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A Faded Passion? Estes Kefauver and the Senate Subcommittee on Antitrust and Monopoly

Daniel Scroop

In this paper, I examine the U.S. Senate subcommittee on antitrust and monopoly (1957-1963), chaired by Tennessee Senator Estes Kefauver. I assess the persistence into the postwar years of the antimonopoly critique of bigness that had animated the politics of reform in the pre-New Deal era, arguing that Richard Hofstadter correctly described antitrust as one of the “faded passions” of postwar reform. However, Kefauver’s antimonopoly crusade was significant in bridging the antimonopoly tradition rooted in the politics of the pre-New Deal era and the new antimonopoly politics of the 1970s and beyond, particularly as manifested in the “third wave” consumer movement. Tracing this connection between antimonopoly and consumer politics, I pay particular attention to the formulation and passage of the Kefauver-Harris Drug Act, the consumer safety legislation from the subcommittee, and to Kefauver’s determined but forlorn efforts in the late 1950s and early 1960s to persuade the federal government to establish a new Department of Consumers.

On August 8, 1963, Senator Estes Kefauver became ill while speaking in the Senate chamber. He was proposing an amendment to legislation creating a new communications satellite corporation when, complaining of stomach pains, he was forced to stop. After taking a short break, he recovered sufficiently to denounce the corporation as “a private monopoly.”¹ All he

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¹ Joseph Bruce Gorman, *Kefauver: A Political Biography* (New York, 1971), 368-69; Charles L. Fontenay, *Estes Kefauver: A Biography* (Knoxville, Tenn., 1980), 400-403.

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wanted, he said, in what would be his last contribution to public debate, was “to make sure that the corporation pays its fair share.”² Within 48 hours, Kefauver, the most prominent and persistent critic of monopoly in the immediate postwar era, and the man for whom business lobbyists coined the phrase, “In Kefauver we anti-trust,” was dead.³ With him, one might argue, went the last remnants of antimonopoly as a significant force in American political life.

Five months later, in January 1964, that verdict seemed to be confirmed when one of the leading U.S. historians of his generation, Richard Hofstadter, presented a paper at an interdisciplinary conference at the University of California, Berkeley, entitled “What Happened to the Antitrust Movement?”⁴ Alert as ever to historical irony, Hofstadter noted that, while antitrust was actually just as important in the 1960s as it had been in Theodore Roosevelt’s trust-busting heyday, it had nevertheless ceased to be a matter of “compelling public interest.”⁵ As he famously stated, “once the United States had an antitrust movement without antitrust prosecutions; in our time there have been antitrust prosecutions without an antitrust movement.”⁶ Historians and the public regarded an issue that had once excited great moral passions (and had driven the populist insurgency of the late nineteenth century) as “complex, difficult, and boring.”⁷ This happened, Hofstadter argued, because by the end of the New Deal Americans had reconciled themselves to a social and economic order structured by large organizations. The antitrust movement was now “one of the faded passions of American reform.”⁸

Given the more than forty years that have passed since Hofstadter wrote his essay, a reassessment of the postwar fate of antitrust in America’s politics of reform is long overdue.⁹ In contributing to such a reassessment, I focus on Tennessee Democrat Estes Kefauver and his chairmanship, between 1957 and 1963, of the Senate Subcommittee on Antitrust and Monopoly. I do so because until Ralph Nader arrived on the scene in the mid-1960s, Kefauver was the leading critic of monopoly in the postwar United States. Although a

² Gorman, *Kefauver*, 369.

³ Peter Goldman, Preface to Estes Kefauver, *In a Few Hands: Monopoly Power in America* (London, 1966), 8.

⁴ Jason Scott Smith, “What *Did* Happen to the Antitrust Movement?” *Reviews in American History* 30 (Dec. 2002): 639-45, quotation at p. 639.

⁵ Richard Hofstadter, “What Happened to the Antitrust Movement?” in *The Paranoid Style in American Politics*, ed. Richard Hofstadter (London, 1966), 190.

⁶ *Ibid.*, 189.

⁷ *Ibid.*, 189.

⁸ *Ibid.*, 188.

⁹ Wyatt Wells has made a reassessment of sorts in arguing that after World War II the United States exported antitrust, particularly to Germany and Japan; see Wyatt Wells, *Antitrust and the Formation of the Postwar World* (New York, 2002); also Tony Freyer, *Antitrust and Global Capitalism, 1930-2004* (New York, 2006). My primary interest is in tracing the persistence of antitrust in the U.S. domestic politics of reform.

study of one phase of a single politician's career cannot provide a new account of post World War II antitrust politics in their entirety, it might at least point to hitherto unsuspected historical connections and trajectories. These, I hope, will in turn lead twenty-first-century historians toward a new interpretation of antimonopoly's role in shaping the politics, economy, and culture of the United States after 1945.

The historiographical landscape has of course changed profoundly since Hofstadter's time. One of the more important recent developments has been the move to explore the relationship between the state and the economy with respect to consumption and citizenship. The work of Lizabeth Cohen and Meg Jacobs, among others, exemplifies this approach.¹⁰ Influenced by this turn toward consumption, but at the same time skeptical of some of its assumptions, I here interpret the Kefauver subcommittee hearings on administered prices not as an anachronistic expression of a dying antimonopoly tradition, but as an episode in modern consumer politics. Whereas Hofstadter, Cohen, and Jacobs all conclude that the Kefauver hearings on administered prices, in Jacobs' phrase, "went nowhere," I argue that they went somewhere, specifically in producing important and still contested consumer safety legislation in the form of the 1962 Kefauver-Harris Act.¹¹ Emphasizing continuities in pre- and post-New Deal approaches to antitrust, I suggest that historians may have underestimated both the persistence of antimonopoly, and its importance for understanding the origins of modern consumer politics.

Estes Kefauver and Antimonopoly Politics

Simultaneously one of the most admired and reviled politicians of his age, Estes Kefauver was a loner with a melancholy streak and a liking for scotch. He was also a formidable campaigner and a skilled self-publicist. Born on a farm near Madisonville, Tennessee, in 1903, he was a graduate of the University of Tennessee, Knoxville, and of Yale Law School. In the 1920s and 1930s, he practiced law in Chattanooga, making an unsuccessful bid for the state senate in 1936. His election to the House of Representatives came three years later, in a special election following the death of Sam D. McReynolds;

¹⁰ Lizabeth Cohen, *A Consumers' Republic: The Politics of Mass Consumption in Postwar America* (New York, 2003); Meg Jacobs, *Pocketbook Politics: Economic Citizenship in Twentieth-Century America* (Princeton, N.J., 2005). See also Martin Daunton and Matthew Hilton, eds., *The Politics of Consumption: Material Culture and Citizenship in Europe and America* (Oxford, U.K., 2001).

¹¹ Meg Jacobs, "Pocketbook Politics: Democracy and the Market in Twentieth-Century America," in *The Democratic Experiment*, ed. Meg Jacobs, William J. Novak, and Julian E. Zelizer (Princeton, N.J., 2003), 250-75, quotation at p. 267.

he was re-elected four times. In 1948, after winning a dramatic campaign in which he faced down Memphis boss Ed Crump, he moved to the Senate.¹²

Once a senator, Kefauver quickly made a name for himself as something of a crusader, a man of “Galahad repute,” as reporter Doris Flesson put it.¹³ This he achieved primarily through his chairing of the Special Committee on Organized Crime in Interstate Commerce, otherwise known as “the Kefauver Committee.” In 1950 and 1951, more than 20 million Americans watched the junior senator from Tennessee quietly but effectively probe corruption and vice in the nation’s big cities. Followed eagerly by the press, the Kefauver anti-Mafia caravan moved from one apparently corrupt city to the next, all the time boosting his image as the white knight of American politics.¹⁴ In 1951, the Washington press corps ranked him the nation’s second-best senator (behind Paul Douglas).¹⁵ His eye-catching brand of moral politics impressed voters as much as it irritated his fellow politicians, especially those in his own party. “Senator Kefauver’s weakness,” James Reston wrote in the *New York Times*, “is that he has nobody for him but the people. It is impossible to overstate, or even to explain, the fierceness of the opposition to him among his colleagues in the Senate and in the party organization.”¹⁶

Following the crime hearings, Kefauver began a determined campaign for the presidency, but his failure to attract the backing of the Democratic Party organization frustrated his ambitions. Remarkably, in 1952, he won over 3.1 million votes in the process of winning fourteen of seventeen primaries. Defeating Harry S. Truman in New Hampshire that year, he became the first presidential contender to defeat a sitting president in a primary election. However, his campaigning style was not suited to an era when primaries played only a small role in determining presidential nominations. Adlai Stevenson, who had barely participated in the primaries, became the Democratic Party’s candidate. Four years later, Kefauver once more made a strong showing in the primaries, but this time Stevenson was stronger still, defeating the Tennessee senator decisively in Oregon, Florida, and—most important—California. This time, however, Stevenson’s decision to let the convention choose the vice-presidential candidate rekindled Kefauver’s hopes. The party delegates opted for Kefauver, and he joined Stevenson on the Democratic Party’s ill-fated 1956 presidential ticket.

¹² No one has written the definitive Kefauver biography and the Kefauver Papers at the University of Tennessee, Knoxville are a vastly underexploited resource. However, see Gorman, *Kefauver*, and Fontenay, *Estes Kefauver*.

¹³ Doris Flesson, “Democrats to Attack Monopoly,” *Nashville Star*, 30 Nov. 1954.

¹⁴ In a rhetorical sense at the very least, Kefauver’s anti-vice crusade was not unconnected to his antimonopolism. For an analysis of the historical links between anti-vice campaigns and antimonopoly rhetoric, see Mara Keire, “The Vice Trust: A Reinterpretation of the White Slavery Scare in the United States, 1907-1917,” *Journal of Social History* 35 (Fall 2001): 5-41.

¹⁵ Richard Harris, *The Real Voice* (New York, 1964), 8.

¹⁶ James Reston quoted in Wilma Dykeman, “Only the Voters like Estes,” *The Nation*, 12 April 1956.

Some argued that because Kefauver was ambitious—not a rare trait among U.S. senators—he was not sincere in the political positions he adopted.¹⁷ It is difficult, however, to make that case in relation to Kefauver’s antimonopolism. His devotion to the antimonopoly cause never wavered; it was his first and last political love. He was striving to combat monopoly in the 1930s and 1940s, long before he had a realistic chance of running for president, and after 1960, when he was no longer a major contender, even if he still harbored faint hopes. Indeed, one of the conundrums of Kefauver’s career is how he achieved such popularity while basing his campaigns for office around an issue that, if we can believe historians, had by this time lost both its relevance and its capacity to stir emotion. Campaigning in the 1950s and early 1960s, he at times sounded like a nineteenth-century populist, attacking railroad mergers and the basing point system as if these, not the Cold War or civil rights, were the great issues of the day.¹⁸

Kefauver favored an economy in which competition among small producers set prices. Such an economy, he believed, not only guaranteed fair prices for consumers, but was also fundamental to the American ideal of citizenship, and therefore to political as well as to economic democracy. As an excerpt from a one-minute television spot broadcast during his 1952 campaign for the presidential nomination shows, Kefauver was proud of his record of support for small business and saw it as a major political asset:

During my 13 years in Congress, I have fought consistently against monopolies and for small business. . . . As a member of the House, I led the fight for the Anti Merger Bill, which recently became law. I sponsored the legislation setting up the smaller war plants corporation which enabled many small manufacturers to keep going during World War II. Just recently, I helped set up the Small Defense Plants Administration, which will give similar aid during the present

¹⁷ Tony Badger, for instance, argues that Kefauver’s refusal to sign the Southern Manifesto owed as much to his national ambitions as it did to any principled stance on African American civil rights; see Tony Badger, “Southerners Who Refused to Sign the Southern Manifesto,” *Historical Journal* 42 (June 1999): 517-34.

¹⁸ For railroads, see Estes Kefauver, “Why I Favor a Moratorium,” *Progressive Railroading*, Sept-Oct 1962, series I, box 83, Monopoly: General Correspondence and Information, folder 10, Kefauver Papers, University of Tennessee Special Collections Library, Knoxville, Tennessee. “Let no one be misled,” Kefauver wrote, “as to what the creation of a giant power—such as the Pennsylvania-Central merger—will mean in the U.S. economy. There will sit on the board of directors of that massive combined railroad, policy officials from some of the nation’s largest and most powerful banks, insurance companies, steel companies, aluminum companies, public utilities, coal companies, and other giants of industrial power. The possibilities for discriminations, rate control, traffic diversion, reciprocity with suppliers, and the actual influencing of the pricing policies of shippers by that railroad alone will be enormous.” See also “Railroad Mergers,” 3 April 1962, series I, box 83, Monopoly: General Correspondence and Information, folder 9, Kefauver Papers. On the basing point system see, for example, series X, box 2, folder: 1952 Monopoly, Kefauver Papers.

emergency. In the House, I was a member of the Small Business Committee. And from my long experience and study in this field, I know the needs and special problems of small business. A nation with many active small businesses is a healthy nation—and a Democratic nation. As President I would do everything within my power to further the interests of the small businessmen—to make this a vital economy fed by many fountains.¹⁹

Clearly, Kefauver believed that a message constructed around an appeal to the “little fellow” still had political potency. He was tapping into a deeply felt anxiety about the size and influence of large-scale organizations, public as well as private, and playing on apprehensions about the waning of an America based on localized, small-scale economies and communities. In this way he was echoing the concerns, for example, that had motivated participants in the anti-chain store movement of the 1920s and 1930s.²⁰

The 1950s, however, were a particularly challenging decade for an anti-monopolist of Kefauver’s stripe. The accelerated trend toward corporate merger and consolidation that marked the Eisenhower years gave him an obvious and inviting target, but the political and economic climate created by the Cold War made hitting it difficult. In these circumstances, Kefauver’s strategy was to link what he perceived as the related threats of economic and political dictatorship, presenting the antitrust laws as the United States’ best defense against corporate control, communism, and fascism—the only means of preserving its uniquely competitive enterprise economy.

For instance, in May 1957, two months before the hearings on administered prices began, Kefauver instructed the Senate on how corporate bigness was posing a danger to the nation’s political and economic wellbeing:

With these mergers, competition has been lessening. The “big” in all facets of American business are becoming constantly more powerful. We have, today, the “big” in the automobile business, the “big” in the steel business, the “big” in the oil business, the “big” in the aluminum business, the “big” in the meat industry, as well as in many other industries too numerous to mention.

The United States, he continued, was in the midst of the “third great merger movement” in its history.²¹ The trend toward economic concentration represented, he said, an abnormal expression of capitalism, the result of “the

¹⁹ “One Minute Spot,” 1952, series I, box 83, Monopoly: General Correspondence and Information, folder 3, Kefauver Papers. For a more elaborate statement of Kefauver’s economic policy proposals in the 1952 campaign, see “A Prosperous American for All,” series I, box 76, Bibliographical Material, folder 3, Kefauver Papers.

²⁰ For the anti-chain store movement and localism see Richard Schragger, “The Anti-Chain Store Movement, Localist Ideology, and the Remnants of the Progressive Constitution, 1920-1940,” *Iowa Law Review* 90 (March 2005): 1011-95.

²¹ Kefauver speech, 1 May 1957, series I, box 83, Monopoly: General Correspondence and Information, folder 3, Kefauver Papers.

competitive avarice of certain giant corporate enterprises.”²² This perversion of capitalism would lead to dire political consequences:

I have long believed that it is only a step from the loss of economic freedom to the loss of political freedom. Nazi Germany under Hitler and Fascist Italy under Mussolini were examples of that step. In both of these countries, statism followed the seizure of economic and industrial power by the few. Present-day Sovietism is another example.²³

In the late 1950s and early 1960s, Kefauver used his public statements repeatedly to emphasize this point. Speaking to students at Pfeiffer College, North Carolina, in March 1962, he said:

I want to talk to you about something that affects not only everybody's pocketbook, but, to an increasing degree, the strength of the Free World. Today, there are few countries in the world with the system of free enterprise as we know it in the United States. In the communist world, private ownership of industry is out of the question. Even in the non-communist world, there are many countries where industry, by-and-large is subjected to direct governmental control. Why, then, has the United States managed to remain an island of free enterprise in this sea of collectivism? The answer, I think, lies in our uniquely American institution, the antitrust laws.²⁴

The domestic climate ensured, however, that this argument was vulnerable to attack. Congressional conservatives and their allies in the business community argued that the antitrust laws, far from being a means of preserving American capitalism, were in fact a malign extension of Soviet methods. To give one example, in June 1960, halfway through the Kefauver hearings, the magazine *Sales Management* carried an article headed “The Man Who Would Manage Your Marketing,” depicting Kefauver as a Soviet-style collectivist: “try to imagine how you would make out under *Komplete Kefauver Kontrols*,” it asked.²⁵

Kefauver was critical of the Eisenhower administration's openness to big business, arguing that Ike was too ready to let corporations run the nation. “The front door is wide open to them,” he declared in 1956, “and the back door has a Welcome mat out also.”²⁶ However, even his fellow liberals only weakly supported his conviction that an antitrust offensive could put the nation back on track. By the 1950s, most liberals were reconciled to large-scale capitalism. Some, such as David Lilienthal (a founding director of the

²² Ibid.

²³ Ibid.

²⁴ Pfeiffer College speech, series X, box 18, folder: 16 March 1962, Pfeiffer College, Misenheimer, North Carolina, Kefauver Papers.

²⁵ “The Man Who Would Manage Your Marketing,” *Sales Management*, 15 June 1960.

²⁶ “Big Business, Political Control,” 23 April 1956, series X, box 8, folder: Big Business, Political Control, Kefauver Papers.

Tennessee Valley Authority and the first chair of the Atomic Energy Commission), were its enthusiastic champions.²⁷ As Alan Brinkley has shown, after the late New Deal, antimonopoly lost its place at the heart of American liberalism.²⁸

Marginalized in this way, Kefauver realized the danger of appearing to be a critic not just of big business, but also of progress. In a February 1958 speech, he admitted, “that the wealth and resources of Du Pont made possible the long years of research from which came such developments as cellophane and nylon.” The question of whether bigness is tolerable, he continued, was “a relative matter” dependent on “whether bigness serves us or we serve bigness.”²⁹

Defensive statements such as these illuminate the limited nature of the political opportunities available to postwar antimonopolists. Hemmed in by the political and rhetorical parameters of the early Cold War era, and by mainstream liberalism’s increasing reluctance to embrace antitrust as an instrument of progressive reform, Kefauver struggled to advance his agenda. The fact that his subcommittee hearings focused on a highly abstract and contested economic concept, administered prices, compounded the problem. It is safe to assume that, for most Americans at least, administered prices were, to quote Hofstadter, “complex, difficult, and boring.”³⁰ They were hardly the stuff successful crusades are made of.

Administered Prices

As Robert Bud has shown, the 1957–1963 hearings on administered prices originated, at least in part, in economic ideas associated with the New Deal; sympathetic economists then kept them alive in the federal bureaucracy.³¹ Administered prices were the brainchild of economist Gardiner C. Means.³²

²⁷ For Lilienthal’s liberalism, see Steven M. Neuse, *David E. Lilienthal: The Journey of an American Liberal* (Knoxville, Tenn., 1996).

²⁸ Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York, 1996).

²⁹ *Congressional Record*, 21 Feb. 1958, 2472, series I, box 83, Monopoly: General Correspondence and Information, folder 4, Kefauver Papers.

³⁰ Hofstadter, “What Happened to the Antitrust Movement?” 189.

³¹ Robert Bud, “Antibiotics, Big Business, and Consumers: The Context of Government Investigations into the Postwar American Drug Industry,” *Technology and Culture* 46 (April 2005): 329-49.

³² Means distinguished such prices both from those “set *in* the market” responding flexibly to supply and demand, and from prices in monopolized industries, which might or might not be administered. In fact, he argued, it was possible to have administered prices in competitive industries, and market prices in monopolized industries; see Gardiner C. Means, “Price Inflexibility and the Requirements of a Stabilizing Monetary Policy,” *Journal of the American Statistical Association* 30 (June 1935): 401-13, at 401. Means first introduced the concept of administered prices in a paper he gave in a joint session of the American Statistical Association and the Econometric Society in 1934 and published the following year as “Price

Means, a leading purchasing power progressive and the husband of leading consumer advocate Caroline Ware, argued that in concentrated industries prices were being administered (that is, set and then held artificially constant at a certain level). During the New Deal, there was a perceived connection between administered prices and underconsumptionist explanations for the causes of the Great Depression. In the late 1950s, the re-emergence of the wage-price problem, albeit in a different form, gave both Means and the idea of administered prices a new lease of life.

The staff members Kefauver inherited when he took over as chair of the Senate Subcommittee on Antitrust and Monopoly in 1957 were committed to the idea that administered prices contributed to the economic difficulties facing postwar consumers and the wider economy. Many of them had been leading figures in the federal government's antitrust bureaucracy since the New Deal. Drawn mainly from the Federal Trade Commission (FTC) and the Antitrust Division of the Justice Department, they included veteran antitrust insiders such as Paul Rand Dixon, an FTC trial lawyer from Kefauver's home state of Tennessee, and economist John Blair, whom Kefauver had known since 1945, when Blair worked as an economist with the Smaller War Plants Corporation.³³ Another Kefauver aide, Irene Till, was the wife of pioneering Brookings Institute economist Walton Hamilton. She had contributed chapters on the milk and oil industries to Hamilton's 1938 book, *Price and Price Policies*.³⁴ When Kefauver died, it was Till who completed *In a Few Hands: Monopoly Power in America*, his account of the Subcommittee investigation.³⁵

These connections between prewar and postwar antitrust activity were evident in the Senate, too, where antimonomopolists worked hard during and after the war to maintain their opposition to economic concentration. Wyoming Senator Joseph C. O'Mahoney took a leading role in these efforts. In the late 1930s and early 1940s, he had chaired the Temporary National Economic Committee (TNEC), the massive inquiry into the problem of monopoly launched by the Roosevelt administration in response to the 1937-1938 recessions.³⁶ In 1948, he was appointed to head the Joint Economic Committee (JEC), a standing committee set up by the 1946 Employment Act to report on the state of the economy and make suggestions as to how it might

Inflexibility and the Requirements of a Stabilizing Monetary Policy." He was publicly defending the idea of administered prices as late as 1983; see Gardiner C. Means, "Corporate Power in the Marketplace," *Journal of Law and Economics* 26 (June 1983): 467-85. See also Gardiner C. Means, "Big Business, Administered Prices, and the Problem of Full Employment," *Journal of Marketing* 4 (April 1940): 370-78; and Gardiner C. Means, "The Administered-Price Thesis Reconfirmed," *American Economic Review* 62 (June 1972): 292-306.

³³ Harris, *The Real Voice*, 11.

³⁴ *Ibid.*, 334-36.

³⁵ Estes Kefauver and Irene Till, *In a Few Hands: Monopoly Power in America* (New York, 1965); Bud, "Antibiotics, Big Business, and Consumers," 335.

³⁶ Bud, "Antibiotics, Big Business, and Consumers," 332.

be improved. The following year, the JEC published a report urging a new, wide-ranging study into the problem of monopoly. It was because of this report that, in 1951, the Senate Subcommittee on Antitrust and Monopoly was established. By 1955, under the leadership of Harley Kilgore, a major inquiry was underway.³⁷ When Kilgore died the following year, O'Mahoney, himself a frail man, took over. Kefauver was next in line.³⁸

Robert Bud's argument that we should understand the Kefauver hearings as an expression of underconsumptionist ideas rooted in the New Deal has considerable merit. It is worth noting, however, that there were important differences between Kefauver's politics and those of liberal economists such as Means and John Kenneth Galbraith, who presented evidence to the subcommittee. In his testimony, Means explained that excessively concentrated industries were raising prices in the face of falling demand, and that this was causing the inflation that was harming the economy. He argued that administered prices were typically associated with markets dominated by a small number of producers, and that such producers enjoyed discretion in setting prices because their total profits might be the same if they produced a larger volume at a lower price or a smaller volume at a higher price. For this reason, he said, administered prices were less elastic than market prices, falling less rapidly than the latter in a depression, increasing more slowly in a boom. Galbraith, in separate testimony, concurred with this assessment, as did Kefauver.

Unfortunately for Kefauver, however, neither Means nor Galbraith found remotely plausible the senator's conviction that America could use the antitrust laws to reverse the trend toward bigness in economic life.³⁹ Indeed, the two economists had both played a part in directing the liberal mainstream's gaze away from antimonopoly and toward a form of interest-group liberalism in which organized labor would act as a countervailing force against big business. Kefauver, Means, and Galbraith could agree that administered prices existed and that they were doing real damage; but there was no unanimity among them on how best to combat the problem. The economists did not share Kefauver's passionate faith in the antitrust laws, which owed more to an older populist-progressive tradition rooted, at least partially, in agrarian distrust of concentrated economic and political power, than to their own New Deal liberal perspectives.

Kefauver's subcommittee probed for evidence of administered prices in an impressive array of industries. Adopting a dragnet approach, it investigated the bread, milk, auto, steel, and electrical manufacturing industries as well as professional sports. Kefauver even quizzed hearing aid manufacturers, persuading an elderly Eleanor Roosevelt to give evidence. From time to time,

³⁷ *Ibid.*, 332-33.

³⁸ *Ibid.*, 334.

³⁹ For Kefauver's critique of Galbraith, see "Conference on the Consumer in American Life," series X, box 12, folder: 23 June 1958, Speech at Conference on the Consumer in American Life, Kefauver Papers.

he was able to unsettle some of the most powerful figures in American business such as U.S. Steel president Roger Blough. The hearings rarely made the front pages of the major newspapers, and never came close to attracting the national following associated with the Kefauver crime hearings from 1950 to 1951; but in the estimation of many contemporary observers, they performed an essential function. In addition to amassing 18,000 pages of transcripts, contained in twenty-nine volumes, and summarized in a set of industry-by-industry reports that stretched to over 1,000 pages, they brought the executives of the most powerful U.S. corporations before a democratically elected group of senators, who subjected them, at great length and in exhausting detail, to sustained scrutiny.⁴⁰

However, the subcommittee achieved much more than this. Aided by the unexpected emergence of the thalidomide scandal, its investigation of the pharmaceutical industry spawned one of the more significant consumer safety laws of the twentieth century, the 1962 Kefauver-Harris amendments to the 1938 Food, Drug, and Cosmetic Act. Furthermore, according to Robert Bud, the debates sparked by the hearings “played a key part in formalizing American society’s postwar attitudes toward access to the new array of potent drugs,” laying the foundations for subsequent “debates . . . that would endure for a generation.”⁴¹ The story of how hearings on administered prices yielded consumer safety legislation is an important one for understanding what happened to antitrust after the New Deal.

The Drug Hearings and the Kefauver-Harris Act

The drug industry phase of the Kefauver hearings began in December 1959 and lasted for ten months. By this time, the subcommittee staff had already carried out a major investigation, compiling extensive data on pharmaceutical prices and profits. They had interviewed physicians, visited manufacturers, examined the industry’s relations with non-profit agencies,

⁴⁰ John M. Blair, “Kefauver,” April 22 1965, *The New York Review of Books*; viewed April 18, 2007. URL: <http://www.nybooks.com/articles/12927>. Note, however, that many contemporary observers believed that the subcommittee hearings were Kefauver’s finest hour, and that they had performed a great service to the nation. In an otherwise lukewarm evaluation, playwright and former New Deal speechwriter Robert Sherwood lauded Kefauver for bringing “to judgment an awesome range of corporate evil-doers” and for publicly exposing “such witnesses as Roger Blough of U.S. Steel,” whose testimony Sherwood represented as admitting that prices were set not by supply and demand but by predetermined profit goals. See Robert Sherwood, “A decent man but not a big one,” *New York Times*, 7 Nov. 1971, BR-4. Radical journalist I. F. Stone valued the exposure the hearings gave to automobile industry practices. “The auto report,” he wrote, “is more than an economic analysis. It is a portrait of our society. It will be a joy to the anthropologist with a sense of humor . . . the intricately planned irrationality and calculated wastefulness of our leading industry is here laid bare for the social psychiatrist.” See *I. F. Stone’s Weekly*, 17 Nov. 1958, p. 1.

⁴¹ Bud, “Antibiotics, Big Business, and Consumers,” 331.

and corresponded with consumers who had complained to them about their experiences. In her pre-hearings report on the industry, Irene Till noted that the patent system helped the biggest companies control the market for drugs. There was, she observed, “a fraternity of spirit among the large manufacturers.”⁴² They preferred, she wrote, to settle by private agreement rather than involve themselves in litigation over patents. Kefauver would interpret this as a sign that the entire business of patent claims in the industry was of dubious validity. Till’s report also pointed to the “close identity of prices” set by manufacturers, asserting that big companies practiced “price leadership” and that there was a lamentable absence of foreign and domestic competition.⁴³

In the course of the drug hearings, about 150 witnesses and their assistants appeared before the subcommittee. Testimony was limited to four groups of drugs, all of which Kefauver’s team had thoroughly investigated in advance: cortical steroids, tranquilizers, oral antidiabetics, and antibiotics. Typically, each day Kefauver would start by offering a few comments before giving the floor to his senior experts, Blair and Dixon. Blair’s method, calculated as much to garner headlines as to unsettle representatives from the drug industry, was to choose a well-known product, compare its production costs to its wholesale and retail prices, then, using State Department data, show that consumers in the United States were paying more for the same drug.⁴⁴

The hearings were never about prices alone, however. They also probed the role of advertising and promotion to doctors, the relationship between trademarked and generic drugs and related naming practices, the work of the “detail men” employed by drug companies to promote their trademarked versions of drugs, and whether consumers were sufficiently informed about side effects. Although the problem of administered prices largely drove the hearings, consumer safety was always one of the subcommittee’s major concerns. In *Pocketbook Politics*, her account of “economic citizenship” in the twentieth century, Meg Jacobs describes Kefauver’s attack on monopoly as a “dead end,” portraying it as the last gasp of a moribund form of consumer politics based solely on “prices” and “income distribution.”⁴⁵ For Jacobs, the Kefauver-Harris amendments marked the birth of a new form of consumer politics organized around “safety and health issues.”⁴⁶ This gives the false impression that the Kefauver-Harris Act that finally emerged from the

⁴² See Harris, *The Real Voice*, 24. I base this account of the complex process by which the Kefauver-Harris amendments became law on Richard Harris’s contemporary reporting. See also Richard E. McFadyen “Thalidomide in America: A Brush with Tragedy,” *Clio Medica* 11 (Spring 1976): 79-93; and Richard E. McFadyen, “Estes Kefauver and the Drug Industry.” Ph.D. diss., Emory University, 1973.

⁴³ McFadyen, “Estes Kefauver,” 25.

⁴⁴ *Ibid.*, 72-73.

⁴⁵ Jacobs, *Pocketbook Politics*, 258.

⁴⁶ *Ibid.*, 259.

hearings bore little relation to the hearings themselves, or to the drug legislation Kefauver proposed before July 15, 1962, when the *Washington Post* broke the news of the thalidomide scandal.

While the 1962 amendments to the 1938 Food, Drug, and Cosmetic Act may not have directly addressed the problem of prices around which Kefauver had initially launched his investigations, it would be a mistake to neglect the connections between Kefauver's consumer politics and the "new" consumer politics of the 1960s and 1970s. The greater emphasis placed by Ralph Nader and other postwar consumer advocates on safety than on prices should not blind us to the striking continuities of concern between the two phases of modern consumer politics. Kefauver and Nader, after all, shared a crusading style and a highly critical approach to big business, especially to monopoly.

It is possible, too, to exaggerate thalidomide's role in shaping the content of the Kefauver-Harris Act. Thalidomide (a tranquilizer given to pregnant women that caused birth defects in babies) was important in galvanizing the public and the Kennedy administration. It is hard to imagine that the Kefauver-Harris Act would have passed without it. However, Meg Jacobs' argument that the thalidomide scandal separated an older consumer politics based on prices from a new politics based on health and safety is not entirely convincing.⁴⁷ Many of the provisions set out in the 1962 amendments had been incorporated in S. 1552—Kefauver's drug bill—long before thalidomide became a household word in the United States.⁴⁸ Kefauver did lose parts of his bill, including those that would have led to greater regulation of drugs under patent, and a scheme for the compulsory licensing of drug manufacturers; but others, including many that dealt with health, safety, and efficacy issues, remained. What is more, the relationship between legislation and medical scares was not new: health and safety fears after a solvent used to dissolve sulfanilamide poisoned and killed more than a hundred people prompted the 1938 Food, Drug, and Cosmetic Act.⁴⁹

The changes brought about by the Kefauver-Harris Act were far from trivial. A key provision was the expansion of the powers of the Food and Drug Administration (FDA) so that the production of all prescription drugs conformed to "good manufacturing practice" (GMP).⁵⁰ This GMP element was especially important from 1969 on in the regulation of the food industry. It has since become a major part of the FDA's work.⁵¹ It made plant inspection procedures more stringent, including access to records, files,

⁴⁷ *Ibid.*, 258-59.

⁴⁸ Harris, *The Real Voice*, 119, 123.

⁴⁹ On sulfanilamide, see James Harvey Young, "Sulfanilamide and Diethylene Glycol," in *Chemistry and Modern Society: Historical Essays in Honor of Aaron J. Ihde*, ed. John Parascandola and James C. Whorton (Washington, D.C., 1983), 105-25.

⁵⁰ Kefauver and Till, *In a Few Hands*, 97.

⁵¹ URL: <http://www.cfsan.fda.gov/~lrd/histor1b.html>, viewed 18 April 2007.

processes, and all facilities related to the final product. It also required annual registration of all drug-making establishments and biannual inspection by an FDA official.

Another aim of the act was to simplify the generic drug names (in contrast to catchy trade names) by giving the Secretary of Health, Education, and Welfare power to designate the generic name where deemed necessary “in the interest of usefulness and simplicity,” and to require review of the names of generic drugs to see if revision was needed.⁵² Furthermore, it introduced amendments to ensure that drugs be proved efficacious for the medical conditions for which they were recommended. Drug companies had two years (until October 1964) to comply with the efficacy provision. Since 1962, thousands of drugs have been withdrawn from the U.S. market because they failed to meet the efficacy test.⁵³ The efficacy provision was part of Kefauver’s bill before thalidomide, as were provisions giving the FDA more powers to secure prompt information on adverse side effects and to obtain this information direct from the drug companies rather than from journal publications and other reports.

Under Kefauver’s leadership, the Senate Subcommittee on Antitrust and Monopoly failed to convince Americans that administered prices were at the root of the wage-price inflation of the late 1950s. However, the drug hearings—aided by the external shock of the thalidomide scare—led to legislation with an enduring impact, requiring that drug companies prove that a product was not only safe, but also effective. Hearings predicated on a mode of antitrust politics rooted in the New Deal era, and led by a politician whose antimonopoly rhetoric harked back to the late nineteenth-century populists, produced consumer safety legislation still in force today.⁵⁴

Antimonopoly and Modern Consumer Politics

The connection between antimonopoly and modern consumer politics merits further scrutiny. To date, historians of the twentieth-century United States have lavished their attention on early twentieth-century consumer groups, and on the relationships among consumption, progressive politics, and citizenship.⁵⁵ As a result we now know a great deal about how women, African

⁵² Kefauver and Till, *In a Few Hands*, 98.

⁵³ URL: <http://www.cfsan.fda.gov/~lrd/histor1b.html>, viewed 18 April 2007.

⁵⁴ Given that the act came out of hearings investigating the high price of prescription drugs, it is ironic that it received severe criticism for inflating prices. For some recent developments in this debate, see Gary Becker, “Get the FDA Out of the Way and Drug Prices Will Drop,” *Business Week* (16 Sept. 2002), viewed 18 April 2007. URL: http://www.businessweek.com/magazine/content/02_37/b3799028.htm. See also Joseph A. DiMasi, “What’s Time Got to Do With It?” *Health Affairs*, 25 (Dec. 2006): 1188. URL: <http://content.healthaffairs.org/cgi/content/full/25/4/1188>, viewed 18 April 2007.

⁵⁵ Examples of this now substantial scholarly field include Cohen, *Consumers’ Republic*; Jacobs, *Pocketbook Politics*; Kathleen G. Donahue, *Freedom From Want*:

Americans, and others took advantage of the opportunities provided by the Progressive and New Deal eras to forge a new and potent form of consumer citizenship, albeit one that has faded since the collapse of the New Deal order. However, as Lizabeth Cohen has noted, in the immediate postwar era consumer issues were also promoted in a more top-down fashion by a network of congresspeople committed to keeping the consumer agenda alive at a time when the ideological constraints imposed by the Cold War gave reformers scant room for maneuver.⁵⁶ Kefauver was the most prominent member among this group, which also included Paul Douglas, Philip Hart, William Proxmire, Warren Magnuson, Edmund Muskie, and Gaylord Nelson. Historians might contribute to our understanding of the origins of modern consumer politics by examining this network, exploring the relationships among its members and establishing the extent to which they acted in concert, and analyzing its ideological character, including its debt to anti-monopolism.

It is interesting, for example, that Kefauver (supported chiefly by senators Douglas and Hart) was the leading congressional proponent of the idea that there should be a federal Department of Consumers. Significantly, he made his case for such a department in the fiftieth-anniversary edition of *The Progressive*, a magazine started in 1909 by Robert LaFollette, Sr., one of the great Progressive Era foes of monopoly.⁵⁷ Presenting his proposal as a natural extension of the work of his subcommittee, Kefauver attacked those liberals who had turned their backs on antimonopoly, arguing that monopoly was the direct cause of the current economic malaise, which combined rising prices with falling production and employment. There was a need, he claimed, for a new department to act “as an advocate of the consumers’ interest at all levels and stages of government.”⁵⁸ It would operate as a “more sympathetic home for a variety of activities directly affecting the consumer which are now performed elsewhere in government,” bringing the FDA, the price work of

American Liberalism and the Idea of the Consumer (Baltimore, Md., 2003); Landon R. Y. Storrs, *Civilizing Capitalism: The National Consumers’ League, Women’s Activism, and Labor Standards in the New Deal* (Chapel Hill, N.C., 2000); Charles F. McGovern, *Sold American: Consumption and Citizenship, 1890-1945* (Chapel Hill, N.C., 2006). See also the essays in Martin Daunton and Matthew Hilton, eds, *The Politics of Consumption: Material Culture and Citizenship in Europe and America* (Oxford, U.K., 2001).

⁵⁶ Cohen, *Consumers’ Republic*, 353. See also Michael Pertschuk, *Revolt Against Regulation: The Rise and Pause of the Consumer Movement* (Berkeley, Calif., 1982), 9-36.

⁵⁷ Estes Kefauver, “A Voice for Consumers,” *The Progressive* (Jan. 1959), 41-44. See also, “Rotary Club Dinner,” Lenoir City, Tenn., 2 April 1959, series I, box 88, Monopoly: Consumers, Department of, folder 1, and “Speech to the National Democratic Women’s Club Luncheon” Washington D.C., 18 May 1959, series X, box 12, folder: 18 May 1959, National Democratic Women’s Club Luncheon, both in Kefauver Papers.

⁵⁸ Estes Kefauver, “A Voice for Consumers,” 44.

Bureau of Labor Statistics, the Bureau of Home Economics, and parts of the Bureau of Standards under one roof. This would be part of a long overdue restructuring of government to reflect the centrality of the consumer in contemporary American life:

In a governmental structure which is heavily weighted by agencies representing the producer interest, there is a compelling need for the countervailing influence of an agency which will bring to the attention of top policy officials the ways in which their actions may affect the American people in their capacity as consumers. Only through the establishment of a Department of Consumers will the voice of the consumer be heard in the land.⁵⁹

In March 1959, introducing a bill to establish the new department, Kefauver reiterated the link between the hearings on administered prices and the plight of the consumer; “the unseen hand of competition”, he said, was no longer protecting consumers.⁶⁰

To return to the question with which we began, this study of the Kefauver hearings on administered prices suggests that Hofstadter was essentially correct in pointing to the waning of antitrust as a popular passion in the post–New Deal United States. The hearings attracted only moderate press coverage and, until the thalidomide scandal broke in July 1962, evoked no great clamor for legislation of any sort to address the problem, regardless of the industry in question.

As Hofstadter himself stressed, however, antitrust politics in the 1950s and 1960s were critically important. It would be most unfortunate, therefore, if the absence of a popular frenzy of antimonopoly activity during this period deterred historians from studying the fate of antitrust, and its relationship to the politics of reform since the end of the Second World War. This is especially the case, I have argued, because there are significant, yet insufficiently researched, connections between the antitrust politics of the early and mid-twentieth century and the consumer politics of the 1960s and beyond.

Estes Kefauver’s hearings on administered prices were not the redundant and anachronistic episode painted by some. They were an attempt, spearheaded by a politician who was both a passionate consumer advocate and an antitrust crusader, to scrutinize, publicize, and remedy the problem of monopoly and its consequences. Their enduring legacy, the 1962 Kefauver-Harris Act, was not merely a response to the thalidomide scandal. Nor did it

⁵⁹ Ibid.

⁶⁰ Senate speech, 26 March 1959, series I, box 88, Monopoly: Consumers, Department of, folder 2, Kefauver Papers. In 1959 and 1961, Kefauver failed to persuade Congress of the merit of his plan for a Department of Consumers. A similar effort in 1963 to establish a more modest Independent Office of Consumers also failed. See Press Release 20 May 1963, series X, box 20, Folder: “Office of Consumers,” and “Memo from Washington,” 3-8 June 1963, series I, box 88, Monopoly: Consumers, Department of, folder 2, both in Kefauver Papers.

mark a clear dividing line between two wholly distinct modes of consumer politics, one linked to prices, the other to health and safety. Rather, the act and the hearings on administered prices from which it sprang constituted an important episode in modern consumer politics, one that illuminates the persistent, if somewhat muted, influence of antimonopoly in the post-World War II United States.