policies, which was the largest fine ever for a company failing to comply with an FTC settlement. The FTC’s settlement also requires Google to disable all the surreptitious tracking cookies on consumers’ computers and mobile devices. Consumer groups have taken notice of the FTC, and are currently pressuring the FTC to block Google’s proposed acquisition of the travel company Frommers. In October of 2012, the FTC announced a formal endorsement of an antitrust lawsuit against Google for the anticompetitive nature of its search policies, which favors its own products, making it harder for competitors to appear as highly on the search results page. If perused, it would represent the most sweeping

713 See Sarah T. Roberts’s forthcoming dissertation ““Behind the Screen: The Hidden Digital Labor of Online Content Moderation” University of Illinois at Urbana-Champaign, 2013 for a detailed analysis of the ways in which companies like Google shape and censor media content
antitrust case since Microsoft in the 1990s. With the transformation of Google as a major content provider and advertiser, media reformers who hope to shape new media in the public interest would be wise to maintain pressure and attention on the appointments and congressional actions surrounding the FTC. Despite the legislative setback for the FTC in 1980, it is still the nation’s most powerful regulatory agency.

The other important lesson from the 1970s is the significance of the intellectual. Peggy Charren, Ralph Nader, and Mike Pertschuk, to name only a few, all helped to build a formidable coalition of progressive organizations who were committed to the consumer cause. Even as late as 1977, Nader was still an important leader: Carter consulted him on his appointments to regulatory and top cabinet-level positions. The power of progressive forces during the 1970s is truly remarkable from our vantage point today. Through the course of the decade, businesses began to grasp the importance of public intellectuals and produced an impressive intellectual assembly of their own. Businesses have not forgotten the importance of this point, and neither should those who engage in intellectual work.

The lesson critical scholars can take from this study is that their work actually matters in effecting policy change and framing public debate.


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