

IS CONSUMER ACTIVISM ECONOMIC DEMOCRACY?

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The Second Gilded Age has also been a golden era for consumer activism. As the nation state and organized labor have both diminished in their ability to translate public attitudes into resource outcomes, civil society groups have turned to a third axis of social power, consumer behavior, to bring multinational corporations to heel. We are witnessing historically high levels of participation in market-based campaigns, boycotts, and conscientious shopping. Recent waves of consumer activism recall the frequent boycotts that characterized the history of the early American labor movement.

Yet whether consumer power actually furthers the project of economic democracy—that is, social control over economic production—remains controversial. This Article argues that two forms of consumer activism, which I call organized buying and ethical consumption, differ fundamentally in their democratic potential. Organized buying refers to a targeted effort to use consumer power to achieve a discrete goal; ethical consumption refers to the more diffuse preferences of individual consumers for morally favored goods. I illustrate these distinctions through case studies from food politics: the United Farm Workers’ grape boycotts, and the contemporary market for organic food.

Only organized buying, I argue, has the potential to subordinate economic power to democratic control. Ethical consumption, on the other hand, aligns with the market fundamentalist view that all political preferences can and should be satisfied through individual purchasing decisions. Although this Article does not deal with doctrinal questions, a more nuanced understanding of the political economy of consumer activism should inform discussions about product labeling, the regulation of secondary labor activity, and free speech protections for consumer behavior.

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INTRODUCTION

The Second Gilded Age has been a golden era for consumer activism. Among defenders of social democracy, it is now a common lament that globalization has eroded a mid-century compromise between capitalism and liberal democracy. In the canonical tale, a “postwar settlement” temporarily defused industrial conflict as tremendous growth and flattening inequality led to a period of shared prosperity, at least in the industrialized West.¹ Yet after the collapse of the Bretton Woods system and successive waves of neo-liberalization, economic inequality has rocketed back up to levels not seen since the late nineteenth century.² The global deregulation of capital flows has, in turn, hobbled the ability of nation-states to address inequality within their borders.³ At the same time, private-sector unions—a primary institution of the mid-century compromise—have seen their membership rolls and wage premiums steadily decline, especially in the United States.⁴

As a result, more and more commentators and activists are looking to market-based campaigns as another way to bring multinational corporations to heel. The “alter-globalization movement” arose as a loose network of civil society organizations opposed to the democratic failings and corporate capture of international institutions.⁵ Groups aligned with the movement have

¹ See Wolfgang Streeck, *The Crises of Democratic Capitalism*, 71 NEW LEFT REV. 5, 10 (Sept.–Oct. 2011) (describing a “political-economic peace formula between capital and labour that had ended domestic strife after the devastations of the Second World War”).

² See David Singh Grewal & Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 LAW & CONTEMP. PROBS. 1, 21–23 (2014) (summarizing this diagnosis); Robert Hockett, *Bretton Woods 1.0: A Constructive Revival for Sustainable Finance*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 401, 430–46 (2013) (describing Keynes' vision for postwar international finance and how it was incompletely realized in the Bretton Woods institutions); see generally THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* 22–27 (Arthur Goldhammer trans., 2014) (summarizing the key finding that mid-century economic equality was a historical anomaly).

³ See Dani Rodrik, *How Far Will International Economic Integration Go?*, 14 J. ECON. PERSP. 177, 180–84 (2000) (describing dual “trilemmas” that undermine efforts to achieve simultaneously international integration and domestic redistribution).

⁴ See JAKE ROSENFELD, *WHAT UNIONS NO LONGER DO* 10–14 (2014) (recounting the decline of organized labor in the United States and other nations); *id.* at 184–88 (connecting rising inequality to the decline in unionization rates).

⁵ See Jeffrey M. Ayres, *Framing Collective Action Against Neoliberalism: The Case of the “Anti-Globalization” Movement*, 10 J. WORLD-SYSTEMS RES. 11, 20–24 (2004).

made frequent use of consumer actions, ranging from so-called “culture jamming” to the less militant promotion of fair-trade labels.⁶ In addition, strains of the American labor movement are attempting new experiments with “comprehensive campaigns” that make expanded use of consumer appeals.⁷ As modern corporations have networked and subcontracted to resist traditional labor actions, they may have become more vulnerable to secondary actions and reputational attacks in the marketplace.⁸

The unraveling of the postwar settlement thus corresponds to a shift in the axes of *economic democracy*, which we can roughly define as public opinion’s influence over the allocation of goods and services in society. Two traditional axes—the democratic nation-state and union-based workplace democracy—have weakened substantially. But a third axis, consumer behavior, seems to have strengthened over the past decades. The aggregate purchasing power of consumers exerts significant, albeit diffuse, influence over what gets made and who reaps the reward. At the same time that political and workplace democracy have retrenched, the relative importance of personal consumption has grown: As a share of gross domestic product in the United States, personal consumption has increased from 59% in the late 1960s to 69% today.⁹ But immediately associating this power with a new form of “economic democracy” begs the question; it is not self-evident that the control exercised by purchasers suits the name.

Although much depends on the method of measurement, consumer activism does seem to have increased in the past decades. Many studies report widespread political consumption among the public.¹⁰ Caroline Heldman, in a recent and comprehensive survey of consumer activism, assembled a variety of sources to conclude that rates of political purchasing, investment actions, and reputational campaigns have all increased dramatically since 1990.¹¹ She observes that, for people under thirty, reported rates of consumer activism outpace more traditional forms of civic participation.¹² Heldman takes a sanguine view of this development: “Consumer activism in the contemporary social media era is ‘putting the roots back in grassroots’ in a way that strengthens political equality, political liberty, and popular sovereignty.”¹³

Not all share Heldman’s optimism. In fact, scholars of many different political stripes take

⁶ See generally NAOMI KLEIN, *NO LOGO* (3d ed. 2010); cf. Douglas A. Kysar, *Preferences for Processes: The Process/Product Distinction and the Regulation of Consumer Choice*, 118 HARV. L. REV. 525, 535 (2004) (arguing that globalization encourages activists to express themselves primarily through market activities).

⁷ See *infra* notes 47–49 and accompanying text.

⁸ See Charles Heckscher, *Organizations, Movements, and Networks*, 50 N.Y.L. SCH. L. REV. 313, 322–23 (2005).

⁹ See *Shares of Gross Domestic Product: Personal Consumption Expenditures*, U.S. BUREAU OF ECONOMIC ANALYSIS, <https://fred.stlouisfed.org/graph/?g=jp2n> [<https://perma.cc/X75F-EBUC>].

¹⁰ For some examples, see William H. Clark, Jr. & Elizabeth K. Babson, *How Benefit Corporations Are Redefining the Purpose of Business Corporations*, 38 WM. MITCHELL L. REV. 817, 819–20 & nn.10–13 (2012). But see TIMOTHY M. DEVINNEY ET AL., *THE MYTH OF THE ETHICAL CONSUMER* (2010) (arguing that survey data overstate the true extent of politicized consumption activity).

¹¹ See CAROLINE HELDMAN, *PROTEST POLITICS IN THE MARKETPLACE: CONSUMER ACTIVISM IN THE CORPORATE AGE* 61–71 (2017).

¹² *Id.* at 63. Note, however, that Heldman cites data from the early 2000s in support of this claim.

¹³ *Id.* at 72–73 (quoting Pia A. Albinsson & B. Yasanthi Perera, *Putting the Roots Back in Grassroots: Consumer Activism through Social Media*, 38 ADVANCES IN CONSUMER RES. 750 (2011)).

a dim view of consumer activism. From the left, critics charge that “voting with your dollars” affirms existing power structures. Consumer campaigns are easily co-opted by commercial interests,¹⁴ and they transform collective political energy into individualized market preferences. Others denounce more broadly a neoliberal reconceptualization of the self as a purely economic actor. Wendy Brown, for instance, argues against the “‘economization’ of political life and other heretofore noneconomic spheres and activities.”¹⁵ She warns against reformulating all “public purposes” as “market conduct,” which ultimately eliminates “the very idea of a people, a demos asserting its collective political sovereignty.”¹⁶

Conversely, for those devoted to free markets, consumer activism infects the market with irrelevant—and potentially invidious—political preferences. Free-trade advocates defend the process/product distinction, which allows corporations to withhold information about the social and environmental provenance of traded goods.¹⁷ Such market fundamentalists as Milton Friedman exalt the market as a sphere rightly sanitized of irrational prejudice and political bias. Friedman’s vision hearkens back to a classical liberal notion of *doux commerce* under which the market pacifies disputes among its participants.¹⁸ Does political consumption just mean prejudiced consumption?

This Article is the first to theorize consumer activism for a law review audience through the lens of economic democracy. Why has the political economy of consumer activism gone neglected for so long? Legal scholars have written extensively on different theories of electoral democracy because they inform the contours of election law and First Amendment doctrine.¹⁹ Likewise, labor law scholars engage with developments in the theory and philosophy of workplace democracy.²⁰ Yet the democratic potential of consumer activism has received no systematic treatment. The traditional distinction between “public” and “private” law may partially account for this neglect, with all market activity relegated to the purportedly non-political private fields. But a theoretical framework for consumer activism should bear on doctrinal questions in public law as well—for instance, to what extent ought First Amendment protection extend to politicized market

¹⁴ See, e.g., Daniel Jaffee & Philip H. Howard, *Corporate Cooptation of Organic and Fair Trade Standards*, 27 AGRIC. & HUM. VALUES 387, 389–90 (2010).

¹⁵ WENDY BROWN, UNDOING THE DEMOS: NEOLIBERALISM’S STEALTH REVOLUTION 17 (2015).

¹⁶ *Id.* at 39.

¹⁷ See Kysar, *supra* note 6, at 537–39.

¹⁸ See *infra* notes 89–92 and accompanying text.

¹⁹ See, e.g., C. Edwin Baker, *The Media That Citizens Need*, 147 U. PA. L. REV. 317, 392–98 (1998); Prina Lahav, *Holmes and Brandeis: Libertarian and Republican Justifications for Free Speech*, 4 J.L. & POL. 451, 454–66 (1988); Richard H. Pildes, *The Constitutionalization of Democratic Politics*, 118 HARV. L. REV. 28, 41–55 (2004); Robert Post, *Reconciling Theory and Doctrine in First Amendment Jurisprudence*, 88 CALIF. L. REV. 2353, 2367 (2000); Martin H. Redish, *The Value of Free Speech*, 130 U. PA. L. REV. 591, 601–11 (1982); Martin H. Redish & Abby Marie Mollen, *Understanding Post’s and Meiklejohn’s Mistakes: The Central Role of Adversary Democracy in the Theory of Free Expression*, 103 NW. U. L. REV. 1303, 1366–70 (2009); Frederick Schauer, *Constitutions of Hope and Fear*, 124 YALE L.J. 528, 532–42 (2014). *But see* Andrew Koppelman, *Veil of Ignorance: Tunnel Constructivism in Free Speech Theory*, 107 NW. U. L. REV. 647 (2013) (criticizing “constructivist” theories that seek to derive First Amendment doctrine from the “purposes” of the First Amendment).

²⁰ See, e.g., Cynthia Estlund, *Rethinking Autocracy at Work*, 131 HARV. L. REV. 795 (2018) (reviewing ELIZABETH ANDERSON, *PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON’T TALK ABOUT IT)* (2017)).

behavior?²¹ This Article cannot reach those doctrinal questions, but it lays the groundwork for analogies between consumer activism and more traditional forms of political participation.

Part I of this Article describes the increasing political salience of market behavior and summarizes the dual critiques of this development. Still, consumer behavior as an axis of public participation in governance remains significantly under-theorized. Does politicized consumption undermine the premises of the self-regulating market, or rather extend them to insinuate market logics into more and more aspects of social life? Put simply, is consumer activism a form of economic democracy?

To answer this question, in Part II, I distinguish two forms of political purchasing behavior. In the first, a social or political association settles upon consumer action as a tactic to apply coercive pressure on specific actors. The action's ultimate goal may or may not be directly related to the product at issue—instead, the organization holds itself out to bargain terms for the end to a boycott. I call this model *organized buying*. It contrasts with diffuse purchases of socially or environmentally “responsible” goods. Under this latter form, individual consumers durably alter their consumption habits to align with their political commitments. I will call this model *ethical consumption*.²²

I will define and illustrate these two contrasting forms of market-based politics through case studies. The paradigmatic example of organized buying is the labor boycott, where a union seeks to win recognition from an employer through boycott activity; I will recount the story of the United Farm Workers' grape boycotts in the late 1960s. Conversely, the burgeoning market for organic food products epitomizes ethical consumption. At both conventional supermarkets and specialty stores such as Whole Foods, American consumers have been taught to alter their individual consumption habits in pursuit of environmental and personal health. There are many other examples of both forms of consumer activism, but Part II focuses on these contrasting examples from the realm of food politics.

In Part III, I show how the distinction between organized buying and ethical consumption clarifies the theoretical debate about the legitimacy of consumer activism. Simply put, ethical consumption is the true target of the left critique of political consumerism, and market fundamentalists ought only to condemn organized buying. Indeed, some market fundamentalists affirmatively endorse ethical consumption as preferable to regulatory controls on the market. Symmetrically, I will argue, proponents of increased economic democracy should embrace the potential of organized buying. Organized buying builds social power at the expense of economic power and could thus play a role in realizing the elusive goal of economic democracy.²³

Both ethical consumption and organized buying undermine, from opposing directions, the neat separation of the private from the public, the economy from civil society. One liberal opponent

²¹ See generally *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 911 (1982) (holding that the boycott is a protected form of expression and association). For the seminal response to *Claiborne Hardware*, see Michael C. Harper, *The Consumer's Emerging Right to Boycott: NAACP v. Claiborne Hardware and Its Implications for American Labor Law*, 93 *YALE L.J.* 409 (1984).

²² Many previous authors have used this phrase, though not for the precise purpose I will use it in this Article. I borrowed it most directly from Tim Lang & Yiannis Gabriel, *A Brief History of Consumer Activism*, in *THE ETHICAL CONSUMER* 39 (Rob Harrison et al. eds., 2005), who capture much of what I mean by the term.

²³ Cf. ERIK OLIN WRIGHT, *ENVISIONING REAL UTOPIAS* 191 (2010) (imagining “multiple, heterogeneous institutional forms along the various pathways through which social power can be exercised over the production and distribution of goods and services”).

of both market fundamentalism and politicized consumption insists that “[p]ublic liberty demands public institutions that permit citizens to address the public consequences of private market choices.”²⁴ This view calls for a vigorous but circumscribed political democracy, harkening back to the postwar industrial compromise. The *trente glorieuses* are long past, however, and it is worth asking whether they can still be recalled or must instead be transcended. A more ambitious agenda would call for renewed commitment to economic democracy, with unions and social organizations of all kinds reclaiming control over the production of goods and services. In other words, the divide between the economy and civil society is transforming, whether we like it or not. Organized buying can help ensure that transformation remains democratic.

I. CONSUMER ACTIVISM: SCOURGE OR SALVATION?

In this Part, I will situate my argument in the ongoing debate about the growing importance of consumer activism. Consumer politics are on the rise today in response to the decline of more traditional forms of economic democracy. But there is also a long tradition of skepticism toward consumer politics. I will summarize a number of arguments that market skeptics make against the melding of the “citizen” and “consumer,” broadly from a left-liberal perspective. Symmetrical arguments come from proponents of a thoroughgoing market system, who prefer that the free market not be sullied or distorted by political preferences. Understanding these dual critiques will point the way to a more nuanced view of the varied forms of consumer politics.

A. Consumers as Democratic Actors in the Second Gilded Age

“Most workers in the United States are governed by communist dictatorships in their work lives.”²⁵ Elizabeth Anderson here describes the extraordinary anomaly of the firm, a “private government” that exercises minute control over its citizen-workers during their working hours, and sometimes outside of them as well. These “island[s] of authority in a market sea”²⁶ seem to run against the commitment to democracy in other aspects of how we order society. The firm makes decisions about the allocation of social resources much in the same way that states do. Many believe that state power should be subject to social power—in other words, that states ought to be *democracies*.²⁷ Yet that commitment has largely not been extended to the firm. Instead, in their work lives, most people are subject to “private government,” wherein authorities may freely dispense order and sanction without even the pretense of accountability to social power.²⁸ Although this reality is somewhat occluded in professional workplaces, poultry workers forced to urinate on themselves rather than take unauthorized bathroom breaks feel it acutely.²⁹ Such abuses result from

²⁴ BENJAMIN R. BARBER, *CONSUMED: HOW MARKETS CORRUPT CHILDREN, INFANTILIZE ADULTS, AND SWALLOW CITIZENS WHOLE* 126 (2007).

²⁵ ANDERSON, *supra* note 20, at 39.

²⁶ CHARLES E. LINDBLOM, *THE MARKET SYSTEM: WHAT IT IS, HOW IT WORKS, AND WHAT TO MAKE OF IT* 184 (2001).

²⁷ See WRIGHT, *supra* note 23, at 121 (“[I]n the ideal of democracy, state power is fully subordinated to and accountable to social power.”).

²⁸ *Id.* at 44–45.

²⁹ See *No Relief: Denial of Bathroom Breaks in the Poultry Industry*, OXFAM AMERICA, 2 (May 9, 2016),

the exercise of economic power unchecked by social power.

The argument I have just sketched has been reiterated in different registers by many different proponents of expanded *economic democracy*. Professor Wright defined economic democracy simply as social control over the allocation of economic resources,³⁰ a definition I will adopt as well. As suggested above, the case for economic democracy often relies on the analogy between the political and economic realms: “If democracy is justified in governing the state, then it must *also* be justified in governing economic enterprises; and to say that it is *not* justified in governing economic enterprises is to imply that it is not justified in governing the state.”³¹ Theorists of “participatory democracy” argue the converse as well: participation at work develops individuals’ capacity to engage in self-government generally.³²

In the postwar industrial compromise, shared prosperity rested on economic democracy, and in particular the influence that powerful states and labor unions could exert over capital. Concentration in industry broadly increased at the domestic level, and corporate profits were high.³³ Nevertheless, wage gains kept pace with increases in productivity.³⁴ Although the precise nature of the bargain varied across different countries, economists have identified powerful unions, minimum wage regulations, and increasingly generous welfare payments as sources of the upward pressure on wages.³⁵ The basic purpose of collective bargaining has always been to give workers influence over the management of their firm,³⁶ and in the post-war context many workers were able to achieve this form of economic democracy.

Today the compromise has collapsed. The causes of the collapse are many, but most importantly slowed economic growth in the 1970s exposed latent tensions in the governing consensus.³⁷ Importantly, the period since has been marked by massive waves of globalization as

<https://www.oxfamamerica.org/explore/research-publications/no-relief/> [<https://perma.cc/6FZT-Z9RG>].

³⁰ WRIGHT, *supra* note 23, at 121.

³¹ ROBERT A. DAHL, A PREFACE TO ECONOMIC DEMOCRACY 111 (1985).

³² See CAROL PATEMAN, PARTICIPATION AND DEMOCRATIC THEORY 42 (1970) (“The major function of participation in the theory of participatory democracy is therefore an educative one, educative in the very widest sense, including both the psychological aspect and the gaining of practice in democratic skills and procedures.”); see also William E. Forbath, *Why Is this Rights Talk Different from All Other Rights Talk? Demoting the Court and Reimagining the Constitution*, 46 STAN. L. REV. 1771, 1792 (1994) (book review) (“One who has no autonomy and no measure of shared authority at work, like the subject of any tyrannical regime, learns to doubt her capacity to affect the order of things.”).

³³ See Andrew Glyn et al., *The Rise and Fall of the Golden Age*, in THE GOLDEN AGE OF CAPITALISM: REINTERPRETING THE POSTWAR EXPERIENCE 59 (Stephen A. Marglin & Juliet B. Schor eds., 1990).

³⁴ See Josh Bivens et al., *Raising America’s Pay: Why It’s Our Central Economic Policy Challenge* 10 (Econ. Pol. Inst., Briefing Paper No. 378, 2014), <https://www.epi.org/files/pdf/65287.pdf> [<https://perma.cc/9BWB-3CDL>].

³⁵ *Id.* at 58.

³⁶ See ANDERSON, *supra* note 20, at 69 (“In the United States, collective bargaining has been the primary way workers have secured voice within the government of the workplace.”); Paul Weiler, *Promises to Keep: Securing Workers’ Rights to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769, 1822 (1983) (“The traditional defense of collective bargaining is that it introduces a modicum of democratic participation into the workplace.”).

³⁷ See Streeck, *supra* note 1, at 5–6 (“I suggest that it is not the *trente glorieuses* but the series of crises which followed that represents the normal condition of democratic capitalism—a condition ruled by an endemic conflict between capitalist markets and democratic politics, which forcefully reasserted itself when high economic growth came to an end in the 1970s.”).

the large firms of the postwar period slipped the bonds of any particular nation's domestic compromise. Individual nation states have lost much of their ability to dictate the terms between industry and labor, even if they cared to do so.³⁸ Both the nation state and the industrial union have lost much of their ability to demand concessions because of the constant threat of capital flight.³⁹ It is no coincidence that, at least in the United States, rates of private-sector unionization have fallen dramatically, and inequality has skyrocketed.⁴⁰

As a result, alternative forms of economic democracy that could work across borders have risen in importance. Organized consumer power presents itself as one such form. Consumer activism is not new: Lizabeth Cohen, a historian of twentieth century consumer politics, points to such "value-for-money" groups as the National Consumers' League as an example of social power during the New Deal era.⁴¹ But modern globalization has brought a level of capital mobility unknown in any previous phase of capitalism's development. As a result, citizens are increasingly looking to consumer tactics as substitutes for, and not merely supplements to, state regulation and shop-floor organizing.

To wit, many voices within the American labor movement are calling for a renewed focus on consumer appeals. Although labor boycotts have a long history in the United States,⁴² the tactic declined in importance as unions cemented their power within the workplace itself. Today, however, the strike is an ineffectual and rarely used economic weapon.⁴³ The legal protections for strike activity lack much force in the United States, and many commentators point to a wave of disastrous failed strikes in the early 1980s as the inflection point for American workers.⁴⁴ In addition,

³⁸ Wolfgang Streeck, *Markets and Peoples: Democratic Capitalism and European Integration*, 73 *NEW LEFT REV.* 63, 71 (Jan.–Feb. 2012) (“[T]he money of the rich is everywhere and nowhere, gone in an instant when strapped tax-states reach for it.”).

³⁹ GAY W. SEIDMAN, *BEYOND THE BOYCOTT: LABOR RIGHTS, HUMAN RIGHTS, AND TRANSNATIONAL ACTIVISM* 26 (2007).

⁴⁰ See ROSENFELD, *supra* note 4, at 2 (“[F]or decades productivity increases led to rising economic fortunes for the vast middle of the income distribution. The collapse of organized labor dismantled this governing arrangement, and with it the tight coupling of economic growth with the economic fortunes of average American workers.”). *But see* PIKETTY, *supra* note 2, at 24 (“[T]his spectacular increase in inequality largely reflects an unprecedented explosion of very elevated incomes from labor, a veritable separation of the top managers of large firms from the rest of the population.”); Dean Baker, *Behind the Gap Between Productivity and Wage Growth*, *CTR. FOR ECON. & POL’Y RES.* (Feb. 2007), http://cepr.net/documents/publications/0702_productivity.pdf [<https://perma.cc/J6RY-E7P7>] (arguing that the decoupling of productivity and wages has been overstated, and that much inequality is driven by unequal distribution among wage earners).

⁴¹ Lizabeth Cohen, *The New Deal State and the Making of Citizen Consumers*, in *GETTING AND SPENDING: EUROPEAN AND AMERICAN CONSUMER SOCIETIES IN THE TWENTIETH CENTURY* 111, 114–15 (Susan Strasser et al. eds., 1998) (“Empowering the consumer seemed to many New Dealers a way of enhancing the public’s stake in society and the economy while still preserving the free enterprise system.”); *see generally* LAWRENCE B. GLICKMAN, *BUYING POWER: A HISTORY OF CONSUMER ACTIVISM IN AMERICA* (2009).

⁴² *See infra* notes 110–114 and accompanying text.

⁴³ Work days lost due to industrial stoppages have declined dramatically not only in the United States, but across OECD nations. *See* Streeck, *supra* note 1, at 15, fig.3. There are some early indications, however, that the strike may be making a limited comeback in the United States. *See* Alexia Fernández Campbell, *A Record Number of Workers Went on Strike in 2018*, *VOX* (Feb. 13, 2019, 3:00 PM), <https://www.vox.com/policy-and-politics/2019/2/13/18223211/worker-teacher-strikes-2018-record> [<https://perma.cc/LRT8-ZA5R>].

⁴⁴ *See* KENNETH G. DAU-SCHMIDT ET AL., *LABOR LAW IN THE CONTEMPORARY WORKPLACE* 750 (2d ed.

employers have shifted their business models to resist strike activity. First, most large manufacturers have developed globalized supply chains, undermining the coercive force of a strike in any one location.⁴⁵ Second, companies today fashion themselves as decentralized networks of subcontractors, resulting in “fissured” workplaces that are difficult to organize using traditional tactics.⁴⁶

As these trends have intensified, many unions have turned to the “comprehensive campaign” in order to bring employers to the bargaining table. The comprehensive campaign seeks to apply pressure at many different nodes in the networked corporation through consumer boycotts, secondary appeals to those who do business with the employer, political pressure against government regulators, and shareholder tactics.⁴⁷ Charles Hecksher argues that these flexible, insurgent tactics are better matched to the organizational structure of the modern corporation. Unions must recognize that “the key weak points are no longer *within* companies but *between* them.”⁴⁸ As a result, Hecksher argues, unions must ally with social movements and emulate comprehensive or corporate campaigns: “Though corporations have grown less vulnerable to mass strikes, they are more vulnerable to bad publicity and attacks on their reputations; they are less self-sufficient than the dominant vertically-integrated firms of the last century, and thus they need good will from many partners to succeed.”⁴⁹

Actors outside the labor movement have already taken up this call with enthusiasm. A broader—but also more formless—movement of movements has arisen to fight back against the perceived excesses of corporate globalization. Various named the “anti-globalization,” “alter-globalization,” or “global justice” movement, its founding moments were a series of mass demonstrations at meetings of the World Trade Organization and other international institutions: 1993 in Bangalore, 1998 in Birmingham, and 1999 in Seattle.⁵⁰ As chronicled by the activist-journalist Naomi Klein in *No Logo*, this new generation attempts through various means to tarnish the public image of well-known multinational corporations. Klein describes a range of tactics—“culture jamming,” “brand attacks,” and selective purchasing—that the decentralized movement has used to assail footloose multinationals.⁵¹ Klein, like Hecksher, argues that reputational attacks have become more powerful as corporations have subcontracted much of their actual production process: “Brand image, the source of so much corporate wealth, is also, it turns out, the corporate

2014) (describing the permanent replacement of striking air traffic controllers in 1981, Phelps Dodge copper miners in 1983, and Hormel meat packers in 1986).

⁴⁵ SEIDMAN, *supra* note 39, at 23 (“Instead of owning a subsidiary outright and producing for a single national market, multinational corporations increasingly moved production toward a global assembly line: components of the final product might be made in one region, brought together for final assembly in another, and sold to consumers in still a third.”).

⁴⁶ Hecksher, *supra* note 8, at 320–21. On the “fissured” workplace, see generally DAVID WEIL, *THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT* (2014).

⁴⁷ See DAU-SCHMIDT ET AL., *supra* note 44, at 987–88. For example, Cynthia Estlund points to the SEIU’s “Justice for Janitors” campaign as an effective alliance between organized labor and more general social movement activity. Cynthia L. Estlund, *The Ossification of American Labor Law*, 102 COLUM. L. REV. 1527, 1605 (2002).

⁴⁸ Hecksher, *supra* note 8, at 322.

⁴⁹ *Id.* at 331.

⁵⁰ See GEOFFREY PLEYERS, *ALTER-GLOBALIZATION: BECOMING ACTORS IN THE GLOBAL AGE 3–7* (2010).

⁵¹ KLEIN, *supra* note 6, at 281, 330, 410–411.

Achilles' heel."⁵²

Gay Seidman explains in detail this “stateless” strategy for labor rights campaigns: “Transnational labor activists often treat national states, especially in developing economies, as irrelevant and weak, focusing instead on corporations as the key actors of globalization.”⁵³ Typically, an international non-governmental organization, purportedly speaking on behalf of low-wage workers in developing countries, mobilizes high-income consumers to boycott a visible branded product. The organization demands, in turn, a voluntary regulatory framework with an independent third-party monitor.⁵⁴ Then, at least in theory, the visible multinational will impose labor regulations on its obscure network of suppliers and contractors across the globe. As I explain in the next Section, however, such tactics have always attracted a range of critics.

B. *The Critics of Consumer Activism*

The increasing popularity of consumer tactics has reinvigorated a longstanding debate about the proper relationship between political struggle and consumer behavior. Consumer activism threatens to undermine the distinction between the “economic” market on the one hand, and the “political” realm of state and civil society on the other.⁵⁵ I will consider the shortcomings of this distinction in Part III, but first we must spend some time understanding its appeal. Every social democracy—even relatively thin ones like that of the United States—depends on some version of the market/politics distinction. Under social democracy, the liberal democratic state preserves a capitalist market by cabining its reach. Citizens through the state determine the scope and function of the market, but then private property and the price mechanism determine the allocation of resources within that market.⁵⁶

Consumer activism complicates this neat schematic. When a consumer decides to accomplish political goals through market behavior, she disregards the established divisions between consumer and citizen, economic and political, and market and state.⁵⁷ A broad range of voices from both sides of the political spectrum have criticized this tendency of the consumer to go beyond her proper role. The center-left fears that consumer activism degenerates into market fundamentalism—all conflict mediated through the market, with no remaining role for the citizen.

⁵² *Id.* at 343.

⁵³ SEIDMAN, *supra* note 39, at 29, 33–34.

⁵⁴ *Id.* at 44.

⁵⁵ For a discussion of the development of the private/public distinction in American law, see generally Morton J. Horwitz, *The History of the Public/Private Distinction*, 130 U. PENN. L. REV. 1423 (1982).

⁵⁶ See Thomas E. Weisskopf, *Toward a Socialism for the Future, in the Wake of the Demise of the Socialism of the Past*, 24 REV. RADICAL POL. ECON. 1, 10 (1992) (“[S]ocial democrats do not try to do away with either the market or private property ownership; instead, they attempt to create conditions in which the operation of a capitalist market economy will lead to more egalitarian outcomes and encourage more democratic and more solidaristic practices than would a more conventional capitalist system.”); cf. Douglas A. Kysar, *Sustainable Development and Private Global Governance*, 83 TEX. L. REV. 2109, 2161 (2005) (describing the “separationist” view that “[p]rivate corporations should be permitted—indeed required—to pursue the single maximand of shareholder value, while concerns regarding distributive equity, environmental harm, and other consequences of corporate activity should be left to the ‘political process’”).

⁵⁷ Cf. GLICKMAN, *supra* note 41, at 23 (“Consumer activists stressed that shopping, often understood as the quintessentially private act in capitalist society, was in fact an unavoidably public responsibility.”).

The center-right fears that consumer activism distorts economic outcomes through the introduction of irrelevant political preferences. This Section will lay out some of these criticisms, with a particular focus on how they seek to defend the distinction between the economic and the political.

1. Left Critique: Insulating Politics Against the Market

A host of defenders of postwar social democracy have reacted with alarm to the renewed vigor of consumer politics. The political theorist Benjamin Barber summed up this anxiety well in his 2007 work *Con\$umed*: “The consumers’ republic is quite simply an oxymoron. Consumers cannot be sovereign, only citizens can. Public liberty demands public institutions that permit citizens to address the public consequences of private market choices.”⁵⁸ This passage captures the fundamental concern of social democrats—that consumer activism privatizes politics. I will also discuss a few related concerns: that consumer activism is easily coopted by market incumbents, that it depends on antecedent political mobilization anyway, and that as a result freestanding consumer campaigns have little chance of success.

To begin with the more pragmatic concerns, consumer activism’s resort to market tactics leaves it vulnerable to cooptation by market incumbents. Marketers often repurpose and then sell countercultural trends. As Barber puts it, “[t]here has not yet been a symbol of resistance and transgression that has not been effectively assimilated and reengineered as a marketing slogan or sales logo.”⁵⁹ He points to the example of Nike selling shoes using the Beatles song “Revolution.”⁶⁰ In an analogous sort of corporate cooptation, consider that in 2014, North American corporations spent about \$1.84 billion sponsoring various “causes” to boost demand for their products.⁶¹ More generally, the entire advertising industry can be viewed as a mode of market-elite control over mass consumption.⁶²

In other words, consumer activism must effectively compete with industrialists’ own efforts to shape demand. In a situation of perfect competition, marketing would not exist because firms could not have strategies beyond competing on price.⁶³ But no market is perfectly competitive—indeed, unregulated markets tend toward ever-increasing consolidation and planning by a few powerful incumbents.⁶⁴ The ability of these firms to market their goods makes it impossible

⁵⁸ BARBER, *supra* note 24, at 126.

⁵⁹ *Id.* at 288.

⁶⁰ *Id.*; see also THOMAS FRANK, *THE CONQUEST OF COOL: BUSINESS CULTURE, COUNTERCULTURE, AND THE RISE OF HIP CONSUMERISM* 7 (1997) (“[F]rom its very beginnings down to the present, business dogged the counterculture with a fake counterculture, a commercial replica that seemed to ape its every move for the titillation of the TV-watching millions and the nation’s corporate sponsors.”).

⁶¹ *Sponsorship Spending Growth Slows in North America as Marketers Eye Newer Media and Marketing Options*, ESP SPONSORSHIP REP. (Jan. 7, 2014), <http://www.sponsorship.com/iegsr/2014/01/07/Sponsorship-Spending-Growth-Slows-In-North-America.aspx> [<https://perma.cc/Q7XH-7HDZ>]; see also HELDMAN, *supra* note 11, at 65–66 (providing examples of cause marketing).

⁶² LINDBLOM, *supra* note 26, at 212.

⁶³ N. CRAIG SMITH, *MORALITY AND THE MARKET: CONSUMER PRESSURE FOR CORPORATE ACCOUNTABILITY* 36 (1990).

⁶⁴ See JOHN KENNETH GALBRAITH, *THE NEW INDUSTRIAL STATE* 7 (4th ed. 1985) (“The initiative in deciding what is to be produced comes not from the sovereign consumer who, through the market, issues the instructions that bend

to sort out “genuine” preferences from those induced by capital.⁶⁵ Consumer activists seek to insert themselves into this system of planned consumption, disseminating their message alongside the producers. One criticism of consumer activism is that it is doomed to failure because it tries to “play by their rules” or “beat them at their own game.”

Another way to phrase this problem is that consumer activism presupposes some mechanism of disseminating information about the provenance of goods and services. Market action alone is never enough: consumer activists must participate in civil society. For example, a common mechanism to inform consumers is product labeling. But the content of product labels is managed politically. Creating a labeling regime does not help consumers “reveal” their preferences; rather, it shapes them: “When regulating process information . . . policymakers must make openly normative judgments about the types of consumer behavior that they wish to inspire.”⁶⁶ Consumer activism is only possible after citizens have constructed the relevant market to serve their political goals.⁶⁷ Consumer action on its own is likely to fail. From her study of transnational labor activists, Seidman concludes that successful boycotts depend more on governmental support and institutional buyers than individual purchasing decisions.⁶⁸

This criticism—that consumer activism ultimately fails—might seem purely pragmatic. But it resonates with the deeper critique running throughout the foregoing discussion: consumer activism fails because it confuses the roles of citizen and consumer. Political theorist Wendy Brown forcefully makes this case in her writings on neoliberalism.⁶⁹ Neoliberalism, she argues, drives toward a monistic conception of value founded on market rationality: “Whereas classical liberalism articulated a distinction, and at times even a tension, among the criteria for individual moral, associational, and economic actions . . . neoliberalism normatively constructs and interpellates individuals as entrepreneurial actors in every sphere of life.”⁷⁰ Members of the body politic no longer relate to one another as citizens because society is reconfigured as solely “a group of individual entrepreneurs and consumers.”⁷¹ Political consumerism, however well-intentioned, exacerbates this tendency by erasing the distinction between an individual’s private and public roles.

the productive mechanism to his ultimate will. Rather it comes from the great producing organization which reaches forward to control the markets that it is presumed to serve and, beyond, to bend the customer to its needs.”)

⁶⁵ But see Jean Baudrillard, *Consumer Society*, in CONSUMER SOCIETY IN AMERICAN HISTORY: A READER 33, 43 (Lawrence B. Glickman ed., 1999) (arguing that Galbraith incorrectly assumes a baseline against which consumer preference can be understood as “artificial”).

⁶⁶ Kysar, *supra* note 6, at 632.

⁶⁷ Cf. Grewal & Purdy, *supra* note 2, at 7 (“The very idea of a “market” has no operational content without a series of prior political decisions that define and allocate economic rights, such as property and the power to contract—who owns what, what they may do with what they own, and how they may contract with others.”).

⁶⁸ See SEIDMAN, *supra* note 39, at 133.

⁶⁹ See BROWN, *supra* note 15; WENDY BROWN, *EDGEWORK: CRITICAL ESSAYS ON KNOWLEDGE AND POLITICS* 37–59 (2005).

⁷⁰ *Id.* at 42. On resisting the drive toward monistic theories of value, see generally ELIZABETH ANDERSON, *VALUE IN ETHICS AND ECONOMICS* (1993).

⁷¹ BROWN, *supra* note 69, at 43. Recall Margaret Thatcher’s famous aphorism that “There is no such thing as society . . . There are individual men and women and there are families.” THE COLLECTED SPEECHES OF MARGARET THATCHER 576 n.1 (Robin Harris ed., 1997) (quoting Interview by Woman’s Own with Margaret Thatcher, Prime Minister, United Kingdom (Oct. 31, 1987)).

This separation “formerly sustained an interval and a tension between a capitalist political economy and a liberal democratic political system.”⁷² The erasure of this interval or tension threatens the social-democratic compromise.⁷³

Others have applied such criticisms to the specific practices of consumer activists. Barber writes an extended critique of the “culture jamming” and “countermarketing” documented in *No Logo*.⁷⁴ These forms of resistance, as explained above, are easily coopted. But more importantly, “citizens and consumers should not and cannot be confounded.”⁷⁵ Ethical shopping seeks to combine what one sociologist calls the “ideologically competing ideal types” of consumerism and citizenship.⁷⁶ But the hybrid form cannot sustain itself, and consumerism ends up crowding out citizenship.⁷⁷ “Ethical consumption is a symptom of a profoundly individualistic society in which individuals are being presented with both the opportunity and responsibility for tackling a number of deep-rooted social problems . . . through their purchasing decisions.”⁷⁸ These writers decry the elision of consumer and citizen and exhort citizens to return their attention to political and structural changes, presumably through traditional legislative campaigns.

2. Right Critique: Insulating the Market Against Politics

The skepticism toward consumer activism among center-left defenders of social democracy does not imply that market fundamentalists endorse it wholeheartedly. On the contrary, opponents of government intervention in the economy have symmetric concerns about consumer activism. A first critique hinges on the alleged irrationality or incompetence of consumers to make policy judgments. For example, Cass Sunstein argues that the USDA will be hard-pressed to justify labels for genetically modified foods because “consumer concerns about GM foods appear to be rooted in some combination of baseless fears of health risks and generalized disgust.”⁷⁹ A deeper concern is that consumer activism undermines the allegedly “neutral” character of the market. Free markets, on this account, cleanse participants of their prejudices. Organized efforts to boycott a product for reasons unrelated to its quality or price distort the market, produce inefficiencies, and often rest on unjustified animus. Liberal democracy exists to defend the market from politics.

The first view—that consumer activism plays on consumers’ fears and irrationalities—is contingent on the facts of any particular boycott. These critics argue that, as an empirical matter, consumers make poor decisions based on process information and misunderstand how their consumption habits affect distant production processes. In the international trade context, for

⁷² BROWN, *supra* note 69, at 45.

⁷³ BROWN, *supra* note 15, at 42–44.

⁷⁴ BARBER, *supra* note 24, at 281–290.

⁷⁵ *Id.* at 294.

⁷⁶ See Josée Johnston, *The Citizen-Consumer Hybrid: Ideological Tensions and the Case of Whole Foods Market*, 37 THEORY AND SOC’Y 229, 242 (2008).

⁷⁷ *Id.* at 246.

⁷⁸ Jo Littler, *What’s Wrong with Ethical Consumption?*, in ETHICAL CONSUMPTION: A CRITICAL INTRODUCTION 27, 33 (Tania Lewis & Emily Potter eds., 2011).

⁷⁹ Cass R. Sunstein, *On Mandatory Labeling, with Special Reference to Genetically Modified Foods*, 165 U. PA. L. REV. 1043, 1093 (2017).

instance, “proponents of the process/product distinction argue that consumer decisionmaking premised on process information frequently will lead to harmful, self-defeating, or otherwise unwise choices.”⁸⁰ Consumers fail to recognize the environmental and social benefits of a liberalized market and the economic growth it brings.⁸¹ As a result, the information allowed to reach consumers should be carefully curated by expert regulators to prevent panicked and counter-productive consumer activism.⁸² This line of argument is consequentialist and technocratic.

More fundamental is the fear that consumers, by bringing their politics into the market, will corrupt the de-politicized market utopia. Market fundamentalists look forward to a time when a self-regulating market will fully allocate society’s resources without any need for political choices. The market fundamentalist utopia is a world of purely voluntary association.⁸³ This vision is explicitly utopian.⁸⁴ Milton Friedman describes this utopia in characteristically strident terms:

There are only two ways of co-ordinating the economic activities of millions. One is central direction involving the use of coercion—the technique of the army and of the modern totalitarian state. The other is voluntary co-operation of individuals—the technique of the market place. . . . Exchange can therefore bring about co-ordination without coercion.⁸⁵

Consumer activism threatens to destroy this dream of peaceful private ordering.

First, consumer activism undermines the allocative function of the price mechanism. The first fundamental theorem of welfare economics states that perfectly competitive markets attain Pareto-efficient equilibriums—no one can be made better off without making someone else worse off.⁸⁶ Consumer activism does away with the theorem’s key premise of perfectly competitive markets. Economists have long recognized that excessive product differentiation through branding and persuasive advertising threatens perfect competition, and hence welfare maximization.⁸⁷

⁸⁰ Kysar, *supra* note 6, at 537.

⁸¹ *Id.* at 538–39.

⁸² See, e.g., Brian R. Copeland & M. Scott Taylor, *Trade, Growth, and the Environment*, 42 J. ECON. LITERATURE 7, 67 (2004) (arguing that reduced demand for goods from developing countries with lax environmental regulations will inhibit income growth in those countries, thereby “reduc[ing] their desire to adopt tighter environmental standards”).

⁸³ See FRED BLOCK & MARGARET R. SOMERS, *THE POWER OF MARKET FUNDAMENTALISM: KARL POLANYI’S CRITIQUE* 99 (2014) (“Economic liberalism celebrates the absolute freedom of unfettered markets as the means to transform politics into a purely technical exercise of maintaining optimal market conditions.”).

⁸⁴ See F. A. Hayek, *The Intellectuals and Socialism*, 16 U. CHI. L. REV. 417, 432–33 (“The main lesson which the true liberal must learn from the success of the socialists is that it was their courage to be Utopian which gained them the support of the intellectuals and therefore an influence on public opinion which is daily making possible what only recently seemed utterly remote.”).

⁸⁵ MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 13 (3d ed. 2002).

⁸⁶ See RICHARD E. JUST ET AL., *THE WELFARE ECONOMICS OF PUBLIC POLICY: A PRACTICAL APPROACH TO PROJECT AND POLICY EVALUATION* 27–28 (2004).

⁸⁷ See Tim W. Dornis & Thomas Wein, *Trademarks, Comparative Advertising, and Product Imitations: An Untold Story of Law and Economics*, 121 PENN ST. L. REV. 421, 442–43 (2016) (“One result of branding and persuasive advertising, as is still argued today, is that consumers may be willing to pay a premium beyond the product price. Moreover,

Similarly, consumer activism seeks to convince consumers to balance the price signal with other, unrelated social aims. As a result, many economists view it with skepticism. In 2006, for example, Greg Mankiw advised readers of his blog not to “distort your consumption patterns to buy more ‘good goods,’” but rather to “satisfy your own desires in a self-interested way and donate the money you save to your favorite charity.”⁸⁸

Consumer activism also undermines what Friedman called the “impersonal” nature of free markets.⁸⁹ This justification for market society relies not on a technical concept of allocative efficiency, but rather on the role that markets play in mediating social conflict. In an evocative passage, Friedman condemns the blacklisting of Hollywood writers with communist sympathies: “The Hollywood blacklist was an unfree act that destroys freedom because it was a collusive arrangement that used coercive means to prevent voluntary exchanges. It didn’t work precisely because the market made it costly for people to preserve the blacklist.”⁹⁰ The market, because it communicates only prices, preserves political liberty through *doux commerce*. It was a boycott—in the Hollywood case, a lockout by management—that brought invidious political bias into the pristine market system. Daniel Markovits gives a more nuanced account of this connection through the concept of “price-commensuration.”⁹¹ Prices establish a uniform system of value that can reconcile diverse social values: “[m]arket prices establish an inter-subjective, commensurating value frame in which all market-participants, whatever their private preferences and beliefs, enroll. In this way, prices give commercial other-regard a stable, convergent content.”⁹²

Consumer activism undermines the salutary neutrality of prices by infusing them with controversial political content.⁹³ The boycott, as a form of consumer monopsony, is particularly dangerous in this regard.⁹⁴ Consider that, from the 1870s onward, American labor unions regularly staged consumer actions against Chinese-owned businesses, blaming Chinese immigrants for depressed wages.⁹⁵ In 1879, for instance, the virulently racist California Workingmen’s Party successfully pressed for a state law that prohibited chartered corporations from employing “any

entry barriers might ensue, thereby decreasing competition.”).

⁸⁸ Greg Mankiw, *Fairtrade Coffee*, GREG MANKIW’S BLOG (May 3, 2006), <http://gregmankiw.blogspot.com/2006/05/fairtrade-coffee.html> [<https://perma.cc/8L7K-8MR8>].

⁸⁹ FRIEDMAN, *supra* note 85, at 119 (“The essence of a competitive market is its impersonal character. No one participant can determine the terms on which other participants shall have access to goods or jobs.”).

⁹⁰ *Id.* at 20.

⁹¹ Daniel Markovits, *Market Solidarity: Price as Commensuration, Contract as Integration* (Inaugural Lecture, Guido Calabresi Professorship, Yale University, 2012) (on file with author).

⁹² *Id.* at 7.

⁹³ For a contemporary example of this anxiety, consider a recent *New York Times* editorial by business professor Aaron Chatterji. In a defense of *doux commerce*, Chatterji bemoans that politicized consumers are forcing large corporations to choose sides on political issues. As a result, company executives must abandon their previous position as “practical technocrats who could unite us.” Aaron K. Chatterji, *Our Newest Culture Warriors: Activist C.E.O.s*, N.Y. TIMES (March 2, 2018), <https://www.nytimes.com/2018/03/02/opinion/dicks-guns-walmart.html>. [<https://perma.cc/74TF-6H7>].

⁹⁴ *Cf.* Markovits, *supra* note 91, at 10–11 (“Monopolists can manipulate prices, which is why we accurately speak not only of monopoly rents but also of monopoly *power*. This renders monopoly prices like a private language, so that monopoly does not just cause misallocation; it also undermines commensuration.”).

⁹⁵ See Gabriel J. Chin & John Ormonde, *The War Against Chinese Restaurants*, 67 DUKE L.J. 681 (2018).

Chinese or Mongolian.”⁹⁶ In 1919, Chinese plaintiffs in Ohio successfully sued to enjoin a boycott organized by a labor union, alleging a conspiracy to deter potential customers of their restaurant.⁹⁷ In a remarkable opinion—running to almost forty pages in the reports—a judge enjoined the boycott on the grounds of freedom of contract. He granted that “capitalists in many instances wax and fatten at the expense of labor,”⁹⁸ but demanded that the union respect the autonomy the market confers: “to prevent a man from entering the markets of labor which should be free to all men is an invasion of the most fundamental of all human rights, and this belongs to all men, even Chinese residents.”⁹⁹

Milton Friedman could not have asked for a better case study. A *Lochner*-era judge put an end to a racist boycott on the grounds that it interfered with free labor. Free labor itself began as a deeply egalitarian ideal. Privilege and serfdom would be abolished in the United States as a nation of independent proprietors. The industrial revolution ended that dream for most, as free labor became synonymous with wage servitude.¹⁰⁰ But, in the Chinese boycott cases, the ideal continued to serve as a bulwark against private prejudice. Likewise, during the civil rights era, opponents of Jim Crow regularly denounced segregation as a monopolistic violation of market liberty.¹⁰¹ Today, neoliberal defenders of free labor ideology argue that the market/politics distinction protects liberty from democracy. Consumer activism undermines this protective barrier.

II. DISAGGREGATING CONSUMER ACTIVISM

It might seem odd that such a diverse set of political thinkers would rise to defend the same contested distinction between the market and politics. On many things they might disagree, but on the issue of consumer activism, market fundamentalists and social democrats find themselves united in their condemnations. Why? In large measure, they are simply criticizing different forms of consumer activism. In this Part, I will defend a disaggregation of consumer politics into *ethical consumption* and *organized buying*. Then, in Part III, I will show how this distinction corresponds to opposing views of economic democracy.

My analysis of consumer activism relies on two case studies from the world of food politics. Food is both a deeply personal experience and also a mass commodity, with agriculture constituting about three percent of global economic production.¹⁰² At the same time, meals remain

⁹⁶ ELMER CLARENCE SANDMEYER, *THE ANTI-CHINESE MOVEMENT IN CALIFORNIA* 73 (Illinois Books 1973) (1939).

⁹⁷ *Park v. Hotel & Rest. Emp. Int’l All.*, 30 Ohio Dec. 64, 68 (Com. Pl. 1919).

⁹⁸ *Id.* at 80.

⁹⁹ *Id.* at 91. The judge concluded that “while organized effort to obtain better conditions of employment is to be commended, it will fail unless the efforts are primarily based upon the ethical and intellectual development and elevation of the workers.” *Id.* at 101.

¹⁰⁰ See ANDERSON, *supra* note 20, at 29–33; see also William E. Forbath, *The Ambiguities of Free Labor: Labor and the Law in the Gilded Age*, 1985 WIS. L. REV. 767 (1985).

¹⁰¹ See Brian S. Feldman, *The Decline of Black Business*, WASHINGTON MONTHLY, Mar./Apr./May 2017, <https://washingtonmonthly.com/magazine/marchaprilmay-2017/the-decline-of-black-business/> [https://perma.cc/ZXU9-JANV].

¹⁰² Julian M. Alston & Philip G. Pardey, *Agriculture in the Global Economy*, 28 J. ECON. PERSP. 121, 121 (2014).

central cultural rituals that reinforce non-commodified relationships.¹⁰³ Cesar Chavez understood the cultural resonance of food. He brought the stories of rural agricultural workers into the distant homes of middle-class consumers. By appealing to urban progressive sensibilities, and also building a self-empowered movement of farmworkers, Chavez briefly shook the foundations of California's oligarchic agricultural industry. The United Farm Workers' boycotts were a paradigmatic case of *organized buying*. Today, food politics more often take the form of a trip to Whole Foods Market, where the well-heeled can enact their political preferences at the cash register. The market for organic and fairly traded foods provides my example of *ethical consumption*, a more individualized form of consumer politics.

I will distinguish organized buying from ethical consumption along three dimensions: *goals*, *tactics*, and *political structures*. An organized buying campaign seeks to alter the terms of bargaining—legal, cultural, or otherwise—under which market transactions take place. Classic examples would include a collective bargaining agreement, a new corporate code of conduct, or a legal change. The desired shift in the terms of bargaining need not bear any direct relation to the actual boycotted good. In contrast, the ethical consumer does not look to change the architecture of the market; rather, she hopes for a reduction in aggregate consumer demand for ethically suspect products. The entire goal is the change in consumer preferences.

These different goals imply different tactics and political structures. Organized buying deploys the consumer boycott to inflict economic injury on a specific actor or set of actors. The tactic often focuses on a key chokepoint or bottleneck in the market, recruiting a relatively small group of allies who hold disproportionate power in the market system. Organized buying requires a pre-existing political structure—a labor union, a community organization, a religious group—that can hold itself out to bargain for terms to the end of the boycott.¹⁰⁴

Participants in ethical consumer campaigns, in contrast, do not need the ability to make coordinated, collective decisions. The tactic of ethical consumption consists of convincing consumers to alter their purchasing habits. A successful marketing campaign reduces the aggregate demand for the disfavored product, a reduction that the ethical consumption advocate hopes will be durable. No particular form of political organization is needed to accomplish this goal. A wide range of groups—from viral social media campaigns, to ethical consumer non-profits, to the manufacturers and retailers of the “ethical” product—can mount ethical consumption campaigns. The following table summarizes these distinctions; the remainder of this Part will defend them.

¹⁰³ The humble potluck is one of the few places where a vibrant commons still thrives daily. See PETER LINEBAUGH, *STOP, THIEF!: THE COMMONS, ENCLOSURES, AND RESISTANCE* 16 (2014).

¹⁰⁴ If the organization's interest in bargaining collectively in this way is purely pecuniary—say, a cartel of the target's business rivals—the boycott could violate antitrust law. See Einer Elhauge, *Making Sense of Antitrust Petitioning Immunity*, 80 CALIF. L. REV. 1177, 1208–10 (1992).

TABLE 1: TWO FORMS OF CONSUMER ACTIVISM

	ORGANIZED BUYING	ETHICAL CONSUMPTION
GOAL	<i>Change in Terms of Bargaining</i>	<i>Shift in Overall Consumption Habits</i>
TACTICS	<i>Inflict Injury on Specific Actor</i>	<i>Individual Persuasion, Mass Marketing</i>
POLITICAL STRUCTURE	<i>Grassroots Membership Organizations</i>	<i>Promotional Groups, Retailers</i>

A. The Goal: Changing the Rules, or Changing Hearts?

Organized buying aims to alter the terms of bargaining in a market rather than the individual preferences of the participants in that market. The most obvious terms of bargaining are the legal rules that construct a market—both public laws and “private” laws such as property and contract. In the first half of the twentieth century, such legal realists as Robert Lee Hale demystified this process of market construction: “The market value of a property or a service is merely a measure of the strength of the bargaining power of the person who owns the one or renders the other, under the particular legal rights with which the law endows him, and the legal restrictions which it places on others.”¹⁰⁵ Organized buying seeks to alter these rules that shape the bargaining strength and hence “voluntary” choices that market participants make. Those rules are often legal in nature, but their content is not necessarily dictated by the state. Ethical consumption, on the other hand, seeks to influence the residuum of voluntary choice left to the players within the confines of the existing terms of bargaining. In this Section, I will draw out this distinction by introducing my two case studies.

1. “Boycott for Democracy”¹⁰⁶

Between 1964 and 1970, farmworker organizations led by Cesar Chavez accomplished the first successful organizing drive of farm labor in California, a task that many had thought impossible. Chavez and his followers did it by deploying a national consumer boycott to great effect—on some accounts, “the most ambitious and successful boycott in American history.”¹⁰⁷ At the boycott’s height, consumption of table grapes in major American cities fell by double-digit

¹⁰⁵ Robert L. Hale, *Bargaining, Duress and Economic Liberty*, 43 COLUM. L. REV. 603, 625 (1943); see generally ROBERT L. HALE, *FREEDOM THROUGH LAW* (1952). For an application of Hale’s work to the labor market, see Duncan Kennedy, *The Stakes of Law, or Hale and Foucault!*, 15 LEGAL STUD. F. 327, 328 (1991).

¹⁰⁶ This slogan appeared on a United Farm Workers boycott pamphlet in 1975. Available at DIGITAL PUBLIC LIBRARY OF AMERICA, <http://dp.la/item/80d09c2df44cc6b5121c5775932fa827> [https://perma.cc/U473-GXF].

¹⁰⁷ SUSAN FERRISS & RICARDO SANDOVAL, *THE FIGHT IN THE FIELDS: CESAR CHAVEZ AND THE FARMWORKERS MOVEMENT* 139 (Diana Hembree ed., 1997).

percentages.¹⁰⁸ This coordinated effort brought owners to the negotiation table in an industry where the transient nature of labor usually frustrates organizing efforts.¹⁰⁹

The UFW was participating in the long and storied tradition of the labor boycott, a consumer action that a labor organization initiates to win a discrete fight with an employer. The goal of a labor boycott is often linked to the goal of a simultaneous strike: a contract, a closed shop, or a union hiring hall.¹¹⁰ In such cases, a boycott can alter the terms of bargaining by obliging the employer to negotiate collectively, rather than with individual employees. The change affects the rules of the market, rather than the preferences of individual consumers. Indeed, critics of collective bargaining charge that it allows unions to demand a “monopoly wage” that exceeds the “true” value of their labor.¹¹¹

The boycott provides another tool for organized workers when withholding their labor—i.e., going on strike—is either impractical or ineffectual.¹¹² The labor boycott first flourished in the United States in the late-nineteenth century. Lawrence Glickman explains that these early boycotts were intensely local: “labor boycotters targeted many thousands of firms, the vast majority of them discrete entities in one location with a recognizable owner (or owners).”¹¹³ These early labor boycotts focused not on the “least ethical” products, but rather on products that working-class people consumed regularly: “newspapers, cigars, hats and certain other articles of clothing, food and furniture,” according to a 1913 study.¹¹⁴ In other words, the object of the boycott is chosen for the purpose of inflicting damage on the target actor, not for any particular quality of the item itself.

The UFW’s actions were fully in line with this tradition. The United Farm Workers began as the Central Valley Farm Workers Association, which Chavez founded as a mutual aid organization in the spring of 1962.¹¹⁵ Chavez’s plan to grow the mutual aid association steadily, and begin labor actions only when fully prepared, was overtaken by events on the ground. The AFL-CIO was also organizing in the California fields, primarily among Filipinos, through a group called the Agricultural Workers Organizing Committee.¹¹⁶ In September 1965, Filipino workers struck the

¹⁰⁸ FRANK BARDACKE, *TRAMPLING OUT THE VINTAGE: CESAR CHAVEZ AND THE TWO SOULS OF THE UNITED FARM WORKERS* 327 (2012).

¹⁰⁹ Saul Alinsky once likened farmworker organizing to “fighting on a constantly disintegrating bed of sand.” Mike Miller, *Cesar Chavez and the Fate of Farmworker Organizing*, in *PEOPLE POWER: THE COMMUNITY ORGANIZING TRADITION OF SAUL ALINSKY* 101, 102 (Aaron Schultz & Mike Miller eds., 2015).

¹¹⁰ Two contemporary studies of labor boycotts in the early twentieth century concluded that the boycott’s chief purpose is to win the initial fight to organize. “The adoption of the boycott by unions stemmed from the difficulties experience in controlling labour supply when labour was unorganized. . . . Once that task had been largely achieved, it declined in importance.” SMITH, *supra* note 63, at 150–51 (citing two studies from the early twentieth century).

¹¹¹ See RICHARD B. FREEMAN & JAMES L. MEDOFF, *WHAT DO UNIONS DO?* 6 (1984) (“Most, if not all, unions have monopoly power, which they can use to raise wages above competitive levels. Assuming that the competitive system works perfectly, these wage increases have harmful economic effects . . .”).

¹¹² See generally MONROE FRIEDMAN, *CONSUMER BOYCOTTS: EFFECTING CHANGE THROUGH THE MARKETPLACE AND THE MEDIA* 34–42 (1999).

¹¹³ GLICKMAN, *supra* note 41, at 120.

¹¹⁴ FRIEDMAN, *supra* note 112, at 38 (quoting HARRY W. LAIDLER, *BOYCOTTS AND THE LABOR STRUGGLE: ECONOMIC AND LEGAL ASPECTS* (1913)).

¹¹⁵ BARDACKE, *supra* note 108, at 108–110.

¹¹⁶ Miller, *supra* note 109, at 105.

Delano grape harvest, dragging AWOC along with them. Caught unprepared, but also loath to cross the Filipinos' picket lines, Chavez decided that his fledgling union—now dubbed the *National Farm Workers Association*, NFWA, would join the strike.¹¹⁷

For the rest of the fall harvest, the NFWA and AWOC collaborated on traditional strike tactics, picketing growers and shipping in supplies to support the strikers. But when winter came, and the “strike” became entirely symbolic, the workers hit on a new tactic. A caravan of NFWA organizers followed “scab grapes” to the coastal ports and found a ready ally in the longshoremen’s unions. Starting in November, dock workers began occasional, unpredictable sympathy strikes, leaving grapes to rot on the wharves.¹¹⁸ Unlike farmworkers, however, dock workers are covered by the National Labor Relations Act.¹¹⁹ As a result, their refusals to handle the “hot cargo” exposed them to legal liability under the prohibitions on secondary activity.¹²⁰ Sure enough, after only a few weeks, a San Francisco judge entered injunctions against both the longshoremen and the NFWA to cease picketing activities at the docks.¹²¹

Nevertheless, buoyed by early success, Chavez directed a lieutenant to organize a formal boycott. The initial targets were two liquor companies, Schenley and DiGiorgio, that had some holdings in wine grapes near Delano, the hub of farmworker activism in the Central Valley. The liquor companies were at a tactical disadvantage because they relied less on commodity grape sales and more on their “carefully cultivated public image” —their brands.¹²² A “boycott supplement” in the newspaper of the Student Nonviolent Coordinating Committee, for instance, listed I.W. Harper, Dewar’s White Label, and Seagers Gin as boycott targets.¹²³ Whiskey and gin, of course, do not come from grapes. The point, the pamphlet explained, was to “make injustice unprofitable” for Delano growers who were violating the workers’ rights to “union recognition” and “collective bargaining.”¹²⁴

Schenley capitulated quickly. That spring, while Chavez and the unions were marching to Sacramento to publicize the strike and the boycott, Chavez received a phone call from Schenley. Days later, the NFWA had its first contract, including a pay raise and an end to the use of labor contractors.¹²⁵ This first victory demonstrates the basic purpose that the boycott served for the

¹¹⁷ BARDACKE, *supra* note 108, at 156–61.

¹¹⁸ *Id.* at 175–76.

¹¹⁹ 29 U.S.C. § 152(3) (2012) (defining “employee” to include “any employee, and shall not be limited to the employees of a particular employer” but excluding “any individual employed as an agricultural laborer”).

¹²⁰ *See id.*; § 158(b)(4) (prohibiting, among other things, various forms of “hot cargo” agreements, whether tacit or explicit).

¹²¹ MARSHALL GANZ, *WHY DAVID SOMETIMES WINS: LEADERSHIP, ORGANIZATION, AND STRATEGY IN THE CALIFORNIA FARM WORKER MOVEMENT* 141 (2010).

¹²² JAMES M. JASPER, *THE ART OF MORAL PROTEST: CULTURE, BIOGRAPHY, AND CREATIVITY IN SOCIAL MOVEMENTS* 259 (1997); *see also supra* text accompanying notes 49–51 (discussing corporate vulnerability to brand attacks).

¹²³ *The National Farm Workers’ Association Asks You, Please Don’t Buy Schenley Liquors / Delano Grapes*, THE MOVEMENT (Supp. 1966), <https://libraries.ucsd.edu/farmworkermovement/ufwarchives/sncc/10-NFWA%20Boycott%201966.pdf> [<https://perma.cc/N3HL-YJ86>].

¹²⁴ *Id.*

¹²⁵ BARDACKE, *supra* note 108, at 229.

NFWA and, later, the United Farm Workers. Chavez was attempting to alter the structure of the market for farm employment, shifting control over hiring and firing from predatory labor contractors to the farmworkers' union.¹²⁶ This contract with the employer was the goal. Temporarily cutting consumption of table grapes, liquor, or any other product was simply a means to that end.

2. "Eat Like an Idealist"¹²⁷

More consumers than ever are choosing to pay extra for food labeled as organic, local, or some other "non-conventional attribute," such as fair trade. Organic has become big business. As one trade journal notes, matter-of-factly: "Food labeling has become an important and integrated part of firms' value-added process."¹²⁸ That study observes that, between 1990 and 2010, the organic food market soared from \$1 billion to \$26.7 billion, with organic consumption positively correlated with income, education, and urban residency.¹²⁹ Meanwhile, the number of farmers' markets quadrupled, from 1755 in 1994 to 7864 in 2012.¹³⁰ Perhaps the best symbol of organic's profitability is the specialty grocer Whole Foods Market. Founded in 1978, Whole Foods has grown to more than 490 stores and annual sales of approximately \$16 billion.¹³¹ Amazon, the online retailer, acquired it in 2017 for \$13.4 billion.¹³²

To take a step back, the "organic movement" is best described as (at least) three distinct but interlocking structures. First, in the United States, organic is a voluntary labeling regime with standards enforced by a detailed federal regulatory apparatus.¹³³ Under the framework established by the Organic Food Production Act of 1990, the USDA's National Organic Standards Board sets approved inputs and processes for organic products. The USDA also accredits private certifiers, which then verify that producers are abiding by organic standards.¹³⁴ Second—enabled by this legal

¹²⁶ GANZ, *supra* note 121, at 98–99 (contrasting the roles of labor contractors in the construction and agricultural industries); *see also* FERRISS & SANDOVAL, *supra* note 107, at 67 (describing the abuses that farmworkers faced at the hands of unscrupulous labor contractors, including wage theft and sexual harassment).

¹²⁷ This slogan ran in Whole Foods Market print advertisements in 2014. *See* Stuart Elliott, *Whole Foods Asks Shoppers to Consider a Value Proposition*, N.Y. TIMES (Oct. 19, 2014), <https://www.nytimes.com/2014/10/20/business/media/whole-foods-asks-shoppers-to-consider-a-value-proposition.html> [<https://perma.cc/8EGM-94WW>].

¹²⁸ Thong Meas et al., *Substitutes or Complements? Consumer Preference for Local and Organic Food Attributes*, 97 AM. J. AGRIC. ECON. 1044, 1044 (2014).

¹²⁹ *Id.* at 1045; Travis A. Smith et al., *Does Price or Income Affect Organic Choice? Analysis of U.S. Fresh Produce Users*, 41 J. AGRIC. & APPLIED ECON. 731, 738–40 (2009).

¹³⁰ Meas et al., *supra* note 127, at 1044.

¹³¹ "Fast Facts", *Whole Foods Market Newsroom*, WHOLE FOODS MARKET, <https://media.wholefoodsmarket.com/fast-facts/> [<https://perma.cc/2JJD-7V82>].

¹³² Nick Wingfield & Michael J. de la Merced, *Amazon to Buy Whole Foods for \$13.4 Billion*, N.Y. TIMES (June 16, 2017), <https://www.nytimes.com/2017/06/16/business/dealbook/amazon-whole-foods.html> [<https://perma.cc/25FD-A4WC>].

¹³³ *See infra* notes 142–145 and accompanying text; *see generally* Arielle Lessing, *A Supplemental Labeling Regime for Organic Products*, 18 MO. ENVTL. L. & POL'Y REV. 415, 428–35 (2011) (summarizing the legal regulation of the organic label).

¹³⁴ *See* *Harvey v. Veneman*, 396 F.3d 28, 31–32 (1st Cir. 2005).

structure—organic has become a multi-billion-dollar industry with trade groups, mass marketing strategies, and significant political clout. On a cynical view, the organic label is just another example of rent seeking, little different from any other industry's desire for a favorable regulatory environment.¹³⁵

Third, organic is a cultural object—a set of beliefs and institutions that move individual consumers to pay a premium for organic food. Organic is an “unpaid internship” for affluent college students;¹³⁶ organic is a pitch from an ethical consumer group;¹³⁷ organic is Terry Gross interviewing food journalist Michael Pollan on *Fresh Air*.¹³⁸ The cultural-political life of organic farming transforms it from an industry into a social movement, or so its proponents would argue. Thus, when a handful of organic associations met in France in 1972, they named themselves the “International Federation of Organic Agriculture *Movements*,” a group that has now grown into its name with 804 member organizations from 111 countries.¹³⁹ For critics, however, the movement remains little more than a veneer on corporate profit-seeking.¹⁴⁰

The goal of all three of these structures is to nourish a market for the consumption of organic food and encourage more consumers to enter that market. Unlike the UFW boycotts, the movement's goal centers on the object of consumption—the organic product. The movement succeeds when more consumers decide to “vote with their dollars” for purportedly more sustainable forms of agricultural production.¹⁴¹ The organic movement operates at the level of consumer preferences, not market structure, and as such participates in ethical consumption, not organized buying.

One might object that the organic movement did win a major structural change: the organic label, which is enforced by U.S. law and tolerated under various international trade agreements.¹⁴² Assuming good compliance, a consumer who buys organic knows that the food was produced in accordance with the requirements of the National Organic Standards Board.¹⁴³ Those rules ban

¹³⁵ Julie Guthman, *Eating Risk: The Politics of Labeling Genetically Engineered Foods*, in ENGINEERING TROUBLE: BIOTECHNOLOGY AND ITS DISCONTENTS 130, 146 (Rachel Schurman & Dennis D. Kelso eds., 2003) (“The underlying purpose of delineating organic growers in this way is to create and uphold a price premium. . .”).

¹³⁶ See Kim Severson, *Many Summer Internships Are Going Organic*, N.Y. TIMES (May 23, 2009), <http://www.nytimes.com/2009/05/24/dining/24interns.html> [<http://perma.cc/Z946-J9W5>].

¹³⁷ See, e.g., Tracy Fernandez Rysavy, *Is Organic or Local Food Better?*, GREEN AMERICAN, <https://www.greenamerica.org/organic-or-local/organic-or-local-food-better> [<https://perma.cc/C3R4-A8L2>].

¹³⁸ See *Fresh Air: Dinner: An Author Considers the Source*, NPR RADIO BROADCAST (Apr. 11, 2006), <http://www.npr.org/programs/fresh-air/2006/04/11/13001557/?showDate=2006-04-11> [<https://perma.cc/N9CX-WSMW>].

¹³⁹ See John Paull, *From France to the World: The International Federation of Organic Agriculture Movements*, 1 J. SOC. RES. & POL'Y 93 (2010).

¹⁴⁰ See, e.g., Guthman, *supra* note 135, at 146.

¹⁴¹ See Patricia Allen & Martin Kovach, *The Capitalist Composition of Organic: The Potential of Markets in Fulfilling the Promise of Organic Agriculture*, 17 AGRIC. & HUM. VALUES 221, 222 (2000) (“Proponents of green consumerism argue that capitalist markets provide opportunities for responsible consumers to ‘vote’ with their dollars and thereby work to solve environmental problems.”).

¹⁴² Cindy Joffe Hyman, *Food for Thought: Defending the Organic Foods Production Act of 1990 Against Claims of Protectionism*, 14 EMORY INT'L L. REV. 1719, 1740–60 (2000) (analyzing the various arguments for why the organic label could violate World Trade Organization agreements).

¹⁴³ See 7 U.S.C. § 6518(k) (2012).

certain inputs, including synthetic substances (with exceptions).¹⁴⁴ They also ban certain production processes, including genetic modification and damaging tillage practices.¹⁴⁵ The passage of the Organic Food Production Act and its implementing regulations made salient certain product characteristics that were previously hidden to the consumer.

But the organic label actually reinforces the preference-oriented goals of the organic movement. A labeling regime is a typical “market-based” policy intervention: Rather than acting directly on the conduct at issue—by regulating pesticides, fertilizers, and other agricultural technologies—the organic label merely facilitates consumer choice. Such “soft” interventions ultimately depend on consumer preferences to alter substantive outcomes.¹⁴⁶ Julie Guthman identifies labeling schemes as a form of “roll-out neoliberalization,” whereby “private organizations certify to particular standards, giving consumers the choice to purchase particular social and environmental qualities as a form of regulation, which putatively shift value to those producers who meet those standards.”¹⁴⁷ The relative sizes of the organic and non-organic markets will depend not on the label itself but ultimately on consumer decisions.

B. The Tactic: Concerted Pressure, or Mass Marketing?

Organized buying and ethical consumption adopt different tactics to achieve their different goals. At a fundamental level, organized buying sees the market differently than does ethical consumption. Organized buying depends on the variegated contours of an imperfectly competitive market to coerce specific actors. Organized buyers look for key chokepoints where they can exercise disproportionate influence over market outcomes. Ethical consumption, on the other hand, flourishes in a perfectly competitive market where consumer preferences exert flawless control over the production of goods and services.¹⁴⁸ Ethical consumption succeeds when a significant proportion of consumers slightly alter their demands on the market. Organized buying campaigns aim for shifts that are narrower but also more focused.

1. “Solidaridad Pa’ Siempre”¹⁴⁹

As discussed previously, comprehensive campaigns and consumer appeals have become

¹⁴⁴ See 7 C.F.R. § 205.105(a) (banning synthetics); *id.* §§ 205.601; 205.603 (providing for limited exceptions).

¹⁴⁵ See *id.* § 205.2 (defining “excluded methods” to include “cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology”); *id.* § 205.203 (regulating soil practices).

¹⁴⁶ See Kysar, *supra* note 56, at 2157 (arguing that even government labeling schemes “properly may be viewed as a form of private governance in that the achievement of a public policy outcome is made to depend on the voluntary, decentralized decisions of countless individual consumers”).

¹⁴⁷ Julie Guthman, *Neoliberalism and the Making of Food Politics in California*, 39 *GEOFORUM* 1171, 1174 (2008).

¹⁴⁸ Even William Hutt, a strident advocate of *laissez-faire*, recognized that his vision of consumer sovereignty could not be realized in situations of monopoly, and one of the few roles he reserved for the state was the maintenance of competitive markets. See WILLIAM HAROLD HUTT, *ECONOMISTS AND THE PUBLIC: A STUDY OF COMPETITION AND OPINION* 271 (Transaction Publishers 1990) (1936).

¹⁴⁹ *Solidaridad Pa’ Siempre* is the Spanish translation of “Solidarity Forever,” an American labor song. The

increasingly important tools for working class power in the era of globalized, fissured workplaces.¹⁵⁰ But the tactic is not new: workers have deployed secondary activity and solidarity boycotts whenever the threat of a strike lacks credibility. Through secondary activity, workers express and promote their class interest, rather than their more parochial interest as employees of a particular employer.¹⁵¹ Glickman describes how secondary activity proliferated during the labor unrest of the late-nineteenth century: “boycotts almost invariably expanded in concentric circles beyond the boycotted business to confront those who continued to support that business.”¹⁵² Labor boycotters were not motivated by individual ethical preference; rather, their purpose and success depended upon solidarity with fellow boycotters: “although the key action was taken by an individual, boycotts were in this sense fundamentally social.”¹⁵³

The UFW grape boycotts joined in this tradition. They succeeded by repeatedly exploiting the vulnerabilities in the market: All along the distribution chain, key middlemen can shut down the journey from the fields to grocery store shelves. In July 1967, after Chavez and his allies had defeated the wine grape growers, the UFWOC launched a strike at Giumarra Vineyards Corporation, a much more ambitious target. Giumarra controlled fully ten percent of the nation’s table-grape crop, and the Giumarras themselves were a tight-knit family with deep ties in the community of Delano growers.¹⁵⁴ From the start, “UFWOC leaders did not believe that they could win a strike at Giumarra. What they hoped to do was use the strike to kick off a boycott.”¹⁵⁵ Known as a “legitimacy strike,” this maneuver reflects how crucial the boycott had become to Chavez’s strategy to win contracts. “The boycott,” Chavez had concluded, “was the union’s only truly effective tool against growers who refused to negotiate contracts.”¹⁵⁶ That fall, the boycott did not go well. The other growers came to Giumarra’s aid, selling its grapes under their labels.¹⁵⁷ UFWOC responded in kind: it declared all the ranches on strike, and that winter it launched “an even bigger boycott of all California table grapes.”¹⁵⁸

How did such an ambitious plan ultimately succeed? The grape boycott did not rely on mailers and advertisements and moral suasion, though there were plenty of those things. Instead, the boycott was a targeted campaign waged at chokepoints in the system of distribution for table grapes. Dolores Huerta, Chavez’s longtime second-in-command, described the process in New York:

Spanish version was a staple of *teatro campesino* and other UFW gatherings. See MIRIAM PAWEL, *THE CRUSADES OF CESAR CHAVEZ: A BIOGRAPHY* 146 (2014).

¹⁵⁰ See *supra* notes 42–49 and accompanying text.

¹⁵¹ See George Feldman, *Unions, Solidarity, and Class: The Limits of Liberal Labor Law*, 15 BERKELEY J. EMP. & LAB. L. 187, 250 (1994) (“[T]he secondary activity that the liberal wing of the Court believes is outlawed is activity whose underlying assumption is an alternative conception of commonality – a view of the relevant community based on the centrality of class.”).

¹⁵² GLICKMAN, *supra* note 41, at 132.

¹⁵³ *Id.*

¹⁵⁴ JOHN GREGORY DUNNE, *DELANO* 183 (1967).

¹⁵⁵ BARDACKE, *supra* note 108, at 282.

¹⁵⁶ FERRISS & SANDOVAL, *supra* note 107, at 197.

¹⁵⁷ See DUNNE, *supra* note 154, at 185.

¹⁵⁸ BARDACKE, *supra* note 108, at 291.

In each of the five boroughs, we organized neighborhood coalitions of church, labor, liberal and student groups. Then we began picketing A. & P., the biggest chain in the city. For several months we had picket lines on about 25 to 30 stores and turned thousands of shoppers away. A lot of the managers had come up through the unions and were sympathetic to us. In response to consumer pressure, the store managers began to complain to their division heads, and soon they took the grapes out of all their stores, 430 of them.¹⁵⁹

UFWOC also found pressure points in the political system. In Cleveland, for instance, the mayor capitulated to Chavez's labor allies and brokered a deal to put boycott signs in local supermarkets.¹⁶⁰ These tactics proved enormously successful. By 1969, consumption of grapes had dropped by double-digit figures in major American cities compared to 1966: in Baltimore, 53 percent; Boston, 42 percent; Chicago, 41 percent; New York, 34 percent; Detroit, 32 percent; Philadelphia, 23 percent.¹⁶¹

At various points, the United Farm Workers also relied on secondary activity from allied unions. In the case of the UFW, longshoremen's unions and delivery drivers sometimes refused to deliver "hot cargo" grapes from the California fields. But, as described above, such efforts usually ended quickly due to proscriptions on secondary activity in national labor law.¹⁶² The UFW, however, was able to ask consumers to boycott stores that sold California grapes—and not just the grapes themselves—because of the farmworker exemption in the NLRA.¹⁶³ National labor unions also provided financial assistance to support the legitimacy strikes in the Central Valley.¹⁶⁴ In recruiting allies among other workers and consumers, the UFW relied on the market's *non-competitiveness*, its imperfection, rather than its vaunted ability to translate consumer preferences into market outcomes. Solidarity activity targeted at specific adversaries is a key tactic that distinguishes organized buying from ethical consumption.¹⁶⁵

2. Advertising the Organic Lifestyle

Ethical consumption, in contrast, relies on the ability of the individual consumer to incrementally affect the level of demand for a particular product. Of course, to achieve a significant market signal, an ethical consumption campaign must convince *many* consumers to alter their

¹⁵⁹ SMITH, *supra* note 63, at 252.

¹⁶⁰ *Chavez Pact in Cleveland*, N.Y. TIMES (Aug. 9, 1968), at 27.

¹⁶¹ BARDACKE, *supra* note 108, at 327.

¹⁶² See *supra* notes 119–121 and accompanying text.

¹⁶³ PAWEL, *supra* note 149, at 186 ("Farmworkers were excluded from the protection of the National Labor Relations Act—but that meant they also were immune from its prohibitions against secondary boycotts. That allowed the union to picket entire stores.").

¹⁶⁴ See BARDACKE, *supra* note 108, at 227–28.

¹⁶⁵ Seidman identifies this same phenomenon in the context of transnational labor boycotts. See SEIDMAN, *supra* note 39, at 133–34 ("When the moral concerns of activists are magnified by the purchasing power of large institutional buyers or investors, and when large institutions publicly reject a company's ethical stance, corporations are far more likely to agree to accede to new regulatory demands.").

habits. The campaign must disseminate information about the product characteristic and convince consumers that its ethical quality is worth paying money for, or that its ethical failing is worth avoiding despite a low price. In other words, the campaign needs to sell an ethical product. The tactic of ethical consumption is a marketing campaign.

The organic food market is deeply commercialized in this sense. Organic farms and organic food processors spend considerable sums of money on developing their market through advertising. A British team spent a year analyzing the messages and labels that advertisers use to promote organic food in grocery stores. Though not particularly surprising, the findings do reveal the deliberate cultivation of a particular persona for organic products: “A recurrent theme in British organic food promotion is an idealized rural idyll of non-industrial farming, using bucolic imagery presumably designed to appeal to the predominantly urban British population.”¹⁶⁶ This strategy is used not only by retailers but also by members of the organic “movement.” “Whether produced by supermarkets, small politically committed producers, or environmentalist campaign groups, the language used tends to be poetic, vague, dialogic, narrative, and emotive, with an emphasis upon bucolic imagery and *consumer self-interest*.”¹⁶⁷

Retailers nevertheless play a dominant role in cultivating this image. Whole Foods touts not only the putative health and environmental benefits of organic food, but also the virtues of ethical consumption itself. The sociologist Josée Johnston, in an ethnography of the Whole Foods shopping experience, describes how the company’s marketing promises both sustainability and limitless consumption: “The message presented . . . is that certain forms of consumption can preserve and protect the environment while at the same time maintaining a cornucopia of available products.”¹⁶⁸ Far from encouraging thrift, Whole Foods uses organic, fair trade, local, and other “ethical” virtues to move more product: “At the same time consumption is encouraged, the ubiquitous environmental imagery, packaging, and signage at [Whole Foods] suggest that resource conservation can significantly occur through consumption.”¹⁶⁹ Through advertising, market segmentation, and ethical appeals, Whole Foods has carved out a niche where it can both “balance our needs with the needs of the rest of the planet” and “increas[e] value . . . over time.”¹⁷⁰

As discussed in Part I, one critique of consumer activism is that it runs the constant risk of co-optation by businesses that can boost their products’ appeal through “ethical” branding.¹⁷¹ We can now see that it is ethical consumption, not organized buying, that suffers from this infirmity. Unlike organized buying, ethical consumption purports to rely on the perfectly competitive market to translate consumers’ political preferences into producers’ decisions. But, at the same time, ethical

¹⁶⁶ Guy Cook et al., “*But It’s All True!*”: *Commercialism and Commitment in the Discourse of Organic Food Promotion*, 29 TEXT & TALK 151, 156 (2009); see also Greg Northen, *Greenwashing the Organic Label: Abusive Green Marketing in an Increasingly Eco-Friendly Marketplace*, 7 J. FOOD L. & POL’Y 101, 126–27 (2011) (analyzing the elision of “natural” and “organic” in the American market).

¹⁶⁷ Cook et al., *supra* note 166, at 151 (emphasis added).

¹⁶⁸ Johnston, *supra* note 76, at 258.

¹⁶⁹ *Id.* at 259.

¹⁷⁰ These goals are stated in the Whole Foods Market “Declaration of Interdependence,” the company’s mission statement originally drafted in 1985. See *Declaration of Interdependence*, WHOLE FOODS MKT., <https://www.wholefoodsmarket.com/mission-values/core-values/declaration-interdependence> [<https://perma.cc/6RMR-H7VV>].

¹⁷¹ See *supra* notes 59–65 and accompanying text.

consumption campaigns make use of marketing, which sits uneasily with a notion of consumers' sovereignty: "[C]onsumers are not really sovereign under capitalism, they only think they are. Marketing fosters this belief."¹⁷² Ethical consumption has a conflicted relationship with the ideal of a purely competitive market. In principle, the competitive market is venerated; in practice, ethical consumption is planned by market elites.

C. The Political Structure: Bargaining Partner, or Billboard?

The different goals and tactics of ethical consumption and organized buying require different political structures to implement them. Whereas ethical consumption campaigns can operate largely as advertising firms, a group engaging in organized buying must be able to hold itself out as a potential bargaining partner for its adversary. As a result, organized buying campaigns must depend on more participatory structures. Sidney Tarrow, a theorist of social movements, describes a "polarity between bureaucratic organizations and grassroots radical groups"—one lobbying in the halls of Congress, the other turning out into the streets.¹⁷³ Though oversimplified, the dichotomy between the institutions and the grassroots roughly tracks the contrasting structures behind ethical consumption and organized buying.

1. Sitting Down to Bargain

After the initial boycott victories against Schenley and DiGiorgio, the UFW had to organize in the fields to gain legitimacy as a bargaining partner. The organization faced the first real test of its power when DiGiorgio demanded a representation election to establish that NFWA was the authentic voice of their workers.¹⁷⁴ The election was hard won, because the growers brought in the Teamsters Union in an effort to strike a sweetheart deal.¹⁷⁵ The key to victory was a merger between NFWA and ACOC as an affiliate of the AFL-CIO. The new group, not yet a full-fledged union, was dubbed the United Farm Workers Organizing Committee, later shortened to the UFW.

The success of the subsequent nationwide boycott, conversely, relied on participatory structures beyond the fields. The new UFWOC started sending entire farmworker families out from California into the nation's cities: "[u]sually one or two farmworker families, in addition to single men, were assigned to large cities to work with a UFW director and an Anglo support staff often recruited from the local community."¹⁷⁶ After landing in a city, often with little English and no money, the families would find refuge in churches and union halls. Then they would begin the process of building "long-term community and regional support" in order to gain the cooperation

¹⁷² SMITH, *supra* note 63, at 38.

¹⁷³ See SIDNEY G. TARROW, *POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS* 128–131 (3d ed. 2011).

¹⁷⁴ BARDACKE, *supra* note 107, at 248.

¹⁷⁵ Interview by Farmworker Movement Documentation Project with Fred Ross, Sr., in Dayton, Ohio (Oct. 1974), available at <https://libraries.ucsd.edu/farmworkermovement/essays/essays/HISTORY%20OF%20FARMWORKER%20MOVEMENT%20BY%20FRED%20ROSS.pdf> [<https://perma.cc/6LEZ-D9WM>].

¹⁷⁶ Margaret Rose, *From the Fields to the Picket Line: Huelga Women and the Boycott, 1965-1975*, 31 LAB. HIST. 271, 275 (1990).

of “labor, religious, political, consumer, and student groups.”¹⁷⁷ This structure—political allegiances under the control of UFWOC leaders—allowed the boycott to mobilize consumer pressure with deliberate precision: “organizers did not need to rely merely on the goodwill of individual shoppers, but could use the personal and more intensive tactics normally available only to truly local boycotts.”¹⁷⁸

And it worked. By the spring of 1970, nearing the three-year anniversary of the nationwide boycott, the Delano growers were running out of options. Although the legitimacy strike was still just for show, the boycott had succeeded: “despite the loss in the fields, the union won in the cities.”¹⁷⁹ In July 1970, the Giumarra brothers caved, and brought twenty-eight other Delano growers with them. At a ceremony in front a room full of farmworkers, the bosses signed three-year contracts that included wage increases, pesticide regulations, and a closed shop with a union hiring hall.¹⁸⁰ Here, it was crucial that the boycott had been centrally directed, not a diffuse cultural “movement.” When the growers signed contracts with UFWOC, they could depend on Chavez’s promise that grape sales would rebound. Or, as one Coachella grower put it, “I *know* what I need! I need to get that goddamn Bird on my goddamn boxes!”¹⁸¹

The experience of the UFW demonstrates how thick, participatory structures are necessary at multiple stages of an organized buying campaign. First, absent bonds of interpersonal loyalty, any effort to sustain collective action runs up against the free-rider problem. Mancur Olson, in his landmark study of collective action, argued: “[U]nless the number of individuals in a group is quite small, or unless there is coercion or some other special device to make individuals act in their common interest, *rational, self-interested individuals will not act to achieve their common or group interests.*”¹⁸² Solidarity—less charitably, social coercion—can convince people to see themselves not as “rational, self-interested individuals” but rather as members of a community. The UFW boycott committees depended on fostering such communities of solidarity.

Second, the UFW needed to be able to present itself as an organization with legitimate support among the farmworkers to bargain effectively with the growers. Although no labor law covered California farmworkers at the time of the original grape boycotts,¹⁸³ a comparison to national labor law is instructive. The basic mechanism of the National Labor Relations Act is exclusive negotiation with a labor organization that enjoys majority support within the relevant

¹⁷⁷ *Id.* at 289.

¹⁷⁸ JASPER, *supra* note 122, at 262.

¹⁷⁹ BARDACKE, *supra* note 108, at 336.

¹⁸⁰ *Id.* at 334–35.

¹⁸¹ The grower was referring to the black eagle emblem of the United Farm Workers. See PETER MATTHIESSEN, SAL SI PUEDES: CESAR CHAVEZ AND THE NEW AMERICAN REVOLUTION 369 (1973).

¹⁸² MANCUR OLSON, JR., THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS 2 (1965).

¹⁸³ Agricultural workers were excluded from most New Deal labor laws, due at least in part to Southern Democrats’ fears of empowering Black sharecroppers. See Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1351–52 (1987). The farmworker exclusion is codified at 29 U.S.C. § 152(3) (2012) (“The term ‘employee’ . . . shall not include any individual employed as an agricultural laborer. . . .”). The UFW did not successfully lobby for a state-level agricultural labor law until 1975. See *infra* note 251 and accompanying text.

bargaining unit.¹⁸⁴ If the union loses majority support within the unit, the employer is entitled to unilaterally withdraw recognition and refuse to bargain.¹⁸⁵ Fostering active participation among the actual workers is thus crucial to maintain legitimacy with employers. Similarly, even though the UFW recruited urban allies for the boycott, it purported to speak and bargain on behalf of the workers in the fields. Though the growers expressed continued doubt about the UFW's legitimacy in this regard,¹⁸⁶ in 1970 the union had won an initial victory.

2. Setting up a Billboard

Participatory structures are less important for ethical consumption campaigns because they aim mainly for a successful marketing push. Consumers just need to be sufficiently informed to alter their consumption habits. Where, then, do consumers get their information about “ethical” products? One survey identifies several broad sources of information.¹⁸⁷ First, governments can try to encourage informed consumption through labeling schemes, corporate disclosure, and prohibitions on false advertisement.¹⁸⁸ Second, and as discussed above, sellers of goods—whether non-profits, benefit corporations, or traditional for-profit businesses—often seek to tout the ethical qualities of their product.¹⁸⁹

But there also exists an ecosystem of “single-issue campaign groups” and “specialist ethical consumer publications,” which seek to alter consumer preferences through persuasion and education, with no profit incentive.¹⁹⁰ These groups range widely across the political spectrum. From the left, broadly defined, appeals to ethical consumption often focus on the environment. “Green America,” for instance, describes itself as a “national . . . membership organization” that seeks “to harness economic power—the strength of consumers, investors, businesses, and the marketplace—to create a socially just and environmentally sustainable society.”¹⁹¹ In a recent blog

¹⁸⁴ See 29 U.S.C. § 159(a) (2012); see also Benjamin I. Sachs, *The Unbundled Union: Politics Without Collective Bargaining*, 123 YALE L.J. 148, 201 (2013) (“[E]xclusive representation . . . is designed to ensure the efficacy of collective bargaining: by establishing that the union speaks for all the workers in the unit, exclusive representation aims to prevent employers from playing different factions of workers off each other to the detriment of the whole.”).

¹⁸⁵ See *Levitz Furniture Co. of the Pac., Inc.*, 333 NLRB 717 (2001) (“[A]n employer may . . . unilaterally withdraw recognition [from an incumbent union] only on a showing that the union has, in fact, lost the support of a majority of the employees in the bargaining unit.”).

¹⁸⁶ The townspeople of Delano founded an organization called “Citizens for Facts.” A pamphlet described the NFWA as strange outsiders, not authentic farmworkers: “Chavez and his cohorts have imported the long-haired kooks, professional loafers, winos and dregs of society to carry their *Huelga* banners. The true farm workers are in the fields working.” DUNNE, *supra* note 154, at 111.

¹⁸⁷ See Hannah Berry & Morven McEachern, *Informing Ethical Consumers*, in *THE ETHICAL CONSUMER* 69 (Rob Harrison et al. eds., 2005).

¹⁸⁸ *Id.* at 71, 74–76.

¹⁸⁹ *Id.* at 81–84.

¹⁹⁰ *Id.* at 78.

¹⁹¹ *About Green America*, GREEN AMERICA (July 8, 2017), <https://www.greenamerica.org/about-green-america> [<https://perma.cc/KYQ6-QWXP>].

post, the organization exhorts consumers to—what else—“vote with your dollars.”¹⁹² Ethical consumer appeals are not the exclusive province of the center-left, however. The website “2ndVote,” which describes itself as “the conservative watchdog for corporate activism,” informs consumers about how they can avoid patronizing companies that donate to “liberal” causes.¹⁹³ 2ndVote explains that “[w]hether you know it or not, you’re casting a vote every day and making a difference, sometimes in support of causes and issues that you would never support on your own.”¹⁹⁴ It encourages users of its mobile app to “go beyond the ballot.”¹⁹⁵

The organic food movement has its own network of promotional groups. Their common feature is that they do not “command the necessary resources to bargain directly,” and as a result are “bound to restrict their efforts to attempts at persuasion.”¹⁹⁶ There are many ethical food websites that provide detailed consumer information about how best to spend your food dollar. The Safina Center, a group that encourages consumers to purchase sustainable seafood, rates wild-caught fish and has partnered with Whole Foods Market to display the ratings in their stores.¹⁹⁷ “If you want to make change,” Carl Safina himself explains, “‘Show me how’ can be a stronger, more effective approach than ‘Just say no.’”¹⁹⁸ The Cornucopia Institute, similarly, produces “scorecards” for eggs, dairy, soy, yogurt, and other products.¹⁹⁹ The Organic Consumers Association, another such group, organized in 1998 in opposition to the initial draft organic standards rule, which activists charged was too weak.²⁰⁰ Yet even this effort focused on maintaining—or restoring—the integrity of the market-based organic system. These groups are billboards, not mass movements.

Moreover, these small non-profits do not even represent the center of power in the putative “organic movement” anymore. As Guthman explains, organic producers and aggregators largely control organic policy, and they aim to increase profits, not to transform the food system:

[The organic movement] has come to be led by third-party certifying agencies and producers associations, who defined ‘organically grown’ specifically as a production standard for farmers (and later processors), not as a food safety standard for consumers and certainly not as an alternative system of food production and distribution.²⁰¹

¹⁹² *What Does It Mean To Vote with Your Dollar?*, GREEN AMERICA: BLOG (June 20, 2017, 10:53 AM), <https://www.greenamerica.org/blog/what-does-it-mean-vote-your-dollar> [<https://perma.cc/63ET-HYBW>].

¹⁹³ *Who We Are*, 2NDVOTE (2016), <https://www.2ndvote.com/who-we-are/> [<https://perma.cc/8MSD-Y4WS>].

¹⁹⁴ *Id.*

¹⁹⁵ *Welcome to 2ndVote!*, 2NDVOTE (2016) [Mobile application software] (screenshot on file with author).

¹⁹⁶ SMITH, *supra* note 63, at 122 (quoting Andrew Colman, *The Psychology of Influence*, in *THE TACTICS OF PRESSURE* 11, 24 (Brian Frost ed., 1975)).

¹⁹⁷ *Whole Foods Market Partnership*, SAFINA CENTER, <http://safinacenter.org/programs/sustainable-seafood-program/whole-foods-market-partnership/> [<https://perma.cc/K2DB-RT6N>].

¹⁹⁸ *Id.*

¹⁹⁹ THE CORNUCOPIA INSTITUTE, <https://www.cornucopia.org> [<https://perma.cc/C2SY-H5FA>].

²⁰⁰ For an account of the battle over the first national organic standard, see Jaffee & Howard, *supra* note 14, at 390.

²⁰¹ Guthman, *supra* note 135, at 140.

The Organic Trade Association, for instance, successfully attached a rider to the 2006 Farm Bill that authorized the use of synthetic materials in “organic” food products, substantially weakening an already permissive standard.²⁰² The organic standard also says nothing about corporate consolidation or farm size, despite widespread consumer belief that organic food comes from “small, local farms.”²⁰³ So far has organic strayed from its movement roots that a new group, calling itself the “Regenerative Organic Alliance,” in early 2018 rolled out a more stringent, private label that it hopes will shore up the USDA organic label.²⁰⁴

Yet, despite losing much connection to a participatory social movement, organic continues to succeed as ethical consumption. Multinational food giants have amply demonstrated their confidence in the future of organic food. General Mills purchased Annie’s Homegrown, maker of the popular organic macaroni and cheese.²⁰⁵ Coca-Cola purchased Honest Tea, a company that “seeks to create and promote great-tasting, healthy, organic beverages.”²⁰⁶ Kellogg purchased Kashi;²⁰⁷ Pepsi purchased Stacy’s Snacks;²⁰⁸ the list goes on. Under a thin vision of the goals of the organic movement, none of this consolidation matters. If, as one Green America staffer would have it, the goal is to “send a direct message to business owners,”²⁰⁹ that market signal gets received whether or not a small family farm is on the other end of the line. Compared to organized buying, ethical consumption admits a much broader range of political structures.

III. ORGANIZED BUYING AS ECONOMIC DEMOCRACY

It should be clear by now that organized buying and ethical consumption differ significantly in their political valences. Where organized buying is structural, ethical consumption is individual; organized buying builds solidarity, ethical consumption satisfies preferences;

²⁰² See E. Melanie DuPuis & Sean Gillon, *Alternative Modes of Governance: Organic as Civic Engagement*, 26 AGRIC. & HUM. VALUES 43, 48 (2009).

²⁰³ Lessing, *supra* note 133, at 443–44.

²⁰⁴ See *Framework for Regenerative Organic Certification*, REGENERATIVE ORGANIC CERTIFIED (Feb. 2018), <https://regenorganic.org/wp-content/uploads/2018/02/ROC-Standard-Framework-Sept-2017-Currently-Undergoing-Revision.pdf> [<https://perma.cc/VM48-VWZ6>].

²⁰⁵ See Brian Solomon, *Buying Organic: General Mills Swallows Annie’s for \$820 Million*, FORBES (Sept. 8, 2014, 5:33 PM), <https://www.forbes.com/sites/briansolomon/2014/09/08/buying-organic-general-mills-swallows-annies-for-820-million/> [<https://perma.cc/8ZVY-CMRH>].

²⁰⁶ See *Our Mission*, HONEST TEA, <https://www.honesttea.com/about-us/our-mission/> [<https://perma.cc/G7BG-K3G8>]; Thomas Heath, *Even After Sale to Coca-Cola, Bethesda-Based Honest Tea “Work in Progress,”* WASH. POST (June 29, 2014), <http://wapo.st/1maYtEv> [<https://perma.cc/8JH2-3LP8>].

²⁰⁷ David Kesmodel & Annie Gasparro, *Inside Kellogg’s Effort To Cash in on the Health-Food Craze*, WALL. ST. J. (Aug. 31, 2015, 10:20 PM), <https://www.wsj.com/articles/inside-kelloggs-effort-to-cash-in-on-the-health-food-craze-1441073082> [<https://perma.cc/L692-6W8K>].

²⁰⁸ *PepsiCo Completes Acquisition of Stacy’s Pita Chip Co.*, CSP MAG. (Jan. 13, 2006), <http://www.cspdailynews.com/category-news/snacks-candy/articles/pepsico-completes-acquisition-stacys-pita-chip-co> [<https://perma.cc/C9BM-Z3Z9>].

²⁰⁹ Eleanor Greene, *You Can Vote Every Day – With Your Dollars*, PORTLAND OBSERVER (Aug. 22, 2017, 3:29 PM), <http://portlandobserver.com/news/2017/aug/22/you-can-vote-every-day-your-dollars/> [<https://perma.cc/WU5C-NA72>].

organized buying is participatory, ethical consumption passive. So what? This Part explains that these distinctions helpfully disentangle the social theory of consumer activism. The two forms of consumer activism correspond to diametrically opposed stances on the democratic control and social embeddedness of markets.

Organized buying is one of the many ways in which social power can be mobilized to exert control over the allocation of resources in society. There is a deep analogy between organized buying and more traditional forms of economic democracy, such as the industrial union or the worker cooperative. Organized buying fosters democratic control over the allocation of resources to the extent that the organizations *themselves* are internally democratic and rely on the exercise of social power. In short, organized buying often furthers economic democracy.

Ethical consumption, taken to its logical conclusion, promises the opposite. Rather than progressively extending social control over the economy, ethical consumption envisions a system of market totalism: all preferences, both “political” and “economic,” expressed exclusively through market transactions. In their deep logics, organized buying and ethical consumption sit at opposite poles of the ideological spectrum. Organized buying, but not ethical consumption, has a role to play in revitalizing democratic control over the production of goods and services in an era of diminished nation-states.

A. The Fantasy of Consumers’ Sovereignty

We can now see that the market fundamentalist critique of consumer activism, discussed in Part I,²¹⁰ applies only to organized buying. Ethical consumption, in contrast, fits seamlessly into an anarcho-capitalist utopia.²¹¹ Ethical consumption, at least in theory, realizes the principle of *consumers’ sovereignty*, a term coined by British economist William Hutt in 1936.²¹² Hutt argued that, “consumers in the market place are incomparably more rational and less seriously misled by propaganda than voters under representative government.”²¹³ As a result, “[a]t least the same measure of social validity could be claimed for consumers’ sovereignty . . . as could be claimed for a decision by ballot. . . .”²¹⁴ Similarly, Ludwig von Mises argued that consumers’ sovereignty was more legitimate than democracy because it protected not only the will of the majority but also the idiosyncratic preferences of the minority:

In the political democracy only the votes cast for the majority candidate or the majority plan are effective in shaping the course of affairs. The votes polled by the minority do not directly influence policies. But on the market no vote is cast in vain. Every penny spent has the power to work upon the production

²¹⁰ See *supra* Section I.B.2.

²¹¹ For more on the utopian project of the self-regulating market, see BLOCK & SOMERS, *supra* note 83, at 3.

²¹² HUTT, *supra* note 148, at 257 (“The consumer is sovereign when, in his role of citizen, he has not delegated to political institutions for authoritarians use the power which he can exercise socially through his power to demand (or to refrain from demanding).”).

²¹³ *Id.* at 262.

²¹⁴ *Id.*

processes.²¹⁵

Milton and Rose Friedman took this line of thinking to its logical conclusion: market results enjoy a presumptive legitimacy above political ones. “When you vote daily in the supermarket,” they argued, “you get precisely what you voted for, and so does everyone else. The ballot box produces conformity without unanimity; the marketplace, unanimity without conformity.”²¹⁶

As a result, the democratic state should be rolled back as far as possible, and the market, extended to “democratize” more and more areas of social relations. As Karl Polanyi describes, classical liberals such as Malthus focused their ire on the English poor laws, which distorted the “natural” outcomes that would have obtained in the self-regulating market.²¹⁷ Today’s efforts to dismantle economic regulations in the name of “freedom of speech” draw on this same tradition.²¹⁸ Demands for radical liberalization drive toward a world in which “the laws of nature eliminate[] . . . the need for political power to structure or govern human society.”²¹⁹ In this world, much of the regulatory state could be abolished because individuals would instead express their regulatory preferences through their market decisions.

Ethical consumption aligns well with this notion of consumers’ sovereignty. Ethical consumers take the market as it exists, rather than seeking a change in the terms that govern it. Ethical consumption succeeds only where many consumers voluntarily alter their preferences. These consumers are unorganized, each pursuing only his or her own vision of the good life. As Von Mises puts it, they are “merciless egoistic bosses, full-of whims and fancies, changeable and unpredictable. For them nothing counts other than their own satisfaction.”²²⁰ Ethical consumption is the “roll-out” face of neoliberal consumer politics. Neoliberal ideology discourages solidarity among citizens but simultaneously tasks them as consumers with the new responsibility of voting in the marketplace for social goods.²²¹

Yet ethical consumption cannot, in the end, confer much democratic legitimacy. First, ethical consumption violates a basic principle of political equality: in a democracy, everyone should get the same number of votes. But in the market for ethically consumed goods, the wealthy receive more votes than the poor.²²² A corollary fact is that less wealthy individuals are unable fully to

²¹⁵ LUDWIG VON MISES, HUMAN ACTION: A TREATISE ON ECONOMICS 271 (Ludwig Von Mises Institute 1998) (1949).

²¹⁶ MILTON FRIEDMAN & ROSE FRIEDMAN, FREE TO CHOOSE: A PERSONAL STATEMENT 65–66 (1980).

²¹⁷ KARL POLANYI, THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME 130–32 (Beacon Press 2001) (1942).

²¹⁸ See generally Charlotte Garden, *The Deregulatory First Amendment at Work*, 51 HARV. C.R.-C.I.L. L. REV. 323 (2016); Amanda Shanor, *The New Lochner*, 2016 WIS. L. REV. 133 (2016).

²¹⁹ BLOCK & SOMERS, *supra* note 83, at 104.

²²⁰ VON MISES, *supra* note 215, at 270.

²²¹ See *supra* note 147 and accompanying text. Douglas Kysar describes the “heroic” demands placed on modern consumers, who are expected not only to boost the national economy but also collectively to assign value to public goods. See Kysar, *supra* note 6, at 635.

²²² Cf. DAHL, *supra* note 31, at 52–62 (discussing the tension between private ownership and the preconditions of democracy, including the principle that all citizens should receive “equal votes” and “an adequate and equal opportunity for expressing a preference as to the final outcome”).

express their ethical preferences, even for the goods they do purchase. Their revealed willingness-to-pay for a particular ethical quality will be limited by their ability-to-pay, not the scope of their ethical commitment. Yet most people would likely report that their moral values apply generally, regardless of their ability-to-pay at any particular moment.²²³ As a result, even a perfectly competitive market does not summarize the public's ethical views.

Moreover, even if votes were equal and undistorted by any market failures or wealth effects, the market outcome could never be free or natural. The market must be built through political choices, hence Polanyi's pithy observation that "laissez-faire was planned."²²⁴ For ethical consumption, this planning is most obvious in the case of product labeling regimes.²²⁵ But manifold other government policies influence consumer preferences, meaning that any attempt to ground policy in revealed preferences is hopelessly circular.²²⁶ Collective choice cannot be avoided, only obscured. As a result, consumers' sovereignty through ethical consumption is unrealizable.

B. Socializing the Market Through Organized Buying

Rather than ethical consumption, it is organized buying that holds promise for a more democratically managed economy. Though disdained by social democrats and market fundamentalists alike, organized buying has been a persistent feature of our society, a weapon of last resort for those seeking to exercise social control over economic power. Organized buying is a partial solution to the problem of industrial autocracy. In much the same way that collective bargaining allows workers to assume partial control over the management of their workplace, organized buying allows a diverse array of civil society associations to bargain for partial control over the systems of production. In this final Section, I will draw out this parallel and defend the extension of economic democracy beyond the labor union context. A rich landscape of buying associations, encompassing a range of different memberships and purposes, would move beyond social democracy toward a form of social ownership.

Consider the analogy to workplace democracy—the paradigmatic case of economic democracy in the United States. As we have seen, unions frequently deploy organized buying as a supplement to or substitute for withholding their labor, either to initiate negotiations or win a specific demand.²²⁷ In fact, because collective bargaining is doctrinally circumscribed to "mandatory subjects" such as wages, hours, and working conditions,²²⁸ organized buying can in some circumstances achieve things that the traditional process could not. Carol Pateman defines collective bargaining as a form of "partial higher level participation."²²⁹ It is "partial" because

²²³ This argument resonates with critiques of wealth maximization as a moral criterion generally. Cf. Ronald M. Dworkin, *Is Wealth a Value?*, 9 J. LEGAL STUD. 191, 196–201 (1980).

²²⁴ POLANYI, *supra* note 217, at 147.

²²⁵ See *supra* note 6 and accompanying text.

²²⁶ See Kysar, *supra* note 56, at 2135 ("[G]overnments simply cannot abstain from influencing—directly or indirectly—the content of consumer desires.").

²²⁷ See *supra* notes 110–112 and accompanying text.

²²⁸ NLRB v. Wooster Div. of Borg-Warner Corp., 356 U.S. 342, 348 (1958); see also DAU-SCHMIDT ET AL., *supra* note 44, at 665–93.

²²⁹ PATEMAN, *supra* note 32, at 73.

workers can exercise only influence, but not final authority, over the decisions of management. It is also “higher level,” however, because it can relate to overall decisions about management of the firm, and not just day-to-day shop floor matters.²³⁰

Organized buying compares favorably to traditional collective bargaining on these dimensions. As described in Section II.C, above, a group that engages in organized buying holds itself out as a potential bargaining partner for the target of the consumer action. The UFW always sought to impose substantial changes on the growers’ business models as part of such negotiations. One important example was the union hiring hall, included in every contract that the UFW won during the grape boycotts.²³¹ Before the UFW, a network of labor contractors controlled the hiring of farmworkers, competing vigorously among themselves and driving down farm wages.²³² A union hiring hall, on the other hand, allowed the union largely to control hiring and firing decisions across growers and thereby demand higher pay.²³³ In Pateman’s terms, the union had won full participation on the narrow question of whom to hire, and partial participation on a broader array of high-level management decisions.

Yet many organized buying campaigns are not run by unions. Earlier, I also discussed the example of non-governmental organizations that wage transnational consumer campaigns to win voluntary compliance regimes.²³⁴ More generally, any civil society association—whether built around an issue, a locality, or some other affiliation—could mount an organized buying action against an entity that controls economic resources. Organized buying is a more general phenomenon in which “social power rooted in civil society directly impinges on the exercise of capitalist economic power.”²³⁵ Professor Wright terms this phenomenon *social capitalism*, but he includes too much under this heading. For instance, Wright speaks the in the same breath of “organized boycotts of corporations” and “fair trade and equal exchange movements.”²³⁶ Generally speaking, the latter would be a form of ethical consumption, not organized buying. Fair trade purchasing relies on the atomized actions of a multitude without political structure or social power—individuals relying only on their economic resources, not social organization.

Organized buying, on the other hand, seeks to leverage the developed social capacity of a committed group of buyers and consumers. Imagine if the examples this Article has considered

²³⁰ See *id.* at 69–71 (defining these terms). Collective bargaining can in some circumstances reach matters fundamental to the employer’s management of the business. For instance, upon a showing of severe anti-union animus, workers could oblige their employer to bargain over the closing of a plant. See *Textile Workers Union of Am. v. Darlington Mfg. Co.*, 380 U.S. 263, 274–76 (1965); see also Terry Collingsworth, *Resurrecting the National Labor Relations Act—Plant Closings and Runaway Shops in a Global Economy*, 14 BERKELEY J. EMP. & LAB. L. 72, 72 (1993) (arguing that the “runaway shop” doctrine ought to be extended given changes in the economic landscape since *Textile Workers*).

²³¹ See GANZ, *supra* note 121, at 158–59 (describing the terms of the Schenley contract); see also BARDACKE, *supra* note 108, at 333–34 (describing the terms of the Giumarra contract after the nationwide boycott).

²³² See GANZ, *supra* note 121, at 99 (“[Farm labor contractors] . . . had no leverage to demand higher pay for their workers and instead competed with each other by reducing labor costs to employers. In turn, they made their own profits by reducing income to workers.”).

²³³ See BARDACKE, *supra* note 108, at 397.

²³⁴ See *supra* notes 53–54 and accompanying text.

²³⁵ WRIGHT, *supra* note 23, at 222.

²³⁶ *Id.* at 139. Wright repeats the error when describing forestry conservation certification as a form of social empowerment. *Id.* at 267–68.

proliferated, and a diverse constellation of civil society associations came to exercise influence over various pieces of the production process through their concerted purchasing power. This hypothetical possibility has rich potential for extending economic democracy. It bears resemblance to William Forbath's call, in the name of participatory democracy, to "encourage the formation of broad associations of citizens—citizen-workers, citizen-consumers, citizen-parents, and so on—by giving them a share in the regulation and governance of spheres of social and economic life that are currently the domain of narrower elites or more concentrated interests."²³⁷ Organized buying could robustly democratize the economic sphere.

A possible objection is that the argument from economic democracy holds less water when assorted social organizations, and not just labor unions, seek to influence corporate conduct. Who are these self-appointed saviors, and who put them in charge? One response could be that under the principle of affected interests many people besides company employees have standing to challenge the decisions of capital managers when those decisions meaningfully affect their lives.²³⁸ Even if the interests of employees should receive priority, a complete system of economic democracy would also preserve some role for members of the general public.

Yet a final caveat is in order: organized buying furthers economic democracy only to the extent that the associations undertaking it are themselves internally democratic. Returning to our definition of economic democracy as social power over economic allocation, "social power" must be limited to people undertaking collective action through *voluntary* association.²³⁹ If an association gathers together many individuals, but then disregards their desires when exerting collective power, it can no longer be said to exercise social power in this sense. As Wright argues, associational democracy exists along a continuum:

When associations involved in democratic governance are themselves internally hierarchical and bureaucratic, when they represent only some interests in society and exclude the unassociated, when they are subordinated in various ways to elite interests, or when they are run by professionals and membership consists of little more than financial donation, governance through secondary associations can become very undemocratic.²⁴⁰

An association could certainly build something that looks like a community without consulting that community on organized buying decisions. It could rely instead on a large endowment, as in the case of many private universities.²⁴¹ Or it could rely on a delegation of state power, which it

²³⁷ Forbath, *supra* note 32, at 1781.

²³⁸ For an introduction to the principle of affected interests and an argument that it necessitates democratic control over non-state actors, see Archon Fung, *The Principle of Affected Interests: An Interpretation and Defense*, in REPRESENTATION: ELECTIONS AND BEYOND 236, 240–45 (Jack H. Nagel & Rogers M. Smith eds., 2013).

²³⁹ WRIGHT, *supra* note 23, at 120.

²⁴⁰ *Id.* at 153.

²⁴¹ See Wally Hilke & Amit Jain, *Public Interests, Private Institutions? Public Policy Challenges to Tax-Free Universities*, 127 YALE L.J. F. 94 (2017), <http://www.yalelawjournal.org/forum/public-interests-private-institutions> [<http://perma.cc/K73Y-B8WG>]; see also Stephanie Saul, *Endowments Boom as Colleges Bury Earnings Overseas*, N.Y. TIMES (Nov. 8, 2017), <https://www.nytimes.com/2017/11/08/world/universities-offshore-investments.html> [<http://perma.cc/8QN6-4MLH>].

exercises autocratically, as in the case of a corrupt, internally undemocratic union.²⁴² If organized buying is to avoid these pitfalls, the organizations that implement it must themselves be democratic. They must afford members equal franchise, effective participation, adequate information, and the authority to place decisions on the association's agenda.²⁴³

I have argued that an expansion of the existing trend toward organized buying could robustly democratize the management of society's economic resources. I have shown how this concept of buyers' associations fits into a rich intellectual tradition on economic democracy through social control of capital. This theoretical argument does not, of course, prove that managing economic production through the demands of a constellation of organized buyers would be efficient or practicable. I hope that I have shown, however, that consumer activism cannot be painted with too broad a brush. Though attacked from the left as fundamentally conservative, consumer activism in its organized buying form does imagine a radical shift toward greater economic democracy.

IV. CONCLUSION: THE UFW AND THE DANGERS OF A CONSUMER STRATEGY

What of the United Farm Workers? Though I have used the grape boycott throughout as a touchstone for organized buying, that fact alone does not speak to whether the UFW fulfilled the democratic promise of organized buying strategies. As I argued in the previous Section, economic democracy also requires that the associations be internally democratic. In this brief coda, I will conclude the narrative of the UFW. As with many other attempts to transform society, the union's initial victories largely went down in ultimate defeat. Today, the United Farm Workers operates more as an advocacy group than a labor union, with fewer than 5,000 members in the fields.²⁴⁴ Modern histories of the UFW, even sympathetic ones, spend much effort explaining "[h]ow it got beat, and to what extent it was responsible for its own demise."²⁴⁵ The general decline of organized labor must bear much of the blame, but most commentators have concluded that the union also suffered self-inflicted wounds due to an autocratic internal structure and an exclusive focus on marketing the boycott to urban liberals. As Frank Bardacke put it, "the boycott tail came to wag the farmworker dog."²⁴⁶ The UFW's decline speaks to the limits of consumer strategies, and to the importance of internal democracy to social movement organizations.

Days after the hard-fought Giumarra victory discussed in Section II.C, the UFW was obliged to lurch back into battle. The Teamsters union had infiltrated again, signing sweetheart

²⁴² For a classic critique of the unrealized promise of democratic collective bargaining, see Alan Hyde, *Democracy in Collective Bargaining*, 93 YALE L.J. 793, 828 (1984) ("Legal decisions, under an articulated norm of democracy in collective bargaining, generally presuppose and frequently reinforce elitism in bargaining.").

²⁴³ These basic criteria are due to DAHL, *supra* note 31, at 59.

²⁴⁴ Miriam Pawel, *A Generation of Leaders, But Not in the Fields: The Legacy of Cesar Chavez*, in A COMPANION TO CALIFORNIA HISTORY 440 (William Deverell & David Iglar eds., 2008), available at http://www.blackwellreference.com/subscriber/uid=411/tocnode?id=g9781405161831_chunk_g978140516183127 [<https://perma.cc/Z7PZ-GL5K>].

²⁴⁵ BARDACKE, *supra* note 108, at 7; see also GANZ, *supra* note 121, at 247–49; PAWEL, *supra* note 149, at 458–59; see generally Dana Frank, *Where Are the Workers in Consumer-Worker Alliances? Class Dynamics and the History of Consumer-Labor Campaigns*, 31 POL. & SOC'Y 372 (2003).

²⁴⁶ Frank Bardacke, *Cesar's Ghost*, THE NATION (July 26, 1993), available at <https://www.thenation.com/article/cesars-ghost/> [<https://perma.cc/4E7H-5UAS>].

contracts allegedly to represent vegetable workers in the Salinas Valley to the north. With no time to secure the loyalty of his newly won membership, which numbered in the tens of thousands, Cesar Chavez rushed north to resist the incursion.²⁴⁷ The Salinas effort distracted from the management of the original grape contracts. In 1973, the growers mostly refused to renew the original contracts, claiming—with some justification—that the fledging union was an incompetent manager and lacked support in the fields. In particular, the UFW had botched the roll-out of the union hiring halls, angering not only the growers but also the workers who bristled against new union seniority rules.²⁴⁸ After the contracts lapsed, membership and dues plummeted.²⁴⁹ Chavez put the grape boycott back on.²⁵⁰

Thus, the boycott proved a fickle ally of the UFW. Although more victories did come over the years—most notably, the passage of the California Agricultural Relations Act of 1975²⁵¹—the boycott did not win the mass base of support among actual farmworkers necessary to sustain the union. Labor historian Dana Frank distinguishes labor-led consumer campaigns from middle-class consumer campaigns *on behalf of* working people.²⁵² She places the UFW boycotts in a third category: a “labor-sponsored campaign pitched to cross-class consumers.”²⁵³ For a time, the strategy worked. Chavez became a household name in the cities, and California grapes became the symbol of consumer politics for a generation.²⁵⁴ But, Frank argues, “the campaign subtly shifted the union’s emphasis from organizing farmworkers in the fields to obtaining power through middle-class consumers.”²⁵⁵ Other histories of the movement sound a similar theme. Miriam Pawel observes that, as defeated strikes piled up, Chavez became increasingly enamored of the boycott: “The man who had built his union walking into barrios in the San Joaquin Valley and talking to workers one by one now felt more comfortable among the volunteers and boycott supporters.”²⁵⁶

As grassroots support among the workers declined, the UFW boycott campaigns in the 1980s began more and more to resemble ethical consumption. Organizational allies that Chavez had depended on in the cities—student groups, the civil rights movement, and especially organized labor—were all in precipitous decline during the Reagan years.²⁵⁷ Lacking that support, Chavez

²⁴⁷ BARDACKE, *supra* note 108, at 360.

²⁴⁸ *Id.* at 397–400.

²⁴⁹ *Id.* at 453.

²⁵⁰ Rose, *supra* note 176, at 277.

²⁵¹ 1975 Cal. Stat. 4013 (codified as amended at CAL. LAB. CODE § 1140 *et seq.* (West 2018)); *see also* BARDACKE, *supra* note 108, at 484–85 (describing the labor unrest that led up to the passage of the Act); *see* Jordan T. L. Halgas, *Reach an Agreement or Else: Mandatory Interest Arbitration Under the California Agricultural Labor Relations Act*, 14 SAN JOAQUIN AGRIC. L. REV. 1, 10–29 (2004) (discussing the history of the Act and contrasting it with national labor law).

²⁵² Frank, *supra* note 245, at 365.

²⁵³ *Id.* at 370.

²⁵⁴ As one historian of consumer activism put it, “for years [I] considered grapes food for boycotting not eating.” LIZABETH COHEN, *A CONSUMERS’ REPUBLIC: THE POLITICS OF MASS CONSUMPTION IN POSTWAR AMERICA* 7 (2003).

²⁵⁵ Frank, *supra* note 245, at 372.

²⁵⁶ PAWEL, *supra* note 149, at 407.

²⁵⁷ BARDACKE, *supra* note 108, at 663.

sought new ways to appeal to middle-class consumers. Yet another grape boycott, launched in 1984, focused on pesticide issues.²⁵⁸ A short film promoting the boycott in 1986—titled “The Wrath of Grapes”—called for a “joint grower-UFW program to test grapes in supermarkets for pesticide residues.”²⁵⁹ Although paired with a call for collective bargaining rights, this pitch actually appeals first and foremost to the self-interest of the grape buyer. Grape sales were largely unaffected.²⁶⁰

Furthermore, the political structure of the union became increasingly vertical. Chavez had always exercised tight control over the NFWA, and later the UFW—Chavez was both organizer and leader of both.²⁶¹ As a contemporary observer noted, “Cesar was also a fine listener, but his decision always concluded the discussion. He had the first and last word.”²⁶² As the farmworker movement’s troubles mounted, he became more autocratic: “He warned that traitors were out to destroy the union, and conducted numerous public purges of staff.”²⁶³ A major bloodletting came in late 1981, when Chavez put down an effort by Salinas vegetable workers to run for the UFW executive board.²⁶⁴ This charge, that Chavez became less and less tolerant of internal dissent, also comes up repeatedly in modern histories of the UFW.²⁶⁵

The UFW became progressively less democratic, and the boycott less effective, in a negative feedback loop of declining grassroots participation. The failures of the UFW might speak to more general challenges of achieving economic democracy through organized buying. Even the most transformative consumer actions depend on hijacking existing centers of economic power, rather than taking direct control of economic resources. Thus organized buying—and industrial unionism, for that matter—depart from the purest forms of workplace democracy. Perhaps the UFW did not achieve a rich internal democratic culture because, in the early years, the boycott strategy allowed it to pay less attention to organizing the fields.

Yet nothing in this story was inevitable. The UFW achieved notable victories, and the struggles of Cesar Chavez and Dolores Huerta remain an enduring symbol of how social movements can help workers win back control over their daily lives. Consumer activist strategies, when consciously deployed, forge a link between every person’s dual role as citizen and consumer. This connection could form a crucial third axis of social power in an era when more traditional organizational forms seem unable to challenge globalized capital. Organized buying has flourished in social democracies but also holds the promise of a more radically democratic social order.

²⁵⁸ FERRISS & SANDOVAL, *supra* note 107, at 235–39.

²⁵⁹ *The Wrath of Grapes*, UNITED FARM WORKERS, at 01:10 (1986), available at <https://youtu.be/Wq48o4fL4A?t=1m10s> [<https://perma.cc/74FG-6HGY>].

²⁶⁰ FERRISS & SANDOVAL, *supra* note 107, at 237, 254.

²⁶¹ Miller, *supra* note 109, at 108.

²⁶² BARDACKE, *supra* note 108, at 305.

²⁶³ Pawel, *supra* note 238, at 438.

²⁶⁴ *Id.* at 438–39.

²⁶⁵ See, e.g., BARDACKE, *supra* note 108, at 552–53; GANZ, *supra* note 121, at 248.