A Tale of Two Movements: Consumer Protection in the U.S. from 1969 to 2010

Diya Berger
diayaberger@gmail.com
A Tale of Two Movements: Consumer Protection in the U.S. from 1969 to 2010

Abstract
The passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and subsequent establishment of the Consumer Financial Protection Bureau marked an unexpected victory for consumers across America at the expense of the well-financed business lobby. Although classical social scientists, such as Mancur Olson, claim that consumer movements should fail to emerge due to the difficulty of providing public goods for large constituencies, consumer victories – like the passage of Dodd-Frank— have occurred in waves throughout the last century. In conducting this study, I thus sought to answer why it is that some consumer movements are able to push through consumer legislation while others fail. In order to answer this question, I conducted two cases studies, comparing Ralph Nader’s failed attempt to establish a Consumer Protection Agency in the 1970s with Elizabeth Warren’s successful push to create Consumer Financial Protection Bureau in 2010. Ultimately my research demonstrates that three variables are critical to the passage of consumer legislation: 1) the opening of a policy window via key events, 2) the existence of favorable structural conditions in the policy making process, and 3) the ability of political entrepreneurs to utilize successful legislative and framing strategies that help them advance their agenda within the broader environmental context. Based upon these determinants, I suggest that a policy window has been opened for the consumer movement following the 2008 financial crisis due to an ideological shift from Friedman to Keynes which primed the current environment, the support of a Progressive Democratic President, and strong public support for consumer protection.

Keywords
Consumer Protection, humanities, Political Science, John Lapinski, Lapinski, John

This article is available at ScholarlyCommons: http://repository.upenn.edu/curej/168
Acknowledgements

First and foremost, I would like to thank my parents, Thomas and Sucharita, for being a constant source of support. Despite the international phone bills, they never wavered in their willingness to help me throughout this endeavor. I would like to thank Professor Lapinski for helping me hone in on my research question and develop my thesis. Finally, I would like to thank Dr. Doherty-Sil for her invaluable research seminar and constant encouragement throughout the thesis process.
Abstract

The passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and subsequent establishment of the Consumer Financial Protection Bureau marked an unexpected victory for consumers across America at the expense of the well-financed business lobby. Although classical social scientists, such as Mancur Olson, claim that consumer movements should fail to emerge due to the difficulty of providing public goods for large constituencies, consumer victories – like the passage of Dodd-Frank—have occurred in waves throughout the last century. In conducting this study, I thus sought to answer why it is that some consumer movements are able to push through consumer legislation while others fail. In order to answer this question, I conducted two cases studies, comparing Ralph Nader’s failed attempt to establish a Consumer Protection Agency in the 1970s with Elizabeth Warren’s successful push to create Consumer Financial Protection Bureau in 2010. Ultimately my research demonstrates that three variables are critical to the passage of consumer legislation: 1) the opening of a policy window via key events, 2) the existence of favorable structural conditions in the policy making process, and 3) the ability of political entrepreneurs to utilize successful legislative and framing strategies that help them advance their agenda within the broader environmental context. Based upon these determinants, I suggest that a policy window has been opened for the consumer movement following the 2008 financial crisis due to an ideological shift from Friedman to Keynes which primed the current environment, the support of a Progressive Democratic President, and strong public support for consumer protection.
# Table of Contents

## Part I: Introduction ..........................................................................................................................6

## Part II: Setting the Stage and Literature Review .............................................................................11

- The Definition and Origins of Social Movements ...........................................................................11
- Consumer Movements in Theory and Practice ..............................................................................15
- A Brief History of the U.S. Consumer Movement .........................................................................17
- Waves of Consumerism Explained ...............................................................................................22
- Determinants of Success in the Consumer Movement ....................................................................23
- Qualifying Mayer’s Environmental Factors via Pivotal Politics .....................................................24
- Frameworks to Analyze the Consumer Movement ........................................................................26
- A Model of Consumer Movements ...............................................................................................27

## Part III: Case Studies ......................................................................................................................30

- **INTRODUCTION AND METHODOLOGY** ................................................................................30
- Note on the Definition of Success ....................................................................................................32

**CASE I: PUSHING FOR A CPA BUT FALLING SHORT** .................................................................35
- From Keynes to Friedman: An Ideological Shift ...........................................................................42
- Congressional Composition ...........................................................................................................46
- Presidential Support ........................................................................................................................49
  - Deregulation Under Nixon ........................................................................................................50
  - Deregulation Under Ford ...........................................................................................................52
  - Deregulation Under Carter ........................................................................................................55
- Summary of Environmental Factors .............................................................................................60
- Tactical Factors in CPA Formation ...............................................................................................54
  - The Rise of Neoconservative Rhetoric .......................................................................................61
  - Tactical Errors in Political Entrepreneurship: The Case of Ralph Nader .................................64

**CASE II: THE FORMATION OF THE CFPB** ...............................................................................71
- Legislative History of Title X ..........................................................................................................73
- The Resurgence of Keynesianism Post 2008 ................................................................................76
- Keynesian Centralization and the Obama Administration .............................................................83
- Bicameral Politics: Composition of the House and Senate .............................................................85
  - Polarized Party Debates on the CFPB ......................................................................................87
- The CFPB: Conclusion Regarding Environmental Factors ..........................................................93
  - A Tactical Utilization of Anti-Wall Street Sentiment ...............................................................94
  - The Lack of A Framing Opportunity: The Business Lobby .......................................................99
  - The Role of Political Entrepreneurship: Elizabeth Warren ......................................................102
### Part IV: Conclusion

A Tale of Two Movements ................................................................. 107  
Suggestions for Further Research ......................................................... 114  
Practical Implications of My Model ......................................................... 115  

### Part V: Appendix

Appendix A: Legislative History of CPA .................................................. 117  
Appendix B: 1970 Poll Wording ............................................................... 119  
Appendix C: Key Findings of the Two Cases ............................................. 120
Part I: Introduction

“Welcome to the Showdown in Chicago. We have come together to reclaim America and hold Wall Street accountable. Imagine a story as terrible as this, the same financial institutions that created the crisis, sent the economy into a tailspin, handed out bonuses on top of bonuses, and needed hundreds of billions of dollars of taxpayers money, are back in business as usual. They are spending millions on Capitol Hill trying to defeat legislation that would help ordinary people and strengthen our economy... We have come here in Chicago because we are sick and tired of being sick and tired, but we are also here because we have hope because we know America can do better. It is time to put the people first.”

- Reverend Eugene Barnes, Central Illinois Organizing Project

Between October 25 and the October 27, 2009, some eight thousand protestors converged upon the Sheraton in downtown Chicago. Toting signs with Dorothea Lange’s famous photo of a Depression Era mother, activists marched toward the American Bankers Association’s convention, chanting, “Bust up big banks” and “ABA you’re the worst, it’s time to put the people first!” This initial protest evolved into a consumer movement that would later sweep the nation. In what some scholars have characterized as the fourth consumer movement in America, working-class citizens united to demand the representation of their interests on a federal level and the breakup of what Simon Johnson has dubbed the “American financial oligarchy”, Wall Street firms and banks supported mainly by Republican members of Congress who have shaped policy in Washington in their favor for the past quarter of a century. Incensed consumer advocates claimed that

2 Mary Bottari, “From the Big Showdown in Chicago.”
the very banks that had caused the 2008 financial crisis were now using taxpayer bailout funds in order to campaign against financial reform that intended to protect the consumer. Advocates called for the reversal of Washington’s deregulatory stance that had led to the loss of millions of jobs, skyrocketing interest rates on credit cards, and the depletion of pensions. They beseeched Congress to implement meaningful reform and to create a Consumer Financial Protection Agency, an independent regulatory body that could act on behalf of consumer interests on a federal level.

Leading the consumer charge was Americans for Financial Reform, a coalition of some 250 consumer, housing and labor groups, formed by U.S Public Interest Research Group (PIRG). Opposition to the legislation came from Wall Street bankers, the U.S. Chamber of Commerce and the American Bankers Association. From the start, the vast and dispersed consumer interest found itself at a disadvantage to the highly concentrated and well-funded financial sector. Classical public goods theory, as espoused by Olson and expanded upon by others, states that non-rival and non-excludable goods can only be provided by a small privileged group who are willing to foot the costs of a public good due to the promise of disproportionate future gains. From this theoretical perspective, the financial sector ought to significantly outperform consumers when lobbying for legislative reform. The financial sector is a smaller group with deeper pockets that tends to be united by similar interests. Conversely, consumers are a vast and heterogeneous group. They tend to have limited resources and disparate interests that prevent them from cohering under a common cause.⁵

⁵While the Americans for Financial Reform had a fixed budget of 2 million dollars, the U.S. Chamber of commerce spent that much on its media campaign alone. Some estimates put total Wall Street lobbying expenditures at 500 million dollars.
Despite their disadvantage as a diverse and underfunded group, the passage of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 marked a significant win for consumerists. Passage of Dodd-Frank seems to contradict what theory might lead us to expect and presents a puzzle that lies at the heart of this thesis. For although theory suggests that they shouldn’t emerge, consumer victories have been peppered throughout history—as one can see with the emergence of anti-trust laws following the Industrial Revolution or with the creation of the Consumer’s Union to test and publicize product results for the average consumer as part of Franklin Delano Roosevelt’s New Deal. Although theory may suggest otherwise, consumer movements often have successfully lobbied against the more-concentrated business sector to codify their interests in law. In conducting this study, I have sought answers to why it is that some consumer movements, despite being generally underfunded and lacking the cohesion that concentrated interest groups enjoy, are able to push through consumer legislation while others fail. More specifically, I seek to identify particular determinants that mark a successful consumer movement.

In order to answer these questions, I conducted two case studies. First I examined Ralph Nader’s failed attempt to establish a Consumer Protection Agency in the 1970s. I then compared this failed attempt with the Elizabeth Warren and the Americans for Financial Reform’s successful creation of a Consumer Financial Protection Bureau in 2010. At the dawn of the 2008 consumer movement, there was a widespread expectation that groups such as Occupy Wall Street would fail to bring about real change. The wild-eyed enthusiasm of its supporters seemed destined for disappointment. After all we had seen such failed movements in the past, most notably in the 1970s when Ralph Nader
spearheaded a highly motivated movement for consumer protection. At the time, many factors seemed to favor the consumer protection movement, including a tidal wave of public support, a strongly Democratic Congress and a general trend toward increased regulations across a wide range of policy domains – especially in areas such as consumer safety and the environment. Yet, by the end of the decade the movement had largely withered away and a new age of financial deregulation dawned. Based upon this historical pattern, commentators and politicians at the beginning of the consumer movement in 2008 deemed it unlikely that this movement would be different. This time, however, was different, and it was consumer interests that prevailed. Comparing these two cases thus proved ideal in answering my previous question of why some consumer movements prove successful in enacting legislation while others fail.

While my case studies focused upon the consumer movement’s goal to enact a federal regulatory agency promoting its interests, I believe that my findings can be generalized across this genre of public laws. In framing the case studies, I drew upon the theoretical insights of Robert Mayer and John W. Kingdon to structure the analysis around an examination of environmental and tactical determinants of legislative success. Ultimately, my research demonstrates that there are three critical variables that are tied to successful passage of consumer legislation: 1) the opening of a policy window via key events, 2) the existence of favorable structural conditions in the policy making process, and 3) effective leadership by political entrepreneurs and their ability to find legislative and framing strategies that help them advance their agenda within the broader environmental context. Practical implications of my findings suggest that the 2008 financial crisis has opened a new policy window for the consumer movement. The
movement has gained considerable momentum in light of a shift in regulatory norms from the free market notions advanced by Friedman to the government interventionist stance advanced by Keynes. Current positive environmental factors— a Progressive Democratic President and public opinion in favor of consumer protection – strengthen this momentum. Although these environmental factors may shift in the future, for the time being a significant opportunity has been presented to consumer advocates.
Part II: Setting the Stage and a Literature Review

The Definition and Origins of Social Movements

On the broadest level, the consumer movement can be thought of as a social movement, a union of individuals and institutions to advance particular political and social projects. Two scholars have been particularly influential in defining social movements—Charles Tilly and Sydney Tarrow. For Tilly, social movements are contentious performances through which the populace expresses a collective claim. Tilly divides social movements into three key factors: 1) a campaign, 2) the social movement repertoire, 3) WUNC displays. A campaign is a “sustained, organized public effort making collective claims on target authorities.” The social movement repertoire includes all the tools which individuals use in order to make their claims—public demonstrations, vigils, rallies, pamphlets and statements in the media. These activities provide employment opportunities and potential material incentives for participants. Finally, participants represent worthiness, unity, numbers and commitment on behalf of the constituents (WUNC) in their displays.

Tarrow defines social movements as “collective challenges, based on common purposes and social solidarities, in sustained interaction with elites, opponents and authorities.” Breaking the definition into its constituent parts, Tarrow identifies four features key to a social movement: collective challenge, common purpose, social solidarity and sustained interaction. First, at the heart of a movement lies a collective

---

7 Tilly, Social Movements, 3 
8 Sydney Tarrow, Power in Movement: Social Movements and Contentious Politics Ed. 2, (Cambridge: Cambridge University Press, 1998), 4
challenge expressed through contention. Tarrow attributes this element of strife to the structure of social movements. Since leaders of social movements lack “stable resources—money, organization, access to the state—that interest groups and parties control”, their greatest strength is being able to channel public expression of frustration into demonstrations. Second, a social movement must have a common identifiable purpose behind which actors can unite. Third, social movements can only occur when leaders are able to unite disparate actors by creating a collective identity through the use of symbols and joint narratives. Finally, this identity then must be mobilized in sustained interaction with elites, rather than a one-time burst of frustration, in order to be considered a movement.

Having identified the features of social movements, the next question becomes how this phenomenon emerges. Olson’s theory of collective action raises the question of how a social movement can emerge. In The Logic of Collective Action, Olson examines how individuals aggregate to form a collective. In particular, he demonstrates that a rational individual acting in accordance with his private cost-benefit analysis will not account for the true social benefit gained from the provision of public goods. This will result in an underprovision of the good. Public goods are non-rival in consumption, in that one individual’s enjoyment of the good does not diminish another individual’s opportunity to enjoy the good. Additionally, public goods are non-excludable, in that once public goods have been provided, any individual in society can enjoy them. Applying Olson’s public good theory to the legislative process, it becomes apparent that the effects of consumer legislation are non-excludable in that once someone has borne the costs of lobbying, others cannot be excluded from enjoying the benefits of the public

---

9 Tarrow, Power In Movement, 5
policy. Consumer legislation is non-rival in consumption in that the benefit an individual gains from utilizing the new public policy does not detract from others’ enjoyment of it. Olson concludes that the nature of public goods incentivizes individuals in large groups to free ride, or avoid paying the costs of providing for the public good while enjoying its benefits after its establishment. If consumer legislation is a type of public good, then every consumer hopes to enjoy the benefits of the legislation following its enactment. However, each individual is unwilling to provide the funds necessary to fund the lobby that would establish the agency. Thus without third-party oversight, Olson predicts that individuals will fail to unite to lobby for consumer legislation, a type of public good.

In the 1960s, scholars developed grievance theory\textsuperscript{10} to explain the emergence of social movements. Although the theory fell out of favor with the academic community in the 1980s due to the rise of resource mobilization theory,\textsuperscript{11} some theorists still use its basic tenants. There are three principle variations of grievance theory: deprivation theory, mass society theory and structural strain theory. Deprivation theorists claim that social movements occur when individuals feel deprived of a certain resources and as a result mobilize to obtain them (Runciman, 1966; Martin, 1968; Major, 1994). Mass society theorists (Kornhauser, 1959; Nisbet, 1969) stress the feeling of empowerment that a social movement provides to individuals who feel insignificant within society. Structural Strain Theorists (draws on the work of Merton, 1957; Smelsner, 1962; Foster and Matheson, 1999) stress the role of a catalyst that gives rise to social discontent and causes the masses to rally behind a proposed solution.

\textsuperscript{10} Grievance theory emerged in Runciman’s 1966 classical study on relative deprivation. 
Grievance theories are descriptively useful in that they highlight the development of mass consciousness key to the emergence of social movements. For example, grievance theory helps explain the collective consumer identity that formed in the Occupy Wall Street Movement, which was based upon a communal claim that banks were gaining at the expense of average citizens. This collective sense of deprivation united citizens across the nation. However, the theories face two principle problems. First, they succumb to a type of circular logic— the appearance of a social movement is indicative of societal discontent and societal discontent leads to a social movement. Second, they overlook the free rider problem and cannot explain how the lobby is financed or sustained organizationally. Thus, grievance theories identify a necessary but not the sufficient conditions for the emergence of a social movement.

In response to Olson’s collective action challenge, resource mobilization theory claims that social movements emerge when individuals are able to attain sufficient resources, such as money, knowledge, or support from political elites, to take action (Lipsky, 1968; Eisinger, 1973; McCarhy and Zald, 2001). The theory stresses a level of professionalization, in that political entrepreneurs and organizations act as intermediaries, transforming societal unrest into an organized movement. From the perspective of Olson’s theory, political entrepreneurs and organizations are willing to act as a privileged group, supplying the necessary resources to finance the movement and overcome the free rider problem.

A final theory that attempts to explain the emergence of social movements is the political process theory (McAdams, 1982; Meyer, 2004; Eisinger, 1973; Tarrow, 1989). This theory draws on insights from grievance theory and resource mobilization theory but
stresses a third key element, political opportunity. Like grievance theory, political process theory recognizes the necessity of insurgent consciousness— the development of a collective sense of deprivation due to a specific political context— that motivates individuals to unite. Like resource mobilization theory, political process theory stresses the necessity of organizational strength, which includes access to resources and effective leadership often provided by political entrepreneurs. The new component of political process theory is that it stresses political opportunities, the degree to which the existing societal structure is receptive to change. Four key factors determine the emergence of political opportunities: increasing political pluralism, a weakening in repression, support of the social movement by political elites, and broadened access to key political institutions.

**Consumer Movements in Theory and Practice**

Having defined a social movement and stipulated on the factors that lead to its emergence, we can now ask the question: how well does social movement theory apply to consumer movements? In many respects, consumer movements seem to be an ideal test case for social movement theory. By definition, nearly everyone is a consumer. According to Merriam-Webster’s dictionary, a consumer is one that utilizes economic goods. According to Investopedia, a consumer is someone who buys goods for personal use and not for resale or manufacturing. We all enter the marketplace on a daily basis in order to transact with others, buying and selling resources in order to survive. Consumers span the nation and have varying interests. Intuitively it seems hard to fathom that these

---

12 Ryan Cragun and Deborah Cragun et al., *Introduction to Sociology*, (Seven Treasures Publications, 2008), 233
13 Ryan Cragun and Deborah Cragun, *Introduction to Sociology*, 234
geographically and motivationally diverse peoples could come together in a united front.

What would it mean then to unite consumers into a social movement? Can we find historical examples of consumers coming together behind an issue in order to enact change in the political system?

Examining the historical record, we find that there are numerous instances when consumers have united to lobby for special rights and protection in the marketplace. Consumer movements, which will be referred to here as consumerism, have emerged in waves throughout history. While in the Middle Ages the law of the land was caveat emptor, or buyer beware, consumer interest emerged with the dawn of the Industrial Revolution, as consumers became inundated with a range of new products that spanned the nation.14 Overwhelmed by a large variety of new products whose quality and purpose was often unknown, consumers united behind the common cause of consumer protection in order to lobby against the more concentrated producer or business interests. Reacting to an increasingly unsure, technological world, consumers have formed consumer movements, peppered throughout the last century, in order to ensure that their needs are being met.

From a theoretical perspective, a consumer movement possesses the key characteristics of a social movement—collective challenge, common purpose, social solidarity and sustained interaction with elites. The emergence of consumer movements can be explained through any of the previously cited social movement theories—grievance theory, resource mobilization theory or political process theory. Robert Mayer distills these theories into two schools of thoughts that explain the emergence of

---

consumerism—structuralism and political entrepreneurs. Either these movements were caused by a set of precise social conditions, in line with political process theory, or by political entrepreneurs who are willing to bear the costs of rallying the masses, in line with resource mobilization theory.\textsuperscript{15} In some sense, this theoretical divide between environmental conditions and the role of a political entrepreneur is a false one. In practice, both forces play a role in the emergence of social movements.

\textbf{A Brief History of the U.S. Consumer Movement}

Periods of consumerism in the United States have ebbed and flowed during the last century, catalyzed by fundamental changes in the marketplace and technological advancements that have created uncertainty and fear among the general public.\textsuperscript{16} Broadly speaking, there have been the three Eras of consumerism as defined by Robert N. Mayer and Stephen Brobeck: in the early 1900s with the Progressives push for humanitarianism and efficiency, in the 1930s with the Great Depression and FDR’s New Deal, and in the 1960s with Lyndon Johnson’s Great Society programs.\textsuperscript{17} I will examine briefly each period of consumerism, identifying the catalyst as well as key wins and loses for the consumer movement.

The dawn of the Industrial Revolution marked the First Era of Consumerism. Prior to the revolution, laws focused upon ensuring orderly commerce but not upon protecting consumers.\textsuperscript{18} The Industrial Revolution marked a societal shift from

\begin{flushright}
\textsuperscript{15} Mayer, \textit{Guardians of the Marketplace}, 30-33
\end{flushright}

\begin{flushright}
\textsuperscript{16} Mayer, \textit{Guardians of the Marketplace}, 10
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\textsuperscript{18} Brobeck et al., \textit{Encyclopedia of Consumer Movement}, 584
\end{flushright}
unbranded goods produced at home to branded mass-produced goods. With this technological boom came the creation of hundreds of new products and brands that could be distributed across greater distances, creating a national market for the first time.\textsuperscript{19} To the elation of consumers, the Industrial Revolution widened the possible universe of consumption. At the same time, however, the new world of shopping could be overwhelming, and the average citizen had no way of judging the quality or reliability of the goods that he purchased. The increased creation and dissemination of products created a new role for the government in regulating the interplay between producers and consumers. The government had to regulate the safety and quality of branded goods as well as deciding how to ensure a competitive market place through anti-trust laws.\textsuperscript{20}

The government’s newfound role in regulating product quality can be seen in emergent food legislation. In 1906, Upton Sinclair’s, The Jungle, an account of the appalling working conditions and practices within the meatpacking industry, sparked consumer fury. Consumer advocates began to pressure the president, Theodore Roosevelt, to support pure food legislation.\textsuperscript{21} In 1898, local consumer activist groups joined forces to form the National Consumers League. The rise of this type of organizations at the turn of the 20\textsuperscript{th} century, whether operating on a local or national level, transformed individuals’ conceptions of themselves from “workers” or “property owners” to “consumers”, who could influence firm behavior through their pattern of consumption and united lobbying efforts.\textsuperscript{22}

\textsuperscript{19} Mayer, Guardians of the Marketplace, 12-19
\textsuperscript{20} Mayer, Guardians of the Marketplace, 12-19
\textsuperscript{21} Brobeck et al., Encyclopedia of Consumer Movement, 586
\textsuperscript{22} Brobeck et al., Encyclopedia of Consumer Movement, 586
The second question brought before the government due to the advent of the Industrial Revolution was the permissible level of competition within the marketplace. Companies joined together in large trusts in order to regulate the quantity and price of products that were flooding the market place. The Progressive movement reacted against the mounting concentrated power of businesses both in the market and in politics, attempting to represent “the people”, a wide range of poorly organized constituents. In 1890 the Sherman Antitrust laws were passed, but they were not effectively enforced until 1914. While the Progressives did not stand for consumer interests per se, the theme that they raised of the people versus special interests would become the basis of future advocacy. The kernel of the movement was present already in the late 19th century and can be seen in the passage of the first health and safety regulations as well as efforts to foster market competition. However, one could make the case that at this stage in the social movement, consumer consciousness had not reached modern form.

The Second Era of consumerism began in the 1930s, during the Great Depression. The 1920s had been marked by rising income and relatively stable prices, allowing the consumer to experience rising real income and an increasingly improved lifestyle. The shock of the Depression heightened the previous problem of choice that consumers experienced during the Industrial Revolution. Individuals now found themselves unemployed, with a reduced income, while shoddy merchandise flooded the market. Worsened economic circumstances and increased uncertainty surrounding the quality of the product combined to create further support for quality testing among consumers.

---

23 Mayer, Guardians of the Marketplace, 15-16
24 Mayer, Guardians of the Marketplace, 12-19
Additionally, critiques of advertising emerged during the Second Era, since consumers felt that this type of hand waving detracted from well-planned spending.\(^\text{25}\)

Consumer sentiment manifested itself in a real way in the second era through the formation of the National Recovery Administration in 1933. Franklin Delano Roosevelt established this agency as part of the New Deal in order to bring laborers and companies together to establish “fair practices” as well as set prices.\(^\text{26}\) This was the first formal representation of consumer interest on the federal level. Furthermore, the Consumer Union was established in 1936 to test products and publicize the results in a magazine. The research was meant to help consumers shop frugally and effectively. By the 1930s businesses had become concerned about the effect of the consumer movement upon public attitude. In the 1940s, George Gallup conducted a study, which showed that 20% of consumers read and used research reports published by product rating services to influence their consumption habits.\(^\text{27}\)

Global trade halted during the interwar period, as countries adopted protectionist policies and devoted their resources to the war effort. This slowdown in trade on a macroeconomic level was paired with a cut in spending on a microeconomic level, and the consumer movement came to a standstill. In was not until 1960s that the consumer movement was reborn. The commencement of the Third Era of the movement is often associated with John F. Kennedy’s message to Congress in the Spring of 1962. In this address, Kennedy enumerated what he termed the Consumer Bill of Rights: the right to safety, the right to be informed, the right to chose, and the right to be heard in

\(^{25}\) Brobeck et al., *Encyclopedia of Consumer Movement*, 587-589
\(^{26}\) Brobeck et al., *Encyclopedia of Consumer Movement*, 587
\(^{27}\) Brobeck et al., *Encyclopedia of Consumer Movement*, 587-589
government-decision making. These sentiments were solidified under Lyndon Johnson’s “Great Society” programs. Johnson created a new White House post, the Special Assistant for Consumer Affairs, and appointed Esther Peterson. In 1967, Peterson created the Consumer Federation of America, which united state and local consumer organizations, consumer cooperative groups, and labor unions to represent consumer interest to Congress. In 1968, Johnson passed a number of consumer bills including the truth-in-lending bill, and bills focusing upon consumer safety, fraudulent land sales, and hazardous appliance radiation.

During the 1970s, Ralph Nader emerged as a leader in consumer advocacy. Nader and his “Raiders” chose issues which they had happened upon or had received inside tips about, appealed to congressional leaders and then publicized their results in the press or through lectures delivered by Nader himself. Nader was most famous for his work on automobiles. Since Nader found that government agencies often did not adequately support consumer interests, he proposed the creation of the Department of Consumers, a bureau to monitor the activities of other government agencies and ensure that they were meeting consumer expectations. Although the idea was supported by the Consumer Federation of America, the Consumers union and a network of over 100 corporations and trade groups, new business interests, who “foresaw an agency with extensive powers and the ability to intervene in all aspects of government” were able to block its passage.

One win for the consumer movement was the establishment of the Consumer Product Safety Commission, an independent agency that regulates the sale and

---

28 Brobeck et al., *Encyclopedia of Consumer Movement*, 590
29 Brobeck et al., *Encyclopedia of Consumer Movement*, 589-593
30 Brobeck et al., *Encyclopedia of Consumer Movement*, 593
The success of a consumer movement is a two-step policy process. First, consumer issues must be placed upon the policy-making agenda and then these issues must be codified in legislation. As noted in the previous historical survey, consumerism is parsed into three distinct eras or “waves”. Increased consumer lobbying occurred throughout these eras and often resulted in the enactment of a greater amount of consumer legislation. In periods where consumer interests did not play a prominent role within the public policy space, it thus follows that either consumers did not feel the need to lobby for heightened protection or that they were unable to have their interests represented on the public policy agenda. The question emerges: how does a particular interest find itself upon the public policy agenda? An issue’s consideration for debate is a necessary prerequisite to representing a societal interest or protecting it through legislation.

For Kingdon, a particular policy item rises to the top of the political agenda when separate streams of problems, policies and politics come together in a critical moment. In order for this union to occur, a policy window must open due to a focusing event, such as the emergence of crises or disasters, or through a change in the political stream, such as a change in national mood or turnover within the administration or legislature. The opening of a policy window creates an opportunity for policy entrepreneurs—advocates who are willing to invest time and money to advance a position in return for future ideational or
material gain—to couple an apt policy alternative with the problem at hand. An effective policy entrepreneur then must couple the problem and its solution to the political stream. When these three elements, problem, policy and politics, are joined a new issue is placed upon the legislative agenda.  

Determinants of Success in the Consumer Movement

Even if consumer issues become a matter of public interest, some consumer movements have succeeded to advance their interests via legislative change while others have not. The literature on determinants of success for a consumer movement is sorely lacking, with the notable exception of Robert Mayer. Defining success as the passage of consumer legislation that favorably alters the economic welfare of consumers, Mayer claims that there are two categories of factors that determine legislative success: relatively immutable environmental factors and tactical factors. Environmental factors include: public opinion, Congressional support and Presidential support. Tactical factors include: choosing the right goals, taking the offensive and skillfully dealing with the opposition.

For Mayer, environmental factors set the stage for a successful consumer lobby. Scandals and dramatic incidents have the power to affect legislative outcomes significantly by garnering public support for consumer issues. While Mayer hypothesizes that public sentiment has a negligible impact on the passage of legislation in and of itself, he notes that it is crucial in influencing elected officials, claiming, “most elected officials follow public opinion, a few lead it, and none want to alienate it.” Even with public opinion resoundingly in favor of consumer issues, Congress and the President are the key

32 Mayer, Guardians of the Marketplace, 88
players that will form the legislation and enact it. As such Mayer feels that it is necessary to have consumer advocates in the House of Representatives and in the Senate. Finally, Mayer argues that the President is the “most visible but least important source of support.” Presidents have indirect power to influence consumer legislation through appointments to regulatory agencies.

A favorable environment creates an opportunity for consumer legislation to succeed, however, a successful consumer movement equally depends upon strong political leadership and tactical maneuvering. First, Mayer claims that consumer advocates must frame legislative proposals in a manner that can be sold to the public and political decision makers. To take the offensive, Mayer stresses that consumerists ought to capitalize on events that receive media coverage and properly christen their bills in a positive manner. In dealing with the opposition, Mayer stresses turning opponents’ assets into liabilities, gaining allies within the business community, and compromising.

In line with social movement literature, Mayer stresses the importance of environmental factors that converge to create a society is receptive to reform. He then stresses the importance of resource mobilization and organization via political entrepreneurs. Leading the consumer charge, political entrepreneurs must create a comprehensive strategy in order to enact change.

**Qualifying Mayer’s Environmental Factors via Pivotal Politics Theory:**
*A Note on the Relative Power of Presidential and Congressional Support*

While I broadly accept Mayer’s determinants of legislative success, I believe that his theory underemphasizes the importance of political preferences and our separation of

---

33 Mayer, *Guardians of the Marketplace*, 90
34 Mayer, *Guardians of the Marketplace*, 92-98
powers system in predicting the success of consumer legislation. Keith Krehbiel’s Pivotal Politics model is a simple yet elegant account of how the preferences of the President and members of Congress create opportunities to pass legislation in some cases and result in legislative gridlock in others. The model focuses on identifying key pivot points, essentially key players who are able to determine the final policy outcome (Krehbiel, 1998; Brady and Volden, 1998; Cox and McCubins, 2005).

Specifically, pivotal politics theory constructs a model of collective choice along a uni-dimensional policy space, on which a continuum of policies ranging from liberal to conservative is situated. Players acting within the policy space are the president and legislators. Each player has a particular ideal point, a policy under which his utility is maximized. The enactment of policies in this theory is not only dependent upon the median voter but is additionally dependent upon two supermajoritarian procedures: the executive veto and the Senate’s filibuster procedures. The US Constitution grants the president the right to veto legislation unless a 2/3 majority overrides his veto. Additionally Rule 22 allows for extended debate in the Senate subject to a cloture vote that requires a 3/5 majority as of 1975. Among n legislators two may prove to be a pivot point due to these supermajoritarian procedures. The pivotal policy theory thus implies that in order for policy change to occur, the status quo must lie outside of the gridlock interval delineated by the president, Senate filibuster and the House veto override member (depending upon which party holds the Presidency and the House).

In considering Mayer’s determinants of legislative success, it becomes clear that he has missed the interplay between the legislative and executive branch key to the American legislative process. Presidential power is not as limited as Mayer suggests
since a presidential veto can result in gridlock. Mayer additionally claims that a Democratic Congress can be an environmental factor favorable to the passage of legislation. While this claim may have proved to be true historically, it is too broad of a factor and should be tempered in one key ways. In claiming that a Democratic majority is a favorable factor, Mayer assumes homogenous preferences within the party, but empirically this is often not the case. If Democratic legislators with more conservative preferences prefer the status quo to the proposed legislation, they can form a separate coalition and mount a filibuster in order to maintain the status quo.\(^{35}\)

Of course, the pivotal political model also has limitations. First, it tells us nothing about why a particular issue is considered by Congress. In other words, the model is completely silent on timing. In addition, the parsimony of the model is a strength and a weakness. For example, the model doesn’t have anything to say about the role of the committee system in the House of Representatives on the legislative process. The importance of committees, particularly the Rules Committee in the House will be highlighted in the following case studies. The structure of the committee system thus can form an additional veto point that the model ignores. Still, the pivotal politics model does have explanatory power when combined with some of the other theoretical concepts introduced in this thesis.

\textit{Frameworks to Analyze the Consumer Movement}

My case studies in the following section will draw upon the ideas of Mayer and Kingdon as well as the theoretical framework of pivotal politics. I hope to show that all three have analytical leverage in explaining legislative success and failure in the context.

of consumer legislation. While alone, none is sufficient to account for legislative outcomes in this policy area, taken together, a more holistic picture emerges. In order to utilize these different ideas effectively, I have created a simple model that synthesizes these three perspectives and describes the process through which consumer legislation emerges.

**A Model of Consumer Movements:**
*What factors determine their emergence and success?*

The evolution from grievance theory to political process theory seems to suggest that there are three crucial variables in the emergence of social movements: collective grievance that helps foster a communal identity, political opportunity, and professionalization of the movement which allows for group resource mobilization. Like political process theorists such as McAdam, and Tarrow, John Kingdon stresses the importance of an external event that opens a policy window to create a political opportunity. It is the emergence of this problem that allows a political entrepreneur to couple a specific alternative with the relevant problem and place a given issue upon the public policy agenda. Drawing on these insights, I stress that the independent variable in my case studies is the emergence of a problem—the reevaluation of failed policy due to the manifestation of a crisis. The dependent variable is legislation, which encompasses a range of possible outcomes from tough regulation to weak regulation to no regulation at all.

The process from the recognition of a problem to enactment of legislation is conditioned by a variety of intervening variables, for the emergence of the movement does not guarantee its success. The initial problem only sets the political stage.
Intervening variables then come together to determine the success or failure of consumer legislation. One dimension is tactical, where actors interact to produce policy. This is the realm within which Kingdon’s political entrepreneur creates and implements a strategy. However, actors do not act on a neutral field. The second dimension is the environment. To characterize these two dimensions, I draw upon Mayer’s environmental and tactical determinants of legislative success. Mayer’s environmental determinants include: public sentiment, the support of the President, and the support of Congress. I add a fourth environmental determinant: an ideological shift that occurs in response to the problem or crisis that powerfully conditions each of the other three environmental variables. Mayer’s tactical determinants of success include: framing legislative proposals so that they can be sold to the public and political decision makers, taking the offensive by capitalizing on key events that could garner public support through the media, and dealing with powerful opponents by turning opponent’s assets into liabilities and gaining allies through compromise.

A graphical depiction of my relatively simple model can be found on the following page.
Environmental Factors
- Ideological Paradigm Shifts
- Presidential Support
- Bicameral Composition
- Public Opinion

Independent Variable
The Problem

Intervening Variables
The Politics

Dependent Variable
Resulting Legislation

Tactical Factors
- The framing of legislative proposals
- Capitalizing on key events in the media to gain public support
- Turning opponents' assets into liabilities
  - Compromise
Part III: Case Studies

Introduction and Methodology

In the following section I will examine two case studies, the attempted formation of a Consumer Protection Agency in the 1960s through the 1970s under the guidance of Ralph Nader and the formation of the Consumer Financial Protection Bureau in 2010 under Elizabeth Warren. While both Nader and Warren attempted to achieve the same goal—the establishment of an independent regulatory body that would represent consumer interest on the federal level— the former proved unsuccessful while the latter succeeded. The question thus becomes: what factors led to the success of consumer lobbyists in present times that were previously lacking?

I chose these two case studies because I wanted to examine a specific type of consumer legislation that had a similar goal across time. Consumer protection legislation is an umbrella category encompassing any statute that seeks to ensure the rights of consumers at the expense of producers. There are many types of consumer legislation. For example, one type seeks to monitor the quality of products sold to consumers in accordance with health and safety standards. Another type seeks to advance the free flow of product information throughout the marketplace to stem the probability of fraudulent practices and to enhance consumer understanding of the products and services. Consumer legislation has often been conflated with the goal of promoting market efficiency. The consumer is directly or indirectly protected when the government promotes efficiency in markets that the consumer accesses by lowering prices in that market. However, I view this as an extension of the consumer protection principle and not consumer protection
legislation in and of itself per se. Ralph Nader and Elizabeth Warren’s push for an independent agency to represent the consumer interest on a federal level is a particular type of consumer legislation that focuses upon the institutional imbalances available to consumers and producers. No similar proposal was made in the interim period from 1978 to 2007.\[36\]

In order to conduct my case study, I draw upon Robert N. Mayer and John W. Kingdon’s theoretical insights on the factors key to legislative success as synthesized in the model laid out previously. Ultimately, I find the success of the current lobby depended upon both environmental and tactical factors, as well as elite preferences in Congress and the White House. Broader socio-ideological paradigms reinforced by events made certain kinds of tactical framing more or less plausible. In the 1970s, it was possible for opponents of consumer protection to frame the initiative as an elitist, anti-market effort that would stifle economic growth and curtail individual freedom. Against the backdrop of a general disappointment regarding the accomplishments of the welfare state, anemic economic growth and a general growth in anti-elitist sentiment following the struggles over Watergate, the Vietnam War and the counterculture, such charges seemed convincing to many.

In contrast, following the 2008 global financial crisis, pro-regulation framing became more convincing due to repeated market breakdowns, increased resentment of

\[36\] In fact very few consumer protection legislative proposals were made during that period at all. While there were some indirect efforts to improve the state of consumers through tax cuts or minimum wage laws, these means were enacted in order to stimulate the economy at large. They did not seek to protect the consumer against a concentrated counter-interest. (North American Free Trade Agreement Implementation Act in the 103\textsuperscript{rd} Congress, Small Business Job Protection Act of 1996 in the 104\textsuperscript{th} Congress, Taxpayer Relief Act of 1997 in the 105\textsuperscript{th} Congress, Economic Growth and Tax Relief Act or the Small Business Liability Relief and Brownfield Revitalization Act or the Job Creation and Worker Assistance Act in the 107\textsuperscript{th} Congress, or the Fair Minimum Wage Act in the 110\textsuperscript{th} Congress. They did not seek to protect the consumer against another concentrated interest.
business elites as a result of rising inequality, and a general drawing back from market ideology a la Milton Friedman to Alan Greenspan. This societal shift in the basic understanding of how the marketplace functions provided the environmental framework within which successful consumer lobbying could take place.

A Note on the Definition of Success

For the purpose of my thesis, I will restrict the range of my dependent variable and measure success in terms of whether or not the consumer lobby was able to pass consumer legislation. This limitation is supported by the literature on lawmaking in Congress, which also measures legislative success by whether a bill passes (Krehbiel, 1998; Brady and Volden, 1998; Cox and McCubbins, 2005). Passage of a bill into a public enactment by definition changes the status quo point of legislation. This means that legislation is being moved closer to the preferred position of those favoring the law. I realize that this is not a perfect measure of success, and some critics might argue that the passage of consumer legislation is not a true measure of success. Rather success depends upon the extent to which the enacted legislation is able to produce the desired change within society. A watered down version of a consumer protection agency that has no real power is simply a symbolic victory.37

Some scholars have made this argument in reference to the Dodd-Frank Bill. John Wooley and Nicholas Ziegler claim that the Dodd-Frank Act caused “significant but less than transformational change” in financial regulation due to the compromise between

37 Symbolic victories can be important in and of themselves. Making Martin Luther King Date a national holiday was symbolic but very significant. Nonetheless, this is a claim often leveled against the CFPB.
financial elite and grass-root consumer activists necessary to pass the bill. Of course, this characterization is true of almost all significant legislation. Daniel Carpenter similarly claims that the Obama administration’s proposals for a dramatic reform have been diluted due to “institutional strangulation,” a process in which existing government agencies lobby against the creation of new agencies in order to capture the largest portion of available transaction and institution fees. These criticisms could be applied to the Consumer Financial Protection Bureau, namely that it is a weakened agency born out of compromise between consumerists, business lobbyists and current regulators. But, this type of critique ignores the reality that the passage of laws depends upon compromise.

A further consumerist concern is the ability of the currently Republican-dominated House of Representatives to weaken the CFPB’s future influence and autonomy. While the passage of Dodd-Frank moved the status-quo point in the direction of the consumer movement, some consumerists fear that this is not representative of society as a whole and will not have an enduring presence. While the Democratic majority in the 111th Congress managed to push through the Dodd-Frank and Consumer Protection Act of 2010, the subsequent Congressional elections saw a shift in the composition of the House and Senate, with Republicans securing the House as well as winning additional seats in the Senate. This has led some consumerists to worry for the future of the CFPB. Even if the consumer lobby was successful in establishing a CFPB, can we really consider it a success for the consumer movement if its future powers are to be continually challenged and perhaps weakened?

A preliminary attempt to restrict the scope of the CFPB’s powers occurred on May 5, 2011, when forty-four Republican Senators led by Richard Shelby made public a letter written to Obama stating that they would block any nominee for the Director of the CFPB unless the Democrats conceded to altering the agency’s structure and funding.\textsuperscript{40} In particular, the Senators requested that the agency’s director was replaced by a board of directors, that its funding was subject to congressional appropriations and that its operations would be subject to other bank regulators.\textsuperscript{41} These changes would severely limit the autonomy of the CFPB by making it dependent upon the Republican controlled House for funding. In July 2011, President Obama used a recess appointment to overcome the Republican-led filibuster and name Richard Cordray the first Director of the CFPB.

With regard to the first critique, I would argue that the Consumer Financial Protection Bureau is not just a symbolic institution with limited powers. Compromises were made in order to allow for its formation. Nonetheless, Congress is built upon compromise. With regard to the second, I would point out that critics are still accepting the initial passage of consumer legislation as a measure of success for the consumer movement and are worried about shifting exogenous factors that may alter the status quo and result in a weakening of the successful legislation. I would point out that as long as the current administration remains committed to consumer protection, consumerists should remain cautiously optimistic. The agency has been established and will continue to function due to the tri-cameral veto that defines the American political system.


\textsuperscript{41}Yian Q. Mui, “Senate blocks Richard Cordray confirmation to head consumer watchdog agency.” \textit{The Washington Post}, December 8, 2011
As lawmaking literature notes, the passage of consumer legislation is a preliminary but necessary step in order to represent consumer interest. It marks a level of governmental acceptance that consumers are a group who ought to be represented and protected. While both the legislation and its enforcement could be improved upon in the future, just the act of moving the bill through both Chambers as well as obtaining a Presidential stamp of appeal is the necessary building block to further consumer interest. Thus for the purpose of my study, I will measure a consumer movement’s success based upon whether or not consumerists were able to get their proposed legislation passed.

Case I: Pushing for a CPA, But Falling Short

During the third era of consumerism beginning in the late 1960s, Ralph Nader—an iconic political entrepreneur—began to push for an independent regulatory body that could represent consumer interest on a federal level. Consumer activists such as Ester Peterson, leading members of the Democratic party and liberal-leaning Senators, most notably Jacob Javits and Charles Percy, supported the proposal. The CPA faced opposition from members of the Old Right, such as Patrick Buchanan, William F. Buckley, and James J. Kilpatrick, as well as a range of business groups and regulatory bodies that united to form the Consumer Issues Working Group (CIWG). Key members of the CIWG included: the US Chamber of Commerce, the Business Roundtable, the Grocery Manufactures Association, the National Association of Manufacturers, and the

---

42 For a table laying out the legislative history of the CPA from 1969-1978 refer to Appendix A
American Enterprise Institute. From 1969 until 1978, various proposals for a Consumer Protection Agency were drafted and redrafted in Congress, but ultimately the legislation failed to pass.

An early form of the bill, H.R. 6037, was first brought before Congress by Benjamin Rosenthal (D-NY) in 1969. Rosenthal’s proposal formed a cabinet level Department of Consumer Affairs that would act in a regulatory and advocacy capacity within the Executive Branch. Under this preliminary proposal, Rosenthal consolidated all federal consumer functions and placed them within the Department of Consumer Affairs. As the leader of the consumer movement, Nader opposed H.R. 6037 and later helped Rosenthal reformulate it. Nader felt that Rosenthal’s proposal would face significant opposition from existing regulatory bodies that feared that a new CPA would lead to a reduction in their powers and budgets. In order to ensure the passage of the legislation, Nader suggested that the Consumer Protection Agency fill a purely advocatory role, representing the consumer interest on a federal level. He additionally stressed the importance of creating an independent consumer agency, rather than one housed in the Executive branch, in order to isolate the agency from economic and political pressures that could compromise the agency’s integrity. By late 1969, Rosenthal had revised H.R. 6037 to reflect these changes.

Preliminary debate surrounding the creation of the proposed CPA mainly centered upon the structure of the agency, as this initial structure would inform the agency’s scope and power. Taking cues from the Nixon Administration, Republicans tended to favor housing the CPA within an already established government agency. In his first Consumer

---

44 Glickman, Buying Power, 286
Message to Congress, President Nixon stated that he was willing to grant statutory status to his Office of Consumer Affairs but claimed that consumer advocacy functions would be more appropriately housed within the Department of Justice.\textsuperscript{46} He reported his legislation, H.R. 14785, to Congress on November 12, 1969 accordingly.

The House version of the bill, H.R. 18214, recommended for floor consideration by the Committee on Government Operations in 1970, melded ideas from Rosenthal and Nixon’s previous proposals into a comprehensive bill. This new House bill, H.R. 18214, proposed the establishment of an Office of Consumer Affairs within the Executive branch that could coordinate consumer policy with the President as well as the creation of an independent Consumer Protection Agency that would collect and disseminate research on consumer products and act as a representative of the consumer interest when litigation was pending before regulatory bodies and the courts. Both the Office of Consumer Affairs and the CPA would field complaints on faulty products and fraudulent practices. H.R. 18214 additionally instituted a fifteen-member Consumer Advisory Council to advise the heads of the aforementioned agencies. The House Rules Committee, however, did not recommend H.R. 18214 to floor for consideration by a 7 to 7 vote.\textsuperscript{47}

The veto by the House Rules Committee is a significant event given that organization of the House via its committee system is not considered in any of the theoretical frameworks considered in this paper. Nonetheless, it was hugely influential in promoting and killing legislation during the early 1970s. Moreover, it was not particularly representative of the House as a whole, given that the Rules Committee was heavily influenced by Southern Democrats who tended to hold more conservative views

\textsuperscript{47} S. REP. No. 1100, 92\textsuperscript{nd} Cong., Sess. 4 (1972)
more closely in line with the Republican Party. The composition of the Rules Committee
was not significant for all legislation, but it did matter for consumer-oriented bills that
sought to reduce the power of businesses vis-à-vis consumers.

In the same Congress, Senator Abraham Ribicoff (D-CT) sponsored similar
measures in the Senate in his draft of the bill, S. 4459. This legislation proposed the
establishment of a Council of Consumer Advisors to represent consumer interest within
the executive branch as well as an independent Consumer Protection Agency, which
would conduct and disseminate product research and testify on behalf of the buying
interest in pending litigation before regulatory agencies as well as court. The bill passed
through the Senate by a vote of 74-4.48

During the 92nd Congress, the House reinvigorated its efforts to pass a new
version of the CPA bill, H.R. 10835, by a 344-14 vote.49 H.R. 10835 was adapted from
the previous Congress’ H.R. 18214 and maintained the same structure but limited the
substantive powers of the agency. While preliminary debate surround the CPA focused
upon the structure of the agency, during the second legislative attempt at creating the
CPA, Congressional members began to consider the powers of the proposed agency.50 In
particular, there were two major House amendments. Rosenthal sought to expand the
CPA’s investigatory and adjudication powers and Don Fuqua (D-FL), Clarence Brown
(R-OH) and others denied the CPA legal party status and standing to seek judicial review
but expanded the bureau’s advocacy right.51 These attempts failed and a weaker version
of the CPA emerged, one that was not able to intervene in agency adjudications,

48 S. REP. No. 1100, 92nd Cong., Sess. 4 (1972)
49 S. REP. No. 1100, 92nd Cong., Sess. 4 (1972)
50 Richard J. Leighton, “The Consumer Protection Agency Bill—Ghosts of Consumerists Past,
President and Future,” Food Drug Cosmetic Law Journal, 28, no. 1 (1973), 32
51 Leighton,”The Consumer Protection Agency Bill,” 33
involving fines, penalties and forfeitures and one that could not use host agency subpoenas.\textsuperscript{52}

A mini filibuster erupted in the Senate, however, and S. 3970 failed to pass through Congress. Southern Democrats, in particular Senator Ervin (D-NC) and Senator Allen (D-AL), led the charge against the proposed Consumer Protection Agency. Couched in free market ideology, the filibuster focused upon the recent over-expansion of governmental activities in the US economy. Senator Ervin claimed that “if the bill were to be enacted, it [would] shake the free enterprise system and the economic system of the United States to its foundations.”\textsuperscript{53} Leaders of the filibuster pointed to the expansion of government activities that had occurred throughout the previous decade that already sought to protect the consumer interest. They questioned the validity of the claim that the consumer was not adequately represented in the federal government. Furthermore, they argued that if the consumer was not adequately represented within the current governmental structure, the existing laws should be revised to properly fulfill this function instead of increased government intervention in the market. In the words of Senator Ervin, “I would say that if a bureaucracy is not functioning in the public interests, as it is ordered to do, the remedy is not piling another bureaucracy on top of it.”\textsuperscript{54}

In the 93\textsuperscript{rd} Congress, the House considered a revised bill, H.R. 13163, designed to constrain the Consumer Protection Agency’s powers. Unlike previous proposals, H.R. 13163 did not establish two separate consumer agencies. Instead it sought to establish a sole independent CPA that would once again conduct research and represent consumers

\textsuperscript{52}Montan, “The Agency For Consumer Advocacy,” 1068
\textsuperscript{53}118 Congressional Record 32405 (1972)
\textsuperscript{54}118 Congressional Record 32405 (1972)
in regulatory proceeding and courts. However, the agency would now be limited to an amicus curiae roles in agency proceedings. An amicus curiae, literally translated as “friend of the court”, is a person or organization who is not party to the case but advises the court on matters that may affect its interest. While Virgina Knauer, the Director of the U.S. Office of Consumer Affairs, voiced support for the House bill, President Nixon implied a veto it if it passed in its current form. In the Senate, the Southern Democrat led filibuster once again prevented S. 707 from reaching a floor vote. Supporting the filibuster were Bennett Johnston (D-LA), Russell Long (D-LA), Robert Dole (R-KS), Robert Griffen (R-MI), Peter Dominick (R-CO), Howard Baker, Jr. (R-TN), Hiram Fong (R-HI), and Milton Young (R-ND).

The 94th Congress finally marked the successful passage of the bill in both houses, but the bill later died in a conference committee when President Gerald Ford indicated that he would veto the legislation. The first bill brought before the 94th Congress’ Senate once again failed to pass due to a filibuster. A subsequent rule change in the Senate, however, decreased the count necessary to invoke cloture, lowering the chance of a successful filibuster. On March 12, 1975, the Committee on Government Operations reported the bill with an 11-1 vote to the Senate. On May 13, 1975, the Senate invoked cloture with a 71 to 27 vote, allowing the Senate to amend and pass S. 200 by a 61 to 28 margin on May 15, 1975. The House amended and passed a

---

55 Montan, “The Agency for Consumer Advocacy,” 1068
56 The U.S. Office of Consumer Affairs was a regulatory body established within the executive branch under Nixon which would conduct research on consumer affairs, ensure coordination between federal agencies regarding consumer protection and report to the President. See Richard Nixon’s Executive Order No. 11583 for a full list of the agency’s powers and responsibilities.
57 Montan, “The Agency for Consumer Advocacy,” 1062
59 Montan, “The Agency for Consumer Advocacy,” 1069
60 S. REP. No. 66, 94th Cong., 1st Sess. 58 (1975)
companion bill, H.R. 7575, on November 6, 1975 with a 208 to 199 vote.\textsuperscript{61} In a letter to the Senate Committee on Government Operations, President Ford asked Congress to refrain from further action on the Consumer Protection Agency, implying a veto.\textsuperscript{62} The margin of victory had been diminishing in the House since the 91\textsuperscript{st} Congress, and the bill no longer had the 2/3 House majority needed to override the presidential veto.

There once again seemed to be hope for the Consumer Protection Agency in 1977 when Jimmy Carter entered the White House after having campaigned on a strong consumer protection platform. Consumer demonstrations increased under the Carter administration. One such campaign was Nader’s nickel campaign, in which consumers mailed a nickel to congressional representatives since that would cover the cost to establish the agency for each American. The forty-three thousand coins, however, only frustrated representatives who may have already supported the legislation.\textsuperscript{63} Amidst the deregulatory attitude of the late 1970s, public support for the agency greatly subsided. On February 8, 1978, the bill was defeated for good.

Throughout the nine-year consumerist push for an independent federal agency, this goal seemed closest to actualization during Carter’s Presidency. While the House of Representatives, the Senate, the President and the public each supported the proposal at large at various points in time, under Carter, all factors seemed to combine favorably to create an environment conducive to the passage of consumer protection legislation. Not only did the Democratic Party, the predominant advocate of consumer issues, hold a majority in Congress but the President also supported the formation of a federal body to

\textsuperscript{61} 121 CONG. RC. 35382
\textsuperscript{63} Patricia Cronin Marcello, \textit{Ralph Nader: A Biography} (Westport, CT: Greenwood Press, 2004), 88
advance consumer protection. Nonetheless, the bill failed definitively in 1978 and was not revived until the financial crisis of 2008 demonstrated the profound economic instability and devastation that uninformed buying practices could lead to. Why is it that a bill that had enough momentum to last through a nine-year battle failed and died out in the last quarter of the 20th century, a time that had been rife with increased consumer protection under the strong leadership of Ralph Nader? In order to answer this question, I will first examine the environment within which the CPA lobby emerged. I will then look at the tactics employed both by Nader and the business lobby to assess which side of the debate most effectively leveraged the environmental factors to accomplish its goal.

**From Keynes to Friedman: An Ideological Shift**

*The First Environmental Factor*

Ideological shifts have the ability to profoundly influence legislative outcomes. These shifts tend to occur following a crisis or the reevaluation of a failed public policy and as such, are tied to the opening of a policy window. An effective political entrepreneur or organized interest group capitalizes upon these new ideological norms, linking them to a particular policy alternative to garner support for his cause. The push for the formation of a consumer protection agency in the 1970s as well in 2008 came at key ideological turning points following significant financial unrest. These ideological shifts affected every level of society and powerfully influenced all other environmental factors in the case studies. They set the stage for potential reform.

The drive to create a consumer protection agency came at a critical juncture in the development of American policies and thinking about the proper relationship between states and markets. In the 1970s, economic policy began to shift from the state
interventionist policies that had characterized the middle of the century to neoliberal norms that questioned the ability of the state to act as a central planner. This paradigm shift can be seen in the move of academic and political consensus from a Keynesian perspective to a free market approach embodied by Milton Friedman, Ludwig von Mises, and Friedrick von Hayek. Although these scholars had expressed their views for quite some time, it was not until global events exposed weaknesses in Keynesian theory that a policy revolution occurred. As Milton Friedman expressed in his Nobel Lecture, “brute experience proved far more potent than the strongest of political or ideological preferences.” On a domestic level, the failure of Keynesianism to deal with high levels of inflation and unemployment led the economic community to move towards a more accommodating model. On an international level, the failure of ISI and the success of the East Asian Economic Miracle highlighted the virtues of a liberal trade theory to the international community.

Born out of the Great Depression, Keynesian theory stressed the importance of government spending in order to raise aggregate demand and lift the economy out of liquidity traps that caused recessions. Keynesian policy prescriptions, however, were ill equipped to address the stagflation—rising inflation without real economic growth—that characterized the 1960s and 1970s, since increased government spending would only exacerbate skyrocketing inflation. Throughout the 1960s, the Johnson Administration’s monetary expansion due to increased military expenditure as well as continued support for Great Society Programs increased the budget deficit and significantly raised inflation.

---

From 1967 to 1968, the budget deficit grew from $9.8 billion to $23 billion. Similarly inflation increased from 1.1% in 1962 to 4% in 1968. At the same time, US economic growth stagnated and unemployment grew from 4% in 1970 to over 10% by 1982.

In response to the stagflation that characterized the US economy, Milton Friedman developed his theory of the Natural Rate of Unemployment. Friedman claimed that the economy tended towards a long-term natural rate of unemployment. Government spending could only alter this rate temporarily because businesses and consumers anticipate its effects through rational expectations. Unemployment would rise back to previous levels, and consumption and investment would sink again, but only this time at higher price levels. As a result, increased government spending would only cause stagflation. Instead of Keynesian “fine-tuning” of the economy, Friedman proposed a deregulated market and floating exchange rate, combined with low inflation and lower taxes. Von Mises and Hayek mirrored these deregulatory sentiments in their work, which stressed the inability of states to allocate resources as well as the market, since the natural forces of demand and supply were the most efficient way of determining price.

The shift away from Keynesian ideology to the liberal free market theories espoused by Friedman, Mises and Hayek paralleled the international community’s movement away from protectionist policies toward a new neoliberal consensus. In the 1940s, many developing countries guided by the tenants of structuralism and dependency theory adopted Import Substitution Industrialization, substituting domestically produced goods for manufactured items they had previously imported. By the 1970s, however, ISI

---

65 Leeson, *The Eclipse of Keynesianism*, 81
66 Leeson, *The Eclipse of Keynesianism*, 81
67 Leeson, *The Eclipse of Keynesianism*, 81
68 These ideas were expressed famously in Von Mises’ *Socialism: An Economic and Sociological Analysis* (1992) or Hayek’s *The Road to Serfdom* (1944).
had generated significant economic imbalances within developing countries. First, ISI contributed to large budget deficits, since the government bore the initial fixed costs of creating a manufacturing sector. ISI also generated a persistent current accounts deficit, since countries needed to import the machines needed in factories from industrialized countries but then tended to produce exports that were not competitive in the international market. These imbalances were exacerbated by these governments’ tendency to maintain an overvalued exchange rate, which encouraged their citizens to import and caused the global demand for their exports to fall.\(^69\)

Three exogenous shocks in the 1970s—an increase in the price of oil, a reduction in the terms of trade and higher interest rates on foreign debt—exacerbated these structural problems and caused developing countries to borrow heavily on international capital markets.\(^70\) As a result, many countries, especially in Latin America, soon found themselves in a debt-trap—forced to borrow to pay ever more interest on their foreign debt—compelling them to turn to international lenders of last resort in order for aid.

The only countries to successfully employ ISI effectively were the East Asian Tigers—Hong Kong, Singapore, Taiwan and South Korea. The East Asian model of development coupled ISI with an export-oriented strategy. The government initially adopted protectionist policies, in order to grow infant industries that were likely to be profitable in the international market. When the industries had achieved sufficient economy of knowledge and scale, the Asian Tigers opened up their economy to foreign


\(^{70}\) Oatley, *International Political Economy*, Chapter 7
exports. The failure of ISI threw the state’s ability to act as a central planner into question, while the success of the East Asian Model reinforced previous liberal norms regarding the benefits of free trade. By the 1980s, the World Bank had come to promote, what John Williamson would later dub, “The Washington Consensus”, a set of neoliberal norms stressing open borders, floating exchange rates and deregulated markets.

The shift from a Keynesian perspective to a deregulatory stance, as espoused by scholars in The Chicago School and globally, would result in the formation of an unfavorable environment for the creation of an independent Consumer Protection Agency. This socio-ideological paradigm shift first influenced Presidential views and later permeated public sentiment, turning first the politicians and policy makers and then the public against the proposal for yet another governmental agency tasked with regulating the market. The shift in economic norms that occurred in the 1970s thus negatively affected the chances of the CPA enactment. It was, however, not the sole factor in this legislative outcome. Next, we must examine the Congressional composition as well as Presidential support for the legislation to understand how all these factors cohered in order to form an environment within which political entrepreneurs lobbied.

**Congressional Composition in the CPA Formation**

*Mayer’s First Environmental Factor*

While an ideological shift sets the stage for successful consumer legislation on a macro scale, a micro-level determinant of a bill’s success is the composition of the House

---

71 Oatley, *International Political Economy*, Chapter 7. See also Stephen Haggard “Pathways from the Periphery, Hong Kong and Singapore”. It should be noted that these regions followed a somewhat different path of development that more closely approximated a free market approach.

and Senate. Since the bill can only be enacted into law with a majority of both chambers, bicameral compositions can predetermine its viability. As Mayer notes, consumer protection generally has been a cause championed by the Democratic Party.\(^73\) From 1969 until 1979, the Democrats held a majority in the House and Senate. From this cursory analysis, it would seem that the stage was set for successful consumer legislation to be passed.

Democrats held a majority in both chambers of the 91\(^{st}\) Congress (1969-1971) with 57 members in the Senate and 243 members in the House of Representatives compared to the Republican’s 43 and 192 members respectively. In the 92\(^{nd}\) Congress (1971-1973), the Senate was composed of 54 Democrats, 44 Republicans, 1 Conservative and 1 Independent and the House of Representatives had 255 Democrats and 180 Republicans. The 93\(^{rd}\) Congress (1973-1975) was composed of 56 Democrats, 42 Republicans, 1 Conservative and the House of Representatives had 241 Democrats and 192 Republicans. The Senate in the 94\(^{th}\) Congress (1975-1977) was composed of 60 Democrats, 37 Republicans, 1 Independent and 1 Conservative while the House of Representatives had 291 Democrats and 144 Republicans. Finally the Senate of the 95\(^{th}\) Congress (1977-1979) was composed of 61 Democrats, 39 Republicans while the House of Representatives sported 292 Democrats and 143 Republicans.

<table>
<thead>
<tr>
<th></th>
<th>House Democrats</th>
<th>House Republicans</th>
<th>Senate Democrats</th>
<th>Senate Republicans</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969-1971</td>
<td>243</td>
<td>192</td>
<td>57</td>
<td>43</td>
</tr>
</tbody>
</table>

\(^73\) Mayer, *Guardians of the Marketplace*, 91
Mayer’s assumption that a Democratic majority is a favorable environmental factor for furthering consumer interests, however, depends upon the assumption that policy preferences within the party are homogenous. This assumption holds for adherents to the responsible party theory of government who neatly divide parties in clearly differentiated and internally cohesive platforms. However, the continual misalignment between this normative theory and the empirical reality has given rise to the weaker theory of coalitional party government. Coalitional party government examines the individual preferences of party members. This theory tends to assume that party members have distinct preferences across parties and homogenous preferences within it allowing for the elimination of gridlock. However, one does not have to assume that individuals have homogenous preferences within parties. Empirically, preferences within a party are often heterogeneous. In the case that some more extreme members have preferences that differ from the majority view of the party, a pivot point can be created and gridlock often occurs.

Throughout the consumerist lobby for a CPA in the 1970s, Southern Democrats functioned as a pivot point. From the 89th to the 95th Congress, when Civil Rights and

<table>
<thead>
<tr>
<th>Year</th>
<th>Votes</th>
<th>Opponents</th>
<th>FOR</th>
<th>NOL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1971-1973</td>
<td>255</td>
<td>180</td>
<td>54</td>
<td>44</td>
</tr>
<tr>
<td>1973-1975</td>
<td>241</td>
<td>192</td>
<td>56</td>
<td>42</td>
</tr>
<tr>
<td>1975-1977</td>
<td>291</td>
<td>144</td>
<td>60</td>
<td>37</td>
</tr>
<tr>
<td>1977-1979</td>
<td>292</td>
<td>143</td>
<td>61</td>
<td>39</td>
</tr>
</tbody>
</table>

75 Krehbiel, *Pivotal Politics*, 9
76 Krehbiel, *Pivotal Politics*, 8
Great Society Programs characterized the Democratic agenda, Southern Democrats became increasingly disloyal to the party. Southern Democratic preferences tended to more closely mirror Republican preferences more than those of their own party. In the case of consumer protection, Southern Democrats emulated a Republican abhorrence of government intervention in business and the economy. As a result, throughout the push for a CPA, Senator Erwin and Senator Allen mounted a successful filibuster through three Congresses blocking the successful enactment of consumer legislation.

*Presidential Support in CPA formation: Mayer’s Second Environmental Factor*

Although the passage of consumer legislation is contingent upon Congressional composition, this environmental factor alone cannot be decisive since proposals are also contingent upon executive approval. As such, the final key environmental determinant becomes Presidential support for the proposed legislation. The American system of governance is based upon checks and balances between the legislative and executive branch. Legislation is not only subject to a bicameral veto within both chambers of Congress but also can be checked by the executive through a presidential veto. Congress is able to override the Presidential veto with a 2/3 majority in both houses. This provision seeks to limit the power exercised by the executive. Nonetheless, the barriers to passing a bill are clearly much lower assuming presidential support.

Throughout the consumerist push for a CPA, 1969-1978, three presidents took office, each with varying proclivities regarding the issue of consumer protection. While Nixon, Ford and Carter all supported consumer protection on a basic level, structural and

---

ideological factors hindered the passage of legislation. From a structural perspective, the lack of progress on consumer legislation can be attributed to the divided government that characterized the presidencies of Nixon and Ford. Republican Presidents and Democratic Congresses or vice-versa tend to adopt opposing views on policy issues. However, a structural account cannot explain why under Carter, in a truly unified government, consumer legislation failed to pass. In order to arrive at a complete account of the consumer lobby for a CPA, one must combine a structural explanation with an ideological one. The paradigm shift that occurred in the 1970s from a Keynesian to free market perspective first influenced Republican Presidents by enhancing their proclivity to deregulated free market norms. Both Nixon and Ford framed their refusal to create an independent CPA in the terms of a deregulatory thesis. While this shift in sentiment may have been limited to the elite level in the early 1970s, by the end of the decade deregulatory sentiment had permeated the public realm. To the consumerists’ chagrin, by Carter’s Presidency the public no longer as strongly supported legislation to create an independent CPA. Without the added push from public opinion, Congressmen no longer felt incentivized to vote in favor of consumer legislation.

**Deregulation Under Nixon**

The deregulatory push for a free market began in a limited capacity under Richard Nixon. During his presidency, free market sentiment could be seen in a number of proposals. For example, S. 2842 sought to deregulate the railroad and trucking sector. This effort was expanded upon under Ford who passed the Railroad Revitalization and Regulatory Reform Act of 1976 and Carter who passed the Airline Deregulation Act.
These anti-monopolistic acts sought to reduce barriers to entry within the transportation industry and allow for competitive pricing, thereby widening consumer access. As the early 1970s only marked the beginning of a larger deregulatory trend, some of Nixon’s policies remained staunchly Keynesian, most notably the implementation of wage and price controls in 1971. Nonetheless, deregulatory sentiment informed Nixon’s consumer protection policies. While Nixon supported consumer protection as an abstract ideal, his reluctance to form an independent federal Consumer Protection Agency was guided by free market tenants.

Nixon’s devotion to consumer protection can be seen in his special message to Congress on Consumer Protection. In his address, Nixon expanded upon Kennedy’s “Buyer’s Bill of Rights”, asserting that buyers have the right to make intelligent and informed decisions between goods and services, the right to have health and safety standards ensured by the provider of those goods and services, and the right to express dissatisfaction with the quality of the purchased item. In order to see these rights met, Nixon proposed the creation of a new Office of Consumer Affairs in the executive branch “with new legislative standing, an expanded budget and greater responsibilities.” This office would appoint as a director the President Special Assistant for Consumer Affairs, who would establish consumer priorities, resolve conflicts among federal agencies regarding consumer issues, and research and recommend improvements to government programs that seek to advance consumer interest. Additionally, Nixon proposed the establishment of a new Consumer Division within the Justice Department, staffed with

---

79 Message 421 ibid.
economists and lawyers and headed by the U.S. Attorney General, to promote the consumer interest in judicial proceedings and government councils. ⁸⁰

Despite his commitment to consumer protection, Nixon rejected the unnecessary expansion of government, insisting that “effective representation of the consumer does not require the creation of a new Federal department or independent agency.” Rather than increase the size and power of the federal government, Nixon argued that the “appropriate arm of Government be given the tools to do an effective job.”⁸¹ When Congress continued to push for an independent consumer agency, Nixon preemptively struck by housing a consumer protection function within the executive branch. On February 24, 1971, after the first Consumer Financial Protection Act passed easily in the senate, Nixon issued executive order number 11583, which established the Office of Consumer Affairs within the executive office.⁸² This office would coordinate and review federal consumer protection policies, advise Federal agency on consumer policies, carry out investigations, and report to the President regarding the effect of federal programs upon consumers. The creation of the Office of Consumer Affairs can be seen as the Nixon Administration’s attempt to reaffirm its support for the consumer cause without ratifying the Congressional proposal for an independent agency, which ran contrary to its attempt to keep “big government” in check.

**Deregulation under Ford**

While Nixon’s presidential term had only marked the beginning of deregulation in the United States, during his Presidency, Gerald Ford and his advisors – including Alan

---

⁸⁰ Message 421 ibid.
⁸¹ Message 421 ibid.
Greenspan, then Chairman of the Board of economic advisors—cemented anti-Keynesian sentiment into a full-fledged regulatory reform program. This program was motivated both by economic and ideational factors. The mid-1970s were characterized by recession as well as inflation. Government spending, which expanded under Lyndon Johnson, had outpaced economic growth and the government had become dependent upon borrowing to sustain the economy. Milton Friedman’s prediction of the ineffectiveness of Keynesian interventionism seemed to have been proved true.

When Ford assumed the Presidency in 1974, unemployment was at an all time high and steadily rising. In August of 1974, unemployment stood at 5.4%, a 0.1% increase from the previous month. The economy was slowing, as demonstrated by the Dow Jones recorded a record loss, falling nearly 99 points in August. Furthermore, the U.S. trade deficit was at an all-time high of 1.1 billion dollars.⁸³ Although Democratic Congressmen pressured President Ford to apply Keynesian spending measures in order to stem unemployment, he refused to do so, claiming the federal spending would only increase the budget deficit, lead to higher inflation, and crowd out investment from the private sector thereby stifling real growth. Keynesian doctrine was ill suited to address the stagflation that characterized the 1970s. Instead, the Ford Administration sought to increase consumption and stimulate the economy through a tax cut paired with a spending cut.

Upon entering office, Ford promised to curtail “big government.”⁸⁴ His reasons for doing this were twofold. First, he felt that the growing federal bureaucracy increased

---

costs that were passed on to the consumer, ultimately leading to inflation. In one speech Ford estimated that administrative costs of the federal bureaucracy resulted in up to an additional $2,000 in taxes for each consumer.\(^{85}\) Second, Ford subscribed to free market ideology that had become popular in the 1970s, claiming that overregulation hindered competition and productivity necessary for a healthy society. In his memoirs, Ford reflected upon the difficulties caused by the red tape of overregulation. For example, one company had to fill out forty-five pounds of Federal Communications Commission paperwork in order to simply renew licenses for three television stations.\(^{86}\) Ford argued that smaller companies in particular were unequipped to deal with the regulatory bureaucracy that characterized the current government and found themselves driven out of business, decreasing competition, which is “key to productivity and innovation.”\(^{87}\) As such, Ford promised to continue to use his veto power “to stem the escalation of Federal programs and agencies.”\(^{88}\)

Congressional support for an independent consumer protection agency thus came at the exact moment when the President was attempting to reduce the size of the federal bureaucracy. In his letter to the Congressional Committee on Consumer Protection, Ford claimed that he “recognized the legitimate public and Congressional concerns be more responsive to the interests of consumers.”\(^{89}\) However, he believed that the government should improve consumer protection through regulatory reform. Ford did not support the

---


\(^{86}\) Yanek Mieczkowski, Gerald Ford and the Challenges of the 1970s (Lexington, Kentucky: University Press of Kentucky, April 2005)

\(^{87}\) Gerald Ford, “Remarks at the White House.”

\(^{88}\) Gerald Ford, “Remarks at the White House.”

creation of yet another independent agency, which would raise the administrative costs of
the government at the expense of the private sector. For, it was his firm “conviction that
the best way to protect the consumer is to improve the existing institutions of
Government, not to add more Government.” Accordingly, he asked the Congress
postpone further action on the creation of a Consumer Agency, marking the end of a
consumerist lobby throughout his presidency.

**Deregulation Under Carter**

Unlike Nixon or Ford, President Carter supported the establishment of an
independent body that would advocate for consumer interests. In a message to Congress
on April 6, 1977, Carter made clear that he supported the creation of an Agency for
Consumer Advocacy. In line with Nader’s original proposal, the agency would not
perform a regulatory role but rather it would “improve the way rules, regulations and
decisions are made and carried out.” Unlike Ford, Carter claimed that the establishment
of this agency would in fact help curb inflation since the ACA could supervise
government actions which raise costs for consumers. Upon the enactment of the ACA, all
consumer protection functions that were currently within the executive branch would be
grouped within this new agency. The ACA would have the power to represent the
consumer in proceedings before federal agencies and would be able to gather information
independently.

---

90 Gerald Ford, “Letter to Congressional Committee Chairmen on Consumer Protection,” April 17, 1975
While presidential support had shifted in favor of the establishment of a consumer agency, public sentiment had shifted resoundingly against it. Public sentiment had turned against government regulation of the economy and moved in favor of a free market economy, as can be seen from the Harris Survey and the Shell Oil Survey below. Additionally public sentiment had shifted regarding the level of government regulation of consumer products. As one can see from Gallup’s survey, in 1970 a majority of individuals surveyed wanted more regulation. By 1977, however, the number of individuals surveyed favoring more government regulation of consumer products had fallen to 38%. The shift in support for a consumer protection agency was less drastic. However, couched in the general deregulatory sentiment of the late 1970s, it had an impact. As can be seen from a 1977 Roper survey, the percent of individuals surveyed that thought it was a good idea to institute a federal Consumer Protection Agency fell from 55% in 1974 to 50% in 1977. Congress no longer felt pressured by public sentiment to establish a Consumer Protection Agency. In June of 1977, Senate Majority Leader Robert Byrd announced that the bill would not be called for debate in the Senate. It also seemed that the bill would not pass in the House.\footnote{Montan, “The Agency for Consumer Advocacy,” 1071} Marjorie Boyd in Washington Monthly cited the public’s lack of interest in consumer legislation as key to Congressmen’s shift away from supporting a Consumer Protection Agency.\footnote{Marcello, Ralph Nader: A Biography, 88}
Harris Survey, Feb, 1978

Do you agree with the statement that a consumer protection agency will prevent businesses from doing their job by increasing the level of red tape?

<table>
<thead>
<tr>
<th>Agree</th>
<th>48%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disagree</td>
<td>34%</td>
</tr>
<tr>
<td>Not Sure</td>
<td>18%</td>
</tr>
</tbody>
</table>


Which general position would you say you lean toward--the free competition or the government watchdog role idea?

<table>
<thead>
<tr>
<th>Free Competition Idea</th>
<th>45%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Watch Dog Role</td>
<td>22%</td>
</tr>
<tr>
<td>Combination of Both</td>
<td>28%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>5%</td>
</tr>
</tbody>
</table>

GALLUP

In your opinion, should there be more government regulation of consumer products and how they are sold, or less regulation than there is now?

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>More Regulation</td>
<td>55%</td>
<td>38%</td>
<td>43%</td>
</tr>
<tr>
<td>Less Regulation</td>
<td>14%</td>
<td>30%</td>
<td>37%</td>
</tr>
<tr>
<td>Same as now</td>
<td>17%</td>
<td>17%</td>
<td>5%</td>
</tr>
<tr>
<td>Don’t Know</td>
<td>14%</td>
<td>14%</td>
<td>12%</td>
</tr>
</tbody>
</table>

95 I have taken the key question from each survey. For the full unedited question refer to Appendix B
What do you think—that all things considered, the creation of a Federal Consumer Protection Agency is a good idea or not a good idea?

<table>
<thead>
<tr>
<th></th>
<th>May 1974</th>
<th>May 1975</th>
<th>June 1977</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good idea</td>
<td>55%</td>
<td>48%</td>
<td>50%</td>
</tr>
<tr>
<td>Not a good idea</td>
<td>29%</td>
<td>31%</td>
<td>29%</td>
</tr>
<tr>
<td>Good in some ways, not others</td>
<td>10%</td>
<td>11%</td>
<td>13%</td>
</tr>
<tr>
<td>Don’t Know</td>
<td>6%</td>
<td>10%</td>
<td>8%</td>
</tr>
</tbody>
</table>

Setting the Stage:
Summary of Environmental Factors in the 1969-1978 CPA Formation

The early 1970s marked an era of ideological change, a shift in thought among elites who set the public policy agenda and the public alike. The 1960s had been a decade committed to advancing consumer interest on a federal level. Consumer scholars often date the beginning of the third era of the consumer movement to John F. Kennedy’s Consumer Message to the Congress in 1962 in which he formulated his famous Consumer Bill of Rights. Consumer interests were institutionalized on a federal level under Lyndon Johnson who created a White House post of Special Assistant for Consumer Affairs. In 1968, Johnson called for the passage of numerous consumer bills such as the truth in lending bill, new legislation regarding the inspection of poultry, fraudulent land sales and hazardous appliance radiation. Furthermore, the 1960s were the decade of Nader’s “Raiders” who created a new lobbying approach to incite public sentiment and pressure Congress through the investigation of key industries and

publishing of their findings in the media. To some extent consumerism carried over into the early 1970s. In 1972, Congress created the Consumer Product Safety Commission, an independent agency that monitors the sale and manufacture of thousands of products.\textsuperscript{97} The shift in economic thought from Keynes to Friedman that occurred in the 1970s, however, hindered the possibility of meaningful consumer protection via government intervention in the market.

This ideological shift directly influenced two of Mayer’s environmental determinants of success—presidential and public support. In the case of the CPA formation in the 1970s, the ideological shift that shaped the policy agenda seemed to occur first on an elite level amongst academics and bureaucrats and slowly trickled down to the public level by the Carter administration. The decisive factor for consumer legislation in the early years was Presidential support, which was resoundingly against the proposition under Nixon and Ford. Once these new economic norms had permeated the public at large, they proved a decisive blow to the consumer lobby’s goal of establishing an independent agency. Public support remained strong in the early 1970s during the Nixon Administration and began to turn during the Ford Administration, as can be seen from the polling data. The lack of public support for a CPA under Carter finally resulted in the death of the legislation.

A second environmental variable crucial in defining the environment was the heterogeneous preferences in the Democratic Party. Southern Democrats divided the party that traditionally supported consumer issues. This undermined the Democratic majority in the Congress and stalled consumer legislation in both the House and the Senate.

\textsuperscript{97} Brobeck et al., “U.S. Consumer Movement: History and Dynamics,” 584-602
**Tactical Factors in CPA Formation**

While environmental factors set the stage for possible reform, the lobbying efforts within this larger context define the success of legislative proposals. Environmental factors can open what John Kingdon dubs a policy window, a critical moment in which policy entrepreneurs are able to couple their agenda with a particular issue due to the appearance of problems, changes in the national mood, administrative turnover or interest group pressure. However, the strategy employed by interest groups and political entrepreneurs dictates whether or not this group will be successful in achieving their goal.

As laid out in the beginning of this section, Mayer identifies three key tactical determinants of success: the framing of legislative proposals, capitalizing on key events that could garner public support through the media, turning opponent’s assets into liabilities, and gaining allies through compromise.

Unfortunately for the consumerists, the business lobby proved to be decidedly more effective in its tactics than the consumer lobby in the 1970s. The rise of deregulatory sentiment in the 1970s created a framing opportunity for the business and anti-consumerist lobby. Through new rhetorical devices the business lobby was able to successfully turn consumerists’ assets into liabilities, depicting federal consumer advocates as elitist. The business lobby then disseminated this new view of the consumer proposals throughout newspapers in attempt to turn public sentiment against the legislative proposal. Conversely, the consumer lobby, led by the political entrepreneur Ralph Nader, strove to achieve an idealistic goal and refused to compromise, often isolating members of Congress and former allies in the process.

---


99 Mayer, *Guardians of the Marketplace*, 92
A Tactical Manipulation of Deregulatory Sentiment: The rise of Neoconservative Rhetoric

The rise of deregulatory sentiment in the 1970s created a framing opportunity for anti-CPA lobbyists. Public opinion influences Congressional voting behavior, particularly in election years. Thus as Mayer noted, a bill’s success partially depends upon framing proposals in a manner that appeals to the public and politicians. The consumer movement had always been based upon giving voice to the average person in the face of large corporate interests. But in the 1970s, anti-CPA forces channeled the deregulatory attitude of the decade in order to depict pro-CPA lobbyists as elitists pushing for an overly powerful, inefficient bureaucratic agency. This new neoconservative framing, supported by the paradigm shift from Keynesian to free market norms, proved a decisive blow to the Consumer Protection Agency in the Ford and Carter administration.

Throughout the 1960s and early 1970s, polls consistently indicated strong support for consumer protection and an independent federal agency. Nader was viewed as a national hero as was evident in polls from that era. Established consumer protection agencies grew in powers, with the Consumer Union doubling in size between 1966 and

---

100 Glickman, Buying Power, 278
101 Glickman, Buying Power, 278; Polls on public attitude toward were not available from the 1960s. However, 55 polls on the subject are available on iPoll throughout the 1970s. These tend to show overwhelming public support for Nader in the early 1970s and waning support around 1975. For Example: A Harris Survey from February 1971 asks do you feel in his attacks on American industry Ralph Nader has done more good than harm or more harm than good? 53% answered more good than harm while 9% answered more harm than good and 38% were not sure. Conversely, a Harris Survey from May 1975 states "Nader was effective at first, but has recently spread himself so thing that he has made charges against various industries he cannot back up" 32% of those polled agreed, 23% disagreed and 45% were unsure. This is small sample is representative of a larger trend.
By the late 1970s, however, public sentiment had become increasingly opposed to consumer issues. In 1978, Marjorie Boyd reported in the *Washington Monthly*:

> “Many congressmen who previously supported the idea of a Consumer Protection Agency were surprised earlier this year to find opposition to the bill growing among their constituents. Congressmen are increasingly hearing from advisers and friends who serve as political barometers in their districts that people are not so keen on consumer legislation as they once were.”

How is it that in a few years, public sentiment had shifted so dramatically from a pro to anti consumer stance?

In his work, *Buying Power: A History of Consumer Activism in America*, Lawrence Glickman claims that this shift in public opinion was due to the effective use of neoconservative rhetoric created by the business lobby. While I agree that this neoconservative rhetoric was a tactic engineered by the business lobby to defeat the CPA, I would like to expand upon Mayer’s thesis and claim that the emergence of this rhetoric was a function of the ideological changes occurring within that decade. New conservative rhetoric drew on the lessons of deregulatory norms that were coming into favor in the mid to late 1970s. Turning away from Keynesian government intervention, it mirrored the neoliberal norms of an efficient free market within which rational individuals, acting in their own self-interest, advance the market towards a social equilibrium.

When analyzing the discourse employed by anti-CPA lobbyists, we can see hints of an efficient market hypothesis emerging. An efficient market hypothesis claims that government regulation through additional bureaucratic agencies will inhibit a well-

---

102 Glickman, *Buying Power*, 278
103 Marcello, *Ralph Nader: A Biography*, 88
functioning economy. A principle complaint leveled against the establishment of the CPA was that it would increase the “bureaucracy.” The term bureaucracy became synonymous with “big government.” Similarly, critics claimed that the CPA would result in “red tape and lawyers” at the expense of smaller businesses which would be ill suited to file the additional paperwork.  

In their campaign against the CPA, the American Enterprise Institute claimed that the agency would “harass business in its unreasonable single-minded pursuit of the consumer interest” and that “exuberant consumerists would terrorize American industry.” In the neoconservative rhetoric of the 1970s, thus, the CPA came to represent government overreach and interference in the market at the expense of a well-functioning economy.

The rise of neoconservative rhetoric marks the anti-CPA lobby’s successful implementation of two tactics: capitalizing on a key event and framing of its proposal in terms that could be sold to the public through the media. First and foremost, the anti-CPA lobby capitalized on the shift in deregulatory sentiment that took hold in the 1970s. It then used this ideological shift to reframe the CPA debate in a way that would garner public support for its side. Having rebranded the CPA’s vision, the anti-CPA lobby then disseminated these views nationally via the media. The anti-CPA lobby created a narrative that was then picked up by op-eds, in the Wall Street Journal, the Nation’s Business, the Dallas Morningstar News, the New York Times and the Los Angeles Times among others.

The anti-CPA lobby’s last successful tactic was its rebranding of the consumer message to turn it into a liability. Anti-CPA lobbyist portrayed pro-CPA lobbyists’ bid to

---

104 Glickman, Buying Power, 290
105 Glickman, Buying Power, 292
106 List of newspapers compiled from references in Glickman, Buying Power, 288-232
represent consumer interest on a federal level as an assumption of incompetence of the average citizen. Ronald Reagan argued that the CPA was “promoting the notion that people are too dumb to buy a box of corn flakes without being cheated. The professional consumerists are, in reality, elitists who think they know better than you do what’s good for you.”

Using the framing opportunity presented by the environmental shift to deregulatory sentiment, the anti-CPA lobby thus effectively turned their enemy’s strength into a liability. The CPA had previously portrayed their quest to represent the consumer on a federal level as an attempt to stand up for the “little guy”, an attempt to give a voice to those that otherwise would not be heard. Their goal was to empower a diverse and relatively powerless interest group through representation in government. The business lobby took this rallying call of the CPA lobby, its strength in terms of gaining public support, and reframed it as a power ploy by left-wing elites.

**Tactical Errors in Political Entrepreneurship: The Case of Ralph Nader**

Throughout the 1960s and 1970s, Ralph Nader spearheaded the consumerist movement, aggressively advocating for consumer interests through investigatory reports, a strong media presence, and lectures, as well as lobbying on a federal level. Nader had always held true to his beliefs, refusing to yield to authority or compromise on what he felt were abhorrent corporate and governmental injustices. The son of Lebanese immigrants, he had always been encouraged to stay strong to his views and not accept the status quo. In an anecdote Nader was fond of recounting, his father once asked him after returning from school, “Well, Ralph, what did you learn in school today? Did you learn

107 Glickman, *Buying Power*, 292
how to believe, or did you learn how to think?”¹⁰⁸ This was a philosophy that Nader would carry with him for the rest of his life, refusing to toe the line or defer to authority. Nader’s unyielding persistence and refusal to compromise on his ideals contributed to the passage of an abundance of consumer protection measures in the 1960s, such as the National Auto and highway Traffic Safety Act, the Clean Water Act and Safe Drinking Water Act as well as the establishment of a wealth of federal regulatory agencies such as the Occupational Safety and Health Administration, the Environmental Protection Agency and the Consumer Product Safety Administration. In the 1970s, however, the same tactics that had been effective in the previous decade began to be seen as “tired” or “overly-aggressive.” In particular, Nader’s blatant public humiliation of former employees and previous allies alienated him from colleagues in the executive branch.¹⁰⁹

In part, the particularly aggressive tactics that characterized his strategy in the 1970s could be attributed to Nader’s feeling of betrayal by the Carter administration. After having met only once with either of the previous two Republic Presidents, Nader was extremely optimistic about what a Democratic President and Congress could accomplish regarding consumer protection.¹¹⁰ Nader had met with Carter before the election at his home in Georgia and had felt that Carter had committed strongly to the consumer agenda. Upon entering office, however, Carter exhibited more moderate tendencies, attempting to placate both Republicans and Democrats. While Carter appointed a number of Naderites to his cabinet, Nader complained that most of the

¹¹⁰ Marcello, Ralph Nader: A Biography, 183
appointments were not at the senior level. Furthermore, Nader questioned the speed at which Carter was proposing legislation, stressing that there was only a “three month grace period” to get things done.\textsuperscript{111}

Nader’s frustration with President Carter was expressed in his appearance on SNL on January 15, 1977. In one skit, Nader played himself and Aykroyd played President Carter, dressed in full confederate regalia and with a deep Southern drawl. The contrast was supposed to be drawn between the quick-witted Nader who was questioning the President on the consumer agenda while the President came across as a country bumpkin.\textsuperscript{112} This frustration only aggravated Nader’s already aggressive tendencies and may have played a role in his subsequent defeats.

The first sign that Nader “didn’t play well with others”\textsuperscript{113} came about when he publically criticized Joan Claybrook, a former employee of his who had been appointed to the National Highway Traffic Safety Administration part of the Department of Transportation. On November 30, 1977, Nader sent an eleven page long letter to the media criticizing not only Claybrook’s stance on airbags but her personal “nerve” as well. Nader did not even send a copy to Claybrook in advance, a failure which she and others viewed as a lack of common courtesy. For many Naderites, this marked the first time that they witnessed the more cutting side of Nader. Remarking on the incident later Crawford remarked that the actions, “[were] also personal. A lot of people have said, well you shouldn’t attack your former staff. They thought it was really lousy for [Nader] to do that.”\textsuperscript{114} Nader additionally publically called Harrison Well in the OMB a “box shuffler.”

\begin{flushleft}
\textsuperscript{111} Martin, \textit{Nader: Crusader, Spoiler, Icon}, 184
\textsuperscript{112} Martin, \textit{Nader: Crusader, Spoiler, Icon}, 184
\textsuperscript{113} Martin, \textit{Nader: Crusader, Spoiler, Icon}, 188
\textsuperscript{114} Martin, \textit{Nader: Crusader, Spoiler, Icon}, 187
\end{flushleft}
In publically criticizing his former friends and allies, Nader began to inadvertently destroy his chance at meaningful reform. The Carter Administration marked the first time that there had been a Democratic President, Democratic Congress, and a substantial amount of Naderites in the President’s Cabinet. A window of opportunity had presented itself but whether due to his idealism or egoism, Nader decided to employ tactics that eroded support for the consumer cause in the White House.

Nader’s idealism and unwillingness to compromise also hindered the passage of the Consumer Protection Agency Act, which in Nader’s words marked “the most important piece of consumer legislation to ever come before Congress.”115 Nader first exhibited his unwillingness to compromise in 1970, when the bill passed through the Senate 74-4 but with what Nader viewed as “intolerable erosions”. Nader had worked closely with Senator Ribicoff to introduce the bill. Upon the bill’s passage, however, Nader vehemently chastised Ribicoff in the newspapers for diluting the purity of the concept.116 This condemnation of a former ally led to the bill failing to procure Senatorial cooperation, and the bill died in committee soon after this incident.

Throughout the 1970s, the bill had several more opportunities to pass through Congress with specific amendments, such as limiting the CPA to cases that did not involve fines or penalties or excising interrogatory powers. Nader, however, refused to water down the bill for the sake of passing the legislation. During the Carter Administration, Nader began to campaign for the CPA with renewed vigor. In line with his offensive tactics characteristic of this decade, he went to the hometown of every senator and representative that did not support the legislation and derided them in the

---

115 Marcello, *Ralph Nader: A Biography*, 189
116 For a detailed description of this see Leighton, “The Consumer Protection Agency Bill—Ghosts of Consumerists Past, President and Future,” (1973)
local newspapers and media. For example, Nader called Patricia Schroeder (D-Col), a representative who was not satisfied with certain parts of the bill, a “mushy liberal” in the Denver Post.  

The bill lost definitively in 1978 by a vote of 227 to 189. No fewer than 101 full democrats voted against the bill. Among them, 49 freshman Dems, 25 voted for and 24 against. Although Democrats historically had voted for consumer protection legislation, Nader’s tactics had alienated many supporters. One democrat, upon casting his “nay”, allegedly whispered “this one’s for you, Ralph”. Similarly in an interview with the Washington Post, Tip O’Neil (D-MA) stated, “I know about 8 guys who would have voted with us if it were not for Nader.”

Ralph Nader’s strong commitment to the consumer cause thus manifested itself in an unsuccessful tactic. According to Mayer, one critical determinant to passing consumer legislation is willingness to compromise. While Nader’s strong commitment was something that many had admired in the past, in the 1970s his unwillingness to temper his views and understand that governmental employees had multiple constraints acting upon them resulted in “tactics [that] began to grate on nerves.” By publically chastising Congressmen and bureaucrats, Nader turned friends into foes and lost public support. He was no longer an effective political entrepreneur championing the consumer cause.

Tying it all together:
Environmental and Tactical determinants of the CPA’s legislative failure

117 Martin, Nader: Crusader, Spoiler, Icon, 191
118 Martin, Nader: Crusader, Spoiler, Icon, 191
119 Martin, Nader: Crusader, Spoiler, Icon, 191
120 Martin, Nader: Crusader, Spoiler, Icon, 192
121 Marcello, Ralph Nader: A Biography, 89
From 1969-1978, environmental and tactical factors combined to create a moment that was not conducive to the passage of consumer legislation. While a cursory glance at the case would seem to suggest that all the key environmental factors were in line for successful consumer reform—a Democratic Congress, Presidents who were supportive of consumer protection, and mounting public opinion that had been in favor of consumer protection throughout the 1960s—a closer examination of these factors yields different results.

First, the broader ideological shift from Keynes to Friedman at the turn of the 1970s created an opportunity for the anti-consumerist lobby to couple their agenda of maintaining the status quo with deregulatory norms that were increasingly coming into fashion. This sentiment initially influenced the decisions of public policy elites and eventually permeated public opinion at large. While Republican Presidents voiced their support for the consumer in public speeches, they were equally influenced by material economic conditions and ideological norms that made them hesitant to expand the size of the federal bureaucracy. As exemplified by Ford, budgetary qualms were couched in ideological norms. His justification for curbing the size of the federal bureaucracy was based upon real fiscal constraints and also justified via the language of deregulatory sentiment. By the Carter’s term in office, this deregulatory sentiment had influenced public opinion and ended the chance of successful consumer legislation that sought to create an independent agency.

Deregulatory sentiment additionally influenced Southern Democratic Senators creating a structural pivot point within a Democratically-dominated Congress. Senator Ervin justified his opposition to an independent CPA in deregulatory terms, stating that
he “would say that if a bureaucracy is not functioning in the public interests, as it is ordered to do, the remedy is not piling another bureaucracy on top of it.”122 Thus, although the Democrats held a majority in Congress from 1969-1978, the ideological shift created an opportunity for Southern Democrats to deviate from a homogenous party line in favor of consumer interests. The Democratic filibuster that developed in the Senate was pivotal in creating gridlock under Republican Presidents.

While it is clear that environmental factors did not favor the passage of consumer legislation, the question still remains: would it have been possible if consumer political entrepreneurs had employed different tactics? The opening of a policy window does not predetermine the type of legislation that emerges. Political entrepreneurs must successfully couple their issues with environmental factors, such as changes in national mood, in order to create policy changes.

In the case of the CPA, the business lobby clearly capitalized upon the opening of a policy window, creating a new neoconservative rhetoric that they disseminated through the media in order to reinforce and to some extent recreate the national mood in favor of deregulation. The consumer lobby did not respond as strongly. They still framed their goal in terms of representing the average citizen at a federal level. They did not adjust to national mood and as such the business lobby’s representation of consumerists as elitists became the favored compelling narrative.

An additional tactical flaw within the consumer lobby was Nader’s idealism. As a political entrepreneur that shaped the movement, Nader was crucial to the bill’s success or failure. His unwillingness to compromise delayed the creation of a Consumer Protection Agency until the moment for successful consumer legislation had passed. In

122 118 Congressional Record 32405 (1972)
1969, Rosenthal’s original proposal was in line with President Nixon’s thinking, backed by public support, and as such had a good chance of passing. Nixon’s commitment to an independent structure, however, prolonged the debate surrounding the CPA for nearly a decade until public support for the agency had subsided. His unwillingness to compromise made him miss the moment in which he could have improved the state of consumers, even if it wasn’t in the manner in which he hoped to do so. The failure of the CPA thus was due to a combination of environmental and tactical factors. Unfavorable environmental factors set the stage for the failure of consumerists, while the ineffective tactics and leadership cemented its fate.

**Case Study II: The Formation of the Consumer Financial Protection Bureau**

A nearly 30 year hiatus of consumer protection legislation followed Nader’s failed attempt to establish a Consumer Protection Agency in 1970. In line with the deregulatory norms that defined the last quarter of the 20th century, public policy officials and politicians tended to adopt the position that advancing free market norms sufficiently protected consumers. It was widely believed that the creation of competition within key markets heavily accessed by consumers would lower prices, increase transparency within the industry, and push producers to create higher quality products. Furthermore, policy makers tended to believe that consumer interest was already adequately protected through established agencies such as the Consumer Union. Additional regulation would be either superfluous or even counterproductive.
The 96th through 110th Congress did pass legislation that would indirectly benefit consumers through stimulating the economy. However, the federal legislation passed during this time period should not be considered typical consumer protection legislation, since it was not designed to protect consumers against a concentrated counter-interest.

It is important to note that I have restricted my study to the federal level. A different story emerged on the state level, as consumer legislation continued to pass under health and safety concerns. The most prominent example is anti-smoking legislation that has been implemented with increasing vigor all across the nation since the 1990s. In other words, while the political and ideological climate blocked action on the federal level from the late 1970s to the early 2000s, different consumer groups continued to pursue their interests through the courts on a state level.

To be fair, throughout this thirty year period, experience seemed to prove federal policy makers right. No event questioned the policy makers’ assessment that the current institutional structure coupled with an active deregulation of the market would adequately protect the consumer. While there were recessions in the early 1980s, the immediate post-Cold war period, and after 2001, economic growth in the U.S. was maintained at a relatively high level throughout the period, outstripping that of most other advanced industrial economies. Unemployment remained low, as did inflation.

Some may wonder why when all of Mayer’s environmental determinants were present—such as during part of the Clinton Presidency—consumer protection

---

123 For example: North American Free Trade Agreement Implementation Act in the 103rd Congress, Small Business Job Protection Act of 1996 in the 104th Congress, Taxpayer Relief Act of 1997 in the 105th Congress, Economic Growth and Tax Relief Act or the Small Business Liability Relief and Brownfield Revitalization Act or the Job Creation and Worker Assistance Act in the 107th Congress, or the Fair Minimum Wage Act in the 110th Congress
legislation failed to emerge. Since a policy window did not open due to a lack of
galvanizing event, consumer protection did not appear on the public policy agenda during
these intermediary years. The financial crisis of 2008 and the subsequent Great
Recession, however, shook the assumption that consumers were adequately protected to
its core. Consumer protection legislation once again moved to the forefront of the public
policy agenda.

*Legislative History of Title X*

The notion of a Consumer Protection Bureau was first conceived in President
Obama’s “White Papers", a series of suggested financial reform following the 2008
crisis. A version of the bill H.R. 3126 was amended and reported to the House by the
Committee on Financial Services and by the Committee on Energy and Commerce. H.R.
3126 was later logrolled with nine other bills and passed by the House under Dodd-Frank
Wall Street Reform and Consumer Protection Act (H.R. 4173). A similar but separate
measure on consumer protection S. 3127 was amended and reported by the Senate
Committee on Banking, Housing and Urban Affairs and passed under the Senate’s
version of the Dodd-Frank bill. For procedural purposes the Senate did not change the
House’s bill number. Rather it inserted its amended text into H.R. 4173 and passed the
measure. A conference committee reviewed and passed the bill, which was signed into
public law 111-203 by President Obama on July 21, 2010.125

On July 8, 2009, Representative Barney Frank (D-MA) introduced “The
Consumer Financial Protection Agency Act”, H.R. 3126, to the House. The bill was co-

---

125 Baird Webel, “The Dodd-Frank Wall Street Reform and Consumer Protection Act: Issues and
Summary,” *Congressional Research Service*, July 29, 2010
sponsored by 18 Democrats: Gary Ackerman (NY-5), Michael Capuano (MA-8), Judy Chu (CA-32), Danny Davis (IL-17), Keith Ellison (MN-5), Alan Grayson (FL-8), Al Green (TX-9), Luis Gutierrez (IL-4), Jesse Jackson (IL-2), Sheila Jackson-Lee (TX-18), Henry Johnson (GA-4), Carolyn Maloney (NY-14), Bradley Miller (NC-13), Brad Sherman (CA-27), Jackie Speier (CA-12), Louise Slaughter (NY-28), Maxine Waters (CA-35), and Melvin Watt (NC-12).\(^{126}\) The Act was referred to the House Committee on Financial Services and the House Committee on Energy and Commerce. On October 22, 2009 the House Committee on Financial Services considered H.R. 3126 and ordered reported the bill, amended, by a recorded vote of 39 yeas to 29 nays. On October 29, 2009, the Committee on Energy and Commerce met to consider the bill. After further amending the bill, they reported it to the House by a recorded vote of 33 yeas to 19 nays. H.R. 3126 was one of nine bills that were reported to the House and consolidated into the Dodd-Frank Wall Street Reform and Consumer Protection Act. Dodd-Frank was passed through the House on December 11, 2009.\(^{127}\)

On March 20, 2010, Senator Chris Dodd published his version of a massive draft legislation, “Restoring American Financial Stability Act of 2009”, S. 3217. The section of the act that delineates the plan for consumer protection is Title X, the “Consumer Financial Protection Agency Act of 2010.” It is similar to HR 3126 as approved by the House Financial Services Committee but has several key differences.


H.R. 4173 Title VI established the Consumer Financial Protection Agency as a freestanding regulatory agency. In the short term, the agency would be headed by a presidentially appointed and senatorially confirmed director. Three and a half years after the bill’s enactment, a five-member commission would replace the director. The CFPA would primarily examine banks and credit unions with over 10 billion in assets, but the agency could regulate institutions below this threshold. In terms of funding, ten percent of the Federal Reserve System’s total expenses would be transferred to the CFPA.  

The senatorial version placed the Consumer Financial Protection Bureau within the Federal Reserve. While the Federal Reserve Board was allowed to “delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board for compliance with the Federal consumer financial laws”129, it did not have the authority to restrict regulation passed by the CFPB. Additionally, S. 3217 eliminated the eventual transfer of power from a direction to a board. To check the power of the Bureau, the Financial Stability Oversight Council would have the ability to stay a regulation prescribed by the Bureau if the regulation “would put the safety and soundness of the US banking system or the stability of the financial system of the US at risk.”130 Furthermore the Senate’s bill limited the Bureau’s ability to supervise non-depository institutions and institutions with under 10 billion in assets.

On May 19, 2010, the Senate Committee on Banking, Housing and Urban Affairs amended Title X of 3217 and reported it to the Senate. On May 20, 2010, the Senate passed H.R. 4173 after substituting the text of the RAFSA as amended into the bill by a

---

129 Carpenter and Jickling, “Financial Regulatory Reform”, 9
130 Carpenter and Jickling, “Financial Regulatory Reform”, 14
recorded vote of 59 yeas to 39 nays. The House accepted changes to H.R. 4173 on June 30, 2010 as did the Senate on July 15, 2010. On July 21st, 2010, President Obama signed the bill into law P.L. 111-203.131

**The Resurgence of Keynesianism Post 2008**

The 2007-2008 financial crisis devastated the global economy, calling into question the deregulatory norms that had dominated academic and Congressional thought for the past thirty years. The crisis and the Great Recession that followed left 26 million Americans unemployed or underemployed, caused 4 million families to lose their home to foreclosure with another 4.5 million in the foreclosure process, depleted 11 trillion dollars in household wealth, and hit small and large businesses alike.132 The massive devastation caused by the crisis once again opened a policy window. This time, however, national mood shifted in manner that proved favorable to the consumer movement.

While scholars disagree on the factors that led to the financial crisis, the Financial Crisis Inquiry Report cites negligible regulation, low interest rates, the availability of credit, and toxic mortgages that were packaged and repackaged into increasing complex securities as the key factors that initiated the crisis in the fall of 2008.133 One key factor that began in the 1970s and led up to the financial crisis was the growth of the shadow banking sector—investment banks as well as non-financial institutions that were not subject to regulation under the system established following the Great Depression. The

---

131 Baird Webel, “The Dodd-Frank Wall Street Reform and Consumer Protection Act: Issues and Summary”, 1
growth of this sector when paired with federal regulators’ belief that emergent dual
system would police itself proved devastating.

In 1975, investment banks such as Merrill Lynch took advantage of the Glass-
Steagall Act’s Regulation Q, which set interest rate limits for commercial banks and
thrifts, and created money market mutual funds, pools of safe assets that individuals
could invest in to gain a higher return. Although these pools were not guaranteed by
federal deposits, the high return proved attractive to investors who flocked to the new
investment opportunity.\textsuperscript{134} Mutual funds principally invested in commercial paper and the
repo market, short-term debt that theoretically was easy to turnover. The shadow
banking system challenged traditional banking system, attracting investors to higher
yields. Commercial banks and thrifts began to pressure Congress to deregulate the
financial sector, arguing that the Glass-Steagall Act was making them uncompetitive and
preventing economic growth.\textsuperscript{135}

The lobbying of the traditional banking sector paired with the deregulatory
ideology of the time proved effective. In 1980, the Depository Institutions Deregulation
and Monetary Control Act eliminated the interest rate caps that depository institutions
could offer to investors.\textsuperscript{136} In 1982, the Garn-St. Germain Act expanded the types of
loans that thrifts could offer, and in 1983 and 1994 the Office of the Comptroller of the
Currency (OCC) expanded the range of derivatives that banks could deal.\textsuperscript{137} While the
saving and loans crisis of the 1980s and 1990s resulted in some stricter thrift regulation,
the overall trend toward greater deregulation continued. In 1991, the Treasury

\textsuperscript{134} The Financial Inquiry Commission, “The Financial Crisis Inquiry Report,” 30
\textsuperscript{135} The Financial Inquiry Commission, “The Financial Crisis Inquiry Report,” 32
\textsuperscript{136} The Financial Inquiry Commission, “The Financial Crisis Inquiry Report,” 34
Department called for the repeal of the Glass-Steagall Act, which was accomplished in 1999 through the Gramm-Leach-Bliley Act.\textsuperscript{138}

This deregulatory trend was partially a product of the free market ideology advanced by Alan Greenspan and others, who believed that financial institutions would not violate the principle of self-preservation and thus would implement effective risk management. In 1997, Greenspan appealed to Congress to “remove outdated restrictions that serve no useful purpose that decrease economic efficiency and limit choices and options for the consumer of financial services.”\textsuperscript{139} The result of the financial lobby as well as free market ideology was, as The Financial Inquiry Report puts it, that “the sentries were not at their posts”—key regulatory precautions had been eliminated leaving the financial system vulnerable to crisis.\textsuperscript{140}

Unchecked by government intervention in the years leading up to the crisis, the shadow banking system grew in opaque and complicated ways. This system utilized the hot money found in the repo lending market, OTC derivatives, off balance sheet entities and “window dressing” of financial statements available to the public.\textsuperscript{141} Regulators thus underestimated the risks held by financial institutions. Contrary to the theory advanced by Greenspan, too many firms assumed risky positions, over-levering with high debt to capital reserve ratios and found themselves excessively dependent upon short-term funding. In 2007, Bear Sterns, Goldman Sachs, Lehman Brothers, Merrill Lynch and Morgan Stanley were levered as high as 40 to 1, a ratio so high that a 3\% drop in asset

\textsuperscript{138} The Financial Inquiry Commission, “The Financial Crisis Inquiry Report,” 54
\textsuperscript{139} The Financial Inquiry Commission, “The Financial Crisis Inquiry Report,” 35
\textsuperscript{140} The Financial Inquiry Commission, “The Financial Crisis Inquiry Report,” xviii
\textsuperscript{141} The Financial Inquiry Commission, “The Financial Crisis Inquiry Report,” xx
values would result in bankruptcy.\textsuperscript{142} Compensatory schemes incentivized financial brokers to think short term and profit off risky trades. These over-leveraged positions set the stage for the crisis.

The second key contributor to the 2007-2008 financial crisis was the growth of the over-the-counter (OTC) derivative market. In the fall of 2008, the crisis began when the housing bubble that had been forming within the American economy burst. The effects of this shock were not limited to the retail sector but were felt throughout the entire American economy as well as globally due to the dissemination of risk through new complex securities. The creation of credit default swaps allowed investors to buy protection on their mortgage-backed securities to hedge against the possible non-performance of the security. Additionally, collateralized debt obligations (CDOs) allowed for the pooling of risk from mortgage-backed securities and CDSs, which would then be sorted into tranches based upon risk. Unlike traditional derivatives that were used for corporate hedging, CDOs existed purely for speculative purposes. There were also CDOs squared which were also asset-backed securities but were based upon the original CDOs. At the time, it seemed that “risk had been conquered” since “investors held highly rated securities, banks thought they had taken the riskiest loans off their books and regulators saw firms making profits” but “each step of the mortgage securitization pipeline depended on the next step to keep demand going.”\textsuperscript{143} Purchasers of the security believed that these instruments were extremely liquid and able to be offloaded due to their high demand at the time of purchase. Unfortunately, they were wrong. These new financial instruments concentrated risk in opaque ways and spread the risk associated

\textsuperscript{142} The Financial Inquiry Commission, “The Financial Crisis Inquiry Report,” xix
\textsuperscript{143} Financial Inquiry Commission, “The Financial Crisis Inquiry Report,” xxiv
with the default of a mortgage far past the original buyers and seller of that transaction. The scale of mortgage backed securities’ dissemination also contributed to spreading the risk globally. From July 1, 2004 to May 31, 2007, Goldman Sachs sold 73 billion dollars worth of CDOs. When the original borrower defaulted on a mortgage, the effects rippled throughout the globe.

Following the burst of the housing bubble, the government found itself unprepared to respond to the far-reaching nature of the crisis. Although some regulators had foreseen the formation of the housing bubble, they did not anticipate the international consequences that would result from the crash of a seemingly isolated sector of the American economy. Regulators implemented ad hoc policies that responded to manifestations of the crisis at any given moment. However, they lacked a comprehensive strategy since they did not understand the intricacies of the global derivatives market, which had magnified the effects of the crisis. However, one fact had become clear: the free market ideology that had dominated public discourse for the past thirty years and led to the deregulation of the financial system had proved ineffective. Although corporations and financial institutions were concerned with their self-preservation, adverse incentives had caused them to act for short-term gain rather than long-term stability. Deregulation might have functioned on a microeconomic scale. But, a greater level of federal regulation was necessary in order to provide stability within an increasingly interconnected, global economy.

As such, the global financial crisis of 2008 once again cast doubt upon the currently accepted economic wisdom, marking a return to Keynesian ideology and policy. As Henry Farrel and John Quiggins state, “Over an extremely short period of

time, the apparent consensus among academic economists shifted from an anti-Keynesian to a pro-Keynesian stance. Clearly this was provoked by the economic crisis.”

While one could hardly find an academic or a politician in the late 1970s who supported Keynesian norms, by 2009 even previously pro-market academics, such as Richard Posner and Martin Feldstein, publically pushed for Keynesian type stimulus packages. This ideological shift was not restricted to the academic world but had real policy implications as well. In the US the question was not whether or not to implement a stimulus it was of what size.

The 2007-2008 financial crisis thus marked a historical moment of political transformation leading to what Daniel Carpenter characterizes as the “democratization of finance policymaking.” As Carpenter observes, American policy networks had become increasingly exclusive throughout the twentieth century. Appointments to the top government financial positions were drawn from the top Wall Street banks and regulatory agencies creating a “gilded network” of financial policy elites. The large-scale devastation caused by the crisis, however, undermined claim that only qualified academics and professionals could understand the intricacies of the economy and meaningfully contribute to financial policy debates. The debates on financial reform following the financial crisis in 2009 and 2010 were not restricted to a small number of

---

146 Farrel and Quiggins, “Consensus and Dissensus,” 19
147 Farrel and Quiggins, “Consensus and Dissensus,” 20
149 Carpenter, “The Contest of Lobbies,” 148
150 Carpenter, “The Contest of Lobbies,” 175
top policy makers but included the opinion of groups that historically have lacked bargaining power, such as consumer advocates and labor unions.\textsuperscript{151} Carpenter sites the robust participation in these financial debates following the financial crisis to claim that “something has changed, albeit temporarily.” A “social aperture” has opened in for Progressive and liberal groups within financial policy.\textsuperscript{152}

Substantiating Carpenter’s claim with public opinion data from 1971-2011, Lindsay A Owens finds that public confidence in Wall Street fell massively following the 2008 financial crisis and during the Great Recession. Between 2006 and 2010, the percent of Americans with “a great deal of confidence” in banks decreased 19% while the percent of Americans with a “hardly any” confidence increased by 29%, from 13% to an all-time high of 42%.\textsuperscript{153} Adopting an event-driven analysis of public opinion, Owens concludes that this massive shift goes beyond the typical correlation between public opinion and economic conditions and was instead driven by the “moral outrage coupled with economic insecurity”.\textsuperscript{154} This outrage can be seen in the public’s increasingly negative views regarding the ethics of bankers. In a 1996 poll conducted by Harris, 43% of those polled agreed that people on Wall Street were “as ethnical and honest as other people.” By 2006, this number had fallen by almost 20% to 26% of adults polled. Owen concludes that the scandals associated with the Great Recession— such as the bank bailouts, predatory lending scandals and “robo-signing” scandal of 2010— amplified the

\begin{footnotes}
\item[151] Carpenter, “The Contest of Lobbies,” 140
\item[152] Carpenter, “The Contest of Lobbies,” 174
\item[154] Owens, “The Polls,” 161
\end{footnotes}
typical loss of public confidence in the financial sector during times of economic crisis, creating a favorable moment for financial reform.\textsuperscript{155}

**Keynesian Centralization and the Obama Administration**

Even before the shift from a free market to a Keynesian ideology was cemented by the devastation caused by the 2008 financial crisis, Obama rejected laissez-faire policies that had characterized Washington in the previous decades. In The Audacity of Hope: Thoughts on Reclaiming the American Dream, Obama criticizes George W. Bush’s “devotion to reduced regulations” and the central “belief that government regulation inhibits and distorts the efficient working of the market.”\textsuperscript{156} Instead, Obama advocated utilizing the “resources and power of the federal government to facilitate a vibrant, free market.”\textsuperscript{157} In this work, we can see the seeds of Keynesian thought, namely the need for government intervention in order to facilitate a well-functioning economy. The 2008 financial crisis, however, created a moment in which Obama could implement stronger government oversight of the market. As public sentiment turned resoundingly against Wall Street and the failure of free market ideology became apparent in academic as well as policy circles, the President obtained the necessary support for major reform.

It was against this backdrop of favorable public sentiment that Obama emerged as a strong consumer protection advocate. The concept of a Consumer Financial Protection Bureau originated in President Obama’s White Papers. The CFPB as formulated by

\textsuperscript{155} Owens, “The Polls,” 161
\textsuperscript{156} Steven L. Arxer, Matthew Babcock and Walter Borges, “Progressivism and Economics: The Case of President Obama” in *Grading the 44th President: A Report Card on Barack Obama’s First Term As a Progressive Leader* Ed. Luigi Esposito and Laura L. Finley (Santa Barbara, California: ABC-CLIO LLC., 2012), 24
\textsuperscript{157} Arxer, Babcock and Borges, “Progressivism and Economics,” 24
Obama would be an independent regulatory agency that would seek “to protect consumers across the financial sector from unfair, deceptive, and abusive practices.”

While consumer protection had been monitored by a range of agencies in the past, Obama proposed consolidating the disparate functions of agencies—the creation of rules, examination of administrative breaches and enforcement of penalties—under one roof. Furthermore, the agency would be headed by a single Director rather than a Board. Obama hoped that this consolidation of authority would help prevent the “regulatory race to the bottom” and regulatory arbitrage that helped precipitate the 2008 financial crisis.

The CFPB would be granted authority over all banking institutions currently monitored by the federal government as well as non-banking institutions that had previously been beyond the scope of consumer protection. In terms of enforcement, the Obama administration proposed granting the CFPB the power to “‘subpoena authority for documents and testimony’, authority to ‘intervene in… actions[s],’ which arise from the violation of its regulations, and authority ‘to request that the U.S. Attorney General bring any action necessary to enforce its subpoena authority or to bring any other enforcement action on its behalf in the appropriate court’.”

Obama’s original proposal set the stage for Congressional debate over the terms. While several changes were made regarding the specific powers of the CFPB in the enacted bill, the agency remained true to the key tenants of President Obama’s original proposal, establishing an independent structure headed by a single Director with the

---

158 The United States Treasury, "Financial Regulatory Reform: A New Foundation Rebuilding Financial Supervision and Regulation" June 17, 2009
160 Worrell, "Crisis as a Catalyst," 202
power to dictate and enforce consumer protection rules. In the post-2008 financial crisis
push for the formation of a federal Consumer Financial Protection Bureau, Presidential
support proved to be a crucial environmental factor. Obama’s White Papers set the tone
for Congressional debate and pressured congressmen to reach across the aisle regarding
controversial provisions.

**Bicameral Politics: Composition of the House and Senate**

As we saw in the previous case study, the passage of legislation depends not only
upon Presidential but also upon Congressional support. Mayer claims that a
democratically stacked Congress is an environmental factor favorable to the passage of
consumer protection legislation. The validity of Mayer’s claim, however, is contingent
upon representatives within the same party having homogenous preferences. In the
1970s, this assumption proved false due to the prevalence of Southern Democrats within
Congress, who tended to hold more conservative preferences that led to a division within
the Democratic Party. In fact, parties’ ideological positions in the late 1960s and early
1970s were closer to each other than they would ever be again.161 Surveying the positions
of both Democrats and Republicans in 1968, third-party presidential candidate George
Wallace commented, “there ain’t a dime’s worth of difference between them.”162

In the 1980s, however, party preferences began to polarize as the Democratic
Party became more liberal and the Republican Party became more conservative.163

---

161 Sean M. Theriault, “Party Polarization in the US Congress: Member Replacement and Member
Adaption,” *Party Politics, 12*, no. 4 (July 2006), 483-503
162 Sean M. Theriault, “The Case of Vanishing Moderates: Party Polarization in the Modern Congress,”
*Working Paper, Department of Government at University of Texas* (2003), 2
163 Mark D. Brewer, Mack D. Mariani, and Jeffrey M. Stonecash, “Northern Democrats and Party
Polarization in the U.S. House,” *Legislative Studies Quarterly* Vol. 27 No. 3 (August 2002), 423-444;
Whereas in the 1968, 60% of the Congressional members held moderate middle positions, by 2004 only 25% of members fell in the middle of the ideological continuum.\textsuperscript{164} Polarization is driven by two key mechanisms: member adaptation and member replacement. Member adaption occurs when congressional members adopt a more extreme preference. Scholars agree that the primary source of polarization has been member replacement. When members retire, run for higher office, fail to be re-elected or die, they tend to be replaced by more ideologically extreme members (Bullock, 2000; Carson et al., 2003). Furthermore, scholars agree that the majority of member replacements have stemmed from the replacement of moderate southern Democrats with conservative Republicans.\textsuperscript{165} This process is often referred to as the Republican Realignment in the South.

The Republican Realignment in the South led to homogenous preferences within the Democratic and Republican Party, dividing the debate over the powers and structure of the Consumer Financial Protection Bureau along clear bipartisan lines. Democrats in the House and Senate stood in favor of the establishment of a CFPB and Republicans against. Under conditions of homogenous preferences, however, the Democratic majority in the 111\textsuperscript{th} Congress in both the House and the Senate created a favorable environment for the establishment of the Consumer Financial Protection Bureau. Consumer protection no longer functioned as a wedge issue dividing the Democratic Party. Unlike the 1970s, a Democratic majority now truly meant a majority in favor of regulation. Within this session of Congress, the House of Representatives was composed of 256 Democrats

\textsuperscript{164} Sean Theriault, "Party Polarization in the US Congress", 484
\textsuperscript{165} Sean Theriault, "Party Polarization in the US Congress", 495
versus 178 Republicans and the Senate held 55 Democrats, 2 Independents and 41 Republicans.

_Polarized Party Debates on the CFPB_

From its inception, the CFPB has been the elephant in the room of financial regulation and one of the principle causes of the bipartisan divide on Dodd-Frank. The financial service industry as well as most Republican Congressmen vigorously opposed the creation of the CFPB. Financial industry trade groups such as the US Chamber of Commerce and the American Bankers Association poured ample time and resources into blocking the passage of Title X, fearing that the legislation would restrict the diversity of products that could be offered and raise the costs associated with regulatory compliance. As in the early 1970s, during the Nixon Administration, the key controversy surrounding the formation of the Consumer Financial Protection Bureau was not its utility or necessity within society, but rather its institutional design. The original debate hinged upon whether consumer protection should be monitored by a new independent agency, an idea advanced by Obama and supported by the House, or whether an existing agency should be granted this new authority, the view supported by the financial service sector and Republican Congressmen.

Consumer protection was originally monitored by seven different agencies and enforced through at least 18 different laws. Title X consolidates the enforcement of these numerous laws under one agency that also has additional lawmaking capabilities. This

---

considerable power is further enhanced by the agency’s structure as an independent body, which is subject to very little legislative or executive oversight. While independent agencies serve a purpose, mainly to avoid regulatory capture by insulating the agency from interest group pressure, the CFPB under the Dodd Frank Wall Street Reform and Consumer Financial Protection Act has powers that extend beyond the typical freestanding agency. As the Harvard Law Review noted, the bureau has several insulation mechanisms that exceed the power of a typical independent agency. Rather than a multimember board, the agency is headed by a single director for a five-year term who is only removable for cause. Although the Bureau is housed within the Federal Reserve, the Fed cannot intervene in its decisions. Additionally, the CFPB has an independent source of revenue in that the Director can request a transfer from the Fed up to a statutory cap. The control mechanisms acting upon the CFPB are that they must consult with the “appropriate prudential regulators or other agencies prior to proposing a rule”. However, the Bureau can object to these consultations subject to releasing a statement explaining why it rejected the advice. Furthermore a two-third majority of the Financial Stability Oversight Council can veto CFPB regulations. 

Thus, the most prevalent complaint leveled against the current structure of the CFPB is that it embodies a traditional “command and control structure”, lacking substantial checks and balances that could mitigate its regulatory prowess. The CPFB was portrayed as an omnipotent agency that would stifle financial innovation and

---

flexibility in consumer services and products. Republicans sided with the financial
service industry in objecting to the formation of an independent bureau and insisting that
this regulatory function be kept within the federal bank regulators.\footnote{Arthur E. Wilmarth Jr., “The Financial Services Industry’s Misguided Quest to Undermine the Consumer Financial Protection Bureau”, George Washington University School of Law, Public Law and Legal Theory Paper No. 2012-4}

Initial Republican opposition to the CPFB was advanced by Senator Shelby (R-Ala), who proposed S. 3826 as an alternative to Senator Dodd’s Title X of S. 3217. Under Shelby’s legislation, the CFPB would have been housed under the Federal Deposit Insurance Corporation and severely restricted in its regulatory abilities. The CFPB would have had to obtain FDIC approval before issuing any rule. Furthermore, all depository institutions as well as most nonbank financial institutions would have been exempt from CFPB oversight.\footnote{For remarks by Senator Merkley see 156 Cong. Rec. S 3319-20 (2010). For Representative Menendez’s remarks see S 3325-26} Senator Dodd’s placement of the CFPB within the Federal Reserve was seen as a way to compromise with the Republican opposition. Republican complained that the House bill, which created the CFPB as a freestanding agency, was advancing the creation of a “consumer protection czar.” Senator Shelby’s amendment was rejected by a vote of 38 yeas to 61 nays. All those in favor were Republican and the majority of those against were Democratic. The exceptions were Olympia Snowe (R-ME), Charles Grassley (R-IA) and Robert Bennet (R-MA). All three representatives have a long history of voting against the Republican Party.\footnote{“How Three New England Republican Senators have voted in Key Issues,” The Boston Globe, May 20, 2012 http://www.bostonglobe.com/2012/05/20/browvnove/1hRwkR5sw7PqLSzhNOEY4L/story.html} In part, this could be because, all three are considered ideological moderates and owe their seats to the democratic and

\begin{flushright}
\footnotesize
171
\end{flushright}

\begin{flushright}
\footnotesize
172
\end{flushright}

\begin{flushright}
\footnotesize
173
\end{flushright}
independent vote.\textsuperscript{174} Even without their support, however, the Democrats had a commanding majority in Congress and could successfully block Republican opposition to a strong federal Consumer Financial Protection Agency. Ultimately the bill was passed without substantial structural changes. As such, when examining the environment in which the CFPB came into being, it is clear that congressional composition proved a key factor.

The shift in Congressional composition following the 2010 elections has created anxiety among consumerists who fear that Republicans will finally have sufficient power to weaken the power the Consumer Financial Protection Agency. The financial sector backed the Republicans in the 2010 congressional elections, helping the Republicans secure the House and gain additional seats in the Senate.\textsuperscript{175} From this heightened position of power, Republicans have launched a new campaign to weaken the Consumer Financial Protection Bureau. Proposed amendments attempted to check the bureau’s power by adjusting its structure as well as its budget.

On July 21, 2011, the House passed Republican Representative Sean Duffy’s (W-07) H.R. 1315. Representatives Spencer Bachus (AL-6), Shelley Moore Capito (WV-2), John R. Carter (TX-31), and David B. McKinley (WV-1) co-sponsored the bill. The bill substantially restricted the CFPB’s powers by establishing a five-member committee to oversee the bureau, suspending all powers of the CFPB until the Senate confirmed a director, and granting FSOC a vote to override any CFPB provision which it deemed would threaten the “safe and sound” operations of US financial institutions. In the

\textsuperscript{174} Jamison Foser, “Senator Olympia Snowe’s Conflict of Interest Cover-up,” \textit{Political Correction}, December 15, 2011 \url{http://politicalcorrection.org/blog/201112150004}
\textsuperscript{175} Wilmarth Jr, “The Financial Services Industry’s Misguided Quest to Undermine the Consumer Financial Protection Bureau,” 884
previous version of Dodd-Frank, CFPB members were not permitted to take part in the vote. The Bill passed with 241 yeas to 173 nays and 18 abstentions. Ten Democrats voted in favor while one Republican voted against, Walter Jones (NC-3).\footnote{See Legislative Digest, “Roll Call 621 on H.R. 1315” (July 21, 2011) \url{http://www.gop.gov/votes/112/1/621}} It was subsequently referred to the Senate Committee on Banking, Housing and Urban Affairs.

In the House, efforts were also made to limit the CFPB’s power through changes in its funding. Republican Representative Jo Ann Emerson (MO-8) introduced Financial Services and General Government Appropriations Act, H.R. 2434 to the House. Section 101 suggested that a 200 million dollar funding cap be placed upon the bureau, a 40% cut from what President Obama recommended. Section 102 of the act made the CFPB’s budget subject to Congressional appropriations starting in fiscal year 2013 rather than a transfer from the Federal Reserve’s expenses. The Obama administration voiced opposition to Representative Emerson’s plan, claiming that it would “compromise the Bureau’s independence and limit expenditures to levels that would severely undercut the agency’s statutory responsibility to oversee consumer financial products such as mortgages and credit cards.”\footnote{Barack Obama, "Statement of Administration Policy: H.R. 2434 – Financial Services and General Government Appropriations Act, 2012,” July 13, 2011. \url{http://www.presidency.ucsb.edu/ws/?pid=90633}} The Act was reported favorably by the House Committee on Appropriations but has yet to be enacted.

Similar efforts to reform the CFPB were made in the Senate. Senator Shelby with the support of 44 Republican Senators spearheaded an effort to block the Presidential nominee to head the CFPB. In July 2011, Obama named Richard Cordray, former Attorney General of Ohio, to lead the Bureau. Republican Senators refused to support the nomination—leaving the Bureau without a director—until the three changes proposed by
the House were adopted. In particular, Republicans stressed the need for a five-member board rather than a single director of the CFPB, a budget subject to Congressional appropriations, and allowing federal bank regulators to oversee CFPB regulations.\footnote{Richard Shelby, “The Danger of an Unaccountable ‘Consumer-Protection’ Czar,” \textit{Wall Street Journal}, July 21, 2011 \hspace{1em} \textit{http://online.wsj.com/article/SB100014240531119035554904576457931310814462.html}}

With 44 of 47 Republicans voting against the nominee, Democrats were unable to garner the 60 necessary votes and end the filibuster to name a director of the bureau leaving it unable to act in the interim.\footnote{Ben Hallman, “GOP senators’ position on Consumer Financial Protection Bureau aligned with industry,” \textit{The Center for Public Integrity}, December 7, 2011 \hspace{1em} \textit{http://www.publicintegrity.org/2011/12/07/7574/gop-senators-position-consumer-financial-protection-bureau-aligned-industry}} The only Republicans not to sign were Scott Brown (MA) and Lisa Murkowski (ALA). In January 2010, however, Obama sidestepped Republican opposition and announced that he was using a recess appointment to name Cordray the acting director, ending the Republican filibuster.

Obama’s use of a recess appointment once again signals to the public his strong support for consumer protection and his belief in a federal agency devoted to this cause. Those who think that a change in Senatorial or House composition will necessarily alter resulting legislation overlook the fact that the American system is essentially a tricameral one, with the President acting as a check upon Congress. In the case of consumer protection, the President’s support for the CFPB has proved favorable for consumerists. To date, Obama’s support has been able to check Republican opposition in the House and Senate. As Mayer aptly noted, policy making often happens outside of the legislative process. The executive branch influences policy through key appointments and influencing certain bureaucratic compositions.
The CFPB: Conclusion Regarding Environmental Factors

The 2008-2010 lobby for an independent Consumer Financial Protection Agency took place against an environmental backdrop primed for success. Public sentiment, Presidential support and Congressional composition were all tipped in favor of meaningful consumer reform. The 2008 financial crisis had proved that the free market paradigm that had dominated policy circles for the last quarter of the century was ineffective. Politicians and the public alike had begun to support a more Keynesian governmental regulation of the market.

This paradigm shift set the stage for President Obama, a progressive democratic president who supported establishing a federal agency to protect consumer from predatory business practices, to push for meaningful reform. Presidential support proved crucial in the framing of the legislation. President Obama’s commitment to an independent bureau with considerable regulatory oversight held Congressional legislative proposals to a high standard. Furthermore, Presidential support proved crucial in the execution of the legislation. Notably, Obama used a recess appointment to name Richard Corday acting director of the CFPB in order to overcome a Republican filibuster that would prevent the agency from becoming operational.

Despite Republican opposition, the Congressional composition also was a favorable factor in the establishment of the CFPB. The process of party polarization that began in the 1980s had led to more homogenous preferences within the Democratic and Republican Party. Unlike in the 1970s, Democrats were not longer divided along regional lines with Southerners aligning more closely with Republican positions. The 111th Congress’ Democratic majority in both the House of Representatives and the Senate and
thus proved crucial in building a strong coalition that had historically been in favor of consumer protection. The environment alone, however, can only provide an opportunity for reform. Political entrepreneurs had to capitalize on this moment in order to push through their agendas.

A Tactical Utilization of Anti-Wall Street Sentiment

The emergence of Pro-CFPA

lobbyist rhetoric

In the 1970s the business lobby had capitalized on the deregulatory sentiment in order to rebrand the consumer mission as an inefficient elitist ploy that would increase the size of the bureaucracy and hinder a well-functioning economy. Following the 2008 financial crisis a framing opportunity presented itself to pro-CFPA advocates. Under Nader, consumer protection was viewed as a positive goal in and of itself. The 1970s consumerist campaign was based upon a rational appeal to represent consumer interest in government. In contrast to this rational appeal, the 2010 consumer lobby capitalized on public sentiment that had turned resoundingly against Wall Street and big business in general. The pro-CFPA lobby depicted consumer protection as an essential step needed to reverse the status quo, a society dominated by the 1%, and re-empower the people. In order to make this claim, the rhetoric of the pro-CFPA lobby mirrored the anger felt by the public.

The pro-CFPA lobby utilized a three-pronged argument to channel public anger and assert the necessity of reform. The pro-CFPA narrative first demonized the financial

---

180 The Consumer Financial Protection Bureau and Consumer Financial Protection Agency are the same proposal. It just depends what point in time you looked at the proposal. Earlier reports tend to call the agency a CFPA but under Dodd-Frank it was renamed to a CFPB. They acronyms are interchangeable for the purpose of my paper.
service industry, characterizing it as greedy profit-seeking enterprise that benefitted from the average citizen’s misfortune. It then sought to tap into common sense norms of fairness to gain further support from angry citizens, asserting that although Wall Street’s reckless actions had led to the demise of the economy, bankers continued to gain in the form of large bonuses while the public bore the cost of bailing out the banks. It then created a divide between Wall Street and the American public, as exemplified by the phrase Wall Street vs. Main Street. This dichotomy created a zero-sum game in the eyes of pro-CFPA lobbyist rhetoric; a win for Big Banks would mark a loss for consumers and vice versa.

While the 1970 consumer lobby had been framed within the positive goal of advancing the interest of the average American on a federal level, the 2009 push for a CFPA was framed in opposition to Wall Street. The pro-CFPA lobby villainized both Wall Street and bankers. In their 2009-2010 press releases, Americans for Financial Reform repeatedly dubbed Wall Street bankers “fat cats” and characterized banks as “greedy” and “reckless”. This characterization was not restrictively used by pro-

181 See AFR Press Release from December 14, 2009, which states “fat cat compensation has nothing to do with good corporate performance”
182 See AFR Press Release from January 15, 2010 which states, “The CFPA will protect working families and small businesses by reining in the greedy, reckless behavior of big banks on Wall Street…”
See AFR Press release from January 21, 2010 which quotes Heather McGhee, D.C. Director of Demos “The President has now drawn a line in the sand for Congress – stand with those greedy big banks that got us into this mess or demand transparency and accountability from Wall Street.”
See AFR Press Release from February 5, 2010 in which Heather Booth, Executive Director of Americans for Financial Reform states, “While we would have hope both sides of the aisle could have come to a consensus on the bill as a whole, the need to rein in the greedy and reckless behavior of big banks is too important to be delayed by partisan bickering”
183 See AFR Press Release from January 13, 2010 which states, “AFR calls on big banks to not only justify their reckless behavior but also explain why they are working to kill real reforms that would keep them from doing it again”
See quote above from January 15, 2010 AFR press release
See AFR Press Release from February 10, 2010 which states that, “Senator Cantwell calls an end to reckless speculation and calls to rebuild the economy”
CFPA lobbying groups but was even employed by government leaders. In an interview with CBS on December 12, 2009, President Obama stated that he “did not run for office to be helping out a bunch of fat cat bankers on Wall Street.”\textsuperscript{184} Press releases by the AFR additionally targeted specific banks and individuals that the group claimed had contributed to predatory lending and the demise of the financial system. By continually reiterating the negative stereotypes associated with their rivals, the pro-CFPA lobby capitalized on public sentiment that had turned resoundingly against Wall Street.

Pro-CFPA lobbyists furthermore attempted to incite anger toward Wall Street by referencing the inequality between bankers who received large bonuses while citizens suffered from poor economic conditions and paid increased taxes to finance bailouts. On a poster calling for national consumer mobilization on November 13, 2009, AFR stated, “Wall Street firms like Goldman Sachs, JP Morgan Chase and Wells Fargo bailed out by our tax dollars are back to making record profits and on track to hand out multi-billion dollar bonuses. Meanwhile millions of regular folks are suffering from job losses, foreclosures, depleted pensions and skyrocketing credit card rates and overdraft fees.”\textsuperscript{185}

See above quote from AFR Press Release on February 5, 2010
See AFR Press Release from March 15, 2010 in which Heather Booth states, “The American public has been at the mercy of the Big Banks and their \textit{reckless} behavior for too long”
See AFR Press Release from April 19, 2010 in which Heather Booth States “A year and a half since the reckless behavior of the Big Banks took our economy to the edge of the abyss and cost 8 million \textit{Americans} their jobs...”
See April 22, 2010 Press release, in which Heather Booth states, “Will they stand with Main Street which has been devastated by the \textit{reckless} behavior of Big Banks, or will they stand with Wall Street who wants to continue business as usual”
See AFR Press release from May 21, 2010 in which Heather Booth states, “We are pleased the Senate has passed this momentous bill that will rein in big banks’ \textit{reckless} behavior and bring transparency to our financial system and protect consumers.”
In citing this inequality, pro-CFPA lobbyists not only meant to incite anger but channel it toward their goal of establishing a regulatory agency. This two pronged-approach can be seen in a speech delivered on April 21, 2010 by Senator Sherrod Brown (D-OH), in which he stated, “while taxpayers helped Wall Street banks get back on their feet, Main Street Americans were not so lucky. Their homes, their jobs, and their retirement accounts were lost or put at risk due to big banks that gambled with their money. That’s why we need to pass tough Wall Street reform that holds banks accountable and ensures transparency in financial information.” These types of appeals not only touched upon the rational need for increased supervision over a previously unchecked system but also appealed to public anger regarding inequality between banks and citizens.

A final facet of the pro-CFPA rhetoric sought to create a divide between Wall Street and the American public as represented by the consumerists. This defined the pro-CFPA lobby as a reactionary one and created an identifiable financial interest that they were fighting against. While the consumer lobby of the 1970s sought to advance a consumer interest that was not well represented, the advancement of the consumer did not necessarily have to come at the demise of the business lobby. One can see this divide most clearly in the AFR slogan “Vote for Main Street, Not Wall Street”, but it is also present in the pro-CFPA lobbyists’ speeches. Heather Booth asked Congressional representatives if “they stand with Main Street which has been devastated by the reckless behavior of the Big Banks, or will they stand with Wall Street who wants to continue

---

business as usual.” Myra Lewis, a community leader with national People’s Action asked, “Which side are you on? The people’s or the big banks?” Similarly in an AFR press release stated, “If big banks win, consumers will lose.” The pro-CFPA rhetoric thus had a polarizing characteristic that seemed to suggest that only one side could win, and it ought to be David not Goliath. This rhetoric was meant to create a sense of solidarity amongst the American public at large, which the pro-CFPA forces envisioned as standing against a smaller portion of the population, Wall Street bankers.

In designing their campaign for financial reform, pro-CFPA forces successfully framed their legislative proposal in terms that could be sold to the public. Feeding off of anti-Wall Street sentiment, they depicted their goal to establish a regulatory agency as a necessary and well-deserved blow to Wall Street rather than a positive consumer goal in and of itself. Their aggressive and often ad hominem tactics drew on the public’s feelings that bankers could not be trusted. They turned their opponent’s strength—its vast financial resources and power—into a liability by appealing to norms of fairness. Many AFR press releases from 2009-2010 focused upon the business lobby’s exorbitant spending to discredit the CFPA, linking this spending to the bailout that banks received from taxpayer dollars. Appealing to public anger, these statements asked how the business lobby could spend a total of 500 million dollars lobbying to destroy an agency designed to protect the very taxpayers who were forced to bail the banks out. Finally the rhetoric sought to create a feeling of solidarity amongst the American public,

---

188 Nader originally characterized the consumer fight as a fight between David and Goliath. This rhetoric reemerged in 2009-2010 and was employed by AFR activists such as Heather Booth.
represented by small business owners and hardworking citizens, by pitting them against the relatively smaller proportion of the population: Wall Street. This “us” vs. “them” tactic once again fed off public sentiments of anger and distrust in the financial institutions that had contributed to the largest global economic meltdown to date. At the same time, it created a positive sense of solidarity amongst consumer advocates.

**The Lack of a Framing Opportunity: the Business lobby**

While the consumer lobby successfully framed their proposal in terms that could garner support, the anti-CFPA lobby found itself resorting to old arguments that no longer held as much weight with the public. Harkening back to the neoconservative rhetoric formed in the 1970s, the anti-CFPA lobby claimed that the creation of an independent regulatory agency would create a superagency and expand federal powers at the expense of innovation and growth. Furthermore, the anti-CFPA lobby claimed that the agency would “deprive consumers of affordability and choice”, since many small businesses would face rising costs due to increased costs of regulation that would either be passed on to the consumer or result in bankruptcy. While this rhetoric had proved effective in 1970 since it reflected the broader deregulatory sentiment present at the time, following the financial crisis the same arguments no longer carried the same weight.

The use of deregulatory norms to bolster the anti-CFPA’s lobby in 2008 can be seen in the US Chamber of Commerce’s “Stop the CFPA” ad campaign. Launched on September 8, 2009, the campaign initially reached the public through print and online

---

advertising and then expanded to television and radio advertising. David Hirschmann, President and CEO of the U.S. Chamber of Commerce’s Center for Capital Markets claimed that the “Chamber supports strong consumer protection, but a massive new bureaucracy with sweeping powers that will deprive consumers of affordability and choice is not the answer.”¹⁹¹ The campaign sought to demonstrate how the passage of a CFPA would hinder small businesses that extended credit to customers. The first ad the campaign ran depicted a local butcher, who allowed his customers to purchase goods on credit from him, and claimed that “virtually every business that extends credit to American consumer would be effected—even the local butcher and the credit he extend to hi customers.” The ad concluded that the “CFPA is not consumer protection. It is more big government.”¹⁹²

In the 1970s, the business lobby’s claim that the consumer protection agency represented “big government” and “red tape” resonated with a public committed to market deregulation. However, in line with the resurgence of Keynesian economic thought following the 2008 financial crisis, the public no longer feared the emergence of “big government” and actively pushed for government intervention in the market. The anti-CFPA’s use of deregulatory discourse following the crisis thus was not as effective as it had been in the 1970s. The trend toward Keynesian thought can be seen in public opinion data from 2008. Based on the survey data, around 40% of the population supported increased government regulation of the financial industry. Approximately the same portion of the population thought that increased government intervention would

benefit the economy. This outweighed the approximately 30% of those surveyed who thought that the government should not regulate the economy and the similar percentage who believed that intervention would cause more harm than good.

**CNN/Opinion Research Corporation Poll, Sep 2008**
In general do you think there is too much, too little or about the amount of government regulation of business and industry?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Too Much</td>
<td>38%</td>
</tr>
<tr>
<td>Too Little</td>
<td>42%</td>
</tr>
<tr>
<td>Right Amount</td>
<td>19%</td>
</tr>
<tr>
<td>No Opinion</td>
<td>2%</td>
</tr>
</tbody>
</table>

**CBS News/New York Times Poll, Sep 2008**
Do you think the federal government regulates business too much these days, does it regulate business too little, or does it impose the right amount of regulation on business?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Too much</td>
<td>21%</td>
</tr>
<tr>
<td>Too little</td>
<td>45%</td>
</tr>
<tr>
<td>Right amount</td>
<td>18%</td>
</tr>
<tr>
<td>Depends</td>
<td>5%</td>
</tr>
<tr>
<td>Don’t know/ No Answer</td>
<td>11%</td>
</tr>
</tbody>
</table>

**Los Angeles Times/ Bloomberg Poll, Oct 2008**
In general do you think there is too much, too little or about the right amount of government regulation of business?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Too much</td>
<td>27%</td>
</tr>
<tr>
<td>Too little</td>
<td>45%</td>
</tr>
<tr>
<td>Right Amount</td>
<td>14%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>14%</td>
</tr>
</tbody>
</table>

**Gallup Poll, Sep 2008**
In general, do you think there is too much, too little or about the right amount of government regulation of business and industry?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Too much</td>
<td>38%</td>
</tr>
<tr>
<td>Too little</td>
<td>27%</td>
</tr>
<tr>
<td>Right Amount</td>
<td>31%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>3%</td>
</tr>
</tbody>
</table>
**Yale University, Sep 2008**  
Government regulation of business usually does more harm than good… Strongly agree, somewhat agree, somewhat disagree, strongly disagree

<table>
<thead>
<tr>
<th>Opinion</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>10%</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>39%</td>
</tr>
<tr>
<td>Somewhat Disagree</td>
<td>42%</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>9%</td>
</tr>
</tbody>
</table>

**Quinnipiac University Poll, Mar 2008**  
President (Barack) Obama has said he wants increased government regulation of business. Do you think this will be good for the economy, bad for the economy or will not affect the economy?

<table>
<thead>
<tr>
<th>Opinion</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good</td>
<td>47%</td>
</tr>
<tr>
<td>Bad</td>
<td>36%</td>
</tr>
<tr>
<td>Not affect</td>
<td>9%</td>
</tr>
<tr>
<td>Don’t know/No answer</td>
<td>8%</td>
</tr>
</tbody>
</table>

**The Role of Political Entrepreneurs: Elizabeth Warren**

Following in Nader’s footsteps, Elizabeth Warren has come to be the most prominent consumer advocate of the 21st century. Born in Oklahoma to Pauline and Donald Jones, Warren was the youngest of four children. Her father worked as a janitor while her mother earned extra money working at the catalog-order department of Sears. The family’s modest living made Warren acutely aware of the problems facing the middle class at a young age. Demonstrating a high degree of academic aptitude at an early age, Warren received a debate scholarship to attend George Washington University at the age of sixteen. She later moved to Texas where she finished her degree in speech pathology at University of Houston. In 1976, she received her JD from Rutgers University. In the following years, she taught at Rutgers Law, University of Houston Law
Center, University of Texas School of Law, University of Pennsylvania and finally Harvard Law School.\textsuperscript{193}

Warren’s path to become a consumer advocate began in 1978, when she investigated a new Congressional statute that made it easier to file for bankruptcy. Attempting to understand the rationale behind this new legislation, Warren found that the greater part of those filing for bankruptcy were from hardworking middle-class families. She claimed that this discovery “changed her vision”.\textsuperscript{194} It was at this point that she became a champion for the middle class. In the subsequent years, Warren advised the new National Bankruptcy Review and lobbied against Congressional legislation that would restrict consumers’ ability to file for bankruptcy.

In November 2008, Warren was asked by Senator majority leader, Harry Reid, to head the Congressional Oversight Panel. The five-member panel would evaluate the 700 billion government bailout, TARP, and related programs in monthly reports.\textsuperscript{195} Warren took to this post with enthusiasm. Unafraid to step on toes, she relentlessly grilled government officials, making enemies out of many, notably Timothy Geithner. In one hearing with Geithner, Warren pointedly asked, “AIG has received about 70 billion in TARP money and about 100 billion in loans from the Fed. Do you know where the money went?”\textsuperscript{196} She relentlessly interrogated the Secretary of Treasury in a style that has led her husband to characterize her as “a grandmother who can make grown men

\textsuperscript{194} Andrews, “The Woman Who Knew Too Much.”
\textsuperscript{196} Andrews, “The Woman Who Knew Too Much.”
Some have speculated that Warren’s blunt personality, which isolated her from the banking sector as well as some federal regulators, caused her to lose the nomination for Director of the Consumer Financial Protection Bureau.

Despite the political infighting that prevented her from heading the CFPB, Warren proved instrumental in the lobby to create it. Warren’s push for an independent regulatory consumer agency began even before the 2008 financial crisis. In “Unsafe at Any Rate”, an article published in 2007, Warren called for the creation of a Financial Product Safety Commission, off of which the CFPB would later be modeled, an agency that would “be charged with responsibility to establish guidelines for consumer disclosure, collect and report data about the uses of different financial products, review new financial products for safety, and require modification of dangerous products before they can be marketed to the public. The agency could review mortgages, credit cards, car loans and a number of other financial products, such as life insurance and annuity contracts.” Following the 2008 financial crisis, Warren advised the Obama administration to adopt a similar initiative. The Obama Administration’s proposal for a Consumer Financial Protection Agency in the White Paper thus emulated Warren’s earlier proposal. Taking up arms, Warren prepared to lead the consumer lobby in order to establish an independent regulatory consumer agency.

Throughout the campaign, Warren appeared on numerous television programs such as CNBC The Real Time or The Daily Show in order to advocate for a Consumer Financial Protection Agency. Like Nader, Warren stuck to her ideals, attempting to create

---

198 See Andrews, “The Woman Who Knew Too Much.” for one account of this
a single, independent federal agency that would look out for consumer interests. Unlike Nader, however, Warren remained open to compromise as long as the integrity of the proposal was preserved. She accepted and worked with the bipartisan politics within Congress in order to advance the bill.

For example, one key point of contention in the debate over the structure of the CFPA was whether it would be a standalone agency or whether it would be housed within a preexisting regulatory agency. Cognizant of this Republican complaint, Warren voiced her willingness to compromise on this point on The Charlie Rose Show, stating “you’ve got to have an agency that’s ultimately independent, whether it’s located within the Fed, within the Treasury, the Department of Agriculture, or whether it sits in its own separate place.” Warren was willing to concede the standalone status of the agency, as long as the CFPA remained distinct from its parent organization in terms of regulatory capacity and budget. On March 15, 2010, Senator Dodd formally proposed placing the consumer agency inside of the Federal Reserve. Unlike Nader, who might have seen this as an “intolerable dilution” of the proposal, Warren saw the bigger picture and endorsed the proposal.

While both Ralph Nader and Elizabeth Warren were crucial reformers in the push for consumer protection, Warren’s willingness to compromise and work with the legislative process proved crucial to the success of the CFPA. Her tactics were often just as aggressive as Nader’s, tirelessly questioning government officials and insisting upon accountability from banks. She, however, did not make enemies out of friends instrumental to furthering her goal. Nader publically criticized and mocked President

---

Carter throughout his push for a CPA when he felt that the President had not exerted sufficient effort on behalf of the cause. Conversely, Warren always praised Obama for his vision and his resolve. Where Nader isolated himself from Congress through his tactics and unwillingness to compromise, Warren remained firm in her key beliefs but understood that the legislative process requires give and take. Her vision and willingness to compromise ultimately paid off when the Consumer Financial Protection Bureau came into being with the passage of the Dodd-Frank and Consumer Financial Protection Act of 2010.
Part IV: Conclusion

*A Tale of Two Movements:*
*Why was the push for a CFPA in 2010 successful whereas the 1997 effort failed?*

Consumer movements, by their very nature, are difficult to organize and sustain. As Mancur Olson pointed out in his landmark study, the diffuse interests of a mass of individuals – like consumers – face a significant collective action problem since each individual has a strong incentive to free ride on the actions of others. In contrast, the concentrated well-organized interests of business organizations, such as the financial lobby, have a much easier time getting their voices heard and getting their preferred policies passed. In spite of the collective action problem, at least twice in the past half century significant consumer protection movements have emerged that sought to obtain greater protection for individual consumers: the push for the CPA in the 1970s and the CFPB after 2008. In both instances, as we have seen, a powerful sense of popular grievance coupled with professional entrepreneurs’ resource mobilization led to the formation of strong movements that lobbied for protection. Yet, despite some comparably favorable conditions, the consumer protection movement of the 1970s failed, while the movement today has, at least so far, has enjoyed some success.

The Consumer Financial Protection Bureau established in 2010 does what Naderites hoped the Consumer Protection Agency would do in the 1970s. It seeks to protect consumers from predatory lending and ensure that they are informed buyers when entering into transactions. It seeks to represent the consumer interest on a federal level, fulfilling an advocacy function, as well as pass meaningful consumer regulation. The
establishment of this bureau has led some to label the Dodd-Frank and Consumer Protection Act of 2010 a win for ordinary consumers against the concentrated interests of the financial industry. What combination of factors enabled the movement today to achieve significant legislative victories that were denied in the 1970s? What does the comparison of these two movements tell us about such movements in general? What do they tell us in particular about the prospects for the sustainability of the reform movement today?

First and foremost, the importance of the opening of a policy window cannot be ignored. A problem, which serves as the independent variable in my analysis, is a necessary prerequisite to the placement of an issue upon the public policy agenda. In the 1970s, the U.S. faced significant domestic financial unrest and international competition challenged its preeminence in the global system. Domestically, the U.S. economy underwent a period of substantial stagflation, soaring inflation without real growth. Internationally, the oil shocks from 1973-1974 caused energy prices to quadruple, stemming productivity of advanced industrialized countries. Meanwhile, confidence in the dollar fell due to an increasing budget deficit and poor economic domestic prospects. The problem that emerged in the 1970s thus was a faltering economy and inadequate macroeconomic tools in order to restore the U.S. economy to health. In 2008, the global financial crisis once again marked the failure of current regulatory policy. Both crises served as the original catalyst for reform, the signal to policy makers that the status quo was no longer acceptable and that major structural reforms were necessary to maintain a stable economic and political system.

---

Similarly, the absence of such an impetus prevented the consumerist movement from emerging when many other structural conditions fell into place, such as during the first part of the Clinton Administration, when for the first two years Democrats controlled the House and Senate, as well as the White House. Following the emergence of the problem, intervening variables unite within the public policy arena to determine the success of consumer legislation. These intervening variables can be classified into two categories: environmental and tactical.

As we saw from both cases, the emergence of a problem can cause the emergence of the most far-reaching environmental variable: ideological shifts that permeate every level of government and society. This environmental factor had at least three major impacts: on the framing of the debate, on the inclinations of the executive branch, and on Congress. First, while the emergence of deregulatory sentiment proved favorable to the business lobby’s agenda of maintaining the status quo in the 1970s, the resurgence of Keynesian thought following the 2008 financial crisis reinforced the consumer lobby’s mission to expand government intervention in the lobby. Whereas in the 1970s, it was the right that was able to frame the debate in terms of protecting the public from a pro-regulatory elite, after 2008 the tide shifted and the Left was able to push a narrative that identified its regulatory agenda with the interests of the public. Second, ideological shifts can also influence and reinforce Presidential positions on a bill and public opinion of that bill. The deregulatory sentiment of the 1970s was in line with Republican Presidents’ existing inclination toward free market ideology and enhanced that tendency and may have weakened Carter’s resolve to push the regulatory agenda. In 2008, however, Keynesian norms reinforced Obama’s inclination to actively monitor the market. Finally,
ideological shifts influenced Congressional preference. In 1970s, it appealed to Southern Democrat’s more extreme party view and reinforced a division with the party that led to a filibuster.

Examining the environmental dimension of my model on a closer basis, one also has to take account of bicameral composition, Presidential support, and public support. I found the pivotal politics model provided critical insight on the interplay between the legislative and executive branch. While the 91st through the 95th Congresses as well as the 111th Congress had a Democratic majority, Democratic preferences in the 1970s were heterogeneous due to the prevalence of Southern Democrats whose preferences tended to more closely align with the Republican Party. The heterogeneity of preferences hindered the passage of consumer legislation, since the Democratic Party — the party that tended to support consumerism — was split into two coalitions. In the House of Representatives, the strong Southern Democratic presence in the Rules Committee structurally blocked the passage of consumer legislation, resulting in a minority from preventing the bill from reaching the floor. In the Senate, Southern Democrats proved pivotal when they mounted a successful filibuster from the 92nd until the 94th Congress. Conversely in 2010, the long decline of Southern Democrats in Congress due to Republican Realignment in the South created homogenous preferences within the Democratic Party. The Democratic majority in 111th Congress thus proved crucial factor in advancing consumer legislation, since this majority coalition now unanimously favored the legislation.

According to a pivotal politics model, Presidential support proves to be a crucial environmental factor since a presidential veto can block the passage of legislation. In the 1970s, Nixon and Ford’s implied veto created a second pivot point and contributed to
gridlock on the CPA bill. Conversely, President Obama active support for a CFPB furthered positive momentum on the bill. Presidential support additionally proved crucial when President Obama used a recess appointment in order to name Richard Cordray Director of the CFPB, blocking a Republican filibuster and ensuring the functionality of the agency.

A final environmental factor is public support for legislation. This factor is key to understanding the difference between the failed attempt of establishing a CPA under Carter and the successful establishment of the CFPB under Obama. A unified government emerged under both Carter and Obama. Both Democratic presidents were relatively progressive and were supported by Democratic Congresses. The crucial difference between the two cases was public support. Under Carter, deregulatory sentiments had firmly taken hold, causing public support for yet another bureaucratic agency to dwindle. Conversely, under Obama the public had turned against Wall Street and actively pushed for regulatory reform on a federal level. The lack of public impetus during Carter led to the death of the nearly decade long push for a CPA, whereas public support under Obama advanced the consumer cause.

Environmental factors only sets the stage for reform, the success of legislation ultimately depends upon the interplay between the environmental and tactical variables. Effective leadership of political entrepreneurs drives the tactical dimension of my model. As Kingdon notes, successful political entrepreneurs are able to couple their policy alternative with the change in the political stream. Following the 2008 crisis, Elizabeth Warren effectively accomplished this goal. Warren had been a strong supporter of the middle class for years. In 2007 Warren proposed the creation of a Financial Product
Safety Commission, an agency that would disseminate product research to consumers, regulate the products placed upon the market, and establish guidelines for consumer disclosure. Following the crisis, Warren paired this alternative with the national mood that had turned resoundingly against Wall Street in favor of consumer protection to successfully advance her cause. In the 1970s, however, Nader was unable to pair the push for an independent agency before the emergent deregulatory sentiment helped close the window during which legislation might have been passed. Instead of compromising and revising his policy goal to one that could fall in line with this national mood, such as the creation of a consumer protection agency within a pre-existing government agency, Nader pushed for the ideal. His aggressive tactics isolated former allies and ultimately proved unsuccessful.

The final tactical determinant of success within the cases was the strategy that each lobby employed in framing their proposal. In the 1970s, the business lobby successfully channeled the national mood and pioneered neoconservative rhetoric, which turned the strength of the consumer lobby into a weakness. They depicted consumerist goal of representing the buying interest on a federal level as an elitist ploy propagated by self-serving Naderites. Consumer rhetoric failed to adapt to the change in public sentiment and proved ineffective. Following the 2008 financial crisis, however, consumer rhetoric evolved to embody the public anger felt toward Wall Street. Consumerists utilized ad hominem attacks against bankers to create a divisive line between ordinary consumers and elitist bankers. This had the dual effect of creating a feeling of solidarity within the consumer movement and reformulating the consumer goal as a reactionary one. Consumers were reacting against Wall Street in order to advance the public good of
a well-functioning economy. Conversely, the anti-consumerist lobby continued to couch their claims in deregulatory sentiment, which no longer held as much weight with the public.

To summarize, in examining the successful formation of the CFPB and the failure to form a CPA, I have thus found that intervening variables combined favorably in the first case while the failed to do so for the second. As this study demonstrates, the success or failure of consumer movements depends on a myriad of factors. Broadly speaking, three factors were crucial to the success of consumer movements: the opening of a policy window via crucial events, the existence of favorable structural conditions in the policy making process (ideological environment, the composition of Congress, the commitment of the President, and bicameral composition), and finally effective leadership by political entrepreneurs and their ability to find legislative and framing strategies that help them advance their agenda within the broader environmental context. From this study, I do not think that we can pinpoint one factor that is crucial to the success of consumer movements generally, as the outcomes were dependent upon the confluence of all the environmental and tactical determinants.²⁰²

However, I do think that within the context of these two cases, two movements had particular significance. First on a macro level, the ideological shift in 1970 and 2008 powerfully influenced every environmental component within the cases. The ideological shift additionally influenced the tactics available to political entrepreneurs, creating a proactive framing opportunity for the business lobby in the first case and the consumerist lobby in the latter. Secondly on a more micro level, the Republican Realignment in the South influenced bicameral composition resulting in heterogeneous preferences in the

²⁰² Refer to Appendix C for a graphical depiction of the factors
Democratic Party in the first case and homogenous preferences within the second. This played a significant role in the passage of consumer legislation, since liberal Democrats tend to favor consumer protection. Thus, while no generalizable variable arises from these cases, I would argue that these two larger movements played a particularly significant role in the success of one consumer push and the failure of the other.

**Suggestions for Further Research:**

*Theoretical Extensions*

On a theoretical level, there are many questions that remain open following my study, such as the relative importance of the executive versus legislature in defining the agenda, or the interplay between ideology and actor preferences. The study here is merely a first-cut effort at defining a model that can capture the intricacies of the process by which discontent may or may not translate into policy outcomes. Among some of the issues that remain is getting a better gauge of the relative importance of the four environmental factors presented in this study. Do ideological shifts drive consumer movements or does Congressional composition? What are the factors that shape the commitment of the executive branch? Additionally, further research could test the extent to which this basic consumer model applies to comparable issues, such as environmental regulation or health care. Finally, while my study focused upon the enactment of consumer legislation on a federal level, future studies could examine the process on a state level. My hypothesis is that the consumer interest is more often mobilized at this level.
Practical Implications of the Study

While the 2008 financial crisis opened a policy window for consumerists, the question remains for how long? Of course we can’t reliably predict the timeframe, but to the extent that an ideological paradigm has shifted, one can reasonably assume that there will be continued opportunities for the consumer movement. This Keynesian counter-revolution that stresses the importance of regulating the market will continue to make it easier for increased regulation to pass through Congress. One can imagine a point in the future, where the market has become overly saturated with regulation, perhaps at the expense of economic growth. This type of event could reverse the current norm. Until then, the environment seems primed for reform.

A second factor that could slow momentum on consumer legislation would be a change in presidential leadership. To what extent would a Republican President be able to turn back the clock? A Republican President certainly would adopt different policies, but reversing the enacted consumer legislation will be an uphill battle. The President does not act in a vacuum. Democratic resistance in Congress could help temper this reversal, and both public and expert opinion, which have been primed by the crisis, would pressure the President to move toward the societal status quo. For example, a Republican President would be hard pressed to ignore the sentiment of current Chairman of the Federal Reserve, Ben Bernanke, who has publically voiced his support for increased financial regulation in order to prevent another global economic meltdown.203 Similarly, a Republican Congress will be tempered by public sentiment as well as the Presidential veto. The contentious character of politics ensures that every issue will be hard fought

---

and there will be no one-sided victories. In this environment, the skill of one individual acting as a political entrepreneur can make all the difference.
## Appendix A: Consumer Protection Agency Legislative History

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Committee Report Issued</th>
<th>Sponsor</th>
<th>Main Provisions</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>H.R. 6037</td>
<td>February 4, 1969</td>
<td>Rosenthal</td>
<td>Version 1: Formed a Department of Consumer Affairs, cabinet level organization which would consolidate federal consumer functions under one roof, Version 2: create an independent Consumer Protection Agency to promote and represent the consumer interest but would not consolidate the regulatory federal consumer activities under the CPA</td>
<td>Nixon did not support the bill, petitioned to form an independent Consumer Protection Agency that would act in a advocacy capacity rather than regulatory one, Rosenthal reformulated the proposal</td>
</tr>
<tr>
<td>H.R. 14785</td>
<td>November 12, 1969</td>
<td>Nixon Administration’s proposal</td>
<td>Created a statutory office of Consumer Affairs within the Executive Office and a new Consumer Protection Division within the Department of Justice</td>
<td>Rosenthal and Nixon’s proposals led to the formulation of H.R. 18067 and subsequently H.R. 18214 which was reported in full by the committee</td>
</tr>
<tr>
<td>H.R. 18214</td>
<td>July 30, 1970</td>
<td>Dawson from Committee on Gov. Operations recommended passage</td>
<td>Established a Office of Consumer Affairs within the Executive branch that could coordinate with the President as well as an independent Consumer Protection Agency that would collect and disseminate information on products as well as act as a representative of the buying interest when litigation is pending before regulatory bodies and the courts. Both agencies could field complaints on faulty products as well as fraudulent practices. Also formed a 15 member Consumer Advisory Council to advise the heads of the previous two agencies.</td>
<td>House Rules Committee failed to report the bill to the floor for a vote by a 7-7 vote.</td>
</tr>
<tr>
<td>S. 4459</td>
<td>October 12, 1970</td>
<td>Ribicoff from Committee on Gov. Operations recommends passage</td>
<td>Established a Council of Consumer Advisors to express consumer interest within the executive branch and additionally established an Consumer Protection Agency which would test products and disseminate research, field complaints, testify on behalf of consumers</td>
<td>Passed by a vote of 74-4</td>
</tr>
<tr>
<td>H.R. 10835</td>
<td>September 30, 1971</td>
<td>Holifield from</td>
<td>Established Office of Consumer Affairs in the</td>
<td>Passed by a vote of 344-44</td>
</tr>
<tr>
<td>Bill</td>
<td>Date</td>
<td>Sponsor</td>
<td>Action</td>
<td></td>
</tr>
<tr>
<td>--------</td>
<td>------------</td>
<td>-------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>S. 3970</td>
<td>September 8, 1972</td>
<td>Ribicoff from Committee on Gov. Operations recommended to floor</td>
<td>Established a Council of Consumer Advisers in the Executive Office of the President, created an independent Consumer Protection Agency and authorized a program of consumer protection grants. Died in filibuster led by Ervin (D-NC) and Allen (D-AL), did not believe in the establishment of another agency, rather thought should review the current laws and revise them if consumer needs weren’t being met, refine the current bureaucracy rather than expand it.</td>
<td></td>
</tr>
<tr>
<td>H.R. 13163</td>
<td>March 29, 1974</td>
<td>Holifield, Committee on Gov. Operations recommended to floor</td>
<td>Established an independent Consumer Protection Agency to advocate for consumer interest on a federal level, handle complaints, to gather and disseminate product information and to advise the president. House passed it 293-94.</td>
<td></td>
</tr>
<tr>
<td>S. 707</td>
<td>May 28, 1974</td>
<td>Ribicoff of Committee on Gov. Operations recommended to floor</td>
<td>Established a Council of Consumer Advisers in the Executive Office of the President and established an independent non-regulatory CPA with authority to appear in proceedings, conduct and disseminate research on products, authorize a program of grants to State, local and private nonprofit consumer organizations. Senate filibuster led again by Ervin and Allen led to the bill not being voted on, fell one short of the necessary 2/3 count on the cloture vote.</td>
<td></td>
</tr>
<tr>
<td>H.R. 7575</td>
<td>July 30, 1975</td>
<td></td>
<td>Establishes an independent advocacy Agency for Consumer Protection in the Executive Branch to represent and protect consumer interest in proceedings before Federal regulatory bodies and courts. Passed by 208 to 199.</td>
<td></td>
</tr>
<tr>
<td>S. 200</td>
<td>April 9, 1975</td>
<td></td>
<td>Establishes an independent Agency for Consumer Advocacy. Successfully invoked cloture following a rule change, and passed the bill 61 to 28.</td>
<td></td>
</tr>
<tr>
<td>H.R. 6188</td>
<td>April 1977</td>
<td></td>
<td>Established an independent Agency for Consumer Protection to conduct and disseminate product research, represent consumer interests before Federal agencies and courts and to field consumer complaints. Failed to come to a vote when Congressional members realized it lacked public support.</td>
<td></td>
</tr>
</tbody>
</table>
Appendix B: Survey Phrasing

**Harris Survey, Feb, 1978**
(Now let me read you some statements about the new proposed federal consumer protection agency. For each, tell me if you tend to agree or disagree)...Business is tied up now by mountains of red tape from government regulations, and a consumer protection agency will just add more red tape and keep business from doing its job.

**Shell Oil Company Survey, “Public & Worker Attitudes Toward Carcinogens & Cancer Risk Survey”, Apr, 1978**
There are two theories of how consumers can best be protected. One says that it is the free enterprise, competitive system. That is, the best protection for the consumer comes from firms competing with each other for your business. The other theory says that this idea about free competition is nice, but it never works out in reality. That, on the contrary, business gets together and devises ways to make profit at the consumer's expense--in some cases by all the businesses getting together to fix prices and product quality. These people say the only answer is a strong government watch dog role to keep business honest. Which general position would you say you lean toward--the free competition or the government watch dog role idea?

**GALLUP**
In your opinion, should there be more government regulation of consumer products and how they are sold, or less regulation than there is now?

**ROPER**
There is at present a proposal before the government for the creation of a Federal Consumer Protection Agency. This agency would have the power to act on behalf of the consumer in any kind of ruling by another government agency or in a court case where the Consumer Protection Agency believes consumer interest is involved. Some people say such an agency is a good idea because there would be much more action in protecting consumer interests. Others say such an agency is not a good idea because the government is into too many things now and consumer interests can be better protected and at lower cost by private and independent groups such as now exist. What do you think—that all things considered, the creation of a Federal Consumer Protection Agency is a good idea or not a good idea?
Appendix C: Key Findings

2010 Successful Push for a Consumer Financial Protection Bureau

**Environmental Factors**
- A shift toward Keynesian Regulation
- Strong support from President Obama
- A Democratic Congress with Homogenous Preferences
- Strong public support for Consumer Protection and anti-Wall Street Sentiment

**Independent Variable**
2008 Financial Crisis

**Intervening Variables**
The Politics

**Dependent Variable**
Formation of the CFPB

**Tactical Factors**
- Consumerist Framing of the legislative proposal as an anti-Wall Street protection of the ordinary citizen
- Successfully turned Opponents' Assets into Liabilities
1970s Failed Push for a Consumer Protection Agency

Environmental Factors
- A shift toward Deregulatory Sentiment
- Implied vetoes under Nixon and Ford
- A Democratic Congress with Heterogeneous Preferences
- Waning public support for consumer protection as deregulatory sentiment took hold

Independent Variable
1970s Financial Unrest

Intervening Variables
The Politics

Dependent Variable
Failure to Create a CPA

Tactical Factors
- Business Lobby’s framing of the legislative proposal as elitist
- Business lobby successfully turned opponents’ assets into liabilities
Bibliography


121 Congressional Record 35382 (1975)
118 Congressional Record 32405 (1972)
156 Congressional Record S. 3319-20 (2010)


Brewer, Mark D., Mariani, Mack D., and Stonecash, Jeffrey M. “Northern Democrats and Party Polarization in the U.S. House.” Legislative Studies Quarterly. 27. no. 3 (2002): 423-444.


