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Is Ethical Consumerism an Impermissible Form of Vigilantism?

Ethical consumerism has been around for a long time: many Americans protested against the Stamp Act of 1756 by refusing to buy tea and other British goods. In recent years, however, it has become an increasingly prominent feature of social life as new forms of technology have allowed consumers to use their choices in the marketplace to address various environmental, labor, and trade concerns.

Surprisingly, people have paid relatively little attention to the moral issues raised by ethical consumerism.¹ Suppose that consumers are morally permitted to use their buying power to pressure companies to treat animals better or to reduce carbon emissions. Does this mean that they can also pressure pharmacies not to stock the “morning after” pill? Can they pressure Walmart not to sell books or music they find offensive? Even in cases where consumers are pressuring companies to do the right thing, do their actions amount to an impermissible form of vigilantism?

In this article, I examine the morality of one type of ethical consumerism. Some ethical consumerism aims to change wider social behavior and practices. This type raises an important question about the boundary between the public and private spheres. Most philosophers believe that we are morally permitted to pursue our own ends in the market,

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1. For the morality of consumer choice in general, see David T. Schwarz, *Consuming Choices* (Plymouth, UK: Rowman & Littlefield, 2010).

subject to general moral requirements, such as the duty not to lie, the duty to aid, and perhaps the requirements of an ethos of egalitarian social cooperation. I argue that the sphere of private choices in the market is itself limited because democratic values play an important role in determining how citizens in a liberal democracy are authorized to use the market to pursue social change. If citizens decide to use their bargaining power in the market as a mechanism of social change, they must approach the task as a legislative endeavor that is part of the wider political process, not a private purchasing decision. I call this the *proto-legislative view* of ethical consumerism.

An implication of my view is that ethical consumerism does sometimes constitute an impermissible form of vigilantism. But my aim in this article is to describe a form of ethical consumerism that is not open to this criticism, a form that respects the privileged position of formal democratic politics and can therefore claim a rightful place in the practices of a liberal democratic society.

I. SOCIAL CHANGE ETHICAL CONSUMERISM

Ethical consumerism is the practice of choosing to buy certain goods and services at least partly on the basis of ethical considerations. For example, when you walk into Starbucks and face an array of coffee choices, one of them may be fair trade. If you base your decision to buy the fair trade coffee at least partly on the fact that the growers were treated fairly in the manufacturing process, you engage in ethical consumerism. You may also base your decision on the fact that the coffee smells and tastes good; what is necessary is just that fair treatment for the growers is one factor in your decision.

Ethical consumerism is a very large category, and I will be concerned with one form in particular. *Social change ethical consumerism* (SCEC) is the practice of choosing to buy certain goods and services at least partly on the grounds that doing so will create an economic incentive for other agents to act in ways that will advance some moral, social, environmental, or other nonmarket agenda. The most important point is that the consumer uses her purchases to try and change the way that other people behave. Suppose in the previous example that you choose the fair trade coffee in part because a policy of buying fair trade will create an incentive for coffee manufacturers to treat growers better. Here you

engage in SCEC because you base your decision partly on the fact that buying fair trade could help to change how manufacturers operate by changing the economic incentives they face.

SCEC differs from other familiar types of ethical consumerism. A consumer engages in *clean hands ethical consumerism* when she avoids a certain product on the grounds that she does not want to be implicated as a participant in the immoral practices through which it was produced. This is different from SCEC because the rationale in this case is to avoid being implicated in the immoral practice, not necessarily to change it.

A consumer engages in *expressive ethical consumerism* when she buys a product to express her approval or disapproval of certain values, beliefs, or practices. For example, she may shop at an organic grocery store to express her disapproval of the broader culture of mass-produced food in this country. This is different from SCEC because the rationale does not have to do with changing methods of food production, but rather with expressing certain attitudes and judgments about these practices.

SCEC also differs from what I will call *unmediated ethical consumerism*. A consumer may choose to buy a certain good or service because using it will directly advance some nonmarket agenda, whether or not it affects how other people behave. For example, you might buy a hybrid car because driving one produces lower emissions and is therefore less harmful to the environment. This is different from SCEC because your objective is not to change how manufacturers make cars, but simply to change your own practices in ways that directly advance the goal of slowing climate change.

SCEC can take the form of both *negative ethical consumerism* (“boycotts”) and *positive ethical consumerism* (“buycotts”).² Whether the consumer avoids certain goods or gives preference to them, she engages in SCEC if she bases her decision partly on the fact that her purchases can influence behavior by changing the incentive structure.

Most importantly for my purposes, SCEC can take the form of a joint effort by a large number of consumers, coordinated through a certification or labeling scheme. One of the most significant developments in ethical consumerism in recent years—and in global governance more generally—has been the rise of certification and labeling as a way for

2. See Monroe Friedman, *Consumer Boycotts* (New York: Routledge, 1999).

citizens to assert control over economic life. These schemes typically involve an umbrella organization that brings several groups together to establish standards for certification—standards connected to some moral, social, or environmental agenda—and a certifying body that evaluates products to determine whether they meet the standards. The umbrella organization may include NGOs, industry groups, and government agencies. Once a product gets certified, the organization makes the certification public, so that consumers who share the organization's objectives can use it to promote the shared agenda through their buying choices. Certification schemes have been used to advance a wide range of goals: promoting fair trade in the production of coffee, honey, tea, and cocoa; promoting small-scale, peasant-controlled, environmentally sustainable agriculture; slowing tropical deforestation; promoting the ideals of organic food; promoting healthy workplaces; addressing a wide range of environmental concerns in the production of detergents, batteries, soap, paint, DVD players, and so on; promoting environmentally sound energy production; reducing political violence in Africa connected with the diamond trade; and, of course, encouraging people to "Buy American."

My approach to SCEC focuses on describing how consumers should assess various considerations and take them into account in making buying decisions. Some readers might worry that this places too much emphasis on the motives of consumers rather than the results of their actions. But focusing on correct patterns of reasoning is appropriate here. Social institutions and practices play an important role in shaping our responsibilities, and they often require that we think about certain decisions in certain ways. A citizen, for example, has a certain role to play in the political process. She could reach the very same decision about whom to vote for based on her assessment of either what will serve the common good or what will serve her own self-interest. The consequences might be the same, but she would be acting wrongly in the latter case because she would violate an aspect of her responsibility as a citizen.

One of the roles that we play in society is the role of a consumer. As I see it, a central set of questions about ethical consumerism stems from the fact that some decisions in a liberal democracy should be made through a market process, while others should be made through a democratic legislative process, and the role of a modern consumer effectively

straddles the boundary between these two domains. Once we appreciate how the ethics of SCEC involves a question about the responsibilities of a consumer in a liberal democracy, it becomes quite natural to approach the issue by asking how consumers might be required to think about their purchasing decisions in different contexts.

II. AN UNRESTRICTED AUTHORIZATION TO USE SCEC

When (if ever) is it permissible for consumers to make choices in the market on the grounds that buying a certain product will generate an incentive for other agents to act in ways that advance some nonmarket agenda? I will argue that it is permissible under certain conditions, which I will describe in the next section. But I want to motivate my position in this section by presenting some arguments against an unrestricted permission to engage in SCEC. A few comments will help to situate the discussion.

Among the most important values in political morality are *procedural values*.³ These values determine how a society should evolve over time. Certain laws, policies, and patterns of behavior may be attractive in themselves, but the processes through which these develop in society may be morally objectionable because they are inconsistent with procedural values. For example, if a wealthy person bribes political officials to get them to increase healthcare spending for low-income people, the new policy may be a substantive improvement, but the process of social change would be objectionable because it is not adequately inclusive, transparent, or public.

One of the central justifying aims of a liberal democratic social order is to ensure that society evolves in ways that satisfy the requirements of procedural values. A liberal democratic order has many component institutions and practices, including legislatures, elections, markets, judicial review, and so on. Each of these institutions and practices defines various powers, and these powers enable people to influence the

3. A procedural value is a nonconsequentialist ideal that makes wide-ranging demands on how members of a society should think and act. For this general view of value, see T. M. Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press, 1998), chap. 2; Elizabeth Anderson, *Value in Ethics and Economics* (Cambridge, Mass.: Harvard University Press, 1993); and Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983). For a somewhat different account of procedural values, see Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf, 1999).

course of social life. The order as a whole is justified (in part) because it structures the processes of change in society in ways that satisfy the requirements of procedural values. The specific requirements of each component institution or practice must be understood in light of the broader procedural aims that justify the arrangement as a whole.⁴

When institutions define powers, they typically do so while also specifying how people are authorized to use them.⁵ This is because institutions could not typically achieve their justifying ends unless people used the powers they define in the right ways. For example, electoral practices in a liberal democracy define the power to vote, but they also specify that citizens are only authorized to vote their best political judgment, not to support candidates in exchange for payment. This restriction is essential because the democratic process could not achieve one of its justifying ends in a liberal democracy—protecting the rights of all citizens, rich and poor alike—if the wealthy were allowed to buy votes to advance their interests.

The market is also a social institution, and it defines various powers, such as the power to buy and sell goods. These powers enable people to exercise an influence—sometimes an immense influence—on the course of social life. Putting these powers in their broader social context, we can think of the permissibility of SCEC in terms of a question about how individuals are authorized to use the market powers that we collectively create and maintain in our society. Are people authorized to use these powers in ways that advance a social agenda? The answer depends, I take it, on whether an authorization to use these powers in this way would conflict with the broader justifying aims of our liberal democratic social order—most saliently, its procedural aims. If we can define the authorization to engage in SCEC so that it is compatible with the aim of ensuring that society evolves in ways that satisfy the requirements of procedural values, then we should see ourselves as permitted to use our market powers in this way. But if there is no way of defining the authorization so that it is compatible with this aim, then we should see ourselves as not permitted to use our market powers in this way.

4. My “interpretive” approach to institutions follows Ronald Dworkin, *Law’s Empire* (Cambridge, Mass.: Harvard University Press, 1986), chaps. 2 and 3.

5. See T. M. Scanlon, “Due Process,” in *The Difficulty of Tolerance* (Cambridge: Cambridge University Press, 2003), pp. 43–44.

In what follows, I will examine two different accounts of our authorization to engage in SCEC. The first one says that our authorization is unrestricted. This means that we can treat SCEC as a private purchasing decision: just as we are authorized to choose between two detergents on price-quality grounds, so too can we decide between them on the grounds that buying one would generate an economic incentive that favors a certain social agenda. I will argue that we do not have an unrestricted authorization to engage in SCEC, because an authorization of this kind is inconsistent with several procedural values that are essential to the justification of our liberal democratic social order. These values include security for the basic liberties, political equality, democratic deliberation, justified coercion, and managed politicization. Let us consider each of these in turn.

A. Security for the Basic Liberties

Every individual has a moral claim to certain fundamental freedoms, including the freedom of thought and conscience, the freedom of expression, the freedom of religion, and the freedoms associated with the integrity of the person.⁶ To have one of these freedoms, individuals must not only have the legal permission to do certain things, such as hold various beliefs and express various opinions; they must also be free from significant social pressures that could prevent them from performing these actions.⁷ Security for the basic liberties is a fundamental procedural value because society should evolve over time through a process in which people express their own freely formed ideas, and because people need an adequate set of basic freedoms to form their ideas freely.

The problem with an unrestricted authorization to engage in SCEC is that it would allow people to use their bargaining power in the market in ways that effectively deprive others of their basic freedoms. There are many illustrations of the danger, but perhaps the most disturbing are the boycotts of Jewish merchants in the 1930s. “Don’t buy Jewish”

6. I have in mind the freedoms that Rawls refers to as the “liberty of the moderns.” See John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, Mass.: Harvard University Press, 1999), part 2 (hereafter cited as *Theory*). I assume that our claims to these basic freedoms also imply a claim to control over our sexual preference.

7. Rawls, *Theory*, p. 177: “constraints [defining a lack of liberty] may range from duties and prohibitions defined by law to the coercive influences arising from public opinion and social pressure.”

campaigns were particularly intense in Germany, but similar campaigns occurred in the United States, Sweden, and other European countries.⁸ These boycotts deprived members of the Jewish community of their religious freedom by making it exceedingly difficult for them to practice their religion openly and to associate with their co-religionists. Many eventually had to hide their beliefs and affiliations. Of course, the boycotts were objectionable for other reasons as well, such as the fact that they were motivated by ethnic hatred. I cite the example simply to illustrate how an unrestricted authorization to engage in SCEC would allow for consumer campaigns that intentionally or unintentionally deprive others of their basic freedoms.

The danger persists today. In the United States, groups such as the American Family Association (AFA) have used ethical consumerism to discourage expression that conflicts with their Christian values.⁹ In recent years, the AFA has used boycotts and the threat of boycotts against companies like Walt Disney, Ford, and Walmart for extending insurance benefits to same-sex partners, advertising in gay media outlets, and sponsoring TV shows that portray gay people as normal members of society.¹⁰ An unrestricted authorization to engage in SCEC would allow for any of these campaigns, regardless of their impact on basic freedoms.

B. Political Equality

Citizens should be able to participate as equals in deciding how society will address important issues of common concern. But an unrestricted authorization to engage in SCEC is at odds with this value. This is because market actors who are better organized and control more valuable resources can apply enormous pressure on other market actors to advance a certain social agenda, but those who are poorly organized and control less valuable resources cannot apply similar pressure. When

8. Michele Micheletti, *Political Virtue and Shopping* (New York: Palgrave, 2003), p. 67.

9. See Friedman, *Consumer Boycotts*, pp. 167–71.

10. Friedman, *Consumer Boycotts*, p. 170; “Still Advertising to Gays; Ford Under Boycott Again,” *New York Times*, March 15, 2006; “Wal-Mart Boycott over Gays Called Off,” <<http://www.msnbc.msn.com/id/15835445/>>. Even those who use SCEC to defend their rights may at the same time use it to threaten the rights of others: see Cheryl Greenberg, “Don’t Buy Where You Can’t Work,” in *Consumer Society in American History: A Reader*, ed. Lawrence Glickman (Ithaca, N.Y.: Cornell University Press, 1999).

everyone is authorized to use their market powers to advance a social agenda, this effectively allows those who are better organized and better endowed to play a disproportionate role in deciding how society will address issues of common concern.

People often miss the point because media attention naturally gravitates to social groups that are active and mobilized. Take the well-known case of the Mexican tourism boycott. In 1975, the Mexican government voted, along with seventy-two other, mostly developing countries, in favor of a UN resolution equating Zionism with racism and racial discrimination. American Jews, who were frequent travelers to Mexico, responded with a groundswell consumerist response: they canceled their Mexican vacations, with the Mexico Hotel Association reporting thirty thousand cancellations in one week. Facing significant economic pressures, the Mexican president eventually conceded that his country should not have voted the way that it did. If we focus narrowly on the mobilized group, the boycott appears to be a relatively unproblematic case of citizens “voting with their dollars.” It is important to keep in mind, however, that many people in the world—rightly or wrongly—supported the UN resolution. But these people largely lacked the resources to pressure the Mexican government. Most importantly, Palestinians were not frequent travelers to Mexico and not nearly as wealthy or well organized as the American Jewish community. They had no ability to back their social agenda with a comparable level of economic pressure, and therefore they could not participate on equal terms in deciding this important issue of common concern.

The Mexican tourism boycott is a particularly apt example because many people see SCEC as a way to address the challenges of globalization. In an insightful essay, Andreas Follesdal argues that a market economy is only justified when there are appropriate restraints in the background that direct firms to socially valuable forms of activity.¹¹ The problem is that corporations can now move their operations anywhere in the world, making it difficult for national governments to regulate

11. Andreas Follesdal, “Political Consumerism as Chance and Challenge,” in *Politics, Products, and Markets: Exploring Political Consumerism Past and Present*, ed. Michele Micheletti, Andreas Follesdal, and Dietlind Stolle (New Brunswick, N.J.: Transaction, 2004). See also Waheed Hussain, “Stepping Up: Ethical Consumerism in a World of Diminished States,” in *Leadership and Global Justice*, ed. Douglas Hicks and Thad Williamson (New York: Palgrave Macmillan, 2012).

these entities effectively. For global capitalism to be justified, Follesdal argues, consumers must help to fill the global governance gap by using their economic power to make sure that corporations respect the interests of workers, communities, and the environment.

Follesdal may be right that someone has to fill the global governance gap, but a system of governance built on consumers exercising their bargaining power in the global marketplace is essentially a system in which consumers in the developed world are in charge. Wealthy and well organized, these consumers command the attention of market actors, including multinational corporations, in a way that consumers in the developing world do not. One of the fundamental problems with an unrestricted authorization to engage in SCEC is that, in a globalized economy, this would effectively allow consumers in the developed world to set the global agenda and to use their bargaining power to advance this agenda around the world.¹²

C. Democratic Deliberation

The course of public life in a democracy should be guided by the public deliberation of its members.¹³ Citizens should coordinate their efforts to address issues of common concern through a discussion that focuses on finding the law or policy that would best serve the common good. The outcome, moreover, should be determined by the strength of the best arguments, not just the relative power of the individuals involved. The problem with an unrestricted authorization to engage in SCEC is that it would not require market-based efforts addressing issues of common concern to be deliberative.

Consider the case of nuclear power. There are good reasons to be wary of nuclear technology, including the danger of a large-scale accident and the intractable problem of how to dispose of nuclear waste. At the same time, there are important arguments in favor of nuclear technology, especially in the context of climate change. Suppose now that a

12. For a discussion of north-south tensions in the fair trade movement, see Christopher M. Bacon, "Who Decides What Is Fair in Fair Trade?" *The Journal of Peasant Studies* 37 (2010): 111–47.

13. See Joshua Cohen, "Deliberation and Democratic Legitimacy," in *Philosophy, Politics, Democracy* (Cambridge, Mass.: Harvard University Press, 2009); and Jürgen Habermas, *Between Facts and Norms* (Cambridge, Mass.: MIT Press, 1996).

group of committed consumers, including some large institutional buyers, decides that nuclear power is simply not an acceptable option for society and boycotts power companies that use it. Given their size and importance, this group may well make it prohibitively expensive for any power company to use nuclear technology to provide electricity to its customers. But even if these consumers were right that nuclear technology does not, on balance, serve the public interest, the process of social coordination in this case would be objectionable. Instead of engaging in a deliberation with other citizens to find a reasonable energy policy, the group simply uses its bargaining power in the market to determine the outcome. An important issue of public concern will have been decided through a bargaining process rather than a process of deliberation. An unrestricted authorization to engage in SCEC would essentially allow for most any market-based effort of this kind, regardless of its deliberative character.

D. Justified Coercion

When individuals use their bargaining power in the market to advance a social agenda, it is important to remember that this power is ultimately underwritten by the coercive power of the state. The coercive power of the state must satisfy the publicity condition, which says that any exercise of this power has to be accompanied by a public justification that could be accepted by reasonable people who are subject to it.¹⁴ The problem with an unrestricted authorization to engage in SCEC is that it is not adequately sensitive to this restriction.

To illustrate, imagine that after the end of apartheid, white South Africans had resolved to make decisions in the market partly on the grounds of maintaining their dominant position in society. They make it a point to buy from black merchants and to hire black workers only when this is compatible with their dominance: they might hire a black maid, for instance, but not a black CEO. Given that the whites own most of the land, natural resources, and productive capital in society, their purchasing policy effectively excludes the black population from a great deal of the benefits of social cooperation. Moreover, if a black person tries to gain access to the land or to work in a professional or

14. See Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. 67–68.

managerial capacity in a firm, against the wishes of white landowners or shareholders, the state will use its coercive power to defend the legally defined ownership rights of white citizens. Apartheid may not be the official policy of the state, but the coercive power of the state clearly stands behind the market-based efforts of white South Africans. We have, in effect, a quasi-apartheid regime indirectly enforced by the state.¹⁵

More generally, for most any pattern of social rules *S*, there is a substantially similar pattern of social rules *S** that could enter society through the decisions of market actors. Even if the state does not directly adopt and enforce *S**, it may effectively enforce *S** insofar as it enforces legally defined property rights. This fact should place significant constraints on what people are authorized to do in the market. If the publicity condition does not allow a group of individuals to enact certain rules through legislation, then it should also prevent them (in some way) from imposing these same rules on society through nonstandard uses of their market powers.¹⁶

E. Managed Politicization

The last procedural value I will consider is managed politicization. Married people will inevitably disagree about many aspects of their life together, but if they brought these disagreements up all the time, they would undermine the many valuable, everyday interactions that make

15. This example builds on observations from G. A. Cohen, "Capitalism, Freedom and the Proletariat," in *On the Currency of Egalitarian Justice*, ed. Michael Otsuka (Princeton, N.J.: Princeton University Press, 2011); and Jeremy Waldron, "Homelessness and the Issue of Freedom," in *Liberal Rights* (Cambridge: Cambridge University Press, 1993).

16. This does not mean that we must satisfy the demands of publicity every time we make a market decision. The market is a social institution that has an appropriate public justification; that is, it provides the institutional setting for an exchange process that tends toward a Pareto optimal outcome (see Section VII). "Standard" uses of our market powers are those uses, such as making purchases on price-quality grounds, that are essential for the market to achieve its justifying aim. When the state enforces outcomes that result from standard uses of our market powers, its enforcement satisfies publicity in virtue of the fact that it is only enforcing the rules of a social practice that has an appropriate public justification. But state coercion would not satisfy publicity in the same way when the outcomes in question result from nonstandard uses of our market powers, for example, those designed to maintain a quasi-apartheid regime. State enforcement of these outcomes would have to satisfy publicity independently of the justification for the institution.

up the fabric of the relationship. They have good reason, then, to show restraint in bringing up their disagreements and to set aside appropriate times for the hard conversations.

Managed politicization reflects a similar concern in political life. Citizens in a liberal democracy disagree about important issues of public concern, but if they brought these disagreements up all the time, they would undermine many of the valuable forms of interaction that make up the fabric of social life. Since these valuable interactions tend to generate mutual trust and good will, they might also undermine the background of fellow feeling in society that ultimately helps them to reach compromises on difficult issues.¹⁷ As a way of preserving these goods, the ideal of managed politicization says that citizens should limit the extent to which they allow their political disagreements to come between them outside of the sphere of formal democratic politics.

The problem with an unrestricted authorization to engage in SCEC is that it puts no conditions on when and how people can pursue their political disagreements with one another in market life. It does not restrict the practice to cases where the disagreements are particularly serious or to cases where the formal democratic process is unavailable. It is therefore insufficiently sensitive to the importance of managed politicization.

An interesting illustration involves the Ford motor company. When Ford began advertising in gay media outlets, the AFA and nineteen other groups organized a boycott of what they saw as an effort to normalize gay and lesbian lifestyles. Prior to the boycott, people could interact as Ford customers, employees, retailers, suppliers, and so on without much thought about where they stood on the issue of gay rights. This created the space for many patterns of mutually beneficial interaction, patterns that encouraged good will among citizens. Once the boycott started, however, many of these patterns came to an end, as those who opposed the integration of gays and lesbians into the mainstream avoided Ford. To make matters worse, the AFA boycott drew a response from forty-one civil rights groups, who lined up to pressure Ford not to cave in to the Christian groups' demands, and this pushed the level of acrimony even

17. See Rawls, *Theory*, pp. 409–13, 429–34. For the importance of everyday interactions, see also Habermas, *Between Facts and Norms*, pp. 17–27; G.W.F. Hegel, *Elements of the Philosophy of Right*, ed. Allen Wood (Cambridge: Cambridge University Press, 1991), sections 182–208; and Marcel Mauss, *The Gift* (London: Routledge, 2001).

higher. An unrestricted authorization to engage in SCEC would allow anyone to start a boycott for almost any reason, and therefore does not pay enough attention to the importance of managed politicization.

III. RESTRICTED AUTHORIZATION: PROTO-LEGISLATIVE SCEC

In the last section, I argued that an unrestricted authorization to engage in SCEC would be inconsistent with some of the most important procedural aims of a liberal democracy, including securing people's basic liberties and ensuring that they can participate in social decision making as equals. We are therefore not permitted to treat SCEC as just another private purchasing decision. I turn now to a more restrictive account of the permission to engage in SCEC.

According to what I call the *proto-legislative account*, we can permissibly use our market powers to advance a social agenda under certain conditions that I will outline below. These conditions effectively limit us to "proto-legislative" SCEC. We are morally permitted to engage in proto-legislative SCEC because an authorization to use our market powers this way is consistent with the central procedural aims of a liberal democracy. We are not morally permitted to engage in other forms of SCEC because an authorization to engage in most any other form would be inconsistent with these procedural aims.

Let us start with an important background idea. The examples in the last section basically draw attention to the limitations of the market, understood as a mechanism of social change. Even when the changes that people want to bring about through the market are good ones, the processes involved tend to be inconsistent with procedural values. If a society were to rely on the market as its sole mechanism of social change, it would clearly fall short of these procedural ideals.

The procedural shortcomings of the market provide one important rationale for treating the formal democratic process as the supreme system for making and changing social rules (including the rules of the market itself). Formal democratic politics incorporates various measures—including a bill of rights, universal suffrage, equally weighted votes, and so on—that are designed to address an array of procedural concerns. When we embed the market in a democratic system of government, we help to ensure that society will not only achieve good outcomes, but will also evolve toward these outcomes in ways that satisfy

procedural values. We might say that formal democratic politics occupies a privileged position in social life because procedural values demand that a process with these features should function as the highest-order system for making and changing social rules (though not necessarily the only system for doing so).

Taking the privileged position of formal democratic politics as background, the proto-legislative account says that citizens are authorized to use their market powers to advance a social agenda when they treat their buying choices as part of the wider democratic process, a kind of ongoing, informal prologue to formal democratic lawmaking. An analogy will help to explain.

When a parliamentary body faces a large array of regulatory tasks, and it cannot complete all of them, members may form one or more ad hoc committees to deal with particular issues. On one model, an ad hoc committee will draw its members from the wider parliament, making sure to include people who can represent the most important perspectives in the larger body on the issue in question.¹⁸ The committee then frames rules for the issue area through a process of reasoning in which members try to identify what rules they think the full parliament should adopt if it were to consider the issue formally. As part of their responsibilities, committee members prepare evidence and arguments to justify their rules, and they make this material available to the rest of the parliament. Once the committee frames a set of rules, these rules may, in some cases, serve as the authoritative pronouncements of the parliament, backed by the usual sanctions, though the rules would not have the full binding force of law unless the parliament as a whole were to explicitly endorse them.

The proto-legislative account says that citizens who engage in SCEC must conduct themselves as a kind of ad hoc committee, working on behalf of the citizen body as a whole. They must use their bargaining power in the market to frame a set of rules for a certain issue area, where these rules are determined through a process that involves parties who

18. The ad hoc committee is representative in the sense that it attempts to adequately reflect the diversity of perspectives in the full parliament: it is a "mini-public." The committee is not representative in the sense that its members exercise some authority delegated to them by members of parliament. See Robert Dahl, *Democracy and Its Critics* (New Haven, Conn.: Yale University Press, 1989), p. 340; Robert Goodin and John Dryzek, "Deliberative Impacts: The Macro-Political Uptake of Mini-Publics," *Politics and Society* 34 (2006): 219–44.

together represent the most important perspectives on the issue in society. Those involved in the process must frame rules that they believe the full citizen body should adopt, if it were to consider the issue formally. As in the case of an ad hoc committee, citizens must prepare evidence and arguments that justify the rules that they frame, and they must make this material available to the wider body of citizens. The rules that citizens frame are authoritative, but they do not have the full binding force of law unless the citizen body as a whole endorses them. In the absence of legal penalties, the bargaining power of citizens as consumers serves to give market actors who are subject to the rules some reasonable assurance that other market actors will also comply.¹⁹

Stated formally, the proto-legislative account says that citizens (acting alone or in concert with one another) are authorized to make purchasing decisions on the grounds that these will change the incentive structure in ways that advance a social agenda when:

- (1) The exercise of bargaining power does not deprive anyone of their basic liberties.
- (2) The exercise of bargaining power is directed at (significantly) advancing an agenda framed in terms of a reasonable conception of the common good.
- (3) The formal democratic process has not already addressed the issue in question.
- (4) The process that guides the exercise of bargaining power is appropriately representative and deliberative.
- (5) The process that guides the exercise of bargaining power generates standards and arguments that can be the basis of future legislation.
- (6) The overall effort aims to raise awareness of the issue and (if necessary) to put it on the formal legislative agenda.

The first two conditions are relatively straightforward: we are not authorized to use our bargaining power in the market in ways that deprive others of their basic freedoms or advance a social agenda built narrowly around our own self-interest. In approaching SCEC as part of

19. See Rawls, *Theory*, pp. 211, 238.

the democratic process, citizens must use their bargaining power to promote a reasonable conception of the common good.²⁰

The third condition recognizes the privileged position of formal democratic politics and rules out attempts by citizens to use their bargaining power in the market to overrule the legislature.

The fourth, fifth, and sixth conditions require citizens to use their bargaining power in ways that express democratic respect for their fellow citizens. Instead of simply imposing rules on society, citizen-consumers must involve other people in the rule-making process, people who can effectively represent the most important perspectives in society on a certain issue. All those involved must deliberate and come to a reasoned agreement about the appropriate rules, and the process should aim to produce standards, arguments, and agreements that can eventually form the basis of formal legislation.

The sixth condition addresses the danger of social disengagement.²¹ Market-based strategies for addressing collective concerns do not require participants to engage democratically with the wider community: small groups of consumers may formulate product standards and enforce them on their own. The sixth condition addresses the danger. It says that citizens who come together to enforce product standards must be open about what they are doing, so that the wider community knows (or could easily learn) about their actions and the issues they are addressing. Citizens taking part in these projects should also be prepared to put their standards and arguments before the full public and seek approval through formal democratic channels, if this becomes necessary.

I want to emphasize that the proto-legislative account does not require that citizens actually get formal approval for their actions before they engage in SCEC. Nor does it require that they act only in ways that they predict would be approved by the majority, given the current state of knowledge and public opinion. Instead, it says that citizens who engage in SCEC must do so with the understanding that they are acting on behalf of the citizen body as a whole, and that they are introducing

20. When acting in a group, citizens can satisfy the second condition (as well as conditions [4], [5], and [6]) by relying on a coordinating agency to direct their joint exercise of bargaining power in the appropriate ways.

21. See Andrew Szasz, *Shopping Our Way to Safety* (Minneapolis: University of Minnesota Press, 2009).

rules that they believe the full citizen body should adopt on full consideration of the facts.

The proto-legislative account contrasts with perhaps the most important contemporary normative conception of SCEC, a view that I will call *common good anarchism*.²² This view says that if individuals see that some activity is damaging the common good (e.g., harming a shared natural resource, violating basic rights, and the like), they can use their bargaining power in the market peacefully to pressure those engaged in the activity to stop what they are doing. The common good anarchist thinks that we each have the authority to act privately in defense of the common good.

The proto-legislative account rejects common good anarchism in favor of a *democratic* conception of SCEC. The common good is certainly a shared concern, but so are procedural values, such as political equality, deliberation, and justified coercion. When we act in defense of the common good, we must not lose sight of the fact that other citizens, who may have different views about what would advance the common good, also have a claim to participate in deciding important issues of common concern. The proto-legislative account allows people to use their bargaining power peacefully to pressure those who are damaging the common good to stop what they are doing, but it says that direct action in defense of the common good must also respect a series of constraints that reflect the importance of democratic ideals.

Why are we morally permitted to engage in proto-legislative SCEC? The basic reason is that an authorization to use our market powers in this way is not at odds with the central procedural aims of a liberal democracy. Take political equality, for instance. The privileged position of formal democratic politics ensures that all citizens have a basic capacity to participate as equals in deciding important issues of common concern. The restrictions of the proto-legislative account reinforce this equality by not allowing wealthy consumers to use SCEC to challenge the formal democratic process. Furthermore, the representation and deliberation conditions ensure that all of the important perspectives in society are represented in the process that directs consumer bargaining power, which means that a wealthy and well-organized minority could not use SCEC to simply impose their views on the rest of society. The

22. I take this view to be implicit in how many activists think about SCEC.

authorization defined by the proto-legislative account is therefore consistent with political equality, and similar arguments can be made with respect to the other procedural aims of a liberal democracy.

Could there be other forms of SCEC that are also compatible with these procedural aims? This is unlikely. Proving the point would require examining every possible formulation of the authorization to engage in SCEC and showing how each one is inconsistent with some procedural value: this is beyond the scope of this article. But I would argue that once you take certain values seriously, particularly deliberation and justified coercion, most any authorization that is consistent with the procedural aims of a liberal democracy would have to incorporate significant proto-legislative requirements. The precise requirements could vary, but they would effectively limit people to proto-legislative forms of SCEC.

IV. AN ILLUSTRATION: THE FOREST STEWARDSHIP COUNCIL

An example will help to illustrate the proto-legislative account. I discuss here the consumer campaign coordinated by the Forest Stewardship Council (FSC). I argue that the joint exercise of consumer bargaining power in this campaign meets conditions (1) through (5), though it is not entirely clear whether it meets condition (6).

The FSC was established in 1993, following a period in which the public became more aware of the dangers of tropical deforestation, and activists became disillusioned with intergovernmental policy-making mechanisms for forestry issues (particularly at the 1992 UN Conference on Sustainable Development).²³ An independent, nongovernmental, nonprofit organization, the FSC is committed to promoting the responsible management of the world's forests. It promotes this goal mainly by certifying wood products as having been harvested consistently with its

23. The international website of the FSC is <www.fsc.org>; the U.S. chapter: www.fscus.org>. In addition to the FSC's publications, the account in this section draws on Fred Gale, "Caveat Certificatum: The Case of Forest Certification," in *Confronting Consumption*, ed. Thomas Princen, Michael Maniates, and Ken Conca (Cambridge, Mass.: MIT Press, 2002); Michele Micheletti, *Political Virtue and Shopping*; Mikael Klintman, "Participation in Green Consumer Policies: Deliberative Democracy under Wrong Conditions?" *Journal of Consumer Policy* 32 (2009): 43–57; and Benjamin Cashore, Graeme Auld, and Deanna Newsom, "Legitimizing Political Consumerism: The Case of Forest Certification in North America and Europe," in Micheletti, Follesdal, and Stolle, *Politics, Products, and Markets*, pp. 181–202.

“basic principles of responsible management.” These principles include respect for local laws and international treaties; respect for the rights and interests of workers, indigenous peoples, and the local community; equitable sharing of the benefits of the forest; and the conservation of biological diversity, water resources, soils, and fragile ecosystems.²⁴ The FSC accredits independent certification bodies to carry out annual inspections and spot checks, and to certify forests, manufacturers, and products as FSC compliant. FSC product labels are widely recognized, and many governmental and institutional buyers will not buy wood products unless they come from FSC-certified forests.

The highest decision-making body in the FSC is the General Assembly. It has the ultimate authority to make decisions about the proper articulation and interpretation of the principles of responsible management, policies regarding accreditation, and so on. The Assembly is divided into three equally weighted chambers: Environmental, Social, and Economic. Each of the chambers is itself divided into two equally weighted subchambers, North and South, in order to ensure that perspectives from the developing world are fairly represented. Among the environmental groups that participate are the Rainforest Action Network, Greenpeace, and the Sierra Club. Social groups include the Alliance of Forest Workers and Harvesters, the National Aboriginal Forestry Association, and the Taskforce on the Churches and Corporate Responsibility. Economic groups include retailers such as Home Depot and Homebase, and forest management companies such as Northland Forest Products and Sweden’s Sveaskog. The Board of Directors manages the operations of the FSC and answers to the General Assembly in triennial meetings that are posted on their website.

The joint exercise of bargaining power coordinated by the FSC meets the first three conditions of proto-legislative SCEC. It does not limit fundamental freedoms, and aims to significantly advance an agenda for forest management framed in terms of a reasonable conception of the common good. The principle of respect for local laws ensures that the consumer campaign does not attempt to override the will of democratic legislatures.

24. For a complete list of the FSC’s principles, see their website: <http://www.fscus.org/standards_criteria/>.

What is most distinctive about the campaign is that it meets conditions (4) and (5). The FSC process is representative because the General Assembly includes organizations that represent the most important perspectives in different societies on how to properly manage and exploit the world's forests.²⁵ The process is also deliberative. Though it would take some close observation to verify this, there are good indicators of deliberative engagement. For one thing, "there is a certain common acknowledgment—one may even say respect—across actors of the broad range of interests and values involved in forests besides forestry: tourism, recreation, wildlife, cultural values and so forth."²⁶ Background inequalities in power are also not excessive because the economic power of the forestry companies is balanced by the important "social" or "symbolic" capital of the social and environmental organizations.²⁷

With respect to condition (5), the FSC process generates standards and arguments that can provide the basis for future legislation. The FSC has national initiatives in over fifty countries, and many of these initiatives include working groups that develop more specific standards and criteria for applying the general principles of responsible management to specific geographical areas and forests. These particular standards and criteria, along with the underlying principles, provide a rich basis for democratic legislation.

A more difficult question has to do with the sixth condition. To what extent does the campaign aim to raise awareness and (if necessary) place the issue of responsible forest management on the formal legislative agenda? There is a certain anarchist tendency in the FSC-led campaign: after all, it was frustration with governmental and intergovernmental policy-making procedures that led the movement to embrace a kind of direct action. Though the campaign respects local laws and regulations, the proto-legislative account says that the campaign would be on a stronger moral footing if it were more clearly oriented to seeking public approval for its standards through formal democratic channels if this became necessary.

25. A fuller treatment of the FSC would also consider whether the mini-public formed by the General Assembly is adequately representative of the relevant communities: Are all important perspectives represented? Are all of the NGOs involved genuine? and so on. (See also note 18.)

26. Klintman, "Participation in Green Consumer Policies," p. 48.

27. *Ibid.*

V. THE GOOD OF SCEC: “WAITING ROOMS” FOR DEMOCRACY

I have explained the central features of the proto-legislative account. Citizens are morally permitted to use their market powers to advance a social agenda when they respect the six conditions outlined above. But in order to fully understand the practice, we must understand what makes it good. What makes proto-legislative SCEC a worthwhile endeavor?

Proto-legislative SCEC essentially creates arenas of informal democratic self-governance that operate below the level of formal democratic politics. We might think of these as the “waiting rooms” of democracy. In a large, complex, and technologically sophisticated society, citizens cannot make all of the rules necessary to direct market activity to desirable outcomes through the formal legislative and regulatory process. As things stand, when issues do not make it on to the formal democratic agenda, they are left to the unregulated market. But with proto-legislative SCEC, citizens can address issues that need attention but do not get on the formal agenda through informal self-regulation in secondary arenas such as the FSC. This secondary form of democratic governance has several benefits.

One has to do with perpetually secondary concerns. Deforestation, for instance, is a real problem and citizens may agree that it is, but they may not think that the problem is as urgent as other issues on the national agenda, for example, issues of war and peace. Unfortunately, political mobilization in a mass democracy typically focuses on a small number of issues that can move people to the voting booth, and since deforestation figures lower on the list of citizens’ concerns, it will get pushed aside in national debates. Depending on what kinds of trouble a society gets into, the deforestation issue may stagnate this way for decades. Proto-legislative SCEC can help to fill the governance gap by giving citizens another avenue for democratically regulating market activity, an avenue that would allow them to address deforestation and other perennial also-rans in mainstream politics.

Another benefit of the practice has to do with the formation of a legislative will. Currently, when issues do not break out into the sphere of formal democratic politics, they languish in the market, a sphere in which consumers, workers, and corporations typically meet one another as groups with competing interests, locked in competitive bargaining. Over time, these antagonistic relationships can harden people’s positions. The

advantage of proto-legislative SCEC is that the “waiting room” for democracy does not have to be just an arena for conflict. While parties are waiting for an opening on the formal agenda, they can work toward agreement on various principles and rules, and the progress they make can eventually form the basis for a legislative consensus.

A closely related benefit is increased governability. Corporations are powerful social actors, with privileged access to political authorities, and they often oppose laws that would protect the rights and interests of weaker players in the market. But the orientation of corporations is closely connected with the orientation of consumers. If consumers are narrowly interested in price and quality, without regard for how a firm delivers these goods, then firms stand to profit from reduced protections for weaker players. But if consumers are sensitive to whether a firm respects the rights and interests of others, there will be less profit to be made in taking advantage of weaker players, and this in turn will make firms less hostile to regulatory efforts to protect these players.

Finally, proto-legislative SCEC can expand the sphere of citizen engagement. As Michele Micheletti and others argue, many people who care about the common good but do not participate in formal democratic politics will find it more natural to participate in market-based decision making.²⁸ Someone who cares about tropical deforestation may not identify with a political party or have general views about economic policy, but she may find it quite natural to connect her social concerns with choices about what furniture to buy or what paper to use. A forum such as the FSC offers this person a way to participate in collective self-governance: she can go to the website to explore the issue, participate in wider discussions about appropriate standards, and contribute to social change by making better purchasing decisions. Her involvement with the FSC may eventually lead her to take a more active role in formal democratic politics.

VI. IS THE PROTO-LEGISLATIVE ACCOUNT TOO RESTRICTIVE?

I have argued that citizens must approach SCEC as part of the broader democratic process rather than as a private purchasing decision. Many readers may be sympathetic to the proto-legislative account, but object to it on the grounds that it is too restrictive.

28. See Micheletti, *Political Virtue and Shopping*, pp. 34–36.

I want to emphasize first that the proto-legislative account says that we can and should engage in proto-legislative SCEC. Citizens *should* use their bargaining power in the market to address a wide range of social concerns by directing corporations and other market actors to better forms of productive activity. All that the proto-legislative account requires is that when citizens use the market this way, their actions must conform to a set of requirements that ensure proper respect for democratic values.

Some may object that the proto-legislative account puts too many demands on consumers. I disagree. The account says that consumers can participate in SCEC in much the same way they do now, that is, by doing things such as buying products that conform to the requirements of an appropriate certification or labeling scheme. What the account stresses is that these schemes must live up to certain standards with respect to representation, deliberation, and transparency. Since a certification scheme directs consumer bargaining power, the restrictions of the proto-legislative account are necessary to ensure that this exercise of power is consistent with the democratic character of society.

Some might object that the proto-legislative account puts too many restrictions on how we can use our bargaining power in the market to challenge unjust regimes. Here it is important to emphasize that the restrictions of the proto-legislative account apply only in cases where political morality actually directs citizens to treat the formal democratic process as authoritative. Clearly there are cases where injustices are so severe that morality does not require citizens to give formal democratic politics a privileged position in social life. In the case of apartheid, for instance, the laws were so unjust that even undemocratic measures would have been permissible to change them, and the formal democratic process did not answer in even basic ways to procedural values such as equality. Under these conditions, the restrictions of the proto-legislative account would not apply: South Africans living under apartheid had a much more expansive permission to use their bargaining power to generate social change; for example, consumers could boycott companies for complying with apartheid laws, even if these laws were enacted through the formal legislative process.²⁹

29. The circumstances in Israel and the Occupied Territories today, though not equivalent to apartheid, also fall far short of what is necessary for people to be morally required to

On the other hand, the restrictions of the proto-legislative account do apply in most affluent liberal democracies today. There are significant injustices in both the laws and political processes in countries such as the United States and Canada, but these injustices do not rise (for the most part) to a level where undemocratic measures would be permitted to change them. The political process in these countries answers in some basic ways to procedural values, and nothing would be gained by setting up a competing rule-making system. The central role of SCEC in these societies is to provide citizens with a way of working *within* the existing authority structure to steer society to better outcomes.

Proto-legislative SCEC is similar, in some ways, to more radical forms of political action, such as civil disobedience and nonviolent noncooperation: proto-legislative SCEC also involves citizens acting directly in defense of the common good while also making their reasons public. An important difference, however, is that citizens generally use civil disobedience and nonviolent noncooperation to challenge legislative decisions made through the formal democratic process. Although citizens may also use SCEC in this way, what is most distinctive about this form of political action is that citizens can use it to supplement the existing authority structure: emerging practices such as environmental and free-trade labeling give guidance where none (or almost none) is given. This represents an important development in the repertoire of contemporary social activism.

VII. PRICE-QUALITY CONSUMERISM

Some readers may be sympathetic to the proto-legislative account, but may think that my argument does not leave enough room in society for private purchasing decisions. Consider that ordinary price-quality consumerism involves the use of our market powers, and that it has an enormous impact on the course of social life: new forms of work, housing, and social interaction—even new cities and towns—are in large part the product of price-quality decisions that people make as consumers. When consumers engage in price-quality consumerism, however,

treat the formal democratic process as authoritative. Israelis and Palestinians therefore have a much wider permission to use their bargaining power to bring an end to the Occupation. The Israeli Knesset has recently taken a different view. See Isabel Kershner, “Israel Bans Boycotts against the State,” *The New York Times*, July 12, 2011.

they do not focus on the common good, deliberate with their fellow citizens, or make their reasons public. If, as I argue, the requirements of the proto-legislative account are necessary to ensure that SCEC is consistent with the procedural aims of a liberal democracy, then it seems these same requirements should apply to price-quality consumerism as well, and this would effectively rule out price-quality consumerism as we know it. So my argument seems to have the counterintuitive implication that consumers must approach all purchasing decisions as part of a deliberative process that aims to find the allocation of resources in society that best serves the common good.

The objection raises an important question about the boundary in market life between the public and private spheres. In order to answer the objection, I need to say something about the rationale for a sphere of private decision making in the market.

In every society, there are many possibilities for generating Pareto improvements in welfare by transferring resources from one person to another.³⁰ One vast pool of such possibilities exists in virtue of the fact that workers and investors are often willing to make products at prices that consumers are willing to pay. The market exchange process is a process of bargaining and exchange that, under the right conditions, will carry out all of these Pareto improving transfers. Over time, the process can maintain a Pareto optimal distribution of resources in society, a distribution that is sensitive to the constantly changing preferences of workers, investors, and consumers.³¹ No other plausible method of social coordination could perform this complex task as effectively.³²

It is true, of course, that the market exchange process generates significant changes in society through a process of bargaining, and in this respect it conflicts with the procedural aims of a liberal democracy. But the procedural defects of the market exchange process are justified because the process can (if reasonably well managed) generate profound improvements in people's lives, improvements that meet the very high threshold necessary to justify certain departures from procedural ideals;

30. By a "Pareto improvement in welfare," I mean an increase in one person's preference-satisfaction that does not lower anyone else's preference-satisfaction.

31. See Allen Buchanan, *Ethics, Efficiency, and the Market* (Totowa, N.J.: Rowman & Allanheld, 1985).

32. Friedrich Hayek, *Individualism and the Economic Order* (Chicago: University of Chicago Press, 1948); see also the extensive literature on the "socialist calculation debate."

in addition, no procedurally sound process could achieve comparable results. So the market exchange process may have certain procedural defects, but incorporating this process into our basic practices does not undermine the justifiability of our liberal democratic order.

What makes price-quality consumerism different from SCEC is that price-quality consumerism is *internal* to the market exchange process. The price-quality preferences of consumers are an essential component in the vast social opportunity for Pareto improving transfers that I mentioned: it is the correspondence between these consumer preferences and the preferences of workers and investors that creates the opportunity. Under the right conditions, the market process will generate all of the Pareto improving transfers that make up this social opportunity, but in order for the process to work, consumers must actually make buying decisions based on their price-quality preferences. If they do not signal their price-quality preferences and pursue these preferences through their purchasing decisions, the market exchange process will not achieve its justifying end.

By contrast, SCEC is not internal to the process in the same way. The social change preferences of individual consumers tend to conflict with the social change preferences of workers, investors, and other consumers. These preferences do not present a significant opportunity for Pareto improving transfers, and as such, SCEC does not contribute to the market achieving its justifying end.

We now have a response to the objection. Ordinary price-quality consumerism and SCEC both involve people using their market powers in ways that bring about significant social changes, but the special restrictions of the proto-legislative account are not necessary with respect to price-quality consumerism. The reason is that price-quality consumerism is internal to the market exchange process: it is part of a social practice whose procedural defects are justified because they are necessary to generate an overwhelming improvement in people's lives.³³

Just to be clear, the fact that the market exchange process generates this overwhelming improvement does not mean that its outcomes are

33. SCEC can also generate improvements in people's lives, but these improvements are not nearly as profound as those of the market exchange process, and there is no reason to think that we could not achieve similar results through a procedurally sound process such as proto-legislative SCEC.

always justified or even neutral—far from it. My point is only that the market exchange process generates an overall improvement in outcomes that is substantial enough to justify its procedural defects (including those associated with price-quality consumerism). This leaves open the possibility that many market outcomes will fail to satisfy certain moral requirements, and that we will have to intervene in the process through formal legislation or proto-legislative SCEC.

VIII. REDRAWING THE PUBLIC-PRIVATE BOUNDARY IN MARKET LIFE

An important implication of my argument is that consumers must distinguish between the different grounds on which they make decisions in the market. When they make choices based on price-quality considerations, they can approach their choices as private purchasing decisions: they are not required to focus on the common good, deliberate with their fellow citizens, or make their reasons public. But when consumers make choices based on social change considerations, they must shift gears and approach these choices as part of the legislative process: they must focus on the common good, deliberate with their fellow citizens, and make their reasons public. The role of the modern consumer effectively straddles the boundary between the private and public spheres.

The case of consumers is one instance of a more general pattern. For example, the market also gives citizens the power to lend resources to one another, and their lending decisions can also have a powerful impact on issues of common concern. According to my argument, lenders can approach their lending decisions as private choices when they make their decisions based purely on their risk-return preferences. This is because the risk-return preferences of lenders form part of the same vast social opportunity for Pareto improving transfers, an opportunity that could only be realistically exploited through the market exchange process. But when lenders use their lending decisions to try and change society—for example, by using “red lining” policies to preserve the racial composition of a neighborhood—they must switch gears, focus on the common good, deliberate with their fellow citizens, and make their reasons public. This is because there is no argument based on market exchange that justifies treating these decisions as private ones. Similar implications follow for the institutional powers of shareholders and workers.

The argument does not extend, however, to all market powers. For example, market institutions give citizens the power to make charitable contributions, and these contributions can also have a powerful impact on issues of common concern. But charitable contributions are different from purchases because they do not involve Pareto improving transfers: when donors donate, they *sacrifice* their own welfare in order to improve the lives of others through a charitable organization. The case for a sphere of private decision making in charitable giving has little to do with the market exchange process, and mostly involves expressive concerns and the value of decentralizing the delivery of social services.³⁴ In the end, some decisions about charitable giving may also be subject to proto-legislative requirements, but whether this is true or not will depend on how best to understand the distinctive arguments for treating these decisions as private ones.

IX. ISSUES OF APPLICATION

I want to turn in this last section to some important issues relating to the application of the proto-legislative account to actual consumer campaigns.

A. The Duties of NGOs

Let us say that an NGO plays a *coordinating role* in a consumer campaign when (1) it shares the social concerns of a wider body of consumers, and when (2) it provides information to these consumers for the purposes of getting them to act in ways that advance the aims that the NGO and consumers share. Most NGOs running a certification or labeling scheme play a coordinating role in this sense. On my view, these NGOs are not like newspapers, disseminating information about companies and products in a more or less disinterested way. They are more like volunteer coordinators, who step forward from a particular community to broadcast information to the other members of the community in order to direct everyone to conduct that will advance their shared aims.

34. For a helpful discussion, see Rob Reich, "Toward a Political Theory of Philanthropy," in *Giving Well: The Ethics of Philanthropy*, ed. Patricia Illingworth, Thomas Pogge, and Leif Wenar (Oxford: Oxford University Press, 2011).

When an NGO plays a coordinating role in a consumer campaign, it has a duty to coordinate the campaign in such a way that the joint exercise of bargaining power by consumers will satisfy the requirements of the proto-legislative account. This follows from what I take to be a more general moral principle of leadership. Military planners coordinating an assault have a duty to coordinate it in such a way that it satisfies the requirements of a just military campaign. A union coordinating a strike has a duty to coordinate it in such a way that it satisfies the requirements of a permissible labor boycott. And similarly, an NGO coordinating the application of bargaining power by consumers has a duty to coordinate the campaign in such a way that it satisfies the requirements of the proto-legislative account. In practice, this means that an NGO running a certification or labeling scheme will have to develop internal structures like those of the FSC, though the scale of the campaign would dictate how extensive these mechanisms have to be.

B. Buying as Political Expression

Every year on Black Friday, the magazine *Adbusters* sponsors a national “Buy Nothing Day,” where participants go out into stores and very publicly refuse to buy anything.³⁵ This boycott is essentially a market-based performance, protest, or “happening,” where the goal is to generate social change, not through a strategic use of bargaining power, but by posing a question about hyperconsumerism and getting people to think more about it.

“Buy Nothing Day” is one example of a special category of expressive ethical consumerism that I will call *political expressive consumerism*. Citizens engage in this form of consumerism when they make buying decisions to change society, but their purchases contribute to this goal because they serve some expressive function. Many boycotts are instances of political expressive consumerism in that they are mainly intended to draw attention to the bad conduct of a firm and to shame it into changing its behavior.

As a general matter, political expressive consumerism does not have to satisfy the requirements of the proto-legislative account. The requirements of the proto-legislative account are necessary because when

35. For a description of the aims of “Buy Nothing Day,” see the *Adbusters* website: <<http://www.adbusters.org/campaigns/bnd>>.

social change comes about through bargaining interactions in the market, the process tends to be inconsistent with procedural values. Political expressive consumerism, however, does not bring about social change through a bargaining process; when citizens engage in this kind of consumerism, they are essentially participating in *social deliberation* about important issues of public concern. People can participate in social deliberation in many ways, including through formal argument, protests, and artistic expression, and commerce represents another possibility. Since a liberal democratic society is supposed to evolve over time through a process of free and open reasoning among citizens, the restrictions of the proto-legislative account are not necessary when it comes to consumerism that amounts to deliberative participation.³⁶

The fact that political expressive consumerism does not have to satisfy the requirements of the proto-legislative account does not mean that it does not have to satisfy other requirements. It can be wrong, for instance, to mislead people in deliberation, or to attack the reputation of a company or product without sufficient reason. My point is only that the relevant restrictions are not those of the proto-legislative account.

What about consumer campaigns that combine some form of expression with an exercise of bargaining power? Here we have to balance two competing concerns. On the one hand, a liberal democracy must provide citizens with an adequate sphere for political expression. On the other hand, a liberal democracy must not allow people to use their bargaining power in the market in ways that undermine the democratic character of society. I argue that any consumer campaign that generates significant economic pressure on other actors must meet the requirements of the proto-legislative account, even if the campaign also has a significant expressive element. Since citizens can usually express the views that they want to express through their purchasing decisions in some other medium—for example, pamphlets or a Facebook page—this restriction would prevent undemocratic uses of bargaining power without constraining the sphere of political expression too severely.

36. Some political expressive consumerism constitutes a threat by consumers to make certain purchasing decisions in the future. Since these threats are basically a way for consumers to exercise their bargaining power, the restrictions of the proto-legislative account do apply to these forms of expression.

C. International SCEC

Finally, many consumer campaigns involve influencing behavior in other societies. I cannot address all of the important questions that arise when we consider the proto-legislative account in the global context, but the following may serve as a useful guide.

Citizens in one political community are not necessarily citizens in another, and people must respect the different relationships that they have with different societies. The proto-legislative account basically says that whenever citizens in one community use their purchasing decisions to advance a social agenda, and advancing this agenda involves using their bargaining power to shape behavior and practices in another community, they must respect the institutions and processes of democratic change in the other community.³⁷ For example, as part of an effort to improve labor standards around the world, consumers in the United Kingdom might try to enforce certain labor standards in the Philippines by pressuring multinationals that sell goods in the United Kingdom to comply with these standards in their Filipino factories. This approach, however, would fail to show adequate respect for Filipinos' views about labor safety and for their processes of democratic change.

How might consumers in the United Kingdom advance their labor agenda while also being respectful of democratic self-government in the Philippines? One way would be for UK consumers to "lend" their consumer power to the people of the Philippines by making purchasing decisions that enforce labor standards that Filipinos have established through legislation or informal standard setting in civil society. If no appropriate standards exist, consumers in the United Kingdom could announce a new purchasing policy: from now on, they will give preference in their purchasing decisions to those goods made in the Philippines that are made in factories that conform to standards formulated through democratically sound processes. This policy would create incentives for companies and civil society groups in the Philippines to work together to set up appropriate standard-setting mechanisms.³⁸ Another possibility is for consumers in the United Kingdom to use their purchasing power to enforce international standards established through an international process (e.g., the FSC, the ILO) that properly

37. Assuming these meet the minimum standards outlined in Section VI.

38. See Follesdal, "Political Consumerism as Chance and Challenge," p. 14.

incorporates democratic processes in the Philippines. These options do not exhaust the realm of possibilities, but they do illustrate the basic principle of respect for democratic self-determination.

X. CONCLUSION

As more traditional modes of governance have failed to address various social, environmental, and trade concerns, citizens have come increasingly to see their buying power in the market as a mechanism of social change. The argument of this article has been supportive of this movement. We must never lose sight of the dangers of SCEC. But within the constraints of the proto-legislative account, the practice is morally permissible and substantively advances the project of democratic self-government. SCEC *can* amount to an impermissible form of vigilantism, but within the constraints of the proto-legislative account, it has a legitimate place in the practices of a liberal democratic society.