

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Faculty Scholarship

2022

Corporate Accountability and Worker Empowerment

Atinuke O. Adediran

Follow this and additional works at: https://ir.lawnet.fordham.edu/faculty_scholarship



Part of the Law Commons

U.C.L.A. Law Review

Corporate Accountability and Worker Empowerment

Atinuke O. Adediran

BOOK REVIEW

AN EQUAL PLACE: LAWYERS IN THE STRUGGLE FOR LOS ANGELES. By Scott Cummings. Oxford University Press. 2020. Pp. ix, 688.

AUTHOR

Atinuke O. Adediran, J.D., Ph.D., Associate Professor of Law, Fordham University School of Law. I am grateful to Jennifer Gordon for generous comments and suggestions. I also thank Bradan Litzinger and the incredible staff of the *UCLA Law Review* for editorial support.



TABLE OF CONTENTS

INTRODUCTION.....	180
I. <i>AN EQUAL PLACE: LAWYERS IN THE STRUGGLE FOR LOS ANGELES</i>	181
A. The Role of Lawyers.....	181
B. The Antisweatshop Campaign.....	181
C. Campaign to Defend Day Labor.....	183
D. Community Benefits Agreements for Retail Workers	184
E. Campaign to Stop Wal-Mart's Supercenter.....	186
F. Campaign to Reclassify Truck Drivers	187
II. CORPORATE ACCOUNTABILITY AND WORKER EMPOWERMENT	188
CONCLUSION	194

INTRODUCTION

Scott Cummings's *An Equal Place* is a monumental rendition of the history of Los Angeles's social movements with a multifaceted set of actors working together to obtain equality for low-wage workers. At just over 500 pages long, the book is a brilliant and thorough description of the modern history of some of the most important campaigns involving lawyers, workers, and labor organizers in "constructing the meaning of equality" in Los Angeles between 1992 and 2008 (p. 446). *An Equal Place* is unlike other recent books about law and social movements. Each campaign tells a different history. Yet, the campaigns are connected by the larger story of lawyers and activists fighting inequality to improve the lives of marginalized workers. Each of the campaigns reached varying degrees of success, but they all involved an amalgam of labor, labor organizing, lawyers, workers, and the private and public sectors.

This Review proceeds in two parts. Part I starts out by describing the role and critical importance of lawyers in all the campaigns. Part I then summarizes key features of each campaign to showcase their uniqueness. The summary focuses on some of Cummings's chief contributions, which he describes as "research at the intersection of the fields of lawyers and social movements, labor law, and local government law" (p. 4).

While not the focus of the book, corporate accountability is woven into the fabric of most of the campaigns described in *An Equal Place*. Part II analyzes Cummings's contributions to scholarly research on the role of corporations in labor abuses. As a lens for this analysis, Part II uses the campaign contesting garment sweatshops described in the book to depict the tension between profit maximization—for retailers and manufacturers—and workers' rights. Part II then goes beyond the history described in *An Equal Place* to address how the COVID-19 pandemic and the Great Resignation¹ might influence the garment industry in California. The Review ends on a hopeful note, describing how current societal conditions can serve as catalysts to pressure companies to comply with California's Garment Worker Protection Act. This new law firmly establishes a minimum wage requirement and joint liability for retailers and manufacturers in California for the first time.

1. Greg Rosalsky, *The Great Resignation? More Like the Great Renegotiation*, NPR (Jan. 25, 2022, 6:30 AM), <https://www.npr.org/sections/money/2022/01/25/1075115539/the-great-resignation-more-like-the-great-renegotiation> [https://perma.cc/7ZHS-Q7BU] (defining the Great Resignation as "the roughly 33 million Americans who have quit their jobs since the spring of 2021").

I. *AN EQUAL PLACE: LAWYERS IN THE STRUGGLE FOR LOS ANGELES*

An Equal Place explores five campaigns to expand protections for low-wage workers in Los Angeles. The first campaign involved the antisweatshop movement and its bid to establish joint employer liability to make retailers and manufacturers responsible for meeting wage and labor standards. The second campaign focused on invalidating antisolicitation ordinances that impacted day laborers. The third campaign addressed leveraging city land use to negotiate Community Benefit Agreements (CBAs) so that publicly subsidized developments would provide benefits to the development's communities rather than low-wage jobs. The fourth campaign involved grocery workers and the bid to eliminate the threat of nonunionized Wal-Mart supercenters undercutting the unionized grocery sector. The fifth campaign focused on the bid to change the independent contractor status and degraded labor conditions of truck drivers.

A. The Role of Lawyers

Movement lawyers played significant roles in all five campaigns. "Lawyers advised clients of their legal rights, filed lawsuits, negotiated agreements, provided legal opinions, and drafted model legislation" (p. 447). In *The Code of Capital: How the Law Creates Wealth and Inequality*, Katharina Pistor explains that lawyers make significant contributions to the "creation and distribution of wealth in society."² The distribution of wealth can be for the benefit of wealthy corporations—as Pistor argues in historical and contemporary contexts—but it can also be for the benefit of marginalized workers and communities as Cummings documents in *An Equal Place*. As Cummings explains, lawyers can also use their legal know-how to "construct the meaning of equality" (p. 446). Lawyers use their legal know-how to "make new law from existing legal material."³ In *An Equal Place*, lawyers also worked across the aisle with organizers and activists to fight for the rights of workers.

B. The Antisweatshop Campaign

Cummings begins his historical exploration in mid-1995, which culminated in three movements within the larger antisweatshop campaign. The campaign was led by the Asian Pacific American Legal Center (APALC), which integrated

2. KATHARINA PISTOR, *THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY* 159 (2019).

3. *Id.* at 160.

strategic litigation and worker organizing to hold the country's largest garment production sector accountable.

The first campaign involved more than seventy undocumented Thai workers in garment subcontracting who labored eighty hours a week for less than two dollars a day in an El Monte factory. The workers were discovered in August 1995 when state and federal labor agents raided the factory. The goal of the campaign was to establish joint employer liability to make retailers and manufacturers—rather than only contractors—responsible for meeting wage standards. As Cummings details, the pyramid structure of the garment industry made establishing joint liability particularly challenging. Corporate retailers and manufacturers subcontracted production to sweatshops that exploited garment workers. Within the pyramid, garment retailers like Wal-Mart are at the apex, garment manufacturers are in the middle, and contractors are at the base. Workers are below contractors. Contractors compete for bids and face the threat of foreign competition and outsourcing and are under immense pressure to cut costs, which they do by reducing wages and exploiting workers. Despite many challenges, through fierce litigation and powerful alliances between labor and grassroots organizations, the campaign resulted in some victories for garment workers, including the passage of Assembly Bill 633 (A.B. 633), an \$8 million recovery, and the launch of the antisweatshop movement.

The second movement within the antisweatshop campaign involved a class action lawsuit against the Los Angeles-based designer jeans manufacturer, Guess, to improve labor conditions and empower garment workers. The Guess campaign used both legal strategies—including litigation—and organizing to try to reach collective bargaining agreements that would cover Guess and its contractors, with the intent of raising wages while obtaining a commitment from Guess not to outsource production to Mexico. The lawsuit portion of the movement sought to bring attention to the broader issue of sweatshop employment grievances by challenging Guess's reputation as a "good guy" garment manufacturer (p. 52).⁴ Alongside litigation, union leaders organized workers to engage in two parallel attacks: a "ground war" of unfair labor practice strikes and an "air war," or corporate campaigns designed to publicize the sweatshop conditions that Guess workers labored under in order to damage the company's image and reduce sales (p. 51). The campaign largely failed because Guess's corporate leadership opposed

4. The Labor Department placed Guess on probationary status from its "Trendsetter List of 'good guy' garment makers and retailers," after discovering its labor practices. Stuart Silverstein, *Guess Is Left Off 'Good Guy' List Pending Labor Inquiry*, L.A. TIMES (Nov. 28, 1996, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1996-11-28-fi-3683-story.html> [<https://perma.cc/A37S-3AYQ>].

unionization and the company invested significant resources to oppose the effort by thwarting the legal strategy with several litigation tactics to delay and drain the union of resources. In July 1999, union organizers and Guess settled the lawsuit for nearly \$1 million with Guess admitting no wrongdoing.

The third movement within the antisweatshop campaign was a lawsuit APALC filed against Forever 21 in September 2001 for labor abuse. “[Latinx] workers claimed that they had labored in unsafe factories for up to twelve hours a day and were owed several hundred thousand dollars in unpaid wages and overtime” (p. 66). Garment Worker Center (GWC), a workers’ rights group, worked with workers to strategize on how to hold Forever 21 accountable. The workers and union agreed to target individual factories as well as the company. The union attempted to contact the company’s CEO, Do Won Chang to resolve the claims. When he rejected attempts to resolve the issue, the labor union and APALC lawyers began to lay the groundwork for legal and organizing campaigns against the company. The campaign put the role of retailers in workplace abuse front and center by seeking to extend joint liability with contractors in federal court.

The district court took a formalistic approach to contract interpretation and held that a retailer or manufacturer could only be a joint employer when its representatives were “primarily responsible for the day-to-day management of the contractor’s employees” (p. 68). The Court dismissed the claims against Forever 21 who then sought to quell ongoing boycotts, filing two lawsuits against individuals and groups involved in demonstrations. By targeting organizing and public relations, the company struck at the heart of the campaign to use law and organizing to hold companies accountable. However, APALC, GWC and the workers involved decided to appeal the district court’s dismissal. In March 2004, the Ninth Circuit Court of Appeals reversed the district court’s ruling. This allowed APALC to bring state law claims against Forever 21. The case ultimately ended in a confidential settlement in December 2004.

Despite its many challenges, the Forever 21 campaign helped to establish organizing as a major player in the industry, providing media attention that allowed APALC and union activists to build low-wage worker activism.

C. Campaign to Defend Day Labor

Day laborers are predominantly immigrant men who come to the United States from Latin America for better financial prospects by seeking daily

employment on street corners in often affluent neighborhoods.⁵ Day laborers negotiate rates for daily work with those who use their labor. “The informality of such transactions often results in labor abuse” (p. 91). Because of their visibility in wealthy communities in the Los Angeles area, they became the target of legal backlash with more than forty cities in the greater Los Angeles area passing antisolicitation ordinances making it a crime for day laborers to solicit work from street corners. To challenge these ordinances, the Mexican American Legal Defense and Education Fund (MALDEF) and the National Day Laborer Organizing Network (NDLON) coordinated legal and organizing tactics across the greater Los Angeles area between 1991 and 2011. The strategy “emphasized protecting the sidewalks as a venue for solicitation and promoting access to private property” (p. 95).

The legal strategy portion of the campaign focused on courts, where MALDEF lawyers sought to limit the scope of legal challenge to the Ninth Circuit (p. 453). During litigation, NDLON “turned its organizing efforts to the policy arena” to influence legislation at the local and federal levels (p. 126). NDLON leaders also went to Washington, D.C. to lobby against a 2015 U.S. House of Representatives proposed immigration overhaul that would have required all day laborers to verify their employer and preempted any city ordinance tying home improvement store approval to the creation of day labor centers.

The campaign eventually led to the seminal 2011 appellate court decision in *Comite de Jornaleros v. City of Redondo Beach*,⁶ striking down the most expansive antisolicitation ordinances on First Amendment grounds. To be sure, the campaign did not result in minimum wage standards or curbing the harassment often experienced by day laborers. Nonetheless, the campaign validated the right to seek work for day laborers. It also activated a movement of day laborers that did not exist prior to the campaign where day laborers “marched in protest despite legal risks” (p. 156).

D. Community Benefits Agreements for Retail Workers

The community benefits campaign that ran from at least 1998 until 2006 centered around bringing affordable housing and good jobs to workers in the retail industry. The campaign challenged city-subsidized redevelopment that resulted in the creation of low-wage jobs and fueled gentrification that displaced existing

5. See Fernando Santos, *Coming to Terms with the Men on the Corner*, N.Y. TIMES (Dec. 17, 2006), <https://www.nytimes.com/2006/12/17/nyregion/nyregionspecial2/17Rday.html> [<https://perma.cc/H52V-TW7P>].

6. 657 F.3d 936 (2011).

neighborhood residents. The campaign's focus was to establish Community Benefits Agreements (CBAs) that would involve "community participation in the planning" of city redevelopment practices (p. 164).

CBAs are contracts signed by community groups and a developer that require the developer to provide specific levels of living wage jobs, affordable housing, environmental remediation, and other benefits in exchange for community support for project approvals and public subsidies. These agreements were meant to slow gentrification and help provide higher wages to workers.

Despite the benefits of CBAs, which seem like a win-win attempt to bring all sides together, Cummings notes the impact of CBAs on redevelopment over time. An important drawback to these CBAs is that the projects often ignited further gentrification. In fact, some CBA advocates later questioned the impact of their work as it further accelerated gentrification by establishing a template for further redevelopment.

Cummings documents three campaigns within the CBA movement. The first campaign established the nation's first CBA with the development of a downtown sports and entertainment complex anchored around Staples Center, called "L.A. Live" (p. 171). The second was a \$500 million CBA in connection with the expansion of Los Angeles International Airport (LAX). The third resulted in the Grand Avenue CBA leading to the development of downtown Los Angeles's Bunker Hill.

While the L.A. Live campaign established the very first CBA, it came with implementation challenges. Its affordable housing provision did not specify the timing of housing development, which required the developer to "develop or cause to be developed affordable housing equal to 20 [percent] of the units constructed within the project, on-site or within a three-mile radius, and targeted to low-income families" (p. 188). This and other challenges prevented the CBA from producing as many suitable units for families as the campaign had sought. Still, the campaign was transformative by sparking interest in "the CBA as an equitable development tool and setting a model for others to follow in Los Angeles and around the country" (p. 190). The campaign also led to hundreds of living wage jobs and developer-funded community amenities. Importantly, community groups were at the table when development projects were conceived and negotiated.

Similarly, the LAX CBA campaign brought together environmental activism around airport pollution, community resistance to airport expansion, and labor organizing around airport jobs. The terms of the CBA were extensive and as eclectic as the movement itself. They included funding for job training, an air pollution study, an air quality fund, and regular meetings with coalition representatives. The LAX CBA led to significant noise mitigation, a serious air

pollution study, and the incorporation of living wage standards into airport contracts alongside job training and placement services for residents (p. 229).

The Grand Avenue CBA was the Los Angeles Community Redevelopment Agency's first project in Los Angeles. The Grand Avenue CBA involved the conversion of Bunker Hill from a working class, mostly Latinx residential immigrant community to a \$1.8 billion project centered around a boutique hotel and luxury high rise condos. The redevelopment of Bunker Hill was an attempt to establish the image of Los Angeles as a city with a center and bustling downtown much like New York, San Francisco, and other major cities. Four labor unions came together to form the Grand Avenue Affordable Housing Coalition to Fight Gentrification and pursue a benefits program focused on affordable housing, local hiring, living wage, and labor agreements. While the development remained incomplete by 2008, it created 29,000 construction jobs and 5900 permanent jobs.

Despite its many drawbacks, the major benefit of the CBA approach was that it produced public-private oversight where the labor community and the city were able to watch over developer compliance and intervene to promote accountability.

E. Campaign to Stop Wal-Mart's Supercenter

The focus of the Wal-Mart Supercenter campaign was the site fight to stop the development of the Inglewood Supercenter. The site fight focused on blocking the installation of a Wal-Mart at a specific location because of the larger threat that Wal-Mart posed to the unionized grocery sector in California. Inglewood is a historically African American working city. Wal-Mart's entrance into the Inglewood market brought the "potential to drive unionized grocers out of business and force those that remained to make wage and benefit cuts to stay competitive" (p. 273). To compete with Wal-Mart, supermarkets in California have had to cut grocery workers' health benefits and wages.⁷ Cutting wages for already low income, predominantly racial minority workers is a potentially major negative outcome of having a Wal-Mart Supercenter in a community.

Labor unions formed a coalition of community leaders and representatives who agreed to push for an ordinance banning "big-box development" (p. 277), which led to the adoption of the ordinance by the Los Angeles City Council. After the City Council passed the ordinance banning big-box developments, the city was forced to reverse its decision because Wal-Mart threatened to sue the city. Lawyers

7. Felix Oberholzer-Gee, *Wal-Mart's Business Environment*, HARV. BUS. SCH. CASE COLLECTION, Jan. 2006, at 1, 2. ARINDRAJIT DUBE, T. WILLIAM LESTER & BARRY EIDLIN, U.C. BERKELEY CTR. FOR LAB. RSCH. & EDUC., *A DOWNWARD PUSH: THE IMPACT OF WAL-MART STORES ON RETAIL WAGES AND BENEFITS* 3 (2007).

and union activities once again deployed a range of tools including litigation, organizing, lobbying and publicity to counter Wal-Mart's quest for development approval.

Wal-Mart took many steps to oppose unions and workers fighting for fair wages, including the use of litigation, lobbying and ballot box strategies. Wal-Mart also deliberately exploited race-based rifts to drive a wedge between labor unions and traditional African American groups like the Urban League and the NAACP. Lawyers wanted to be "accountable to the community at large, rather than a particular interest group" (p. 309). Wal-Mart's tactics however made it difficult for lawyers to claim that they represented working-class Black communities. Despite these challenges, "activists and lawyers . . . used Wal-Mart's disregard of public input to successfully mobilize community opposition to the Supercenter" (p. 265). Wal-Mart's quest to build a Supercenter in Inglewood failed as residents of Inglewood rejected Wal-Mart's expansion at the ballot box.⁸

F. Campaign to Reclassify Truck Drivers

The final campaign that Cummings documents sought to raise labor and environmental standards in the trucking industry at the Los Angeles and Long Beach ports. It emerged first as a fight over air quality but over time advanced as a local policy struggle over working conditions for about 16,000 truck drivers working at the ports. The campaign, led by labor unions, won the passage of the 2008 Clean Truck Program. The campaign had two goals. The first was to convert dirty fuel trucks to clean fuel trucks to reduce pollution. The second was to convert truck drivers' independent contractor status to employee status to enable unionization. While the environmental goal was successful, the campaign failed to meet its unionization goal. An industry preemption lawsuit invalidated the employee conversion, leading to an "environmental victory but labor setback" (p. 312). Unfortunately, this left drivers in a worse place than before the campaign began as they were "forced to bear the cost of acquiring and maintaining more expensive clean trucks" without the benefit of becoming employees (p. 443).

* * *

It is difficult to critique the complex campaigns that Cummings describes as they made significant progress in the fight for equality for low-wage workers. Despite these victories, more could have been done to bring individual community

8. See Press Release, UFCW, Inglewood Voters Say No to the Walmartization of America (June 2, 2004) <https://www.ufcw.org/press-releases/inglewood-voters-say-no-to-the-walmartization-of-america> [<https://perma.cc/5TMT-B4X8>].

members and workers to the table when it came time for decision-making and strategizing, rather than engaging community groups and advocates claiming to represent the interests of those communities. This is critical even though as Cummings notes, community members were oftentimes dispersed and uncoordinated. I have written about the importance of ensuring that community members are included in decision-making that directly impacts their lives.⁹ *An Equal Place* brings this concern to the fore as lawyers, union organizers, and others worked for the interests of worker communities.

II. CORPORATE ACCOUNTABILITY AND WORKER EMPOWERMENT

Cummings's extraordinary efforts at documenting the role of lawyers and labor activists in empowering worker and community stakeholders in "constructing the meaning of equality" (p. 446) is an important piece of work that scholars, lawyers, organizers, activists, employers, workers, and others should read.

While *An Equal Place* is excellent in its depictions of the collaborations between lawyers and labor organizing, it could have been more forceful about the role of businesses in labor abuses and worker conditions. In this sense, *An Equal Place* examines the fight for justice and equality but does not take the reader through a complete journey of what factors contribute to depressed worker conditions and particularly, the role of corporations and businesses in that process. In all the campaigns, workers are predominantly people of color and immigrants, indicating a significant power imbalance between low income immigrant workers and corporate actors. Throughout *An Equal Place*, we see the tension between the goal of profit maximization and commitment to workers. A conception of wealth that was detached from labor drove the structural dynamics in many of the industries where the campaigns took place.¹⁰

The garment industry is instructive, and I use it here to illustrate this point. In 2021, the garment industry was the second largest industry in Los Angeles with 45,000 workers who make about six dollars per hour on average.¹¹ The structure of the garment industry is such that companies are insulated from liability for labor abuses by design. As Cummings describes, the industry is based

9. See generally Atinuke O. Adediran, *Nonprofit Board Composition*, 89 OHIO STATE L.J. (forthcoming 2022).

10. See Dalia Tsuk, *Corporations Without Labor: The Politics of Progressive Corporate Law*, 151 U. PA. L. REV. 1861, 1868 (2003).

11. Paulina Velasco, *Garment Workers in America's Fashion Capital May Make Just \$6 an Hour. A New Law Could Change That*, GUARDIAN (Sept. 18, 2021 6:00 AM), <https://www.theguardian.com/us-news/2021/sep/18/california-garment-worker-protection-act-wages-pay>.

on a pyramid structure of a subcontracting system where retail companies like Wal-Mart, Target, and Gap are at the top of the subcontracting chain. These retail companies place orders with manufacturers like Tommy Hilfiger who design clothing. Manufacturers hire contractor factories, who sometimes hire subcontractors, to assemble the clothing. Contractors and subcontractors then recruit, hire, and pay garment workers at the bottom of the pyramid who cut, sew, and package clothing. Fierce competition puts most contractors in a position where they must accept low prices given to them by manufacturers or else lose the work to another factory. As such, workers are often left with no choice but to accept meager wages and subpar and sometimes unsafe working conditions because of immigration status or poverty.

Retailers and manufacturing companies fiercely resisted the antisweatshop campaigns to impose joint liability with contractors through A.B. 633. After A.B. 633 became law in 1999, “flagrant disregard of the law by many apparel companies effectively strip[ped] A.B. 633 of its power” (p. 74).¹² Retailers “frustrated the law [by] avoiding liability for . . . systemic abuse, by creating layers of subcontracting, which . . . enabled them to claim that they do not fall under the definition of ‘garment manufacturer,’ as defined in [A.B. 633], and are therefore not liable for . . . egregious wage violations.”¹³ These layers of subcontracting make it easy for corporations to turn a blind eye to practices that are clearly detrimental to workers. With no joint liability holding retailers and manufacturers equally accountable with contractors, workers are left with little to no recourse. Such flagrant disregard for the law meant that labor abuses ran rampant in the garment industry in California even years after the passage of A.B. 633.

Indeed, the antisweatshop movement produced other laws angling towards improving wage conditions for workers. In 2004, California passed Senate Bill 179 (S.B. 179) based on efforts made by the antisweatshop movement coalitions that Cummings describes. S.B. 179 permitted workers to “recover damages and attorney’s fees from a manufacturer that knows or should know that its agreement with a contractor does not include funds sufficient to allow the contractor to comply with” the law (p. 83). S.B. 179 was designed to get at manufacturer liability by “making it easier to show manufacturer control” over workers (p. 83). Despite having both A.B. 633 and

12. See also Nigel Duara, *Garment Manufacturers Worry California Bill Threatens “Golden Window” to Reshore Jobs*, ABC 10 NEWS (Aug. 23, 2021, 12:54 PM), <https://www.abc10.com/article/news/local/california/california-matters/garment-manufacturers-california-bill/103-439ef5b0-3ec8-4353-b0bb-5628bb6c8cb2> [https://perma.cc/L5T4-9E7T].

13. S. B. 62, 2021-2022 Sess. (Cal. 2021) § 1.

S.B. 179 on the books, “garment retailers and manufacturers remained generally insulated from legal liability for labor abuse” (p. 84).

For example, between 2008 and 2012, the Department of Labor’s investigation of Forever 21 found that it produced clothing in “sweatshop-like conditions.”¹⁴ When asked about its contractors’ labor practices during an interview with CNN, Forever 21 CEO Do Won Chang said that “those are actually not my employees. Those are people who work at a company that sells products to us” (p. 89). Chang went on to say that “with companies that we just buy and trade with, we try to check up on their working conditions and try to prevent any problems. . . . And, even though it was not our fault, we have tried to fix it. And now we don’t have any problems.”¹⁵ In other words, the continuation of labor abuses is not necessarily an issue for Forever 21 insofar as it monitors the working conditions of its contractors. This is consistent with Chang’s response to the Garment Worker Center (GWC) when it tried to address labor abuses with the company before turning to litigation. It is also clear that the confidential settlement between Forever 21 and the labor movement in 2004 allowed the company to continue with its labor abuses. Forever 21 evidently made little progress in addressing this issue, even after efforts by labor unions and multiple legislative efforts to impute legal liability to garment retailers and manufacturers.

Critics have pushed back on corporate self-monitoring, calling it mere “window-dressing to insulate retailers and manufacturers from charges of insensitivity and protect their images” (p. 82).¹⁶ Critics have also noted that corporate self-monitoring is ineffective because the interest of clothing companies to have clothes made cheaply runs counter to and outweighs the goal to end the exploitation of workers.¹⁷

An Equal Place could have better emphasized that retail and manufacturing companies likely designed the pyramid structure and

14. Shan Li, *Forever 21 Investigated for Vendors’ Alleged “Sweatshop” Conditions*, L.A. TIMES (Oct 29, 2012, 12:00 AM), <https://www.latimes.com/business/la-xpm-2012-oct-29-la-fi-mo-forever-21-labor-20121029-story.html> [<https://perma.cc/VA3A-2GW4>].

15. Talk Asia, *High: Interview with CEO and Founder of Forever 21, Do Won Chang*, CNN (Aug. 21, 2012, 5:30 AM), <http://edition.cnn.com/TRANSCRIPTS/1209/21/ta.01.html> [<https://perma.cc/VQ4J-384X>].

16. This issue is not limited to the garment industry. On December 11, 2010, speaking to a reporter following a protest in Daphne, Alabama, Publix supermarket’s spokesperson Dwaine Stevens replied, “[i]f there are some atrocities going on, it’s not our business,” in response to questions about farm labor exploitation in the grocery giant’s supply chain. Greg Asbed, *Worker-Driven Social Responsibility (WSR): A New Idea for a New Century*, HUFFPOST (Dec. 6, 2017), https://www.huffpost.com/entry/workerdriven-social-respo_b_5500104 [<https://perma.cc/RW3A-ZC54>].

17. *Id.*

mechanisms like self-monitoring to evade liability and exercise tremendous control over the garment production chain. Indeed, in 1990, 1997, 2002 and 2005, the relevant years which Cummings writes about in *An Equal Place*, the Business Roundtable—a consortium of the nation’s leading corporations with a combined workforce of more than twenty million employees and \$9 trillion in annual revenues¹⁸—stood for the ideal that “the interests of . . . shareholders are primarily measured in terms of economic return over time,” and the interests of other stakeholders, including workers who produce goods and services for companies, “are relevant as a derivative of the duty to stockholders.”¹⁹ In other words, “[a] corporation has as its prime purpose the long-term optimization of economic outcomes,”²⁰ echoing the age-old debate about the place of stakeholders in corporate dealings. The debate about whether and how corporations ought to consider stakeholders such as workers and members of communities in which they operate dates back to a 1930s debate between Adolph Berle and Merrick Dodd,²¹ and is still very much alive today.²² Berle described the protection of shareholders as the critical challenge facing corporate law.²³ Dodd focused on the power dynamics between corporations and stakeholders, arguing that corporations should be attentive not just to shareholders, but to other stakeholders.²⁴

Fast forward to 2019, the Business Roundtable declared that corporations share “a fundamental commitment to all . . . stakeholders,” which “starts with compensating them fairly,” fostering “dignity and respect,”²⁵ and “[s]upporting

18. *About Us*, BUS. ROUNDTABLE, <https://www.businessroundtable.org/about-us> [https://perma.cc/G62Y-CHLF].

19. Business Roundtable, *Corporate Governance and American Competitiveness March 1990*, 46 BUS. LAWYER 241, 244 (1990); BUS. ROUNDTABLE, STATEMENT ON CORPORATE GOVERNANCE 3 (1997).

20. *Id.* at 243.

21. Ronald Chen & Jon Hanson, *The Illusion of Law: The Legitimizing Schemas of Modern Policy and Corporate Law*, 103 MICH. L. REV. 1, 33–35 (2004).

22. See generally Jill E. Fisch & Steven Davidoff Solomon, *Should Corporations Have a Purpose?*, 99 TEX. L. REV. 1309 (2021); Tom C.W. Lin, *Incorporating Social Activism*, 98 B.U. L. REV. 1535 (2018); Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247 (1999); David Millon, *New Game Plan or Business As Usual? A Critique of the Team Production Model of Corporate Law*, 86 VA. L. REV. 1001 (2000); Ronald M. Green, *Shareholders as Stakeholders: Changing Metaphors of Corporate Governance*, 50 WASH. & LEE L. REV. 1409 (1993); Oliver Williamson, *Corporate Governance*, 93 YALE L.J. 1197, 1197, 1200 (1984).

23. A.A. Berle, Jr., *Corporate Powers as Powers in Trust*, 44 HARV. L. REV. 1049 (1931).

24. E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145 (1932).

25. BUS. ROUNDTABLE, STATEMENT ON THE PURPOSE OF A CORPORATION (2019). In its 2016 Principles of Corporate Governance, the Business Roundtable stated that it is “recognized . . . as an authoritative voice on matters affecting American business corporations . . .” BUS. ROUNDTABLE, PRINCIPLES OF CORPORATE GOVERNANCE 2016, 1 (2016). For further

the communities in which [companies] work.”²⁶ Having the power to evade liability also means having the power to improve working conditions for workers. The power that companies wield in the ability to change the conditions of workers for the better is virtually missing from Cummings’s account. The focus on labor organizing and collective bargaining is therefore incomplete since organizing and collective bargaining tend to be in direct response to corporate power.

While some scholars have questioned whether the 2019 Business Roundtable declaration would drastically shift companies’ ideals beyond wealth maximization,²⁷ it remains to be seen whether major societal shifts, including the COVID-19 pandemic and the Great Resignation, would force companies to fully engage with protecting the interests of workers. One example of a potential shift is the influence of COVID-19 on worsening conditions for garment workers and the passage of California’s Garment Worker Protection Act, or S.B. 62, in response to those conditions. When the COVID-19 pandemic began, many factories stopped operations without paying workers for the work they had already done, leaving workers to struggle with how to make ends meet.²⁸

S.B. 62 became law on September 27, 2021.²⁹ S.B. 62 makes California the first state to require an hourly minimum wage for garment workers, eliminating the piece rate that paid workers by the number of units produced. With the piece rate, workers earned as little as \$2.68 per hour or \$400 to \$450 a week, working almost sixty hours a week.³⁰ Under the new law, garment workers will earn fourteen dollars per hour.

S.B. 62 also creates joint liability for retailers and employers, seeking to revive the weakly enforced A.B. 633 and S.B. 179 by expanding the definition of a garment

discussions about stakeholder interests, see Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. REV. 733 (2005).

26. BUS. ROUNDTABLE (2019), *supra* note 25.

27. See e.g., Dorothy S. Lund, *Corporate Finance for Social Good*, 121 COLUM. L. REV. 1617, 1620 (2021). BUS. ROUNDTABLE, *supra* note 24. CEOs from 181 companies, representing some of America’s largest companies, signed the declaration. Some scholars have argued that the declaration does not drastically shift companies’ purpose beyond shareholder wealth maximization.

28. Emily Chan, “We’re in a Very Grave Situation”: How the Pandemic Has Affected Garment Workers Around the World, *VOGUE* (Mar. 25, 2021), <https://www.vogue.com/article/how-pandemic-affected-garment-workers-around-the-world>

29. SB-62 Employment: Garment Manufacturing, Chap 329, Sec. 4 2671, Sep 27, 2021, https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB62 [<https://perma.cc/5BGV-HN5F>]; see also Suhauna Hussain, *Gov. Newsom Signs Bill Expanding Protections for Garment Workers*, L.A. TIMES (Sept. 27, 2021, 3:37 PM), <https://www.latimes.com/business/story/2021-09-27/garment-workers-bill-sb62-signed-by-newsom> [<https://perma.cc/UY9E-7DU5>].

30. Chan, *supra* note 28.

manufacturer and extending the scope of liability for wage and hour violations to retailers. Under S.B. 62, “any person contracting for the performance of garment manufacturing” is jointly and severally liable with “any manufacturer and contractor for the full number of unpaid wages, and any other compensation.”³¹

Opponents of S.B. 62 argue that rather than improve conditions for workers, the law is likely to put pressure on garment manufacturers to further outsource garment manufacturing.³² Proponents of the law certainly have reason to be concerned. The number of garment workers in Los Angeles shrunk from 98,000 in 1996 to 45,000 in 2021 (p. 36). Most of the businesses outsourced their labor to Asian countries—particularly China—and Latin American countries—particularly Mexico (p. 36).

At the same time, there is a possibility that the COVID-19 pandemic has caused supply chain disruptions that may bring outsourced garment manufacturing back to the United States.³³ China and other countries and shippers have experienced disruptions in producing and shipping garments.³⁴ In addition to the COVID-19 pandemic, worker activism is becoming more prevalent with workers in different sectors protesting low wages.³⁵ The Great Resignation is empowering low-wage workers in many industries to demand higher wages or quit their jobs if employees fail to respond.³⁶ Sectors that have seen the biggest increases in workers quitting are retail and manufacturing.³⁷

This trend may give garment workers an upper hand in a manner that we have never seen before. While it is unlikely that undocumented immigrant

31. See Hussain, *supra* note 29.

32. Duara, *supra* note 12.

33. *Id.*

34. Antonella Teodoro & Luisa Rodriguez, *Textile and Garment Supply Chains in Times of COVID-19: Challenges for Developing Countries*, U.N. CONF. ON TRADE & DEV. (May 29, 2020), <https://unctad.org/es/node/3024> [<https://perma.cc/RQ3H-LUZ6>].

35. See e.g., *Hundreds Of Janitors Walk Off Job In Strike*, CLEANLINK (Mar. 30, 2021), <https://www.cleanlink.com/news/article/Hundreds-Of-Janitors-Walk-Off-Job-In-Strike-26925> [<https://perma.cc/TT6X-H7JH>] (describing a strike led by more than 700 janitors in San Francisco who protested low wages and for worker’s rights).

36. See e.g., Megan Leonhardt, *Over 4 Million Americans Have Quit Their Jobs for 6 Months in a Row as the Great Resignation Rages on*, FORTUNE (Feb. 1, 2022, 7:58 AM), <https://fortune.com/2022/02/01/great-resignation-over-4-million-americans-quit-jobs-six-consecutive-months/> [<https://perma.cc/F8N9-YY44>]; Michelle Fox, *The “Great Resignation” Is More of a “Great Reckoning,” Led by Low-Wage and Minority Workers*, CNBC (Nov 24, 2021), <https://www.cnbc.com/2021/11/24/the-great-resignation-is-more-of-a-great-reckoning.html> (last visited on Feb. 11, 2021); Justin Fox, *The Great Resignation Is Great for Low-Paid Workers*, BLOOMBERG OP. (Nov. 18, 2021, 3:00 AM), <https://www.bloomberg.com/opinion/articles/2021-11-18/the-great-resignation-is-great-for-low-paid-workers> [<https://perma.cc/2Y8E-P8HV>].

37. Leonhardt, *supra* note 36.

workers, who make up the majority of garment workers in Los Angeles,³⁸ will quit their jobs if employers fail to respond, with the assistance of GWC and other worker rights organizations, garment workers can make demands on companies to comply with S.B. 62. Unlike its predecessors, S.B. 62 was passed under societal conditions that are likely to push companies towards compliance to improve wages and working conditions for low-wage workers.

CONCLUSION

In *An Equal Place*, Cummings renders a powerful historical account of five campaigns led by lawyers, labor activists and organizers, unions, and workers in the struggle for equality for low-wage workers in the garment, day labor, retail, grocery, and trucking industries in Los Angeles between the 1990s and 2008. Each of the campaigns involved a range of actors and unique challenges. *An Equal Place* advances scholarly and practical debates about labor, organizing, public interest law and its communities, workers, and corporate stakeholders. Law and social movement scholars, lawyers, labor organizers, immigrants' rights groups, other public interest constituents, and workers in any industry would benefit from *An Equal Place's* detailed analysis of how lawyers, unions, and workers worked together for labor equity, including the successes and limitations of the movements.

An Equal Place could have done more to address the role of corporations and businesses in designing industries to achieve the goal of profit maximization at the expense of low-wage workers, in addition to its stunning history of Los Angeles worker movements. The second part of this Review uses the garment industry to show how power imbalances between corporate actors and workers can create tension between profit maximization and corporate commitments to workers. The Review highlights how corporate retailers and manufacturers constructed the pyramid structure to evade liability in the garment industry and how they also have the power to improve worker conditions particularly in light of the COVID-19 pandemic and the Great Resignation. These social pressures, combined with the organizing efforts described in *An Equal Place*, are cause for optimism in the struggle for worker's rights.

38. Michael Sainato, "We Work Non-Stop": LA Garment Workers Toil for Top Brands and Earn Paltry Rate, *GUARDIAN* (Aug. 17, 2021, 2:00 AM), <https://www.theguardian.com/us-news/2021/aug/17/la-garment-workers-minimum-wage-factory>.