



Joshua Lederberg

Consumer Should Be on Par With Labor and Industry

THE GENIUS of American democracy, when it works, has been the separation of power. Its compartments then complete for initiative, and for the support of a generally quiescent electorate. It has not always worked well, merely better than any alternative with which it could fairly be compared.

We have no guarantee that this is good enough to assure our survival; it is certainly bad enough that we must attend to relentless reform and readjustment. We know that youth is exploited to fight in wars it did not declare, and that racial minorities are victimized by a heritage of poverty they did not elect; none of us will fully enjoy the fruits of freedom so long as any of us are enslaved.

Although these problems deserve the highest priority, others should not be neglected, especially when politically and technically plausible solutions are in sight.

MANY OF our social and political faults are closely connected with an economic structure which now is badly out of balance. Together with the liberal economists, I marvel at the ele-

gant, self-correcting mechanism of the free market; but how free is it in the face of the concentrated power of corporate enterprise and corporate labor?

Not only the pressures for economic imperialism and racial discrimination, but also much of our cultural inanity and conflict and most of our environmental devastation, are related to the debility and fragmentation of consumer interests. Need I repeat the well-worn allusions to the GNP that goes into touch-crumb fenders or cigarette advertising and its consequences? Can our productive capacity be diverted from a hundred kilowatts per capita of unserviceable appliances toward the building of new cities?

Consumer protection is a political byword these days, and groups like Nader's Raiders have been surprisingly successful in attracting remedial attention to isolated abuses and in criticizing the responsible agencies. President Nixon's proposal to establish a permanent Office of Consumer Affairs in the White House, and other initiatives to bolster the effectiveness of the regulatory agencies, are commendable gestures.

They may, however, prove to be frustrating palliatives because they do nothing to strengthen the solidarity and self-sustenance of consumers as a class interest on a par with enterprise and labor. These groups are a vital part of our national life because they have the resources, incentives and information with which to seek out every opportunity for advancement, often to discover new rules as they go along, which a government bureaucracy obviously cannot.

A REMARKABLE opportunity for a new structure in American society is offered by pending legislation that would open the federal courts to "consumer class actions." Were I to steal one cent a day from every citizen, I could soon afford to retire—even after taxes—and even 10 angry victims could not find a lawyer to sue me for \$36.50 a year. If the attorney is authorized to represent the whole class of victims, however, he could invest a great deal of research and litigation for an expected fee of a few per cent of the total damages.

This version, strongly supported by Rep. Bob Eckhardt (D-Tex.) and Sen. Joseph D. Tydings (D-Md.) has been criticized by many businessmen and by the Nixon administration. It

would, they believe, open the door to unfair harassment and conniving "strike suits" which would merely extort settlements from honest businessmen as a cheaper alternative to nuisance litigation and adverse publicity.

They pressed instead for a bill that would allow class action suits only after a sinner had been successfully prosecuted by the Justice Department or the Federal Trade Commission. The merits of this concern deserve some thought, although one could argue that nuisance suits are a lesser evil than unpunishable fraud. However, neither the administration nor the Eckhardt-Tydings bills really take full advantage of the constructive side effects that could be nurtured by class action legislation.

INSTEAD, I would propose that a new kind of organization be chartered, a voluntary, nonprofit, consumer action association. This would be registered with, and regulated by an agency like the Securities and Exchange Commission or the National Labor Relations Board. Registered associations would have special privileges to file class action suits on behalf of their own membership, at least, and also on behalf of a prorated fraction of consumers generally.

They would be allowed to keep a portion of any damages they collected, enough to cover their expenses, to provide working capital for other suits and, most important of all, to finance their own research and information services. These associations might also be qualified to act for consumers in seeking fair access to broadcast media—that is, a kind of "equal time" to neutralize high-pressure advertising, which is also paid for out of a semivoluntary tax on the consumer's dollar.

This social speculation is a far cry from science. But is there a better way to assure that pluralistic, independent criticism on which freedom depends in a technologically organized society?

© 1970, The Washington Post Co.