The Development of Consumer Law in the US: Comparisons with the EU Experience

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In commemoration of President John F. Kennedy’s landmark Special Message to the Congress on Protecting the Consumer Interest proclaimed on 15.03.1962, this contribution surveys the emergence and development of consumer law in the US, with a focus on the regulation of consumer contract and financial transactions in order to take account of certain recent trends in the approach taken to consumer law in these areas and to highlight some salient comparisons with the EU experience. It provides background on the emergence and early development of US consumer law at the federal and state levels. It also discusses certain recent developments in US consumer law on both the legislative and judicial fronts, namely the Dodd-Frank Wall Street Reform and Consumer Protection Act and the US Supreme Court’s judgment in AT&T Mobility LLC v Concepcion. Lastly, it presents some comparative reflections on the development of consumer law in the US and the EU with respect to the relationship between the central authority (Federal Government/Union) and the constituent state entities (states/Member States) in this setting.

1. Introduction

It is no exaggeration to say that former President John F. Kennedy (JFK)’s Special Message to the Congress on Protecting the Consumer Interest, delivered over fifty years ago on 15.03.1962, is a cornerstone of consumer law and the consumer movement generally in the United States (US). To be sure, subsequent US Presidents have played an important role in the development of consumer law. For example, former Presidents Lyndon B. Johnson and Richard M. Nixon also issued special messages to the Congress on protecting consumer interests, and former Presidents Gerald R. Ford and William J. Clinton are credited with adding the consumer rights to education and service to the list of the four consumer rights (the right to safety, the right to be informed, the right to choose and the right to be heard) proclaimed by JFK. Moreover, certain legislative reforms


3 See Johnson, Special Message to the Congress on Consumer Interests, 05.02.1964, <presidency.ucsb.edu/ws/?pid=26058>; Johnson, Special Message to the Congress “To Protect the American Consumer”, 16.02.1967, <presidency.ucsb.edu/ws/?pid=28638>; Johnson, Special Message to the Congress: “To Protect the Consumer Interest”, 06.02.1968, <presidency.ucsb.edu/ws/?pid=29204>.


5 See Clinton, Proclamation 6748 – National Consumers Week, 1994, 24.10.1994, <presidency.ucsb.edu/ws/?pid=49359>. In this document, former President Clinton noted that the right to consumer education was added by President Gerald Ford in 1975 and declared an additional consumer right to service, denoting “the right to convenience,
achieved under the current Obama Administration, including the Dodd-Frank Wall Street Reform and Consumer Protection Act discussed further below⁶, have been heralded as “the strongest consumer protections” in US history.⁷ Nevertheless, as illustrated by the fact that it is commonly referred to as the “Consumer Bill of Rights”, JFK’s Special Message will forever occupy the centerpiece in the advancement of consumer rights and interests for which the Federal Government has, in his words, “a special obligation”.⁸

No doubt, the significance of JFK’s Special Message was not confined to the US and had an impact on the development of consumer law in other parts of the world, including the European Union (EU). As noted by commentators⁹, JFK’s Special Message had some influence on the formulation of the five similar, though not identical, consumer rights (the right to protection of health and safety, the right to protection of economic interests, the right of redress, the right of information and education and the right of representation (the right to be heard)) in the EU setting, starting with the Council’s seminal 1975 Preliminary Programme for a consumer protection and information policy.¹¹ Not long thereafter, scholars began to look to the US for comparative insight as regards the development of consumer law in the EU.¹² Yet, surveying the development of US and EU consumer law over the past fifty years since JFK’s Special Message reveals that there is considerable opportunity for comparative reflection and dialogue going both ways as regards the challenges presented by consumer law and the potential solutions to tackle such problems in the American and European legal orders.

As evidenced by the range of topics canvassed in JFK’s Special Message, including food and drug regulation, transportation, housing, packaging and financial protection, US consumer law has a broad expanse, which continues to grow with the challenges of the day, such as those brought about by the Internet and new technologies.¹³ In fact, US consumer law is highly interdisciplinary in the sense that it cuts across numerous fields, such as contracts, torts, commercial transactions, bankruptcy, health law, alternative dispute resolution, competition or antitrust law, administrative law and constitutional law.¹⁴ As a result, all of the various topics of US consumer law with potential relevance to the EU setting cannot be covered within the scope of this contribution, and even those that are mentioned here could easily take up an entire book.

The objective of this contribution is therefore to discuss in broad brush strokes the emergence and development of consumer law in the US, with a focus on the regulation of consumer contract and financial transactions in order to take account of certain recent trends in the approach taken to consumer law in these areas and to highlight some salient comparisons with the EU experience. For this reason, this contribution is divided into three main parts concerning: first, the emergence and early development of US consumer law; secondly, recent developments in US consumer law on both the legislative and judicial fronts; and thirdly, comparative reflections on the development of consumer law in the US and the EU. While the discussion of the American consumer framework may be descriptive at times, it is meant to lay the foundations for a firm understanding of US consumer law by European audiences and for the comparative analysis of EU consumer law that follows.

See section 3.

See, e.g., Obama, Proclamation 8634 – National Consumer Protection Week, 2011, 04.03.2011, <presidency.ucsb.edu/ws/?pid=90030> (also citing the Credit Card Accountability, Responsibility, and Disclosure Act (Credit CARD Act) of 2009; see further fn 29 below).

⁶ See section 3.
¹² See JFk’s Special Message, fn 1 above, second para.