BRIAN BERKEY* Ethical Consumerism, Democratic Values, and Justice

Abstract: It is widely believed that just societies would be characterized by some combination of democratic political institutions and market-based economic institutions. Underlying the commitment to the combination of democracy and markets is the view that certain normatively significant outcomes in a society ought to be determined by democratic processes, while others ought to be determined by market processes. On this view, we have reason to object when market processes are employed in ways that circumvent democratic processes and affect outcomes that ought to be determined democratically. In this paper, I argue that Waheed Hussain’s recent account of the conditions that must be met in order for the use of market power in pursuit of social change to avoid conflict with democratic values is objectionably narrow, and offer an alternative account that avoids the problems that undermine his account without abandoning the requirement that democratic values be properly respected. The central feature of my account that makes this possible is a broader conception of democratic processes that includes public deliberation and debate aimed at shaping informal social norms and practices.

It is widely believed that just societies would be characterized by some combination of democratic political institutions and market-based economic institutions. ¹ Democratic political

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¹ This paper has been influenced, in different ways, by three wonderful philosophers who sadly passed away recently, all much too young. The first is Waheed Hussain, whose important work has given shape to the debates to which this paper aims to contribute. I never got the chance to speak with Waheed about this paper in particular, but I was fortunate enough to meet him on a couple of occasions, and to benefit from his sharp wit and penetrating intellect. The second is Stephen White, with whom I had a very helpful discussion at the 2020 Central Division Meeting of the American Philosophical Association. And the third is Rachelle Bascara, who attended a talk that I gave on a very early draft of the paper at the Association for Social and Political Philosophy in 2016, and with whom I had an extremely helpful discussion afterwards. I am also grateful to audiences at the 2016 International Conference on Economic Philosophy, the 2016 Association for Social and Political Philosophy Conference, the 2016 Society for Applied Philosophy Conference, the 2016 North American Society for Social Philosophy Conference, the 2017 Transatlantic Normative Business Ethics Workshop, the 2020 Workshop on Morals, Markets, and Market-Based Societies at the University of Colorado-Boulder, the Georgetown University Institute for the Study of Markets and Ethics, the 2021 Eastern Division Meeting of the American Philosophical Association, and the Penn Normative Philosophy Group. Caleb Pickard provided excellent comments at the Boulder Workshop, as did Amanda Greene at the Eastern APA. For very helpful written comments, I am grateful to Craig Agule, Justin Bernstein, Ewan Kingston, Amy Sepinwall, and two anonymous Associate Editors for this journal. I have also benefitted from discussions with Sahar Akhtar, Eilidh Beaton, Amy Berg, Sandrine Blanc, David Boonin, Jason Brennan, Vince Buccola, Adam Burgos, Chetan Cetty, Lee-Ann Chae, Rutger Claesen, Nico Cornell, Geert Demuijnck, Tom Donaldson, Ryan Doody, David Faraci, Brian Feinstein, Harrison Frye, Mike Gadomski, Axel Gosseries, Mark Hanin, Nicole Hassoun, Lisa Herzog, Rob Hughes, Peter Jaworski, Julian Jonker, Errol Lord,
institutions are required in order to ensure (among other things) that all citizens are able to influence social and political outcomes on at least roughly equal terms. And an economy structured by markets is required in order to ensure (perhaps among other things) that society’s resources are employed efficiently. Underlying the commitment that many share to the combination of democracy and markets (or market democracy) is the view that certain normatively significant outcomes in a society ought to be determined (at least largely) by democratic processes, while others ought to be determined (at least largely) by market processes. For example, market democrats will tend to think that who holds public office ought to be determined by democratic processes, whereas the ratio of broccoli production to cauliflower production ought to be determined by market processes.

It is, of course, unavoidable that the results of each type of process will, at least to some extent, affect the functioning, and thereby the outcomes of the other type. And while policies

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2 The efficiency-based reasons in favor of markets do not, of course, by themselves settle any of the difficult and widely debated questions regarding how and to what extent markets ought to be regulated, including whether particular goods and services should be prevented from being bought and sold at all (for discussion of the latter issue, see Debra Satz, Why Some Things Should Not Be For Sale: The Moral Limits of Markets (Oxford: Oxford University Press, 2010) and Jason Brennan and Peter M. Jaworski, Markets Without Limits: Moral Virtues and Commercial Interests (New York: Routledge, 2016)). This is in part because efficiency can conflict with other values that we may at least sometimes have reason to prioritize, and in part because which institutional arrangements will best promote efficiency is an empirical matter, and will likely vary across different societies. G.A. Cohen claims that the essential efficiency-related function of markets is informational – they reveal how much people are willing to pay for various goods and services, and thereby indicate to which productive uses resources ought to be put – and argues that efficiency does not, in principle, depend on them also serving their typical motivational function (Why Not Socialism (Princeton: Princeton University Press, 2009), pp. 61-63).


4 Perhaps most fundamentally, since markets are institutions the structures of which are partially determined by state policy (e.g. property rights, contract law, etc.), in a democratic society the democratic processes that determine the relevant policy choices will play an ineliminable role in determining the outcomes of market processes. For the claim that markets are necessarily sustained by a range of state policies, see Satz, Why Some Things Should Not Be For Sale, p. 16.
can sometimes be adopted to limit these effects, there are both empirical and moral constraints on the extent to which the mutual causal influence of democratic and market processes can be limited.\(^5\) Because there are moral limits, at least some of which are grounded in the reasons that count in favor of having a broadly market-based economy, on what the state can do to shield democratic processes from the influence of market power, a society’s ability to fully realize both the values that justify market-based economic structures and the values that underlie our commitment to democratic processes depends on agents acting within democratic processes refraining from supporting excessive restrictions on market action, and on economic agents voluntarily refraining from exercising their legally available market power in ways that undermine democratic values. Since at least currently the much more significant threat would seem to be excessive influence of market power on democratic processes, rather than excessive democratic restrictions on market actors, much of our concern might reasonably focus on the ways in which very wealthy individuals, corporations, or the capitalist class might exercise their extensive market power in ways that undermine democratic values.\(^6\) There are, however, reasons to worry that it is not only the wealthy and powerful that can employ market power in ways that are inconsistent with democratic values. Waheed Hussain, for example, has argued that certain consumer choices that are available to the wealthy and non-wealthy alike can involve an impermissible use of market power that violates core democratic values.\(^7\) Specifically, he claims

\(^5\) Of course, processes of one type could, in principle, be prevented from affecting the functioning and results of the other if they were eliminated entirely. Few, however, would endorse completely eliminating either democratic or market processes. I assume, for the purposes of this paper, that market democrats are correct that there are compelling moral reasons to endorse both markets and democracy, in some form or other.


\(^7\) “Is Ethical Consumerism an Impermissible Form of Vigilantism?”
that ethical consumerism campaigns, such as organized boycotts, in which participants employ market power with the aim of bringing about social change, must meet a rather strict set of conditions in order to avoid impermissibly violating core democratic values.

My central aim in the remainder of this paper is to defend an alternative to views like Hussain’s about the limits of the permissible use of market power that aims to influence social outcomes that we generally think ought to be determined largely by democratic processes. I will argue that Hussain’s view involves an overly narrow conception of the means by which social change consistent with core democratic values can be brought about, and articulate an alternative, less restrictive view. Importantly, my view shares with Hussain’s the requirement that agents employing market power in the course of pursuing social change within societies with sufficiently well-functioning democratic processes do so in a way that is consistent with core democratic values. I will suggest that the appeal of more restrictive views like Hussain’s likely has its source in a widely held but mistaken view about the relationship between requirements of justice, institutional policy, and the behavior of agents within institutional constraints. This view, if it were correct, could plausibly be thought to support the claim that economic actors are, in general, entitled to be free from deliberately applied economic pressure that aims to bring about changes in their legally permissible behavior unless those applying the pressure do so as part of a campaign to change the legal status of that behavior. And this claim, if it were correct, would have the restrictive implications regarding the permissible exercise of market power by consumers that Hussain defends. The most plausible understanding of the relationships between some organized boycotts, the corporate behavior that they target, justice, and state policy,

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8 The requirement that those employing market power as part of an effort to bring about social change must aim at legislative change in particular is captured in Hussain’s fifth and sixth conditions for permissible “social change ethical consumerism” (“Is Ethical Consumerism an Impermissible Form of Vigilantism?,” p. 126). These conditions will be discussed in detail in the following sections.
however, provide strong reasons to reject the view about the relationship between justice, institutional policy, and behavior within institutional constraints on which the appeal of these further claims appears to rest.

If my argument succeeds, then we ought to accept not only that organized boycotts are permissible, and consistent with core democratic values, in a wider range of cases than views like Hussain’s allow, but more generally that the employment of market power in pursuit of social change within well-functioning market democratic societies can, within fairly broad constraints, be a democratically legitimate means of promoting justice. In order for a particular use of market power in the pursuit of social change to be permissible, all things considered, however, it must not only be consistent with the democratic, procedural values that are central to Hussain’s view. In addition, the social change to which it aims to contribute must actually constitute an improvement with respect to justice over the status quo, and the employment of market power must be sufficiently likely to actually contribute to bringing about positive social change without also bringing about excessive negative side-effects.9 On my view, then, substantive considerations of justice play a more central role in determining the limits of the permissible employment of market power in pursuit of social change within well-functioning market democracies than they do on Hussain’s view.10


10 Hussain allows that in severely unjust societies in which democratic processes, if they are in place at all, do not function in ways that are consistent with core democratic values such as the equal status of citizens, the restrictions of his account do not apply, and substantive considerations of justice can justify the employment of market power (and indeed other forms of power) in pursuit of social change (“Is Ethical Consumerism an Impermissible Form of Vigilantism,” p. 134). Others have also argued that Hussain’s view gives insufficient weight to substantive as opposed to procedural values, though their arguments differ from mine in important respects; see, for example, Christian Barry and Kate MacDonald, “Ethical Consumerism: A Defense of Market Vigilantism,” Philosophy & Public Affairs 46 (2018): 293-322, p. 322; Nicole Hassoun, “Consumerism and Social Change,”
I will follow Hussain in focusing primarily on the case of organized boycotts of commercial firms. But my argument, I will suggest, helps to illuminate the kinds of constraints that we ought to accept on the employment of market power to promote social change more generally. The kinds of constraints that my argument supports would allow us to condemn many of the most intuitively troubling exercises of market power that aim to affect outcomes that ought to be determined at least largely by democratic processes, such as heavy campaign spending by wealthy individuals and corporations, without implying that organized boycotts involving agents who, generally speaking, do not possess disproportionate economic power in society, and which are aimed at redressing genuine injustices, must meet all of Hussain’s restrictive conditions in order to be permissible. My argument, then, has broader implications for how we ought to think about the appropriate relationships between market processes, democratic processes, and the pursuit of justice.

I will proceed in the remainder of the paper as follows. First, in section I, I will describe Hussain’s view, and the central arguments that he offers in its defense. Next, in section II, I will argue that his view is overly restrictive by discussing two examples of boycotts that seem intuitively permissible, despite being ruled impermissible by his account. I will claim that it is not merely the substantive aims of the boycotters that make the actions in these cases seem permissible, but also the fact that these actions are not, as Hussain’s view suggests, inconsistent with core democratic values. The boycotters do not, I will argue, aim at circumventing the proper, broadly democratic procedures for determining the relevant social outcomes, because

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sometimes the proper procedures are ones that Hussain’s view wrongly implies are inconsistent with core democratic values. The central problem with Hussain’s view, then, is that it is committed to an overly narrow view of the processes by which social change consistent with core democratic values can be brought about. In section III, I will offer a diagnosis of this error by considering how Hussain might modify his view in light of key aspects of my argument in section II without abandoning the “proto-legislative”11 components that I claim we should reject. I will argue that the appeal of the proto-legislative view has its source at least partially in its compatibility with the Rawlsian view that justice is fundamentally a matter of how the institutions of the “basic structure of society” operate, along with a plausible account of the role of democratic processes. I will claim, however, that the problems with the proto-legislative view that I have identified provide us with reason to reject the narrow account of democratic processes that seems to be implied by the basic structural account of justice, and so to be skeptical of that account itself. Finally, in section IV, I will describe the central features of the view that is suggested by my arguments against Hussain’s view, and note some important implications for our thinking about the proper relationships between market processes, democratic processes, and the pursuit of justice. In particular, I will highlight how my view suggests that we should think about the fact that consumption choices that are not made as part of an organized boycott effort can, at least in the aggregate, affect outcomes in ways that circumvent democratic processes, even on the broad account of what such processes consist in that I endorse.

11 Hussain, “Is Ethical Consumerism and Impermessible Form of Vigilantism?,” p. 112.
I. ORGANIZED BOYCOTTS AND THE PROTI-LEGISLATIVE ACCOUNT

Before describing Hussain’s view, it is worth highlighting the central features of the organized boycotts that will be the focus of my discussion. Organized boycotts of commercial firms generally aim to apply economic pressure on the targeted firms, with the aim of producing changes in certain of their business practices, which the boycotters believe to be morally objectionable. Typically, boycotters intend to make it the case, or at least threaten to make it the case, that a targeted firm will suffer a reduction in profitability if it maintains the policy or policies that the boycotters oppose, in comparison with what it would enjoy if it revises those policies in ways that the boycotters find acceptable. They do this by, perhaps among other things, announcing to both the targeted firm and to the public at large that they will refrain from purchasing the products or services of the targeted firm until it changes its policies. In the relevant cases, then, we can understand boycotters as aiming to use public declarations of their collective, conditional purchasing intentions in order to provide targeted firms with financial incentives to alter their policies or practices in ways favored by the boycotters.

12 For the claim that boycotts should be understood as necessarily motivated by moral reasons and directed at perceived wrongdoing on the part of the targeted entities, see Weinstock, “Dissidents and Innocents,” pp. 562-63. Radzik focuses on cases of this kind, but does not insist that an account of boycotts should rule out the possibility of cases not directed at perceived wrongdoers (“Boycotts and the Social Enforcement of Justice,” pp. 103-04, 107).

13 For a similar characterization, see Chris Mills and Prince Saprai, “Commercial Boycotting and Conscientious Breach of Contract,” Journal of Applied Philosophy 36 (2019): 575-91, p. 575. Monroe Friedman suggests that the means by which boycotters aim to accomplish this is often by generating negative media coverage of the targeted firm, rather than by causing any significant reduction in consumer purchases from the firm in the short term (“Ethical Dilemmas Associated with Consumer Boycotts,” Journal of Social Philosophy 32 (2001): 232-40, p. 232). For the view that boycotts can work in both of these ways, see Beck, “Consumer Boycotts as Instruments for Structural Change,” p. 546. This difference in the means by which boycotters aim to achieve their goals is not morally relevant on either Hussain’s view or on mine, so I will set it aside in the remainder of my discussion.

14 The role of this kind of communication in typical boycott is noted by Radzik (“Boycotts and the Social Enforcement of Justice,” p. 106).

15 For the claim that boycotts should be understood as necessarily coordinated, collective actions, see Weinstock, “Dissidents and Innocents,” pp. 561-63; Radzik, “Boycotts and the Social Enforcement of Justice,” pp. 104, 108. I do not take a position on whether it should be thought possible for individuals to boycott on their own, although my focus is limited to organized, collective boycotts.

16 Though my focus will be on cases in which boycotters aim at changing the behavior of the targeted firms, I do not claim that organized boycotts necessarily have this aim. Some boycotts might, for example, be motivated by...
There is an initially plausible line of argument for the view that it is always permissible for consumers to use their market power to apply this kind of economic pressure on firms. This argument begins with the uncontroversial claim that individuals do not have any antecedent obligation to purchase the products or services of any particular firm. It then notes that an organized boycott consists in participants acting in a way that is, for each of them, uncontroversially permissible, namely refraining from doing business with the targeted firm. Because that firm has no right to be patronized by any of the boycotters, it has no legitimate complaint against their actions, either individually or in the aggregate. It may be an effect of the boycotters’ collective effort that the firm now faces a choice between, on the one hand, altering its business practices and, on the other, maintaining those practices and thereby forgoing whatever revenue it could otherwise expect to generate from the boycotters and those who might come to sympathize with their cause. But this, proponents of the argument might suggest, is simply the market working as it is supposed to. Among consumers’ preferences are those concerning firm policies that they find unjust or otherwise morally objectionable, and firms must choose whether to satisfy those preferences in the same way that they must choose whether to satisfy their preferences concerning, for example, the price and quality of the goods and services that they offer.

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the desire among participants to disengage or disassociate from the targeted firm, or aim merely to signal collective disapproval of the policies of a targeted firm that boycotters identify in their public statements (Weinstock, “Dissidents and Innocents,” pp. 560-61; Mills and Saprai, “Commercial Boycotting and Conscientious Breach of Contract,” p. 580). Radzik claims boycotts should be understood as “protests” of the perceived injustices that participants believe targeted firms are guilty of, without insisting that participants must aim at changing the allegedly unjust behavior (“Boycotts and the Social Enforcement of Justice,” pp. 104, 108). For the claim that most boycotts are in fact aimed at changing the behavior of targeted firms, see Friedman, “Ethical Dilemmas Associated with Consumer Boycotts,” p. 234.

17 This argument is noted and critiqued by Mills (“Should We Boycott Boycotts?,” pp. 140-41) and Radzik (“Boycotts and the Social Enforcement of Justice,” p. 109), and noted and set aside by Mills and Saprai (“Commercial Boycotting and Conscientious Breach of Contract,” pp. 576-77).

Hussain’s central reason for rejecting this argument is that it rests on the assumption that the actions of boycotters who aim, via an organized, collective effort, to affect the business practices of targeted firms, and thereby the broader social world, are appropriately treated as purely private purchasing decisions that are subject only to the principles that govern any other ordinary market choices. On his view, however, when boycotters are motivated by the aim of bringing about social change, this fact makes their actions political, and this in turn implies that they are subject to a broader range of principles. Specifically, they are subject to norms of public justification grounded in democratic, procedural values.\(^\text{19}\) Proper respect for these procedural values requires, on Hussain’s view, that boycotters who aim to bring about social change via the collective employment of their market power satisfy a range of conditions that are not relevant to the permissibility of ordinary purchasing decisions that are not part of any effort to bring about social change. The plausible underlying thought, it seems, is that it is democratic processes, and not market processes, that are the appropriate vehicle for efforts to intentionally bring about changes to our shared social world, since, unlike market processes, properly functioning democratic processes ensure that all citizens are able to influence the evolution of that shared social world on at least roughly equal terms.\(^\text{20}\)

\(^{19}\) “Is Ethical Consumerism an Impermissible Form of Vigilantism,?,” pp. 115-17.

\(^{20}\) It is important that on views like Hussain’s it is only efforts to intentionally bring about social change via the employment of market power that are subject to democratic, procedural norms. This is because even patterns of market choice that are motivated entirely by self-regarding considerations such as the price and quality of the goods and services purchased unavoidably influence the evolution of our shared social world. Hussain claims that “price-quality consumerism,” whereby market actors make purchasing decisions entirely on the basis of their preferences with respect to the price and quality of goods and services, is procedurally defective in virtue of its effects on matters that ideally ought to be determined by democratic processes. But he argues that it is nonetheless not subject to the democratic, procedural norms that apply to efforts to intentionally bring about social change via the employment of market power, because the benefits of market exchange characterized by price-quality decision-making are so large, and could not be generated by any other process (“Is Ethical Consumerism an Impermissible Form of Vigilantism,” pp. 135-38). On Hussain’s view, then, there is a morally relevant distinction between consumers’ preferences with respect to the price and quality of goods and services, and their preferences with respect to, for example, the policies of firms offering those goods and services, such that consumers who are motivated by preferences of the latter kind must meet conditions that those motivated only by preferences of the former kind need not satisfy in order for their consumption choices to be permissible. For criticism of this
Organized boycotts that aim to bring about changes to our shared social world are instances of what Hussain refers to as “social change ethical consumerism” (SCEC). He defines SCEC as “the practice of choosing to buy [or not 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.” SCEC campaigns are unique among boycott efforts because they are the only type that involves the use of market power as part of a deliberate attempt to affect the behavior of others, and to thereby affect the shape of the social world. This, Hussain suggests, is sufficient to make SCEC campaigns political acts, and so permissible only if they are consistent with proper respect for “the broader justifying aims of our liberal democratic social order – most saliently, its procedural aims.”

SCEC campaigns can, Hussain claims, fail to properly respect a range of procedural values that are central to a well-functioning liberal democracy. These include security for the basic liberties, political equality, democratic deliberation, justified coercion, and managed politicization. According to Hussain, the importance of respecting these values, and the component of Hussain’s view, see Barry and MacDonald, “Ethical Consumerism,” pp. 312-15; Hassoun, “Consumption and Social Change,” pp. 35-36; Julian Fink and Daniel Schubert, “The Morality of Price/Quality and Ethical Consumerism,” Res Publica 25 (2019): 425-38.

21 “Is Ethical Consumerism an Impermissible Form of Vigilantism,?” p. 112.
22 Ibid.
23 Hussain contrasts SCEC with consumption decisions made in order to, for example, avoid complicity in corporate behavior that the consumer believes to be wrong, or express support for values connected to products purchased or avoided (Ibid., p. 113).
24 Ibid., p. 116.
25 Ibid., pp. 117-24. It is not clear to me that all of these values are properly characterized as procedural, and therefore unclear that Hussain is correct that they can ground procedural, as opposed to substantive, objections to SCEC campaigns. For example, security for the basic liberties seems to me best understood as at least primarily a substantive value. What matters, it would seem, is that people’s basic liberties are in fact protected in appropriate ways. Hussain suggests that protection of the basic liberties is a precondition for society to evolve in a procedurally appropriate way, “through a process in which people express their own freely formed ideas” (Ibid., p. 117). SCEC campaigns that aim to affect the economic prospects of those who publicly express certain views can, he claims, have the effect of stifling the expression of those views, which in turn can undermine the exchange of ideas necessary for society to evolve in the procedurally proper way. This concern about the potential effects of SCEC campaigns on the exchange of ideas seems to me appropriate, although it may be an exaggeration to suggest that
democratic process more generally, provides reason to think that SCEC campaigns are permissible only if they are pursued in a way that is consistent with recognizing the “privileged position of formal democratic politics” in a liberal democratic society. And in order for an SCEC campaign to be consistent with proper recognition of the privileged position of formal democratic politics, its participants must treat their efforts as “part of the wider democratic process, a kind of ongoing, informal prologue to formal democratic lawmaking.”

In order to properly treat an SCEC campaign as part of the wider democratic process, participants’ efforts must, according to Hussain, satisfy six conditions, which together constitute his “proto-legislative account” of permissible SCEC:

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.

being provided with an economic incentive, via an SCEC campaign, to conceal one’s views amounts to a violation of one’s basic liberties (specifically freedom of expression). But even if this concern is appropriate, it does not suggest that protection of the basic liberties is itself a procedural value. Instead, it seems to me more plausible to view the protection of these liberties as a substantive precondition for the realization of other procedural values, such as open and robust democratic deliberation. For a somewhat different objection to boycotts that target those who hold political beliefs that the boycotters find objectionable, see Mills, “Should We Boycott Boycotts,” pp. 141, 144.

26 “Is Ethical Consumerism an Impermissible Form of Vigilantism?,” p. 125.
27 Ibid., p. 123.
(6) The overall effort aims to raise awareness of the issue and (if necessary) to put it on the formal legislative agenda.\textsuperscript{28}

SCEC campaigns that fail to satisfy all of these conditions, Hussain argues, are impermissible because they are in conflict with core democratic procedural values such as political equality and democratic deliberation – they seek to employ market processes, rather than democratic processes, to promote the social change at which participants aim.

We should find the proto-legislative account compelling, according to Hussain, at least in part because unlike its rivals,\textsuperscript{29} it counts a wide range of SCEC campaigns that are in conflict with important procedural values as impermissible. Both the intuitive force of the claim that these procedural values ought to be respected by agents in liberal democratic societies, and the intuitive appeal of the implications of the proto-legislative account for cases in which these values are implicated, are taken by Hussain to provide support for the account. It is, for example, widely thought that political equality is an important procedural value, and that it requires that all citizens “be able to participate as equals in deciding how society will address important issues of common concern.”\textsuperscript{30} But, Hussain claims, if a group of relatively wealthy citizens decides to boycott certain firms in order to provide them with economic incentives to alter their business practices in ways that the group favors, then members of the group will be employing their

\textsuperscript{28} Ibid., p. 126.

\textsuperscript{29} Hussain refers specifically to what he calls “common good anarchism” (Ibid., p. 128), according to which individuals are permitted to employ their market power in order to apply pressure to firms to change their behavior in any case in which they recognize that the firm behavior that they are targeting is detrimental to the common good. Critics of Hussain’s view have tended not to defend common good anarchism, but instead to argue that the proto-legislative account is too restrictive, despite the fact that at least some of the procedural concerns that Hussain appeals to do bear on the permissibility of SCEC campaigns (Barry and MacDonald, “Ethical Consumerism,” pp. 295-96, 316-21; Hassoun, “Consumerism and Social Change”).

\textsuperscript{30} Hussain, “Is Ethical Consumerism an Impermissible Form of Vigilantism,?,” p. 118.
market power in a way that can be expected to disproportionately affect the evolution of the social world that they share with all of their fellow citizens.\textsuperscript{31}

Consider also the value of democratic deliberation. In societies that properly respect this value, controversial policy issues are decided via a process of public discussion and debate that is aimed at determining which policy option is best in terms of justice and the common good. But if a group with sufficient market power boycotts firms that engage in controversial business practices that could be regulated or prohibited by state policy, with the aim of providing those firms with economic incentives to change their practices, then the boycotting group may, in effect, determine the range of business practices that are available to the relevant firms in a way that prevents public debate from influencing the outcome and undermines the ability of those with competing views to participate in the process of deciding what the outcome will be by presenting their arguments.\textsuperscript{32} At least so long as the formal legislative process is sufficiently responsive to well-conducted public debate, seeking to have one’s preferred policy in effect implemented through the application of economic pressure is, Hussain claims, inconsistent with proper respect for the democratic process.

\textsuperscript{31} The central example that Hussain appeals to in order to highlight how an SCEC campaign can undermine political equality is the Mexican tourism boycott of the 1970’s, in which American Jews refrained from vacationing in Mexico in response to the Mexican government voting in favor of a United Nations resolution “equating Zionism with racism and racial discrimination” (Ibid., p. 119). Although it is true that, as Hussain points out, Palestinians were not in a position to apply the same amount of economic pressure on the Mexican government, this is a somewhat puzzling choice of case. This is because it is unclear exactly what the procedural value of political equality might require of citizens of one country who are aiming to employ market power in order to affect the policies of another country’s government. Political equality is, after all, a value that is typically appealed to in order to ground requirements that apply within a single political community.

\textsuperscript{32} Hussain’s example is a large-scale consumer boycott of power firms that use nuclear energy (Ibid., pp. 120-21).
II. ETHICAL CONSUMERISM AND THE SCOPE OF DEMOCRATIC PROCESSES

In my view Hussain is correct that at least some SCEC campaigns are morally suspect, and perhaps impermissible, in virtue of the fact that they are in conflict with procedural values such as political equality and democratic deliberation. And because these procedural values can be in conflict with substantive values, this means that some SCEC campaigns might be impermissible even if they could be expected to advance substantive justice. Nevertheless, I will argue that Hussain’s view is overly restrictive in a particular way – specifically, it relies on an overly narrow conception of appropriately democratic processes by which social change can legitimately be brought about.

Other critics of Hussain have argued that his view has implausible implications in cases in which society’s background institutions are unjust, for either substantive or procedural reasons. Nicole Hassoun, for example, claims that when citizens are making consumption choices within unjust institutions, substantive considerations of justice can sometimes take priority over some of the procedural considerations that are central within Hussain’s view, such that at least some SCEC campaigns that Hussain considers impermissible are in fact permissible. On her account, in the absence of just institutions, “it is…permissible for people to pursue non-democratic, genuinely positive, change,” subject only to more limited procedural constraints than Hussain endorses.33 Specifically, she holds that consumers are generally obligated to respect basic liberties and political equality, but are not constrained by the other procedural conditions included in the proto-legislative account.34 Christian Barry and Kate MacDonald, on the other hand, argue that when a society is characterized by “inequalities of power or access within formal political processes,” ethical consumerism campaigns can play a role in promoting the

34 Ibid., p. 41.
better realization of the procedural values at the core of Hussain’s view by counterbalancing those inequalities.\textsuperscript{35} On their view, when an SCEC campaign would have such a counterbalancing effect, it will generally be permissible, as long as it respects basic liberties and advances a reasonable conception of the common good (that is, as long as it satisfies conditions (1) and (2) of the proto-legislative account, which they take to be uncontroversial).\textsuperscript{36}

While I am sympathetic to both Hassoun’s claim that substantive considerations of justice can compete with, and sometimes outweigh democratic, procedural values, and Barry and MacDonald’s claim that organized boycotts can sometimes counterbalance unjust inequalities of power and access within democratic systems, my central criticism of the proto-legislative account is importantly different, and in my view more fundamental.\textsuperscript{37} If I am correct about the ways in which, and the grounds for thinking that, the proto-legislative account involves an overly narrow conception of the means by which appropriately democratic social change can be brought about, then a wide range of SCEC campaigns that Hussain takes to be impermissible are in fact permissible, \textit{even in societies with fully just institutions and no unjust inequalities of power or access within formal political processes}.\textsuperscript{38}

\textsuperscript{35} “Ethical Consumerism,” p. 296.  
\textsuperscript{36} Ibid., pp. 299, 316.  
\textsuperscript{37} It is worth noting that Hussain himself allows that “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” (“Is Ethical Consumerism an Impermissible Form of Vigilantism,” p. 134). He cites the example of apartheid in South Africa, and says that on his view both the fact that the laws were so deeply unjust and the fact that the formal democratic process failed to embody the procedural values that are central to his account provide grounds for accepting that undemocratic means of attempting to change the laws, including boycotts of firms that complied with the apartheid laws, would have been permissible. This suggests that Hussain’s disagreements with some of his critics (e.g. Hassoun, as well as Barry and MacDonald) may be at least somewhat less significant than those critics suggest. Much depends, for example, on exactly how unjust a society would have to be before Hussain would allow that undemocratic means of pursuing social change is permissible. His use of the apartheid example suggests that his threshold may be quite high, whereas Hassoun’s view seems to be that aiming to remedy less severe injustices by undemocratic means can be permissible, at least as long as the cost in terms of democratic values would be modest. In any event, even if there would be significant disagreement on this matter, it would appear to amount to disagreement about the relative weight that should be given to substantive and procedural values when they conflict, rather than disagreement about anything more fundamental, I am grateful to an anonymous Associate Editor for encouraging me to discuss the extent of Hussain’s disagreement with his critics on this issue.
Because I aim to show that Hussain’s view involves an overly narrow conception of the processes for bringing about social change that are consistent with core democratic values, my argument will target the conditions within the proto-legislative view that require engaging the formal legislative process. I will focus in particular on conditions (5) and (6), though I will say a bit about condition (3) as well. Like other critics of Hussain, I accept conditions (1) and (2), and, in addition, I endorse condition (4).

Recall that condition (5) requires that the arguments offered by those involved in an SCEC campaign be capable of serving as the basis of future legislation, and that condition (6) requires that participants aim to raise awareness of the issue that motivates the campaign and to put it on the formal legislative agenda, if it is not there already. These conditions imply that it is a necessary condition of the permissibility of an SCEC campaign that participants aim to remedy the perceived injustice or wrongdoing by the targeted firms that motivates the campaign via formal legislation. In addition, they require that the arguments offered in defense of the campaign provide the moral basis for the aimed at legislative action.

These requirements can be challenged by pointing to examples of SCEC campaigns that seem intuitively permissible, despite not aiming to remedy the injustice or wrongdoing that motivates them via the formal legislative process. In my view, examples of this kind are plentiful. There are at least two types of case worth highlighting. In the first type, targeted firms

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38 I will suggest, however, that we should accept a more restrictive version of condition (2).
39 Barry and MacDonald endorse a requirement that is at least similar to Hussain’s condition (4) (“Ethical Consumerism,” p. 316), while Hassoun rejects the condition (“Consumption and Social Change,” p. 45).
40 Both Barry and MacDonald and Hassoun briefly note that some boycotts seem permissible even if participants are not aiming at legislative change, and that in some of these cases it might be impermissible to seek legislative action in response to the injustice or wrongdoing that motivates the boycott (Barry and MacDonald, “Ethical Consumerism,” p. 306; Hassoun, “Consumption and Social Change,” p. 45). This point does not, however, figure centrally in either of their critiques of the proto-legislative account. Radzik also notes that boycotters sometimes target firms that engage in behavior that they believe to be wrong without believing that it would be appropriate for legal penalties to be imposed on that behavior (“Boycotts and the Social Enforcement of Justice,” p. 107).
are engaged in behavior that culpably contributes to injustice, but there are nonetheless principled reasons why the behavior should not be addressed by legislative action. In the second type, while there are no principled objections to addressing the relevant wrongful firm behavior via legislative action, there is, in the circumstances, no way to craft a policy that could successfully address it without having unacceptable effects overall. As an example of the first type, consider the following case:

Sexist Advertising: A group of citizens aiming to combat long-standing gender inequalities in our society is considering organizing a boycott of a slate of firms that employ advertising campaigns that objectify women, and/or in subtle or not-so-subtle ways portray women as subservient to men. The group is inclusive, and consults with people from a wide range of backgrounds and with a wide range of viewpoints on the relevant issues. After careful reflection and joint deliberation, the group concludes that the firms that they intend to target are actively contributing to the perpetuation of gender injustice by reinforcing patterns of thought and behavior that result in the oppression of women. The group chooses representatives to speak publicly on its behalf, and charges them with conveying the conclusions reached by the group, and the grounds for those conclusions, in an open and transparent way. The group aims, through the campaign, to provide the targeted firms with economic incentives to change their advertising practices, and specifically to cease employing the kind of objectifying content that motivated the campaign. They do not, however, take the arguments that they offer for thinking that the firms’ conduct is objectionable from the perspective of gender justice to provide grounds for potential future legislation, and they do not aim to place the issue on the formal
legislative agenda. Instead, they believe that it would be objectionable to impose formal regulations on or prohibitions of the type of advertising with which they are concerned, since doing so would be inconsistent with proper respect for freedom of expression.  

And, as an example of the second type of case, consider:

*Exploitation:* Firm F is one of the largest, wealthiest, and most profitable corporations in the world. It employs hundreds of thousands of people in country C, including tens of thousands in the firm’s lowest paid positions. These positions require long working hours in rather unpleasant conditions. F pays these employees at least C’s legal minimum wage, and employees who have been at the firm for an extended period of time typically earn a bit more than that. C’s minimum wage is high enough that typical full-time workers paid at that level are able to meet their basic needs and those of their families. C is not an especially wealthy country overall, and the minimum wage policy that it has adopted represents the best that its government can do for its lowest paid workers – any increase in the legal requirement would make things worse for them, since many employers genuinely could not afford to pay their lowest paid workers more. F, however, could easily afford to pay its lowest paid workers somewhat more than it does, and the unpleasantness of their working conditions and the long hours expected of them make it the case that they are, on the whole, worse off than similarly paid workers at other firms.

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41 The participants’ view that formal regulations would be inappropriate need not be grounded in the thought that firms’ commercial speech is entitled to the same degree of protection under the law as other types of speech, such as individuals’ political speech. It may instead be motivated by, for example, the view that there is no feasible way to design a policy that would prevent firms from engaging in the forms of advertising to which they object without also excluding expression that ought, as a matter of justice, to be protected. If this were the motivation, the example would constitute an instance of the second type of case.
After careful reflection, a group of C’s citizens concludes that F is wrongfully exploiting its lowest paid workers, and organizes a boycott with the aim of providing F with economic incentives to increase their pay. The group chooses representatives to speak publicly on its behalf, and charges them with conveying the group’s view, and the grounds on which they accept it, in an open and transparent way. The participants do not believe that there are any principled objections to legally requiring F to pay its workers more – if there were a way to craft a policy that would require this without having other unacceptable effects (such as causing many other firms to go out of business), they would support it. But there are compelling reasons, which the participants correctly recognize, to believe that any policy that would require F to pay its workers more should, in the circumstances, be rejected for justice-based reasons (e.g. a straightforward minimum wage increase would cause many low-paid workers to lose their jobs; a policy requiring higher pay only for workers who work in conditions like those at F would be too difficult and costly to enforce fairly, etc.).

In these cases, the participants in the SCEC campaigns plausibly believe that the firms’ conduct is morally objectionable, and, at least in Sexist Advertising, that it contributes to ongoing patterns of injustice. If these beliefs are correct, then we can ask whether the fact that the firms are engaged in this kind of wrongdoing makes them appropriate targets of an SCEC campaign.

We can helpfully characterize this question by employing the concept of liability that is often appealed to in discussions of the ethics of self-defense (and defense of others).42 One’s being liable to defensive harm does not entail that, all things considered, it is permissible to harm

her in order to defend those whom her conduct threatens. In order to be permissible, defensive harm must, on most views, also be necessary in order to avoid the threatened harm to the defensive actor or others, and it must meet a proportionality condition. Liability can be treated either as a necessary condition for the permissibility of targeting an actor for defensive harm, or as a condition that increases, perhaps by a significant amount, the harm that can be imposed on an actor without violating the proportionality condition. In order to be liable to defensive harming, one must meet whatever the liability-generating conditions are. There is, unsurprisingly, much debate about exactly what the correct view of these conditions is. For my purposes, however, it is enough to note that, whatever the correct view is, it will surely imply that culpable wrongdoing that threatens to inflict unjustified harm on another is sufficient for liability (even if it is not necessary).

Just as culpably threatening unjust harm seems sufficient for liability to defensive harm, culpable firm conduct that contributes to injustice seems intuitively to be a sufficient condition for liability to be targeted by a boycott effort. If it is true that a firm is culpably contributing to injustice, it is difficult to see how it might be denied that the firm is an appropriate target of efforts to prevent it from continuing to engage in the offending behavior. Of course, in order for a boycott effort to be permissible, all things considered, it may need to meet a necessity condition, and it certainly must meet a proportionality condition. With respect to defensive harm, the proportionality condition is generally taken to require both that the harm inflicted on

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43 Ibid. McMahan discusses and rejects both the view that one is liable if one would otherwise violate the rights of another, and the view that one is liable only if one is culpable for the threat posed to another. His own view is that one is liable if one is responsible for the fact that another is threatened with unjust harm, where one can be responsible without being culpable by, for example, engaging in behavior that, though reasonable, turns out to impose a threat of objectively unjustified harm on another.

44 It is not obvious to me that a condition as strong as necessity applies to boycotts, but my argument does not require that I reject it.
the liable actor not be very much greater than the harm that he threatens to inflict on others,\textsuperscript{45} and that any unintended harmful side-effects that will unavoidably be imposed on third parties are at least less severe than the harm that the defensive action will prevent.\textsuperscript{46} In the case of boycotts, then, a plausible proportionality condition would require both that any harm to a targeted firm not be disproportionate to its wrongdoing, and that any harmful effects on third parties who are not themselves liable for the wrongdoing be sufficiently limited. Since boycotts will tend to risk generating negative effects for innocent parties (e.g. low-level employees who have no ability to affect firm policy), the proportionality condition may make it the case that liable firms often ought not be targeted, all things considered.\textsuperscript{47}

What does the proto-legislative account imply with respect to when a firm is liable to be targeted by an SCEC campaign? On the most straightforward interpretation, liability simply has no role to play in the account. This is because a firm’s engaging in culpable wrongdoing is neither necessary for an SCEC campaign targeting the firm to be permissible, nor sufficient for a firm to be liable to be targeted. This interpretation is suggested by a strict reading of Hussain’s six conditions, the joint satisfaction of which he suggests is sufficient for the permissibility of an SCEC campaign.\textsuperscript{48} Since none of the conditions require that targeted firms have engaged in culpable wrongdoing, or suggest that their having done so strengthens the case for the

\textsuperscript{45} For example, while it is plausibly permissible for me to kill a culpable aggressor who threatens to paralyze me for the rest of my life, it is surely impermissible for me to kill a culpable aggressor who threatens me with nothing more than a paper cut, even if killing him is the only way that I can prevent the paper cut.

\textsuperscript{46} So while it may be permissible for me to impose a broken arm on a third party as an unintended side effect of preventing a culpable attacker from killing me, it is impermissible for me to defend myself if doing so would, as an unintended side effect, kill two people who are uninvolved in the attack on me.

\textsuperscript{47} For the worry that boycotts will tend to harm innocent parties, see Radzik, “Boycotts and the Social Enforcement of Justice,” p. 117; Mills, “Should We Boycott Boycotts,” p. 139.

\textsuperscript{48} When he presents these conditions, he claims that the proto-legislative account “says that citizens…are authorized to make purchasing decisions on the grounds that these will change the incentive structure in ways that advance a social agenda when” they are met. This is what suggests that he regards meeting all six of them as sufficient for permissibility. It is, of course, clear from the context and from his broader argument that he regards meeting each of the six conditions as necessary in order for an SCEC campaign to be permissible.
permissibility of targeting them, it might seem that we should conclude that liability is simply irrelevant on the proto-legislative account. While this may seem counterintuitive, it does seem consistent with Hussain’s emphasis on the centrality of procedural rather than substantive considerations in the justification of SCEC campaigns.

If we consider what this strict reading of the conditions implies, however, it seems clear that this version of the proto-legislative view is unacceptable. To see this, consider a variant of Sexist Advertising. In this case, the targeted firms’ advertising campaigns are designed to celebrate women’s sexuality and promote women’s empowerment, and they do this successfully, generating reactions in most viewers that make them more respectful of women’s agency, both sexual and otherwise. Participants in the boycott, however, mistakenly believe that the moderately sexual content of the advertisements will tend to reinforce objectionable stereotypes about women, and thereby reinforce patterns of gender injustice. Moreover, they believe that preventing this from happening is important enough to justify strict legal restrictions on advertising with sexual content, and they advocate for such restrictions as part of their campaign.

If we assume that the formal democratic process has not already addressed the issue of restrictions on advertising with sexual content in a way that Hussain would consider incompatible with condition (3), then this campaign plausibly meets all six conditions of the proto-legislative view. Despite the fact that the policies being advocated for are, we can assume, substantively unjust, the participants’ support for them is motivated by a reasonable conception of the common good, which includes an appropriate concern for gender equality. And the campaign meets conditions (5) and (6) in virtue of offering arguments that could (though

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49 Barry and MacDonald point out that it is unclear exactly how Hussain intends condition (3) to be understood, and that the obvious interpretations imply either that nearly all issues have been addressed, or that virtually none have in a way that would render an SCEC campaign impermissible in virtue of failing to satisfy the condition (“Ethical Consumerism,” pp. 300-01).
unjustly) serve as the basis for future legislation, and aiming to put the issue on the formal legislative agenda.

It is, it seems to me, implausible that the SCEC campaign in this variant of Sexist Advertising is permissible. It is also, as I have argued, implausible that the campaign in the original version of the case is impermissible. Perhaps in the absence of a compelling view that can accommodate both of these judgments, we should be open to the possibility that we ought to revise one of them – after all, sometimes upon reflection we learn that there are no plausible principles that can capture all of our intuitive judgments about cases. But the interpretation of the proto-legislative view under consideration implies that both of these judgments are mistaken – that is, it implies that while the SCEC campaign in the original Sexist Advertising case is impermissible, the campaign in the variant of the case is permissible. This result should, it seems to me, count decisively against the view. And since part of what makes this result so implausible is that the firms targeted in the variant are not in fact culpably contributing to injustice (or contributing to injustice at all), while the firms in the original case are, it seems that any acceptable view will take liability to bear, at least to some extent, on the permissibility of targeting firms in SCEC campaigns.

Notice, however, that even in cases in which the targeted firms are intuitively liable, the proto-legislative view makes the permissibility of an SCEC campaign depend largely on whether the participants aim at a legislative remedy for the wrongdoing that motivates the campaign, and not on whether the legislative remedy being sought is substantively just or unjust.\(^50\) In the original Sexist Advertising case, for example, all that the participants would have to do in order

\(^{50}\) Condition (2) can plausibly be interpreted to rule out campaigns that aim at legislative remedies that cannot be defended as compatible with any reasonable conception of the common good. But this will exclude only especially egregious legislative aims.
to transform a campaign that fails to meet conditions (5) and (6) into one that does meet them (and therefore meets all six conditions) is to incorporate arguments that could (though unjustly) serve as the basis for future legislation into their public statements, and aim to place the issue of preventing sexist advertising on the formal legislative agenda. But since it would plausibly be unjust to attempt to restrict the relevant forms of advertising through legislation, despite the fact that they are morally objectionable, the strict reading of the proto-legislative view implies that it can be permissible to employ market power in order to affect firm behavior when it is part of an effort to impose unjust legislation, but impermissible to engage in an otherwise similar campaign that refrains from attempting to impose the unjust legislation. And this is clearly an unacceptable implication.

The reason that the proto-legislative view has this implication is, of course, its requirement that participants in SCEC campaigns aim at legislative remedies for the wrongdoing or injustice that motivates their efforts. In my view, the original Sexist Advertising case, along with Exploitation and a wide range of other cases with a similar structure, suggests that it can be appropriate for consumers to employ their market power in ways that aim to bring about social change without aiming at legislative remedies. Hussain believes that views that permit this are objectionable because they allow consumers to potentially bring about the social change at which they aim while bypassing the appropriately democratic procedures by which such change ought to be pursued. On his view, these procedures are limited to the formal legislative process. We might ask, however, what exactly is supposed to be undemocratic about seeking to bring about the kind of social change that the boycotters in Sexist Advertising aim at without seeking legislative action, but in ways that are consistent with conditions (1), (2), and (4) of the proto-legislative view.
My suggestion is that, contrary to what the proto-legislative view implies, the boycotters in Sexist Advertising do not act in a way that is inconsistent with any democratic, procedural values. It is not a case in which substantive justice outweighs procedural values, but rather a case in which the proper procedures for remedying the injustices that the targeted firms are involved in do not include enacting formal legislation. Indeed, it might be the case that the formal legislative process has already yielded every policy that could be plausibly be required as a matter of gender justice, and yet objectionable patterns of attitude and behavior among individuals, firms, and other private organizations prevent society from fully achieving the egalitarian relations among men and women that are required as a matter of justice.\textsuperscript{51} Note that in such a case, it would seem that we must accept that the formal democratic process has already addressed the issues in question as much as it possibly can, so that on any plausible reading, there is no way that a boycott effort can satisfy condition (3) of the proto-legislative account. Condition (3) should be rejected, then, because it implausibly rules out the permissibility of all SCEC campaigns under just institutions.

Even the presence of fully just institutions does not undermine the intuitive case for the permissibility of the boycott in Sexist Advertising. There are at least two reasons for this. First, in cases of this kind the very same values that make certain institutional arrangements required as a matter of justice (e.g. gender equality) are implicated, and how private actors such as firms behave will play a role in determining the extent to which those values are realized or undermined. And second, even when just institutions are currently in place, so that there are no reasons to seek any changes to existing legislative arrangements, the behavior of private actors can affect individuals’ beliefs, attitudes, and dispositions in ways that threaten the stability of the

prevailing just institutions. So while participants in the SCEC campaign in the version of Sexist Advertising in which fully just institutions are already in place clearly ought not seek legislative change, their actions are properly understood as part of an effort to promote and/or preserve justice via the kind of representative, deliberative public engagement about justice-relevant values that respect for democratic values requires.

It is difficult to see how Hussain can deny that the SCEC campaign in Sexist Advertising is consistent with democratic, procedural values, properly understood. After all, he allows that the employment of market power in pursuit of social change is consistent with those values in cases in which participants seek legislative change. What would be needed is a plausible basis for denying that the very same exercise of market power is consistent with the values in cases in which legislative change both is not and ought not be sought. But it is not clear what such a basis could be. It seems, then, that accepting the general claim that the employment of market power in pursuit of social change is not necessarily inconsistent with democratic, procedural values commits us to accepting that employing market power in pursuit of social change without seeking legislative change is not necessarily inconsistent with those values. And this in turn implies that Hussain’s account of the procedures by which social change can be brought about consistent with those values is too narrow.

III. JUSTICE, LIABILITY, and DEMOCRATIC SOCIAL CHANGE

It is worth asking what might have led Hussain to embrace the overly narrow view that he does about the procedures for bringing about social change that are consistent with democratic, procedural values. To begin, it is worth considering how he might attempt to retain the central “proto-legislative” component of his view embodied in conditions (5) and (6), while
incorporating the concerns about liability and avoiding endorsement of the pursuit of unjust legislative remedies that I highlighted in the previous section.

In order to avoid permitting SCEC campaigns that aim to bring about legislative action that is in fact unjust, Hussain could amend his view to require that the legislative change that a campaign aims at would at least constitute an improvement with respect to justice. This could be done, for example, by revising condition (2) so that it requires that participants aim to advance an agenda that is at least preferable to the status quo in terms of justice. This would rule out the campaign in the variant of Sexist Advertising in which participants aim to impose unjust restrictions on the content of advertising. And once this condition is included, it would seem appropriate to also include a liability condition that takes whether a firm is in fact contributing to injustice to be relevant to the permissibility of targeting it with an SCEC campaign. After all, if it is required that the social change being sought would constitute an improvement with respect to justice, then the firm behavior that the campaign aims to change must at least be connected in a relevant way to the injustice that the campaign ultimately aims to address.

In order to maintain the proto-legislative component of his view, Hussain would, it seems, have to limit the liability condition in a particular way. Specifically, firm conduct would have to meet two conditions in order to render the firm liable to be targeted by an SCEC campaign. First, of course, it would have to (perhaps culpably) contribute to injustice in some way. But second, it would also have to be a type of conduct that it would be preferable, as a matter of justice, to combat via new legislation (in comparison with maintaining the legislative status quo).\(^{52}\) On this view, firm conduct that is wrongful, including conduct that contributes to

\(^{52}\) The legislative action that it must be preferable to take need not involve simply prohibiting the firm from engaging in the conduct in question. It could involve disincentivizing that conduct, officially condemning it without prohibiting it, etc.
injustice, would not be liability-generating in the absence of permissible legislative remedies for that conduct, and so, at least generally, targeting firms that engage in such conduct with an SCEC campaign would be impermissible. This result would be consistent with the proto-legislative requirements of Hussain’s view.

This account of liability might be defended by appeal to a widely accepted view about the nature of justice, which in turn suggests an account of the role and scope of democratic processes that seems to be roughly the one to which Hussain is committed. The view about the nature of justice derives from John Rawls’s claim that the principles of justice apply to the institutions of the basic structure of society, but do not apply directly to the conduct of individuals and private associations within those institutions. On this view, justice is fundamentally a matter of whether the institutions of the basic structure, most centrally (if not exclusively) state institutions, operate in the ways required by the principles of justice. Because this is what justice consists in, efforts to bring about social change that do not aim to bring about any changes at the level of basic structural institutions cannot count as efforts to combat injustice.

Democratic processes are plausibly thought of as the means by which we ought to resolve disagreements about justice, and to ensure, as best we can, that justice is achieved in a way that is consistent with political equality. If this is correct, and if justice is fundamentally a matter of how the institutions of the basic structure operate (including the policies that they adopt), then

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democratic processes must be understood as limited to those that play a role in determining what is done by those institutions. And if this is correct, then efforts to bring about social change in ways that do not run through the basic structure, and perhaps in particular the formal legislative process, are necessarily suspect from the perspective of democratic values, as well as being suspect in virtue of not being directed at remedying injustice.

These views about the nature of justice, and about the role and scope of democratic processes, together imply that the conduct of the targeted firms in Sexist Advertising does not ground liability to be targeted by an SCEC campaign. They do allow that this conduct might constitute a contribution to injustice, if it could affect the operations or policies of basic structural institutions in a justice-relevant way. But because there are no permissible legislative remedies for the conduct, even if it does contribute to injustice, there are no suitably democratic means of employing market power in a way that can bring about changes to the conduct. And since it seems correct that employing market power in order to bring about social change is permissible only when doing so is consistent with democratic values, the basic structural account of justice and the associated limits on what can count as democratic processes together imply that the boycott in Sexist Advertising is impermissible.

This is, again, an implausible implication, and the intuitive permissibility of the boycott in that case provides strong grounds for rejecting the proto-legislative view. Recognizing that the impermissibility of the boycott follows from the widely accepted basic structural account of justice and a plausible account of the role of democratic processes, however, suggests that the initial appeal of the proto-legislative lies at least partially in its connection to the basic structural

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54 When the conduct of private actors could affect the operations or policies of basic structural institutions, it is, on Rawls’s view, subject to what he calls the “natural duty of justice,” which requires support for just institutions, and contributions to establishing them where they do not yet exist (A Theory of Justice, p. 99).
account and its commitment to the existence of legislative solutions to anything that counts as a genuine injustice.

On reflection, however, cases such as Sexist Advertising (and Exploitation) should lead us to reject the narrow account of democratic processes that the proto-legislative view requires, and should therefore lead us to be skeptical of the basic structural view, since it, in combination with the view that democratic processes are the means by which we ought to resolve disputes about justice, appears to entail the narrow account of democratic processes.

IV. MARKET PROCESSES, DEMOCRATIC PROCESSES, AND THE PURSUIT OF JUSTICE

My argument thus far suggests that we ought to accept a view about the conditions in which SCEC campaigns are permissible that includes the following components:

1. A requirement that basic liberties are respected.
2. A requirement that participants aim to advance an agenda that constitutes an improvement with respect to justice relative to the status quo.
3. A principle that treats firm liability as either a necessary condition of the permissibility of targeting it, or as significantly increasing the harm that can be done to it without violating the proportionality condition.
4. A proportionality condition that determines how much harm can permissibly be imposed on both liable firms and (as unintended side-effects) non-liable parties.
5. A requirement that participants publicly offer reasons for their efforts, and treat the campaign as part of the ongoing process of public deliberation and debate about justice-relevant issues that ought to shape both formal policy-making and the evolution of informal social norms and practices.
Condition (5) ensures that permissible SCEC campaigns must show proper respect for democratic values, and must be consistent with the broader understanding of appropriately democratic processes for bringing about social change that I have defended.

One important question about condition (5) is whether it should be understood as requiring participants in an SCEC campaign to aim at legislative remedies for the injustices that motivate their efforts when such remedies are both possible and permissible. In my view, we should not endorse a requirement that is quite this strict. Nevertheless, it is true that in some cases participants will be obligated to aim at legislative remedies. This will be the case, for example, if the injustice that motivates a campaign can, in principle, only be remedied legislatively. Consider, for example, a case in which, in response to the enactment of a law that imposes unjust restrictions on voting that will disproportionately affect particular groups of citizens, an SCEC campaign targets firms that have funded the campaigns of elected officials who voted for the law. In this case it is clear that participants must aim at legislation that eliminates the restrictions. There are both reasons of justice and reasons deriving from core democratic values that support this conclusion. Justice requires aiming at a legislative remedy because the restrictions are constitutive of the injustice – the nature of this particular injustice makes it the case that there is, in principle, no way of remedying it that does not involve eliminating those restrictions. And respect for democratic values requires aiming at a legislative remedy because the restrictions constitute an impediment to the ability of some citizens to

55 I am grateful to an anonymous Associate Editor for encouraging me to address this issue.
56 They might, for example, aim to provide the targeted firms with economic incentives to publicly endorse the repeal of the restrictions, and/or to donate only to candidates who oppose the restrictions in the future, while at the same time offering arguments against the restrictions publicly.
participate as equals in the process of determining outcomes that ought to be determined democratically.

In other cases, democratic values may generate an obligation to aim at legislative remedies for the injustice that motivates an SCEC campaign because the means by which the participants could bring about the aimed at social change non-legislatively would involve objectionably disproportionate influence over the relevant social outcomes. Imagine, for example, that a group of firms engages in behavior that contributes in a non-trivial way to a moderate injustice, and that there are possible and permissible legislative measures that would curb this behavior. A relatively small group of consumers on which these firms are heavily reliant organizes a boycott with the aim of remedying the injustice. Together, these consumers could succeed in getting the firms to change their behavior without either securing legislative change or persuading more than a small fraction of the population that their assessment of the firms’ behavior as unjust is correct. In a case of this kind, even if the participants in the boycott are substantively correct, and offer arguments in defense of their position publicly, it seems objectionable if they succeed in bringing about the social change that they seek without gaining the support of either at least a significant percentage of the population or a majority of their elected representatives. Since the views that those who are not already committed participants in the campaign might adopt, and the consumption choices that they might make, after being exposed to the participants’ arguments would not make a difference to whether the campaign succeeds, participants are plausibly obligated to aim at legislative change rather than proceeding in a way that would achieve their aims without it, since succeeding at bringing about legislative
change may be the best (or even the only) available indication that their position has gained traction with a significant percentage of the public.\(^{57}\)

While there are many cases in which reasons of justice, democratic values, or both will make it the case that participants in an SCEC campaign ought to aim at legislative remedies, on my view there will be at least some cases in which this is not required. Specifically, it is not required when two conditions are both met. The first is that the injustices that a campaign seeks to remedy can be more effectively addressed by efforts to bring about change non-legislatively, even if, in principle, legislative solutions are permissible or even required as a matter of justice.\(^{58}\) And the second is that the non-legislative means by which the campaign aims to bring about change are no less compatible with core democratic values than the available legislative means.\(^{59}\) This second condition will be met, on my view, whenever the non-legislative means of promoting change would be no less representative of the views and opportunities for influence of each member of the public than the legislative process. For example, a campaign whose success depends on persuading a majority of the population that participants are correct about the matter of justice that motivates the campaign, and motivating them to change their consumption choices, but does not depend on gaining votes for legislation from elected officials who would be hesitant to vote against the interests of the business community, would satisfy the condition.

\(^{57}\) The thought here is that in a reasonably well-functioning democratic system, elected officials will be accountable to the public in ways that will lead them, at least generally speaking, to vote for policies that are widely supported, and to oppose policies that are widely opposed. When this is not the case, the reasons to aim at legislative change in cases of the kind under discussion will be at least somewhat weaker.

\(^{58}\) On at least some versions of the basic structural account of justice, it is, as a conceptual matter, not possible to reduce injustice non-legislatively. I have argued, however, that cases such as Sexist Advertising provide strong reasons to reject this view. And if we reject it, then we must acknowledge that there can be cases in which an agent or group of agents can do more to reduce injustice by aiming at non-legislative change than by aiming at legislative change.

\(^{59}\) The two conditions being met is, on my view, a sufficient condition for the permissibility of not aiming at legislative remedies. It is a more difficult question whether the second condition being met is necessary. I am inclined to think that it is not, and that at least when substantive justice can be promoted to a much greater extent non-legislatively, some sacrifice of compatibility with democratic values is permissible.
When both of the conditions are met, there do not seem to be any compelling reasons to insist that participants in an SCEC campaign aim at legislative remedies. Of course, the requirement to publicly offer reasons and to treat the campaign as part of the process of public deliberation that ought to shape the evolution of the social world may require that participants note their belief that a legislative response to the relevant injustices would be appropriate, and that they would support such a response if it were on the agenda. But if it would be a more effective use of their limited voice and resources to focus on bringing about non-legislative changes that would contribute to addressing the injustices, then doing so is, in my view, at least permissible.

On the view that I have suggested, some SCEC campaigns (such as that in the variant of Sexist Advertising) will be impermissible for reasons of substantive justice, despite the fact that they do not run afoul of democratic, procedural values. Those procedural values, however, constrain the pursuit of substantive justice. Employing market power and market processes alone, even in the pursuit of real improvements in substantive justice, will at least typically be impermissible in conditions in which democratic processes are functioning sufficiently well. But just as, on Hussain’s view, employing market power as part of a suitably democratic effort to promote legislative change is permissible, on mine employing market power as part of a suitably democratic effort to promote justice-improving changes in social norms and practices (without advocating any formal legislative action) will often be permissible.

My view, then, does not permit market processes to determine normatively significant outcomes that, intuitively, ought to be determined by democratic processes. Instead, it recognizes the full range of ways in which market power can be employed on behalf of justice in ways that are consistent with a proper understanding of the scope of democratic processes. It is simply not
undemocratic for agents to engage in an SCEC campaign as part of a broader effort to publicly advance arguments in defense of changing prevailing norms and practices. We should reject narrow accounts of democratic processes that restrict them to those connected to the formal legislative process.

Thus far, I have focused on organized SCEC campaigns, and argued that while they are subject to a requirement to respect democratic values (embodied in my condition (5)), they can satisfy this requirement without aiming at legislative remedies for the injustices that motivate them. There remain, however, important questions about how the concern that exercises of market power should be compatible with proper respect for democratic values and processes should impact our assessment of a wide range of consumption choices that are not made as part of an organized SCEC campaign.  

While organized SCEC campaigns are distinctive among uses of market power in that their participants both pool their capacity to influence social outcomes via consumption choices and are motivated by the aim of achieving social change, all consumption choices contribute to shaping important aspects of our shared social world. The concern that outcomes that ought to be determined by democratic processes might instead be determined largely by market processes does not, then, provide grounds for thinking that only consumption choices made as part of an SCEC campaign must satisfy criteria of the kind that I have defended in order to be compatible with proper respect for democratic values. Instead, this concern suggests that all consumption choices that affect justice-relevant values generate obligations to contribute to democratic discussion of the relevant issues, and to offer justifications for one’s choices. This will strike

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60 I am grateful to an anonymous Associate Editor for encouraging me to discuss these issues.

61 At least in the aggregate, they affect, for example, which firms succeed and which fail, what kinds of policies firms are under economic pressure to adopt or abandon, and what kinds of social norms and expectations we are all subjected to.
many as a rather counterintuitive view. I believe, however, that we should accept it. In the remainder of this section, I will note some key reasons for accepting it, and describe in general terms the democratic obligations that I take to be generated by our participation in market processes. Once the nature and extent of these obligations is made clear, it seems to me that the view is much less counterintuitive than it may initially seem.

Hussain acknowledges that market exchanges contribute to shaping the social world in significant ways whether or not market actors are motivated by the aim of bringing about social change, and notes that this makes it the case that market processes are themselves in conflict with democratic, procedural values. He argues, however, that when agents engage in “price/quality consumerism,” whereby they make purchasing decisions entirely on the basis of their preferences with respect to the price and quality of goods and services, the procedural norms that underlie his proto-legislative account do not ground obligations to satisfy the account’s conditions. This is because even though price/quality consumerism is procedurally defective in virtue of its effects on matters that ideally ought to be determined by democratic processes, “the procedural defects…are justified because the [market exchange] 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.”

The market exchange process, driven by price/quality consumerism, meets this threshold, according to Hussain, at least in part because consumers making purchasing decisions on the basis of price/quality considerations is necessary in order for the massive potential benefits of

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62 “Is Ethical Consumerism an Impermissible Form of Vigilantism?,” pp. 135-36.
63 Ibid., p. 136.
mutually beneficial market transactions to obtain on a large scale – as he puts it, “no procedurally sound process could achieve comparable results.”  

On Hussain’s view, then, when consumers make purchasing decisions entirely on the basis of price/quality considerations, they are permitted to treat those decisions as “private,” and therefore “they are not required to focus on the common good, deliberate with their fellow citizens, or make their reasons public.” It is only when consumers aim to affect the shape of the social world through their market choices that proper respect for democratic values requires that they ensure that those choices satisfy these conditions.

There are, however, at least two reasons why we should reject the view that consumption choices that are not made with the aim of contributing to social change do not generate democratic obligations. The first is that the effects of consumption choices on the shape of our shared social world are, at least generally, no less extensive when agents happen not to be aiming at any particular effects beyond satisfying their price/quality preferences. Since it is the fact that these effects can be brought about in ways that do not involve properly democratic processes that is troubling from the perspective of democratic values, it is unclear why those who make choices that contribute to bringing them about should be exempt from democratic obligations just in virtue of the fact that they are not aiming to bring them (or any other justice-relevant effects) about. Indeed, it might seem especially implausible that market agents can avoid democratic obligations by making their purchasing choices on purely self-interested price/quality grounds,

64 Ibid., p. 137.
65 Ibid., p. 138. Hussain also allows that individuals can treat purchasing decisions that they make for ethical reasons as private, so long as they are not aiming to bring about social change via those decisions. For example, if one refrains from purchasing certain products because she does not want to be complicit in what she views as the unethical processes by which they were produced, but is not thereby aiming to affect the way that those or similar products will be produced in the future, his view does not require that she satisfy the conditions of the proto-legislative account. On my view, however, because such choices in fact contribute to shaping the social world, the democratic obligations that I will defend with respect to price/quality consumerism apply to them as well.
and incur such obligations only when they are aiming to contribute to shaping the social world (perhaps for well-justified moral reasons).\textsuperscript{66}

Hussain’s reason for exempting price/quality consumption choices from democratic obligations is that these choices tend to bring about large improvements in people’s lives that could not be generated via any other process. Specifically, he suggests that price/quality consumption is essential to generating Pareto improvements that are available via market transactions.\textsuperscript{67} Importantly, however, price/quality consumption is far from guaranteed to generate Pareto improvements. This is because many, and perhaps most actual market transactions generate negative externalities, so that even if the parties to a transaction all benefit, there are others who are made worse off. For example, when consumers purchase products that are produced in environmentally damaging ways on price/quality grounds, the benefits that they and the firms involved in producing and selling them obtain are accompanied by negative effects for others. Because at least many cases of price/quality consumption have this structure, the fact that the parties to the transaction all benefit is an insufficient basis upon which to conclude that no democratic obligations are generated. Indeed, even when the benefits for society at large outweigh the costs, it seems that those who might be negatively affected by externalities (and all of those who would prefer that these negative effects are avoided) are owed a justification.

A second reason to be skeptical of Hussain’s view that price/quality consumption should be exempted from democratic obligations is that once we recognize all of the ways in which, and the extent to which, the kinds of social and political motivations that he accepts do trigger democratic obligations might affect our consumption choices, it is difficult to see how there

\textsuperscript{66} This might be especially true when the effects of price/quality consumption choices on the shape of the social world are both reasonably predictable and likely to negatively affect at least some people.

\textsuperscript{67} Ibid., p. 137.
could be a morally relevant distinction between cases in which one is motivated by social and political considerations and cases in which one is not. To see this, notice that the kinds of motivations that would typically be viewed as a matter of the “quality” of a product for a particular consumer will sometimes themselves be explained by a person’s social and political commitments. Consider, for example, that the fact that I would enjoy using product A more than I would enjoy using product B seems like a paradigmatic example of a non-political, quality-based motivation for purchasing product A. If, however, product B is advertised using sexist imagery, and I believe that this kind of advertising contributes to ongoing gender injustice, then the fact that I would enjoy using product A (which is not advertised using sexist imagery) more may be explained by the fact that if I were to purchase and use product B, I would be reminded of the sexist imagery that I disapprove of, which would in turn undermine my enjoyment of using the product. In this case, my political values, and in particular my (morally-informed) preference that there be less sexist imagery in our shared social world, play what may be a psychologically unavoidable role in determining facts that appear, in themselves, to amount to non-political grounds for a consumption choice. Even if we could at least often avoid allowing our social and political values to influence our purchasing decisions in this way, however, it is not plausible that whether we are subject to democratic obligations in virtue of our purchasing decisions depends on whether we have avoided allowing our decisions to be so influenced. If I recognize that in the absence of the effect on my enjoyment of the way that product B is marketed, I would actually enjoy using product B more, and therefore decide to purchase product B instead of product A, I cannot thereby avoid the obligation to justify my choice to my fellow citizens that I would have had if I had purchased product A. Indeed, it seems plausible that

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68 This is the case, I claim, even if one is not convinced by the first reason that I offered for rejecting Hussain’s view.
because I would in fact be contributing to the perpetuation of injustice, and because I recognize this fact, my obligation to justify my choice to my fellow citizens is especially strong.

In light of these considerations, we have reason to accept that all consumption choices are subject to a requirement that is in the spirit of condition (5) of my account of the requirements for permissible SCEC campaigns.\(^69\) On this view, all consumers, in virtue of their contributions to shaping our shared social world through the use of their market power, must publicly offer reasons for their purchasing choices as part of the ongoing process of democratic deliberation and debate.

It will likely be objected that it is difficult to see how a consumer could satisfy the requirement to engage in processes of democratic deliberation alongside her market choices in more than a limited number of cases – we simply do not have the time to publicly explain our reasons for hundreds, or even thousands, of our consumption choices in ways that contribute to public discussion and debate about the issues that might motivate those choices, or the justice-relevant values that might be affected. Because many consumption choices are not avoidable, and others are avoidable only at substantial cost,\(^70\) it might seem unreasonably demanding to hold that we are subject to a requirement to publicly offer reasons for all of our consumption choices.

This objection might seem especially powerful given that (unlike organized SCEC campaigns) most individuals’ consumption choices have virtually no chance of making more

\(^{69}\) In my view, all of our consumption choices are subject to at least rough corollaries of all five of my conditions, though the corollaries of condition (2)-(4) merely provide reasons, and do not necessarily generate obligations, outside of the context of SCEC campaigns. We must, as condition (1) requires, always respect basic liberties in our consumption choices. In addition, there are always reasons to make consumption choices that will promote justice-relevant values, as well as reasons to treat firm culpability and the likely negative effects of one’s choices for others as relevant considerations in decision-making.

\(^{70}\) There are, for example, certain kinds of products, such as food, clothing, toiletries, and basic household goods, that we cannot avoid purchasing. In addition, many people cannot avoid purchasing other products that are necessary for their work (e.g. academics generally cannot avoid purchasing computers).
than a very small difference to the shape of the social world. While it might be plausible that those who make consumption choices that stand to make a significant difference to outcomes that ought to be determined at least largely by democratic processes are required to publicly offer reasons for their choices that contribute to democratic discussion and debate, it is much less plausible, the objection suggests, that consumption choices that will make at most a trivial difference generate demanding requirements to contribute to public debate.

If this objection were compelling, then we would simply have to accept that, in the aggregate, individuals’ consumption choices (whether politically motivated or not) will significantly affect outcomes that intuitively ought to be determined largely by democratic processes, but that individuals are nonetheless not subject to any requirement to mitigate the undemocratic effects of the sum of these choices. In my view, however, we need not, and should not, accept this conclusion. Instead, we can hold that the fact that at least most individuals will employ at least some market power in ways that will affect outcomes that ought to be determined democratically provides grounds for thinking that virtually all of us have an obligation to contribute to an appropriate extent to the process of public discussion and debate about justice-relevant issues.

On a view of this kind, we are all obligated to avoid employing market power in ways that will contribute to shaping our shared social world without contributing to public discussion about the relevant issues, but we are not obligated to offer reasons for every individual consumption choice that we make. Instead, our contributions can consist in, for example, offering much more general explanations and defenses of the values that inform our choices on

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71 This may not be true of, for example, the consumption choices of extremely influential public figures or extremely wealthy individuals who are spending very large sums.
the whole. Furthermore, insofar as our individual consumption choices are unlikely to make more than a very small difference to social or political outcomes, the extent of our obligations to contribute to public discussion will also be rather modest. Importantly, this does not mean that those whose consumption choices are likely to make a larger difference to social and political outcomes, such as influential public figures and the very wealthy, are obligated to take steps to magnify their own voices within the public debate about justice-relevant issues. Instead, the requirement to contribute to public discussion must be understood as a requirement to contribute to ensuring that the democratic process, broadly understood, functions well. With respect to public discussion, this will often require making clear one’s own reasons for choices that might affect justice-relevant outcomes, but it may also require helping to magnify the voices of those who are less likely to otherwise be heard, and will often require seeking out arguments against one’s own views, listening to them carefully and reflecting on them in an open-minded way. This is especially likely to be required of those who are in a position to disproportionately influence the evolution of our shared social world in virtue of possessing a great deal of market power.

While I have not offered a complete defense of the view about the obligations that arise in virtue of our individual consumption choices that I have outlined, I hope to have suggested an approach to reconciling the unavoidability of market choices that will affect the shape of our shared social world and a commitment to democratic values that can serve as the basis for further reflection on the relationship between markets and democracy.

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72 This differs from what is required by my condition (5) of participants in SCEC campaigns, since that condition requires offering reasons for the particular consumption choices that are part of the campaign’s effort.  
73 This is consistent with thinking that we in fact have quite extensive obligations to contribute that are grounded in other considerations.
V. CONCLUSION

A robustly democratic society characterized by a concern for justice among citizens must publicly debate not merely legislative options, but also the informal norms and practices that affect the degree to which justice-relevant values are realized. In a market democracy, exercises of market power will inevitably affect justice-relevant informal norms, just as they will inevitably affect legislative choices. When coordinated groups of citizens aim specifically to bring about either legislative change or changes in informal norms, their use of market power in the process must be part of a broader effort to contribute to democratic debate. This is an important lesson of Hussain’s discussion. If I am right, however, SCEC campaigns will meet this requirement in a broader range of cases than his proto-legislative view suggests. In addition, because many of individuals’ ordinary consumption choices also contribute to shaping our shared social world, there are reasons to think that we all have at least some obligation to publicly justify our choices, and more generally to contribute to the process of democratic discussion and debate that ought to play the central role in determining how our society evolves.