

THE POCKETBOOK NEXT TIME: FROM CIVIL RIGHTS TO MARKET POWER IN THE LATINX COMMUNITY

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The United States is undergoing a demographic transformation. Nearly one in five Americans already is Latinx, and the United States Census Bureau projects that by 2060, nearly one in three will be. Latinx will substantially outnumber every other historically underrepresented racial and ethnic minority group, and non-Hispanic whites no longer will be a majority. Those changes have unsettled traditional approaches to full inclusion.

Civil rights activists have suffered numerous setbacks, and the burgeoning Latinx population is searching for other paths to belonging. Some leaders have turned to growing Latinx market power to demand recognition and equal opportunity. These efforts rely heavily on aggregate contributions that Latinx make to the labor force, consumption of goods and services, and entrepreneurship. Advocates use these statistics to show that Latinx are vital to continued prosperity for all Americans.

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Aggregate statistics do not grapple with the internal heterogeneity of the Latinx population, particularly along lines of class and immigration status. Nor do the numbers address the ways in which the law itself constrains market participation. Earlier movements to promote economic empowerment are instructive. Marcus Garvey's Universal Negro Improvement Association (UNIA), though not a Latinx movement, mobilized working-class Black Americans to advance race pride and an enterprising spirit. That initiative foundered in the face of two implacable forces: opposition from middle-class Black leaders committed to a civil rights agenda and a capitalist system that made little room for entrepreneurship by poor people. Cesar Chavez's labor organizing for the United Farm Workers (UFW) is the most famous mobilization to advance Latinx economic interests, and his movement continues to influence activists to this day. The UFW's rise and fall reveal how disputes over the treatment of the undocumented and legal battles over union tactics divided the membership and drained precious resources.

These lessons of history reveal the limits of both market aggregation and traditional civil rights strategies in addressing contemporary Latinx labor force participation, political consumerism, and entrepreneurship. Aggregation conceals distinct challenges that Latinx face depending on whether they are working-class or middle-class, undocumented or legally present. For working-class and undocumented Latinx, the most essential reforms depart from a civil rights framework, requiring structural investments in human capital and comprehensive immigration reform. For middle-class and legally present Latinx, civil rights can be a useful tool in fighting discrimination on the job and in lending markets. However, new approaches will be needed to address exclusionary social networks, which create barriers to advancement at work and limit access to capital. To leverage growing numbers, Latinx therefore must forge innovative strategies that recognize the intricate interdependency of the civic square and the marketplace.

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INTRODUCTION

In recent years, leading members of the Latinx business community have been calling for a new path to full integration into American life,

one that relies more on market power than on civil rights.¹ According to these leaders, much of the real growth in productivity in the United States reflects Latinx contributions to the economy.² As a result, all Americans are dependent on Latinx as a source of continued economic expansion and prosperity. Because of this critical role, these leaders believe Latinx will eventually assume their rightful place in our nation's life, not through the civic square but through the free market.³ There is a certain logic to these demands for Latinx recognition. After all, the need for workers, especially in low-wage jobs, has fueled much of Latinx migration to the United States.⁴ Recent calls for economic respect and empowerment do not, however, single out low-wage labor markets or reckon with income and wealth inequality. On the contrary, these nascent efforts typically aggregate the impact that all Latinx have

1. See Werner Schink & David Hayes-Bautista, Latino Donor Collaborative, *Latino Gross Domestic Product (GDP) Report: Quantifying the Impact of American Hispanic Economic Growth*, AM. COUNCIL FOR CAP. FORMATION 4, 39 (June 28, 2017), <https://accf.org/wp-content/uploads/2017/08/Latino-GDP-Report-6.28.2017.pdf> [<https://web.archive.org/web/20211110184539/https://accf.org/wp-content/uploads/2017/08/Latino-GDP-Report-6.28.2017.pdf>]; Jeffrey A. Eisenach & Robert Kulick, Latino Donor Collaborative, *The Latino Contribution to U.S. Economic Dynamism*, NERA ECON. CONSULTING 1–2, 31 (Mar. 2019), https://www.nera.com/content/dam/nera/upload/LDC_Prosperty_Final_022819.pdf [<https://perma.cc/JY62-W6HT>]; Dan Hamilton et al., *2020 LDC U.S. Latino GDP Report: Quantifying the New American Economy*, LATINO DONOR COLLABORATIVE 4, 5 (Sept. 24, 2020), <https://latinodonorcollaborative.org/original-research/2020-ldc-u-s-latino-gdp-report> [<https://perma.cc/BHP5-HLMY>]; Sarah Alvarez, *Unleashing Latino-Owned Business Potential*, ASPEN INST. 3, 5 (2017), https://www.aspeninstitute.org/wp-content/uploads/2017/11/Unleashing-Latino-owned-Business-Potential_Final.pdf [<https://perma.cc/H8MR-TXDZ>].

2. Schink & Hayes-Bautista, *supra* note 1, at 6; Eisenach & Kulick, *supra* note 1, at 2–3, 11, 13–15; Hamilton et al., *supra* note 1, at 8, 17; Alvarez, *supra* note 1, at 7; *see also From the Ballot Box to the Grocery Store: A 2016 Perspective on Growing Hispanic Influence in America*, NIELSEN 3, 11 (2016), <https://www.nielsen.com/us/en/insights/report/2016/from-the-ballot-box-to-the-grocery-store-hispanic-influence-in-america/#> [<https://perma.cc/QT5A-BUXQ>] (noting that “[i]n 2015, Hispanics controlled \$1.3 trillion in buying power, an amount larger than the GDP of Australia or Spain” and that growth in their buying power was over twice as great as that of the non-Latinx population due to both population growth and growth in household incomes).

3. See Schink & Hayes-Bautista, *supra* note 1, at 4, 8; Eisenach & Kulick, *supra* note 1, at 28–29, 31; Hamilton et al., *supra* note 1, at 17; Alvarez, *supra* note 1, at 7–8.

4. ARMANDO IBARRA ET AL., *THE LATINO QUESTION: POLITICS, LABOURING CLASSES AND THE NEXT LEFT* 4–5, 10–11, 25–26 (2018).

on the economy, and much of the case for recognition rests at least as much on entrepreneurship as on labor force contributions.⁵

The strategy of aggregation perhaps should come as no surprise, given its well-developed roots in both the civil rights and business worlds. The addition of the Hispanic-origin classification to the U.S. Census was, after all, a product of lobbying by both social justice activists and Spanish-language media executives.⁶ While activists sought recognition to bolster an anti-discrimination agenda, executives wanted acknowledgment of their market share to boost advertising revenue.⁷

When Latinx began to push for official recognition of the Hispanic-origin classification in the 1960s, they were a small fraction of the U.S. population and substantially outnumbered by Black Americans.⁸ Today, however, that demographic picture has changed dramatically. Latinx already make up nearly 19% of the U.S. population, and according to U.S. Census Bureau projections, that number will jump to nearly 28% by 2060.⁹ When Latinx reach this milestone, non-Hispanic whites are projected to account for 43.6% of the population; Black Americans, 14.3%; and Asian Americans, 9.3%.¹⁰ This kind of demographic transformation is unprecedented in American history.

5. See *infra* Part II.

6. G. CRISTINA MORA, MAKING HISPANICS: HOW ACTIVISTS, BUREAUCRATS, AND MEDIA CONSTRUCTED A NEW AMERICAN 155–56 (2014).

7. *Id.* (describing how Latinx advocates and Spanish-language media executives used a strategy of aggregation to argue for a Hispanic-origin category on the U.S. Census that would elevate their political voices and market power respectively).

8. *Id.* at 23–25, 51, 84–104, 120 (describing efforts to add the Hispanic-origin classification to the U.S. Census beginning in the late 1960s); Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 STAN. L. REV. 957, 958–59 (1995) (noting that during the 1960s and 1970s, about 10% of Americans identified as Black, and Latinx constituted an estimated 3.9% of the population).

9. *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, U.S. CENSUS BUREAU (Aug. 12, 2021), [census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html](https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html) [https://perma.cc/8X6G-M9Q2] (illustrating that 18.7% of the American population is of Hispanic origin); *Hispanic Population to Reach 111 Million by 2060*, U.S. CENSUS BUREAU (Oct. 9, 2018), <https://www.census.gov/library/visualizations/2018/comm/hispanic-projected-pop.html> [https://perma.cc/RG74-UHCJ].

10. SANDRA L. COLBY & JENNIFER M. ORTMAN, U.S. CENSUS BUREAU, P25-1143, PROJECTIONS OF THE SIZE AND COMPOSITION OF THE U.S. POPULATION: 2014 TO 2060, 9 (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf> [https://perma.cc/5NLF-G332].

Never before has a historically underrepresented racial or ethnic group been expected to make up such a large share of “We the People,” nor have non-Hispanic whites ever been projected to become a minority population.¹¹

In the push to create the Hispanic-origin classification, an early coalition of civil rights reformers and media executives obscured some significant differences in how aggregation works for these two interest groups. Those distinctions have become more evident with the Latinx population’s rapid growth. A civil rights model turns on both aggregation and disaggregation. Members are aggregated to form an identifiable constituency but are disaggregated to form a discrete and insular minority.¹² Activists and government officials alike make normative judgments in setting the boundaries of racial and ethnic categories. Aggregation can express solidarity, while disaggregation signals exceptionalism.¹³ As the Latinx population expands, normative claims about the category have come under increasing scrutiny. Latinx have grown more internally diverse, casting doubt on the cohesiveness of the group, and the population is achieving formidable numbers, raising questions about whether it is still discrete and insular.¹⁴ Dramatic population growth does not pose similar problems for aggregation under a business model. For those who argue that the marketplace is the path to full belonging, cumulating the impact of Latinx economic activity remains an unqualifiedly powerful tool.

11. RICHARD ALBA, *THE GREAT DEMOGRAPHIC ILLUSION: MAJORITY, MINORITY, AND THE EXPANDING AMERICAN MAINSTREAM* 40 (2020) (describing the “momentous transition” of “whites from a numerical majority to a minority”).

12. This dichotomy can be understood as the civil rights version of “lumping” and “splitting.” See Eviatar Zerubavel, *Lumping and Splitting: Notes on Social Classification*, 11 *SOCIO. F.* 421, 422–28 (1996).

13. See Constance Grady, *Why the Term “BIPOC” Is so Complicated, Explained by Linguists*, *VOX* (June 30, 2021, 9:10 AM), <https://www.vox.com/2020/6/30/21300294/bipoc-what-does-it-mean-critical-race-linguistics-jonathan-rosa-deandra-miles-hercules> [<https://perma.cc/EK4B-DA4X>].

14. MORA, *supra* note 6, at 156, 169 (noting the ambiguity inherent in the Hispanic-origin classification from the outset and recognizing the rising popularity of panethnicity even as “the category still seems ambiguous to many”); Cristina M. Rodríguez, *Latinos: Discrete and Insular No More*, 12 *HARV. LATINO L. REV.* 41, 42–45, 47–48 (2009).

Rising numbers reflect increased influence without triggering any concerns about whether Latinx should be treated as a minority.¹⁵

Today's calls for Latinx economic recognition openly diverge from civil rights strategies. As I explain in the first Part of this Article, there are several reasons for the shift besides sheer population growth. Even in the 1960s and 1970s, when Latinx were undeniably a minority and the civil rights movement was in its heyday, advocates had trouble gaining recognition for unique concerns related to linguistic and cultural differences.¹⁶ Then, beginning in the 1980s, civil rights activists faced numerous setbacks, as federal officials increasingly embraced a neoliberal philosophy that emphasized personal responsibility. That ideological turn, with its professed faith in individual choice and free markets, fueled heavy Latinx migration to meet workplace demands while entrenching profound inequalities in wealth and income.¹⁷ For many recent Latinx immigrants, virtue became synonymous with a work ethic, born of the neoliberal gospel of self-reliance and upward mobility that motivated much of their migration in the first place.¹⁸ For these workers and their families, immigration status was central to a landscape of opportunity in the United States, displacing a focus on civil rights.¹⁹

15. ARLENE DÁVILA, *LATINOS INC.: THE MARKETING AND MAKING OF A PEOPLE* 1–3, 8–9, 12–13 (2012) (describing the strategic and advantageous deployment of a depoliticized Latinx identity in media marketing).

16. See *infra* notes 57–59 and accompanying text.

17. See *infra* notes 50–53, 63 and accompanying text.

18. Mark Hugo Lopez et al., *Latinos Are More Likely to Believe in the American Dream, but Most Say It Is Hard to Achieve*, PEW RSCH. CTR. (Sept. 11, 2018), <https://www.pewresearch.org/fact-tank/2018/09/11/latinos-are-more-likely-to-believe-in-the-american-dream-but-most-say-it-is-hard-to-achieve> [<https://perma.cc/94PW-7XYF>] (finding that Latinx are more likely than the general public in the United States to believe in the American dream, that is “that hard work will pay off and that each successive generation is better off than the one before it”; however, that optimism fades as Latinx grow more distant from their immigrant roots). See generally MARÍA G. RENDÓN, *STAGNANT DREAMERS: HOW THE INNER CITY SHAPES THE INTEGRATION OF SECOND-GENERATION LATINOS* 190–92 (2019) (describing how working-class Latinx in heavily immigrant communities embraced ideals of meritocracy and the work ethic that would allow them to achieve the American dream).

19. See Leisy J. Abrego, *Relational Legal Consciousness of U.S. Citizenship: Privilege, Responsibility, Guilt, and Love in Latino Mixed-Status Families*, 53 L. & SOC'Y REV. 641, 643 (2019) (finding that undocumented immigrants fear being detained and deported, and thus, it prevents them from making civil rights claims, such as filing work-related claims or participating in collective demands).

In truth, the neoliberal impulse to import cheap immigrant labor has always been a Faustian bargain, one that ultimately pits economic advantage against political cohesion. To stave off debates over demographic change and our shared national identity, Congress capped legal migration, which inevitably resulted in large numbers of workers arriving without proper documents.²⁰ That policy allowed Latinx to meet the American economy's need for low-wage labor without substantially altering the complexion of the nation's citizenry—at least in the short term.²¹ Quite predictably, the undocumented population swelled in the intervening decades, even as Congress remained unwilling to enact comprehensive immigration reform.²² Yet, over the long term, policy inertia has not been a safeguard against a reckoning with the nation's shifting racial and ethnic make-up. Any firewall between the workforce and the polity has been breached by a new generation of Latinx youth, many of them birthright citizens and all of them socialized into America's norms and ideals.²³

In the next Part of the Article, I explore how recent calls for Latinx economic empowerment rely on aggregation to elide the internal

20. IBARRA ET AL., *supra* note 4, at 25–26.

21. Nicholas P. De Genova, *Migrant "Illegality" and Deportability in Everyday Life*, 31 ANN. REV. ANTHROPOLOGY 419, 432–36 (2002).

22. Mark Hugo Lopez et al., *Key Facts About the Changing U.S. Unauthorized Immigrant Population*, PEW RSCH. CTR. (Apr. 13, 2021), <https://www.pewresearch.org/fact-tank/2021/04/13/key-facts-about-the-changing-u-s-unauthorized-immigrant-population> [<https://perma.cc/9NCR-ZLB9>] (describing rapid growth in the unauthorized immigrant population between 1990 and 2007, followed by a sharp decline for two years, and stabilization in 2017); *Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065: Views of Immigration's Impact on U.S. Society Mixed*, PEW RSCH. CTR. 18–22 (Sept. 28, 2015), https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2015/09/2015-09-28_modern-immigration-wave_REPORT.pdf [<https://perma.cc/YP4N-ZQPX>] (describing lack of any comprehensive immigration reform during this period of growth in the undocumented population). *See generally* HIROSHI MOTOMURA, IMMIGRATION OUTSIDE THE LAW 49 (2014) (“Congress can enact no more than a system that looks good on paper but is designed to acquiesce in significant levels of noncompliance.”).

23. *See* Abrego, *supra* note 19, at 657–58 (describing how U.S.-born children of undocumented immigrants come to resist the inequalities created by the legal system by defying stereotypes such as low academic performance); Genevieve Negrón-Gonzales, *Undocumented, Unafraid and Unapologetic: Re-articulatory Practices and Migrant Youth "Illegality,"* 12 LATINO STUD. 259, 268–70 (2014) (describing how undocumented students become acculturated to U.S. norms and practices, including civil rights activism).

heterogeneity of this community, including many of the intense flashpoints surrounding immigration and American identity. Business leaders have treated all forms of economic participation as a good without interrogating the situation of low-wage Latinx workers, many of whom are undocumented.²⁴ By sidestepping these issues, proponents of an economic path to full inclusion treat aggregation as an unmitigated virtue.²⁵ Business leaders characterize the growing Latinx workforce as a source of prosperity for all Americans and eschew any efforts to mobilize to get a bigger share of the economic pie. In this way, those who make the business case for Latinx integration remain a benign voice for free enterprise and avoid the deep divisions that economic inequality brings to the Latinx community as well as the general population.²⁶

In the third Part of the Article, I review powerful lessons from history, which show that the quest for economic inclusion is not likely a straightforward matter of aggregation. Two previous initiatives to advance economic participation are particularly instructive: Marcus Garvey's Universal Negro Improvement Association (UNIA) and Cesar Chavez's United Farm Workers (UFW). During the period following World War I, Garvey, a Caribbean immigrant, called for a pan-African movement to advance economic self-reliance and self-determination among Black Americans.²⁷ In contrast to leaders of the National Association for the Advancement of Colored People (NAACP), he rejected a civil rights campaign that depended heavily on a political process dominated by whites. In fact, Garvey considered the NAACP's initiatives antithetical to genuine Black autonomy, and he supported the creation of Black enterprises as a way to empower the community.²⁸ That vision inspired the largest social movement among Black Americans ever seen in the United States, but the effort came to naught when federal officials imprisoned Garvey and ultimately deported him.²⁹ Garvey's defeat marked a significant turning point in addressing inequality in the United States. Advocacy would focus on a domestic paradigm of civil rights, while largely ignoring the imperatives of a global economy.

24. *See infra* Part II.

25. *See infra* notes 79–82 and accompanying text.

26. *See infra* notes 82, 106 and accompanying text.

27. *See infra* notes 127–32 and accompanying text.

28. *See infra* notes 140–42 and accompanying text.

29. *See infra* notes 127, 170–71 and accompanying text.

By the 1960s and 1970s, when Cesar Chavez mobilized farmworkers, the dilemma of a transnational labor force figured prominently in his organizing efforts. In some ways, Chavez's movement was a study in contradictions. He melded social justice with labor organizing, even as he refused to define the UFW in strictly racial and ethnic terms.³⁰ Though Chavez preached compassion, he struggled to deal with the impact of undocumented immigration on his fledgling movement.³¹ Even as Chavez characterized the UFW as labor organizing pure and simple, he departed substantially from a model of business unionism, looking beyond specific workplaces to think broadly about America's agricultural industry as part of a global market.³² Reflecting that wider perspective, UFW organizers deployed innovative tactics like marches and boycotts to bring powerful growers to the bargaining table.³³

In the final Part of the Article, I bring the lessons of history to bear on contemporary calls for economic participation as a path to full inclusion in the United States. Both Garvey and Chavez addressed the material conditions of the most severely disadvantaged, and today's efforts could benefit from a similar sensitivity to dimensions like class and immigration status. That awareness would diversify the interventions needed to ensure meaningful access to market participation for all Latinx, whether the focus is labor, consumption, or entrepreneurship. With respect to labor, for example, disciples of Cesar Chavez have inspired modern-day organizing efforts among immigrant workers.³⁴ Over time, labor unions have come to appreciate the benefits of reaching out to the immigrant workforce, and now immigrants are helping to revitalize, though not wholly resuscitate, labor unions.³⁵ These gains have been modest, however, and much of the community's future success depends on the intergenerational mobility of Latinx youth. That mobility is far from assured, and even when Latinx join the ranks of the middle class, they may encounter barriers to advancement in the workplace. Traditional civil rights strategies can reach only some of these obstacles to participation.³⁶

30. See *infra* notes 174–76 and accompanying text.

31. See *infra* notes 177–85 and accompanying text.

32. See *infra* notes 186–91 and accompanying text.

33. See *infra* notes 199–203 and accompanying text.

34. See *infra* notes 241–44 and accompanying text.

35. Ruth Milkman, *Introduction* to *NEW LABOR IN NEW YORK: PRECARIOUS WORKERS AND THE FUTURE OF THE LABOR MOVEMENT* 7, 9 (Ruth Milkman & Ed Ott eds., 2014).

36. See *infra* Section IV.A.3.

As for consumption, Latinx activists have built on Chavez's insight that consumers can be powerful allies in the quest for worker dignity—but only sporadically. Immigrants have orchestrated media campaigns and boycotts to highlight their contributions to the economy and demand reforms to labor and immigration policy.³⁷ Activists combine these tactics with civil rights strategies like marches and rallies that challenge systemic inequality.³⁸ So far, however, Latinx have not consistently tapped into political consumerism, an increasingly popular kind of lifestyle politics that allows individuals to vote with their dollars. The limited use of consumerism is somewhat surprising, given the Latinx population's growing market power and the increasing popularity of this strategy. Perhaps that lack of consumer mobilization reflects larger problems in identifying sustained reform agendas that inspire people to alter their market behavior.³⁹

In the spirit of Garveyism, there also has been increasing attention to the rise of Latinx entrepreneurship. Not all Latinx start businesses as a voluntary act of self-empowerment. In some instances, economically vulnerable Latinx are entrepreneurs of necessity because they lack opportunities in the conventional job market.⁴⁰ Regardless of whether Latinx face daunting prospects or relatively propitious circumstances, lack of access to capital is a serious impediment to launching a successful business. Members of the Latinx working class have few ways to draw on traditional sources of capital, and even middle-class Latinx do not have the same ability to attract capital as their white counterparts.⁴¹ As a result, although Latinx are disproportionately likely to be entrepreneurs, they often must self-finance their businesses or turn to family and friends for funds.⁴² Moving beyond aggregation reveals how limited access to capital makes Latinx enterprises precarious despite a widespread spirit of entrepreneurship. Here, too, traditional civil rights strategies cannot

37. See *infra* notes 310–15 and accompanying text.

38. See JONATHAN ROSENBLUM, *BEYOND \$15: IMMIGRANT WORKERS, FAITH ACTIVISTS, AND THE REVIVAL OF THE LABOR MOVEMENT* 190 (2017) (noting that activists organized strikes, sit-ins, and direct legal action to demand new laws protecting their rights to organize).

39. See *infra* Section IV.B.3.

40. See *infra* notes 345, 348–55 and accompanying text.

41. See *infra* notes 365–70, 388–91 and accompanying text.

42. See *infra* notes 365, 386 and accompanying text.

address all the problems, which instead require new ways to open privileged social networks that allocate opportunity.⁴³

The newfound market power of the Latinx community may well offer unprecedented opportunities to demand full inclusion in the United States. That said, it is also true that simple aggregation of labor force contributions, buying power, or entrepreneurial activity will not be enough to leverage full-bodied reform. Instead, advocates must devise strategies that address the varied challenges facing Latinx with different employment opportunities, household income and wealth, and access to capital. Otherwise, aggregation will conceal the ways in which the civic square and the market are integrally connected. Especially for the most financially vulnerable, government policies—for instance, in the area of immigration—can dramatically expand or contract opportunities to work or start a business. Adding up the outcomes of economic activity can draw attention to growing Latinx market participation, but without innovations that promote equal opportunity, free enterprise alone will not be the foundation for a path to full belonging.

I. THE LATINX POPULATION'S UNCERTAIN PATH TO FULL INCLUSION THROUGH THE CIVIC SQUARE

In the wake of World War II, there was great optimism about the States' ability to rectify persistent patterns of inequality, particularly those resulting from racial discrimination. At the time, Black Americans accounted for about one in ten Americans and represented the overwhelming majority of the non-white population.⁴⁴ To combat patterns of exclusion, advocates resorted to a strategy of adversarial legalism, turning to the courts to seek remedies for racial segregation in education, employment, services, facilities, and more.⁴⁵ Early on,

43. See *infra* text accompanying notes 398–99.

44. See Ramirez, *supra* note 8, at 958 (noting that Black Americans constituted approximately 10% of the population); U.S. DEP'T OF COM., BUREAU OF THE CENSUS, (PC(A2)-1, 1960 CENSUS OF THE POPULATION: GENERAL POPULATION CHARACTERISTICS 4 tbl.1 (1961), <https://www2.census.gov/library/publications/decennial/1960/population-pc-a2/15611114.pdf> [<https://perma.cc/AML6-9TX9>].

45. See BENJAMIN MARQUEZ, THE POLITICS OF PATRONAGE: LAWYERS, PHILANTHROPY, AND THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND 6–12, 114–16 (2021) (describing how the Ford Foundation used its grants to steer Mexican-American advocacy to legal reform, a dynamic also seen with the National Association for the Advancement of Colored People's Legal Defense Fund); ROBERT KAGAN,

these efforts were met with remarkable success, most notably when the U.S. Supreme Court struck down state-mandated segregation in the public schools as “inherently unequal” in *Brown v. Board of Education*.⁴⁶ Following that decision, there was an increase in both public interest litigation and civil rights activism. Lawyers sought to expand the Court’s ruling while activists demanded administrative and congressional action to make the Court’s promise of desegregation real.⁴⁷ In the 1960s and early 1970s, attorneys in public school desegregation lawsuits never lost a case before the Supreme Court,⁴⁸ and the arc of reform through the civic square seemed to “bend[] toward justice.”⁴⁹

As the 1970s drew to a close, however, the Reagan revolution ushered in a retreat from a vigorous government role in addressing inequality, instead emphasizing the primacy of personal responsibility. Under a neoliberal philosophy, the government was not obligated to save people from their own folly; instead, individuals needed to use their freedom wisely.⁵⁰ This shift posed challenges for those who sought government intervention on behalf of discrete and insular minorities due to lapses in a majoritarian political process.⁵¹ Under this

ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW 10 (2d ed. 2019) (defining adversarial legalism as “a method of policy-making, policy-implementation, and dispute resolution”).

46. 347 U.S. 483 (1954).

47. See DOUG MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCE 1930–1970* 111 (2d ed. 1982); see also TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT* 151–52, 155, 174 (2012) (detailing how activists relied on direct action, media, community education, the threat of boycott, and litigation during the 1960s civil rights movement to advance their agenda for equal rights). But see Michael J. Klarman, Brown, *Racial Change, and the Civil Rights Movement*, 80 VA. L. REV. 7, 79–80, 141–50 (1994) (questioning the conventional view that *Brown* directly catalyzed civil rights mobilization; instead, the decision stiffened Southern resistance and thus indirectly accelerated demands for equality).

48. See MARK YUDOF ET AL., *EDUCATIONAL POLICY AND THE LAW* 432–33 (5th ed. 2012).

49. See Dr. Martin Luther King, Jr., *Remaining Awake Through a Great Revolution*, Speech at the National Cathedral, March 31, 1968 (“[T]he arc of the moral universe is long but it bends toward justice.”).

50. See Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L.J. 251, 251–52 (2010) (noting that “profound inequalities are tolerated—even justified—by reference to individual responsibility and the workings of an asserted meritocracy within the free market”).

51. JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 148–61 (1980).

neoliberal regime, official inaction became the presumptively desirable course of action, rather than a shortcoming.⁵² As a result, market transactions and private decision making ideally were left undisturbed.⁵³ The jurisprudence on race reflected this diminishing conception of political obligation. Courts increasingly confined themselves to rectifying harms motivated by racial animus, while ignoring entrenched patterns and practices that perpetuated inequality even in the absence of hostile intent.⁵⁴ Consequently, structural inequality and systemic racism remained largely beyond the reach of judicial review and political action.⁵⁵

The Latinx population began to grow significantly from the 1970s through the 1990s, just as neoliberalism was taking hold and the Supreme Court's racial jurisprudence was becoming increasingly constrained.⁵⁶ Even when the population was small and civil rights was at its apex, the place of Latinx in this paradigm was the subject of debate. For one thing, many Latinx self-identified as white, complicating the application of anti-discrimination protections.⁵⁷ The U.S. Supreme Court ultimately concluded that Latinx, whatever their racial designation, should be entitled to constitutional protection

52. *Id.*

53. *Id.*

54. *See, e.g.,* *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) (holding that “[t]he way to stop discriminating on the basis of race is to stop discriminating on the basis of race” in striking down voluntary school desegregation plans).

55. *See* Martha A. Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 *YALE J.L. & FEMINISM* 1, 3–4 (2008) (a formal model of equality is not effective in “address[ing] and correct[ing] the disparities in economic and social wellbeing among various groups in our society”).

56. *See* BUREAU OF THE CENSUS, *WE THE AMERICAN . . . HISPANICS* 2 (1993), <https://www.census.gov/history/pdf/we-the-americans-hispanics-092020.pdf> [<https://perma.cc/VZ8L-E75E>] (describing how the Latinx population grew by 61% between 1970 and 1980 and by 53% between 1980 and 1990, in part due to high rates of immigration).

57. *See* Betsy Guzmán, *The Hispanic Population: Census 2000 Brief*, U.S. CENSUS BUREAU 1–2 (May 2001), <https://www.census.gov/prod/2001pubs/c2kbr01-3.pdf> [<https://perma.cc/98ZC-FVWT>] (describing how the Census Bureau's data collection of Latinx evolved: asking if an individual was Mexican in 1930, asking if the individual spoke Spanish as their mother tongue in 1940, collecting data for persons of Spanish surname in 1950 and 1960, asking individuals their origin or descent from a limited list in 1970, asking if the individuals were of Spanish/Hispanic origin or descent and to choose from a limited list in 1980 and 1990, and allowing individuals to simply identify as Hispanic/Latino in 2000).

against discrimination and segregation based on their ethnicity.⁵⁸ In addition, a substantial part of Latinx population growth was due to immigration.⁵⁹ Newcomers had not necessarily suffered longstanding histories of discrimination in the United States, yet it seemed clear that many encountered prejudice and exclusion upon arrival.⁶⁰ Congress enacted some legislation designed to recognize these concerns. For instance, non-discrimination mandates expanded to include linguistic barriers in elementary and secondary education when officials used language as a proxy for race, ethnicity, or national origin.⁶¹ Even so, racial integration, not respect for cultural pluralism, remained an overriding objective for civil rights advocates. When Latinx sought to maintain neighborhood schools to preserve bilingual-bicultural programs, a federal court of appeals made clear that “[b]ilingual education . . . [was] not a substitute for desegregation.”⁶² In short, the definition of discrimination subordinated the linguistic and cultural concerns of the Latinx population to an overriding preoccupation with racial animus.

Not only did Latinx encounter an increasingly neoliberal State and a reified civil rights discourse, but they also discovered that their identification with immigrants made them a target of harsh rhetoric and policies that limited pathways to full citizenship.⁶³ Reflecting a laissez-faire impulse when it came to economic matters, weak border enforcement policies allowed a large population of undocumented workers to enter the country to meet employers’ demands for cheap

58. *Hernandez v. Texas*, 347 U.S. 475, 479–80 (1954). Even so, Latinx played a leading role in race-neutral reform strategies, for example, in school finance reform. *See, e.g., San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 14–16, 58–59 (1973) (addressing disparities in per-pupil spending in public schools as a deprivation of the right to education and a form of wealth discrimination); *Serrano v. Priest*, 487 P.2d 1241, 1244 (Cal. 1971) (holding that California’s public school financing system discriminated against the poor and violated the equal protection clause).

59. BUREAU OF THE CENSUS, *supra* note 56, at 2.

60. *See Rachel F. Moran, Unrepresented*, 55 REPRESENTATIONS 139, 142, 145–46 (1996) (describing the tensions between characterizing Latinx as white immigrants and as an ethnic minority).

61. Equal Educational Opportunities Act of 1974, H.R. 40 93d Cong. § 201(f) (1973–74) (codified at 20 U.S.C. § 1703 (f)).

62. *Keyes v. Sch. Dist. No. 1, Denver, Colo.*, 521 F.2d 465, 480 (10th Cir. 1975).

63. LEO CHAVEZ, *THE LATINO THREAT: CONSTRUCTING IMMIGRANTS, CITIZENS, AND THE NATION* 216–18 (2d ed. 2013); Douglas S. Massey & Karen A. Pren, *Unintended Consequences of U.S. Immigration Policy: Explaining the Post-1965 Surge from Latin America*, 38 POPULATION & DEV. REV. 1, 4–9 (2012).

labor.⁶⁴ That influx had the potential to alter the make-up of the body politic, destabilizing a longstanding non-Hispanic white majority and the nation's capacity to imagine itself as a community.⁶⁵ Any sense of shared fate already had begun to deteriorate with the growing wealth and income inequality that neoliberalism had unleashed.⁶⁶ To combat the prospect of disunity, the federal government adopted a restrictionist approach when creating pathways to citizenship. Congress permitted some undocumented immigrants to regularize their status in 1986, but afterwards, federal officials ramped up spending on border enforcement and limited opportunities for legal residency in the United States.⁶⁷ The impulse to police the boundaries of national belonging aggressively was not limited to denying the undocumented ways to regularize their status. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act⁶⁸ prohibited undocumented immigrants from receiving federal benefits and imposed a similar restriction on permanent residents.⁶⁹ Although the

64. Lopez et al., *supra* note 22.

65. ALBA, *supra* note 11, at 44–48; *see also* BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 7 (rev. ed. 1983) (describing how imagined community requires that “regardless of the actual inequality and exploitation that may prevail . . . , the nation is always conceived as a deep, horizontal comradeship”).

66. Bruce Western & Jake Rosenfeld, *Workers of the World Divide: The Decline of Labor and the Future of the Middle Class*, 91 *FOREIGN AFFS.* 88, 89 (2012) [hereinafter Western & Rosenfeld, *Workers of the World Divide*] (describing how “[w]ith labor’s decline since [the 1950s and 1960s], economic elites have grown more influential in the political system and the tie between national economic prosperity and working-class prosperity has been severed”).

67. *See* Maria Olivares, *The 1986 Immigration Reform and Control Act as Antecedent to Contemporary Latina/o/x Migration*, 37 *CHICANX LATINX L. REV.* 65, 70–71, 74 (2020) (finding that the Immigration Reform and Control Act created limited pathways to legalization but failed to reduce the size of the undocumented population because it did not include provisions for family reunification and because increased border enforcement and employer sanctions did not dampen the demand for undocumented labor).

68. Pub. L. No. 104–193, 110 Stat. 2105 (1996) (codified at 42 U.S.C. § 1305 (2012)).

69. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, H.R. 3734, 104th Cong. (1995–1996), subsequently amended by the Illegal Immigration Reform and Immigrant Responsibility Act (codified at 8 U.S.C. § 1611 (2018)) (disqualifying undocumented immigrants and some legal immigrants from federal public benefits). The bill was the first to impose sweeping restrictions on federal benefits for immigrants. CONG. RSCH. SERV., R43221, *NON-CITIZEN ELIGIBILITY FOR PUBLIC BENEFITS: LEGAL ISSUES 2–4* (2013).

Act severely limited assistance to needy citizens as well, it sent a clear message that they would be preferred over non-citizens. Still, under a neoliberal regime, there would be little in the way of support for anyone, regardless of immigration status.⁷⁰

What the struggles over immigration revealed to Latinx newcomers was that a civil rights strategy held little promise of enabling them to overcome barriers to citizenship. For one thing, Congress held plenary power over immigration policy, and there were not many avenues of relief from punitive policies in the courts.⁷¹ In fact, undocumented immigrants had few enforceable rights, given their fears of detention and deportation.⁷² In the workforce, for example, the undocumented often took jobs in a shadow economy, an environment marked by transient labor contracts, low wages, and no benefits.⁷³ Faced with tenuous legal status and insecure employment, these immigrants became easy targets for wage theft and other forms of workplace exploitation.⁷⁴ As a result, those who resided for long periods in the United States without any pathway to citizenship found their economic mobility blocked, even if they became thoroughly acculturated to American norms and values.⁷⁵

70. See *Mathews v. Diaz*, 426 U.S. 67, 80 (1976) (immigrants need not receive “an equal share of th[e] munificence”). See generally David Abraham, *Recognizing the Problem of Solidarity: Immigration in the Post-Welfare State*, 55 WAYNE L. REV. 1641, 1645–47 (2009) (arguing that due to a lack of trust and solidarity, “heavy immigration and diversity may disincline people from contributing to either redistribution or public goods”).

71. See *Chae Chan Ping v. United States*, 130 U.S. 581 (1889) (validating the power of Congress to enact the Chinese Exclusion Act); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893) (extending Congress’s plenary power to the deportation of resident aliens); Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 YALE L.J. 545, 550–54 (1990) (noting the deference given to Congress in the realm of immigration policy).

72. Abrego, *supra* note 19, at 650 (“Because citizenship is the only status that can best protect [immigrants] from forced expulsion, the value of this juridical category is heightened . . . [and] immigrants locate the source of all privilege within the formal legal status of citizenship.”).

73. JANICE FINE, *WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM* 27–28, 284 n.1–5 (paperback ed. 2006).

74. See César F. Rosado Marzán, *Worker Centers and the Moral Economy: Disrupting through Brokerage, Prestige, and Moral Framing*, 2017 U. CHI. L.F. 409, 425–29 (2017) (describing pervasive wage theft from immigrant workers in Chicago and efforts to combat it).

75. Mary C. Waters & Philip Kasinitz, *Race, Legal Status & Social Mobility*, 150 DAEDALUS 120, 129 (2021).

In sum, just as the Latinx population began to grow rapidly, the United States developed a neoliberal philosophy, a cramped understanding of racial and ethnic equality, and an ungenerous stance toward immigrants. Taken together, these shifts made plain that Latinx could not look to the civic square for much in the way of protection or inclusion. Instead, if this emerging constituency wanted to achieve full integration and participation, it would have to find other strategies. Some, like civil rights litigator Thomas Saenz of the Mexican American Legal Defense and Educational Fund, are pinning their hopes on forging “Civil Rights 2.0.”⁷⁶ By this, Saenz means “a broader conception of civil rights law—encompassing not just the post-Civil War amendments but structural provisions in the Constitution, like the Supremacy Clause, the Contracts Clause, and the Tenth Amendment.”⁷⁷ To diversify winning arguments, he contends, “[w]e need to see the entire Constitution as a civil rights tool.”⁷⁸ Other Latinx leaders, however, are pursuing an entirely different strategy. Given setbacks in civil rights litigation, these advocates firmly believe that the free market provides a more promising route to full belonging in America than a refurbished civic square ever could.

II. AGGREGATING LATINX ECONOMIC POWER: CONTEMPORARY CALLS FOR FULL INCLUSION THROUGH THE MARKET

Calls for Latinx to forge a path to full inclusion through the market eschew conventional politics, instead relying heavily on statistics to show that America’s fiscal future depends on the Latinx community. There are two influential groups producing statistical evidence of aggregate Latinx economic power and fueling calls for full inclusion through the marketplace. The first is the Latino Donor Collaborative (LDC), which has commissioned several research reports on Latinx market power. The LDC reports focus primarily on Latinx contributions to the labor force and to a lesser degree on their buying power. The second is the Aspen Institute Forum on Latino Business Growth. The Aspen Institute reports emphasize Latinx

76. See Thomas A. Saenz, *One Advocate’s Road Map to a Civil Rights Law for the Next Half Century: Lessons from the Latino Civil Rights Experience*, 38 N.Y.U. REV. L. & SOC. CHANGE 607, 621–22 (2014) (intimating that the trend of recent civil rights jurisprudence will force the Latinx community to spearhead the “Civil Rights 2.0” movement).

77. *Id.* at 621.

78. *Id.* at 622.

entrepreneurship and access to capital. Together, the reports make clear that America's fiscal future depends on the Latinx community.

A. *The Latino Donor Collaborative and Latino GDP*

The Latino Donor Collaborative links the community's growing economic participation to Latinx recognition as "well-regarded and valued patriotic Americans in all facets of American life."⁷⁹ The LDC emphasizes that it is "self-funded and independent" and "nonpartisan," thus making clear that it is not asking for handouts and has a message that transcends ordinary political rent-seeking.⁸⁰ The LDC seeks to deflect anxieties associated with growing Latinx market power by asserting that the goal is "to reshap[e] the perception of Latinos as part of the American social mainstream."⁸¹ The LDC's aspiration is to unify, not to divide. By "finding [the] best ways to grow revenue and market share—by targeting and serving the Latino audiences," the LDC hopes to "empower[] every Latino to be the best they can be, and know that by empowering Latinos, they create a rich, united, and more powerful United States of America."⁸²

The LDC has commissioned several research reports on Latinx market power. The first, published in 2017, examined "Latino Gross Domestic Product (GDP)," which was calculated for the first time as a way to measure Latinx impact on the American economy.⁸³ According to researchers Werner Schink and David Hayes-Bautista, in 2015 Latinx produced a GDP of \$2.13 trillion in the United States, which would make the Latinx population the seventh largest and the third-fastest growing economy in the world if it were a country.⁸⁴ Moreover, the study found that Latino GDP was expanding 70% more rapidly than non-Latino GDP in the United States.⁸⁵ As Schink and Hayes-Bautista explained, the significance of Latino GDP to the American economy should only increase in the coming years because "for every two young Latinos entering the civilian work force, roughly only one young non-Latino entered."⁸⁶ In fact, from 2010 to 2015, the number of non-

79. *About Us*, LATINO DONOR COLLABORATIVE, <http://latinodonorcollaborative.org/about-us> [<https://perma.cc/E24E-4KEW>].

80. *Id.*

81. *Id.*

82. *Id.*

83. See Schink & Hayes-Bautista, *supra* note 1, at 4.

84. *Id.*

85. *Id.*

86. *Id.* at 10.

Latinx employees shrank by a small amount, while the number of Latinx employees grew substantially.⁸⁷ According to Schink and Hayes-Bautista, this influx of Latinx workers prevented the U.S. labor force from going into “a gradual decline.”⁸⁸ Based on these trends, the report predicted that by 2020, Latinx would account for about one-fourth of all growth in the U.S. GDP, making “Latinos . . . the element most needed to fuel the growth of this country.”⁸⁹

In 2020, the LDC followed up with another analysis of Latino GDP.⁹⁰ The findings were quite similar. This time, Latinx contributions to the American economy amounted to \$2.6 trillion, which would qualify as the eighth largest economy in the world if this population were a country.⁹¹ Latino GDP grew four and a half times more rapidly than non-Latino GDP for several reasons.⁹² Wages and salaries increased at nearly twice the rate for Latinx as for non-Latinx; homeownership rose for Latinx even as it declined for non-Latinx; and Latinx increased their educational attainment even as it decreased for non-Latinx.⁹³ The 2020 report also noted a “stunning” six-fold difference in household formation with Latinx households growing by 23.2% from 2010 to 2018, while non-Latinx households grew by only 3.8%.⁹⁴ Even though Latinx population growth was slowing, it still substantially outpaced non-Latinx population growth, rising at a rate that was 7.6 times greater.⁹⁵ These changes correlated with larger increases in labor force participation for Latinx, which expanded at over double the rate for non-Latinx.⁹⁶ The report concluded that “Latinos are one of the economy’s biggest growth engines, and the pandemic is making this even more true than ever.”⁹⁷ Citing a strong work ethic, population growth, increasing human capital, and rising workforce participation, the analysis found that Latinx “will power through the current

87. *Id.*

88. *Id.* at 11.

89. *Id.* at 4.

90. Hamilton et al., *supra* note 1.

91. *Id.* at 4.

92. *Id.* at 4, 8–11.

93. *Id.* at 11–13.

94. *Id.* at 13.

95. *Id.* at 14.

96. *Id.* at 17.

97. *Id.*

[pandemic] situation and continue to drive the economy for years to come.”⁹⁸

In 2019, the LDC published a report on *The Latino Contribution to U.S. Economic Dynamism* by Jeffrey A. Eisenach and Robert Kulick, two scholars affiliated with NERA Economic Consulting.⁹⁹ These researchers concluded that Latinx had a significant impact on the American economy because this population “is growing more rapidly than other ethnic groups,” “is significantly younger,” has “high labor force participation rates and high levels of employment,” and has “high entrepreneurship rates.”¹⁰⁰ Moreover, Latinx “are increasingly wealthy, contributing to both consumption and capital formation.”¹⁰¹ To assess “the Latino effect” on the U.S. economy, Eisenach and Kulick first assumed that Latinx employment would continue to grow at the current rate from 2018 to 2024 under the “baseline scenario.”¹⁰² They then compared economic outcomes if Latinx employment dropped to the rate currently observed for non-Latinx employment, the “slow growth scenario.”¹⁰³ The study found that under the baseline scenario, each year there would be, on average, 33,223 more new firms, GDP would be \$701.4 billion higher, and GDP per capita would be \$442 higher than would be true under the slow growth scenario.¹⁰⁴

As Eisenach and Kulick explained, “the impact of higher Latino employment and population growth on GDP . . . is comparable to the estimated effects of the 2017 Tax Cuts and Jobs Act, which the Council of Economic Advisers projects could increase GDP by between \$470 billion and \$740 billion per year over the next decade.”¹⁰⁵ Eisenach and Kulick offered reassurances that these economic gains would accrue to all Americans: “the Latino effect induces substantial ‘spillover’ benefits for the entire U.S. economy. That is, rather than increasing economic activity in proportion to the size of the Hispanic population, Latino engagement in the economy increases the size of the U.S. economic pie.”¹⁰⁶ The authors predicted that due to “demographic changes and

98. *Id.*

99. Eisenach & Kulick, *supra* note 1.

100. *See id.* at 7 (noting the reasons why Latinx have a significant impact on the U.S. economy).

101. *Id.* at 8.

102. *Id.* at 1, 24–25, C-1.

103. *Id.* at 23–24.

104. *Id.* at 26–28.

105. *Id.* at 29.

106. *Id.* at 31.

reduced economic dynamism [that] will create significant headwinds for the U.S. economy in the future,” the Latino effect would continue to grow.¹⁰⁷

There are several noteworthy points about these reports. First, at a time when a neoliberal politics has emphasized individualism and diminished awareness of our shared civic fate, this research suggests that we are in fact interdependent as an economic matter. Whatever the limits of our imagined community as a nation, full inclusion of Latinx is a self-interested way to generate robust returns for all Americans. Second, the findings sidestep dangers of political polarization by focusing exclusively on Latinx as self-interested market actors pursuing upward mobility through work and entrepreneurship. The reports assume that this description of marketplace behavior is largely axiomatic and universally accepted. Finally, the results do not depend on Latinx mobilizing as a market constituency. Instead, the studies simply aggregate the benefits of individual contributions to the economy to yield “Latino GDP” or the “Latino effect.” This approach makes aggregation seem innocuous. Rising Latinx impact will not lead to collective mobilization or conflict. Instead, this community’s economic participation will yield benefits for all Americans.

B. The Aspen Institute Forum on Latino Business Growth and the Rise of Latinx Entrepreneurship

The Aspen Institute Forum on Latino Business Growth (Aspen Institute) is another initiative taking a leading role in promoting full inclusion through the market. While the LDC’s reports primarily focus on Latinx contributions to the labor force and to a lesser degree their buying power, the Aspen Institute emphasizes entrepreneurship and access to capital.¹⁰⁸ A 2017 Aspen Institute report noted that although the rate of business growth in the United States has been declining since the early 2000s, Latinx launched new businesses at three times the rate of the general population.¹⁰⁹ These businesses generated \$473 billion in revenue and 2.3 million jobs.¹¹⁰ When starting businesses, nearly two-thirds of Latinx entrepreneurs used their personal savings and more than one-fifth turned to family members for funding.¹¹¹

107. *Id.*

108. Alvarez, *supra* note 1.

109. *Id.* at 3.

110. *Id.* at 5.

111. *Id.* at 8.

Because of limited access to capital, Latinx businesses were often quite small and precarious: Latinx firms made up 12% of all American firms but accounted for only 1% of revenues.¹¹² Nor were these disproportionately low returns a temporary condition for Latinx enterprises. They were less likely than other businesses to scale up to annual revenue of \$1 million or more; indeed, only 3% of Latinx businesses achieved this benchmark.¹¹³ According to the Aspen Institute, if Latinx firms had scaled up at the same rate as other businesses did, they would have contributed an additional \$1.38 trillion and 9.5 million jobs to the U.S. economy.¹¹⁴

To address this “opportunity gap,”¹¹⁵ the Aspen Institute report recommended expanding access to capital for Latinx firms as well as strengthening the business ecosystem to improve their power, influence, visibility, and success.¹¹⁶ With respect to capital, the report found that Latinx entrepreneurs often have neither qualified for traditional loans nor have they attracted the support of angel investors.¹¹⁷ Moreover, Latinx did not successfully obtain funding from other sources such as the Small Business Administration (SBA) or the Small Business Investment Companies that the SBA licenses.¹¹⁸ To address these barriers, the report suggested using private sources of capital to create a fund of funds that would support Latinx entrepreneurs as well as other entrepreneurs of color.¹¹⁹ In addition, the Aspen Institute recommended a research and development fund that could pioneer new ways of evaluating creditworthiness.¹²⁰ Finally, the Institute proposed substantial growth in Community Development Financial Institutions, including increased use of their resources to support loans to small businesses.¹²¹

The Aspen Institute report explicitly recognized that its proposed reforms are unlikely to come about without substantial changes in the

112. *Id.* at 5.

113. *Id.* at 8.

114. *Id.*

115. *Id.*

116. The report also advocated for increased integration of Latinx firms in procurement and supply chain networks as well as enhanced business education and training for Latinx entrepreneurs. *Id.* at 15–19.

117. *Id.* at 10–11.

118. *Id.* at 11.

119. *Id.* at 11–12.

120. *Id.* at 12.

121. *Id.* at 13.

business ecosystem.¹²² As the report explained, “there continues to be a significant wealth and power deficit among Latinos vis-à-vis the rest of the population. This is reinforced by a lack of influence in the existing power structures.”¹²³ Moreover, the report found that stereotypes and bias have harmed Latinx entrepreneurs’ ability to gain support and achieve respect within the business community.¹²⁴ Finally, the report concluded that Latinx have few opportunities to participate in social networks that could help them to navigate the business world successfully.¹²⁵ To redress this situation, the Aspen Institute study acknowledged that “[n]ew and radical approaches are needed,” but the proffered strategies mainly consisted of developing a Latinx business agenda, educating and engaging supportive leaders, improving Latinx representation in the media, building Latinx influence in key networks, and maximizing the utilization of these networks.¹²⁶

Unlike the LDC reports, the Aspen Institute study does not focus exclusively on aggregation of statistics to make the case for the importance of Latinx entrepreneurship. Instead, the research acknowledges problems of stratification in the business world, which keep Latinx businesses from flourishing. Even so, the move from a statistical portrait to a plan of action remains incomplete. Although the recommendations for change are sensible, they are not particularly radical. Most seem targeted at entrepreneurs who already have some access to resources and a chance of at least middle-class success. There is no call for more dramatic changes that would expand access to capital for aspiring business owners who are closed out of the traditional finance system.

III. THE LESSONS OF HISTORY: GRASS-ROOTS MOBILIZATIONS FOR ECONOMIC EMPOWERMENT

If today’s calls for Latinx recognition in the marketplace turn heavily on aggregation, earlier demands for economic participation and empowerment adopted a very different strategy. These efforts relied on disaggregation to highlight the challenges facing the most vulnerable and thereby promote collective mobilization. The first

122. *Id.* at 4.

123. *Id.* at 20.

124. *Id.* at 21.

125. *Id.* at 23.

126. *Id.* at 20–24.

movement that deserves careful consideration arose during a time of national prosperity after World War I. The leading figure in this effort was Marcus Garvey, who was not Latinx but rather an immigrant from the Caribbean. Garvey's story is important because it marks a critical turning point when the Black American community confronted a choice between relying on civil rights advocacy or pursuing economic self-determination. While middle-class Black Americans were in the vanguard of civil rights and calls for integration, working-class Black Americans flocked to Garvey's self-empowerment movement.

The second movement that merits close review is Cesar Chavez's labor organizing among farmworkers in the 1960s and 1970s, probably the most famous effort by a Latinx leader to push for economic respect and inclusion. Far from aggregating all Latinx, Chavez identified one of the most marginalized and isolated segments of the workforce, agricultural labor. That disaggregation was key to Chavez's success in at least two ways. He could build on the internal cohesion of farmworkers to organize and mobilize them, and he could use their terrible hardships to arouse the sympathy and support of powerful allies. Though the Garvey and Chavez movements are separated by decades and distinct in many ways, they share important commonalities, and both offer valuable insights into how the marketplace can be used as a path to full inclusion in the United States.

A. *Marcus Garvey and the Universal Negro Improvement Association*

In the wake of World War I, there was a new optimism, and even radicalism, among Black Americans. This sense of ferment and possibility allowed a Jamaican immigrant named Marcus Garvey to launch what historian John Hope Franklin once described as "the first and only real mass movement among Negroes in the history of the United States."¹²⁷ That movement was explicitly global rather than domestic in its aspirations; after all, Garvey himself had migrated to Latin America, England, and the United States to pursue his ambitions.¹²⁸ Garvey's followers embraced a "Race First" philosophy

127. THEODORE G. VINCENT, *BLACK POWER AND THE GARVEY MOVEMENT* 207 (2006) (citing John Hope Franklin); *see also* Shawn Carter, *The Economic Philosophy of Marcus Garvey*, 26 W.J. BLACK STUD. 1, 1 (2002).

128. COLIN GRANT, *NEGRO WITH A HAT: THE RISE AND FALL OF MARCUS GARVEY* 24–26, 33–34, 71–73 (2008).

that transcended the boundaries of the nation-state.¹²⁹ Even so, Garvey explicitly recognized that this philosophy had different implications, depending on whether Black people constituted a minority or the majority of a country's population.¹³⁰ In Jamaica, where the Black community was numerically dominant, a quest for national liberation was a plausible strategy for empowerment.¹³¹ In the United States, however, where Black Americans accounted for only about 10% of the population, Garvey believed that a push for political recognition was doomed to fail.¹³² In his view, Black Americans were clearly outnumbered and could not depend on a majoritarian process to protect their interests.¹³³ Instead, Garvey concluded, Black Americans needed to pursue equality through economic empowerment by creating separate Black enterprises.¹³⁴

This insight lay at the heart of Garvey's efforts to launch the Universal Negro Improvement Association (UNIA) in New York. The focus on Black enterprise did not mean that Garvey was indifferent to the State's role, however. He appreciated that there must be protections for Black Americans' civil liberties if they were to organize and prosper in their separate endeavors.¹³⁵ These safeguards included rights of press, speech, and assembly along with the right to vote and

129. See *id.* at 93–94 (noting how racial identity predominated over class privileges); VINCENT, *supra* note 127, at x (describing the importance that Garvey placed on his “Race First” message and how he made attempts to globalize his message); TONY MARTIN, RACE FIRST: THE IDEOLOGICAL AND ORGANIZATIONAL STRUGGLES OF MARCUS GARVEY AND THE UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION 41–42 (1976) (same); Carter, *supra* note 127, at 1–2 (emphasizing the need for economic self-sufficiency).

130. MARTIN, *supra* note 129, at 41–42.

131. Nicholas Patsides, *Allies, Constituents, or Myopic Investors: Marcus Garvey and Black Americans*, 41 J. AM. STUD. 279, 282 (2007).

132. VINCENT, *supra* note 127, at 139; Patsides, *supra* note 131, at 284.

133. See Otis B. Grant, *Social Justice versus Social Equality: The Capitalistic Jurisprudence of Marcus Garvey*, 33 (4) J. BLACK STUD. 490, 491 (2003) (noting how Garvey asserted that “[w]hites would continue to be prejudiced against Black [Americans]”); Nicole Marie Brown, *Freedom's Stock: Political Consumerism, Transnational Blackness and the Black Star Line*, 41 (2) CRIT. SOC. 237, 242–43 (2015) (observing that “Black Americans desired the perks of white American liberalism/individualism, private property and possession of material objects,” but Jim Crow laws prevented them from fully participating in these opportunities).

134. Carter, *supra* note 127, at 1–2. In this, Garvey was inspired by the work of Booker T. Washington, but he was not able to forge close bonds with Washington before his death. GRANT, *supra* note 128, at 49, 60, 66–70.

135. See VINCENT, *supra* note 127, at 8–9.

serve on juries.¹³⁶ Foundational freedoms were essential if Black Americans were to empower themselves and achieve self-sufficiency, even if no further governmental aid was likely to be forthcoming.¹³⁷ Garvey learned the hard way that Black Americans could not count on official protection of even these core rights. The newly created Bureau of Intelligence subjected the UNIA to pervasive surveillance; the federal government used immigration laws to thwart Garvey's travel in and out of the United States; and complex regulations made it inordinately difficult for the UNIA to launch a shipping line.¹³⁸ Indeed, the law would prove to be Garvey's undoing.¹³⁹

Garvey's focus on Black economic self-sufficiency diverged sharply from that of elite Black American leaders at the NAACP, who emphasized civil rights. These leaders pursued interracial coalitions to promote full citizenship as an expression of the nation's democratic commitments.¹⁴⁰ With mostly middle-class Black Americans at the helm, the NAACP relied heavily on white sponsors and philanthropists to keep the organization afloat.¹⁴¹ Garvey saw this as evidence of Black subordination rather than a path to Black liberation. As he put it, "the

136. *Id.*

137. MARTIN, *supra* note 129, at 36–37 (explaining that the UNIA teaches black Americans that self-help and self-reliance is essential in contributing to human happiness and well-being); Justin Hansford, Note, *Jailing a Rainbow: The Marcus Garvey Case*, 1 GEO. J.L. & MOD. CRITICAL RACE PERSP. 325, 335–36 (2009) (describing how Garvey believed that racial justice would be best achieved by imploring Black Americans to seek economic independence before seeking civil rights and integration); Carter, *supra* note 127, at 1 (describing how community development and collective decision making would promote the collective interests of Black Americans); Brown, *supra* note 133, at 240 (explaining how Garvey embraced a form of Black capitalism where economic self-sufficiency would result in political power and control over an independent Black nation).

138. See GRANT, *supra* note 128, at 217–18, 220–21, 248–49, 284, 292, 295 (describing various types of federal surveillance tactics employed against Garvey); MARTIN, *supra* note 129, at 175–90 (explaining how several U.S. government agencies cooperated in a comprehensive effort to block Garvey's return and put a stop to Garvey's movement); RAMLA M. BANDELE, BLACK STAR: AFRICAN AMERICAN ACTIVISM IN THE INTERNATIONAL POLITICAL ECONOMY 29–30, 124–27, 130 (2008) (detailing how government informants infiltrated the highest ranks of Garvey's organization and how government officials repeatedly blocked Garvey from obtaining the necessary travel visas to return to the United States).

139. See MARTIN, *supra* note 129, at 191–205 (describing the story of Garvey's trial, conviction, and the subsequent implications for his movement); GRANT, *supra* note 128, at 367–73, 390–92 (same).

140. Hansford, *supra* note 137, at 329–31, 340.

141. *Id.* at 329–31; GRANT, *supra* note 128, at 164–65.

Universal Negro Improvement Association seeks independence of government, while the other organizations seek to make the Negro a secondary part of existing governments.”¹⁴² Garvey’s critique and his growing influence led to a bitter feud with NAACP leaders. Civil rights proponents were indignant: “How dare Marcus Garvey, a West Indian Negro, come here from Jamaica trying to tell us American Negroes how to lead our people! We are the real Americans, we will redeem the race!”¹⁴³

As the UNIA came to rival the NAACP in influence, elite Black leaders launched the “Garvey Must Go” campaign.¹⁴⁴ At the same time, federal agents worked to build a criminal case against Garvey that would facilitate his deportation.¹⁴⁵ An open letter from prominent Black Americans described him as a foreigner and a threat to American race relations.¹⁴⁶ In response, he attacked the signatories as “informants, as modern versions of the faithful house slaves who ran and alerted their beloved master whenever there was a hint of trouble brewing among the field slaves on the plantations.”¹⁴⁷ With Garvey painting NAACP leaders as “enemies of the race,”¹⁴⁸ Perry W. Howard, the highest ranking Black American in President Warren G. Harding’s administration, “worried about the public perception” that the NAACP was working with the government to undermine Garvey and the UNIA.¹⁴⁹ Howard believed that the UNIA was, in fact, failing due not to sabotage but to “sincere but staggeringly incompetent management.”¹⁵⁰

Rejecting white support and rejected by Black elites, Garvey turned to the Black American working class to sustain the UNIA.¹⁵¹ In disaggregating the base that would become the backbone of his movement, Garvey also identified the mission that would best serve his constituents. He first dismissed labor organizing as an option. Although Garvey supported trade unions in regions with predominantly Black workforces, he rejected them in the United States

142. VINCENT, *supra* note 127, at 88.

143. *Id.* at 213.

144. *See* GRANT, *supra* note 128, at 336.

145. *Id.* at 338.

146. *Id.* at 363.

147. *Id.* at 364.

148. *Id.*

149. *Id.*

150. *Id.* at 364–65.

151. *See* VINCENT, *supra* note 127, at 88–89.

where whites dominated the trades and pervasively discriminated against Black Americans.¹⁵² Nor could Garvey rely on Black buying power to promote an agenda of self-sufficiency. Even in Black communities, whites often owned the local businesses.¹⁵³ As a result, Garvey concluded, Black Americans could vote with their dollars only when they could shop at Black-owned establishments.¹⁵⁴ Garvey's top priority became building Black enterprises that would serve the Black community. The most significant obstacle was a lack of access to capital for working-class Black Americans in general and the UNIA in particular.¹⁵⁵ To overcome that difficulty, Garvey created businesses that resembled collectives rather than corporations.¹⁵⁶ He described these arrangements as poor people's way of creating "a capitalistic system of their own" to "combat the heartless capitalistic system of the masterly ruling class."¹⁵⁷

This alternative approach to promoting entrepreneurship did not prompt legal objections when the UNIA opened small businesses like a restaurant, millinery shop, and hotel at its headquarters in New York at Liberty Hall.¹⁵⁸ The troubles began when the UNIA decided to launch a large-scale enterprise, the Black Star Line (BSL), for international travel and shipping.¹⁵⁹ Garvey saw the BSL as different

152. *Id.* at 138–39.

153. *See* GRANT, *supra* note 128, at 186 (noting that even among ostensibly Black businesses in Harlem, less than a quarter of them were actually owned and operated by Black Americans according to a 1917 report).

154. *See id.* ("Early on, Marcus Garvey had championed the idea that real emancipation would come through economic independence; the mighty dollar was the great leveller in American Society."); Brown, *supra* note 133, at 243 (describing how the UNIA's economic self-help projects aimed to expand Black-owned business as a means to advance racialized political consumerism). After the Garvey movement was in decline, it did inspire a boycott in Harlem. Many White-owned businesses did not hire Black employees, and so the campaign's slogan was "Don't Buy Where You Can't Work." VINCENT, *supra* note 127, at 198–201.

155. *See* Charles Lattimore Howard, *Black Stars and Black Poverty: Critical Reflections upon Black Theology from a Garveyite Perspective*, 9 BLACK THEOLOGY: INT'L PERSP. 312, 319 (2011) (Garvey recognized the role of poverty and a lack of economic opportunity in the oppression of Black people).

156. *See* Carter, *supra* note 127, at 4.

157. MARTIN, *supra* note 129, at 53.

158. GRANT, *supra* note 128, at 155, 186–87; *see also* Brown, *supra* note 133, at 243 (describing UNIA's small businesses as aligned with its central philosophy that political consumerism was integral to uplifting the economic condition of the race).

159. *See* GRANT, *supra* note 128, at 188, 190–92 (describing how Garvey faced skepticism that the BSL was "not serious but ill-conceived and shot through with whimsy" and how it soon prompted audits and threats of prosecution).

from other market endeavors: supporters “weren’t just buying into a business but were placing a down payment on future black redemption.”¹⁶⁰ In his view, the BSL should involve neither speculation nor private returns; instead, the funds should be regarded as donations held in trust for all Black people.¹⁶¹ The New York District Attorney’s Office saw the matter differently, however, insisting that Garvey provide investors with shares that would pay dividends.¹⁶² As a result, Garvey incorporated the BSL, which in turn left him open to accusations that he had violated securities laws.¹⁶³ Eventually, the authorities arrested Garvey for violating a Blue Sky Law, which required that he have a license to sell shares in the BSL in Illinois.¹⁶⁴

Later, federal prosecutors convicted Garvey of mail fraud in conjunction with his fundraising activities for the BSL.¹⁶⁵ Fellow UNIA officials were acquitted, but the judge sentenced Garvey to five years in prison and a \$1,000 fine.¹⁶⁶ Even so, many UNIA supporters remained loyal to him, believing that he had been the victim of political persecution.¹⁶⁷ Indeed, when Garveyites asked President Calvin Coolidge to commute the sentence, the U.S. Attorney General expressed astonishment that even though officials filed the charges to protect Black Americans from fraud, many of them did not feel victimized.¹⁶⁸ Instead, they saw the prosecution as “an act of oppression of the race in their efforts in the direction of race progress and discrimination against Garvey as a Negro.”¹⁶⁹ President Calvin Coolidge acceded to pressure to free Garvey from prison, but because the

160. *Id.* at 155–56.

161. *Id.* at 190.

162. *Id.* at 191; *see* MARTIN, *supra* note 129, at 152.

163. *See* GRANT, *supra* note 128, at 193–94 (detailing the circumstances surrounding the BSL’s incorporation); BANDELE, *supra* note 138, at 139–41 (outlining several ways that incorporation led to a boon in financial resources for BSL while simultaneously attaching corporate securities law limitations, which conflicted with the UNIA board’s perception of UNIA as a separate, sovereign government).

164. Blue Sky Laws are anti-fraud regulations that create liability for issuers to prevent worthless securities that have “about as much value as the blue sky.” GRANT, *supra* note 128, at 209.

165. *Id.* at 369–70; MARTIN, *supra* note 129, at 192–93.

166. GRANT, *supra* note 128, at 371–72; MARTIN, *supra* note 129, at 193.

167. GRANT, *supra* note 128, at 374; MARTIN, *supra* note 129, at 194–96; Hansford, *supra* note 137, at 365.

168. GRANT, *supra* note 128, at 410.

169. *Id.*

Attorney General saw him as a “menace,”¹⁷⁰ federal authorities deported him to Jamaica immediately upon release.¹⁷¹ In Garvey’s absence, the UNIA’s vision for Black economic self-sufficiency gradually withered away.¹⁷²

Just as the LDC and Aspen Institute have pushed for a Latinx path to full inclusion through the market, Garvey boldly called for an economic alternative to civil rights advocacy. There, however, the resemblance largely ends. Contemporary efforts to promote Latinx market power are largely silent on the matter of civil rights. By contrast, Garvey overtly rejected Black elites’ faith in the civic square as a path to inclusion. In his view, Black Americans’ minority status in the United States was an insurmountable impediment to relying on the political process for meaningful reform.¹⁷³ Far from aggregating all Black Americans, Garvey distanced himself from the middle class and privileged to align himself with the working class and poor.

Rather than accept the existing system of business and finance, Garvey expressly acknowledged structural barriers to gaining access to capital and crafted alternative forms of entrepreneurship. For Garveyites, economic empowerment was about more than just the profit motive. Their participation also was a demonstration of race pride. That solidarity in turn made it possible for UNIA to raise funds for its collective enterprises. Still, officials found Garvey’s demands for Black self-determination and poor people’s capitalism so subversive that there was constant surveillance of the UNIA. Eventually, Garvey could not overcome the challenges posed by two powerful paradigms, civil rights and capitalism. His efforts to resist both influences proved to be his undoing, and a once vibrant social movement disappeared. As a result, civil rights activism would set the agenda for racial equality

170. *Id.* at 400–01.

171. *Id.* at 410–11; Hansford, *supra* note 137, at 366.

172. See GRANT, *supra* note 128, at 418–21 (recounting how UNIA leadership struggles in the aftermath of Garvey’s deportation weakened the organization); Hansford, *supra* note 137, at 370 (noting that the UNIA had “lost its driving force” after Garvey was unsuccessful in his efforts to sustain the movement from afar in Jamaica and England).

173. Journalist Charles Blow offers a contemporary version of concerns that Black Americans’ minority status impedes their ability to effect meaningful change through the political process. In contrast to Garvey, Blow urges Black Americans to consolidate their numbers by relocating to the South and exercising influence as a regional majority. CHARLES M. BLOW, *THE DEVIL YOU KNOW: A BLACK POWER MANIFESTO* 31, 42 (2021).

in the United States, emphasizing the need to overcome segregation rather than the desire for economic self-determination.

B. Cesar Chavez and the United Farm Workers

In the wake of World War II, a now well-established civil rights movement had won new victories in promoting racial inclusion, and that momentum continued into the 1970s. By this time, key leaders were embracing not only the imperative of racial integration but also an agenda for economic justice.¹⁷⁴ As a result, when Cesar Chavez created the United Farm Workers (UFW) to organize an overwhelmingly Mexican-origin workforce in California, he could have framed his efforts in civil rights terms.¹⁷⁵ In marked contrast to Garvey, however, Chavez rejected efforts to label his campaign as one centered around ethnic identity, instead framing his movement as labor organizing pure and simple.¹⁷⁶ Even so, Chavez used disaggregation strategically, much as Garvey had, to create a sense of solidarity among the workers he was trying to organize.

Early in the UFW's history, Chavez had to grapple with the treatment of undocumented workers. These workers, mostly of Mexican origin, had a common ethnic identity with many UFW members, but their presence threatened efforts to organize for better wages and improved labor conditions.¹⁷⁷ In the 1970s, Chavez initiated an "Illegals Campaign" to call attention to the Nixon administration's lax border enforcement, which allowed growers to deploy undocumented workers to defeat unionization.¹⁷⁸ Chavez firmly believed that the United States and Mexico were colluding in "a union busting

174. See Michael K. Honey, *What Happened to Martin Luther King Jr.'s Dream of Economic Justice?*, TIME (Feb. 20, 2020, 7:32 AM), <https://time.com/5783976/martin-luther-king-jr-economic-justice> (describing a March 1968 rally in Memphis, Tennessee, at which Martin Luther King, Jr. expressed support for sanitation workers seeking to unionize because they worked full-time but were paid "starvation wages").

175. Jorge Mariscal, *Negotiating César: César Chávez in the Chicano Movement*, 29 AZTLÁN 21, 39 (2004).

176. *Id.*; see also Alan Aja, *From "Sí se Puede" to "Yes We Can": Legacy of Cesar Chavez and the United Farm Worker Movement*, 12 NEW POL. 128, 130 (2009) (reviewing JACQUES E. LEVY, *CESAR CHAVEZ, AUTOBIOGRAPHY OF LA CAUSA* (2007) and RANDY SHAW, *BEYOND THE FIELDS: CESAR CHAVEZ, THE UFW, AND THE STRUGGLE FOR JUSTICE IN THE 21ST CENTURY* (2008)) (describing Chavez as rejecting ethnocentric notion of "La Raza"); Steven W. Bender & Keith Aoki, *Seekin' the Cause: Social Justice Movements and LatCrit Community*, 81 OR. L. REV. 595, 613 (2002) (same).

177. MIRIAM PAWEL, *THE CRUSADES OF CESAR CHAVEZ: A BIOGRAPHY* 293 (2014).

178. *Id.* at 288, 294.

operation of the biggest goddamn order.”¹⁷⁹ At the same time, Chavez’s cousin set up a “wet line” to deter the undocumented from entering the United States at the U.S.-Mexico border.¹⁸⁰ Local news media on both sides of the border reported acts of violence by the “*cesarchavistas*,” and some UFW members were convicted of assault and robbery.¹⁸¹ UFW allies and board members concerned with civil rights immediately decried the “wet line” and the “Illegals Campaign.”¹⁸² Several chapters eventually left the UFW due in part to their disagreement with these tactics.¹⁸³ These breakaway chapters successfully organized some predominantly undocumented workforces, much to Chavez’s surprise.¹⁸⁴ Although Chavez ultimately wrote a letter to the *San Francisco Examiner* defending “illegal aliens,” the tensions over the issue were never fully resolved.¹⁸⁵

While Garvey pursued alternatives to traditional capitalism that would better serve the poor and working class, Chavez realized that his organizing efforts had to depart significantly from the conventional model of a union to advance the interests of his profoundly marginalized constituency. In many ways, Chavez returned to the radical roots of union organizing before labor-management relations became subject to government regulation.¹⁸⁶ Labor laws emphasized bargaining at specific workplaces, and this framework prompted labor unions to adopt a “business unionism” model.¹⁸⁷ Union leaders

179. *Id.* at 313; see also MATT GARCIA, FROM THE JAWS OF VICTORY: THE TRIUMPH AND TRAGEDY OF CESAR CHAVEZ AND THE FARM WORKER MOVEMENT 149–50 (2012) (describing Chavez’s perception that lax government enforcement was designed to break the union).

180. PAWEL, *supra* note 177, at 288.

181. *Id.* at 288–90.

182. *Id.* at 294.

183. *Id.* at 419.

184. *Id.* at 420.

185. Mariscal, *supra* note 175, at 37.

186. ERIC THOMAS CHESTER, THE WOBBLIES IN THEIR HEYDAY: THE RISE AND DESTRUCTION OF THE INDUSTRIAL WORKERS OF THE WORLD DURING THE WORLD WAR I ERA xi–xii, xv (2014) (describing how the Industrial Workers of the World defined themselves as a movement for justice on a global scale, organizing migratory and low-skilled workers). Chavez himself was cognizant of the UFW’s connections to these earlier labor movements. LEVY, *supra* note 176, at 151. Moreover, he fully recognized the allure of business unionism for farmworkers themselves. He believed that once the law conferred recognition on his members, “you’re talking about wages, you’re talking about money, you’re talking about benefits . . .” PAWEL, *supra* note 177, at 308.

187. See VICTORIA C. HATTAM, LABOR VISIONS AND STATE POWER: THE ORIGINS OF BUSINESS UNIONISM IN THE UNITED STATES 3–4 (1993) (describing how the American

focused on better wages and benefits for members but treated other issues, including civil rights, as beyond the purview of the labor movement's concerns.¹⁸⁸ Chavez certainly appreciated the importance of member benefits. He used cooperative businesses to reward members for joining the UFW.¹⁸⁹ Benefits alone, however, could not propel Chavez's organizing success, given the UFW's modest resources.¹⁹⁰ He needed other strategies to mobilize workers for meaningful change. To that end, Chavez embraced "social unionism," which framed his members' quest as one for dignity, fairness, and respect.¹⁹¹

Chavez's innovations were both necessary and possible because federal labor laws expressly excluded agricultural workers from their coverage.¹⁹² Instead of treating the agricultural sector's exemption as an impediment, Chavez saw it as an opportunity to seize on new

Federation of Labor focused on workplace concerns through collective bargaining and industrial action rather than through extensive partisan politicking).

188. See *id.* at 3 (contrasting the workplace focus of American labor unions with the political and social reform focus of unions in western Europe); MIRIAM CHING YOON LOUIE, SWEATSHOP WARRIORS: IMMIGRANT WOMEN WORKERS TAKE ON THE GLOBAL FACTORY 198–99 (2001) (describing how business unionism promoted improvements in workers' standard of living in exchange for worker compliance).

189. Arturo S. Rodriguez, *Why Cesar Chavez Led a Movement as well as a Union*, 23 HARV. J. HISP. POL'Y 15, 16 (2010–11); see also PAWEL, *supra* note 177, at 195–96, 229–30 (describing Chavez's ongoing interest in cooperatives as a means to strengthen and sustain the movement).

190. See Rodriguez, *supra* note 190, at 17–18 (noting how Chavez and his colleagues embraced a life of voluntary poverty to support their cause in sharp contrast to other labor movement leaders who received generous salaries and maintained affluent lifestyles).

191. See Frank Bardacke, *The UFW and the Undocumented*, 83 INT'L LAB. & WORKING-CLASS HIST. 162, 165 (2013) (explaining that Chavez and his cohorts intended to build an institution that would be a cross between a union and a community organization); Richard A. García, *César Chávez: A Personal and Historical Testimony*, 63 PAC. HIST. REV. 225, 232 (1994) (describing how young Chicanos embraced Chavez's view that civil rights was linked to a fight for human rights); Mariscal, *supra* note 1765, at 25, 28–31, 42–43; Rodriguez, *supra* note 189, at 16 (noting how Chavez's version of social unionism was reflected in a 1969 letter, wherein Chavez decried the racial, linguistic, cultural, educational, and democratic obstacles faced by farm workers).

192. GARCIA, *supra* note 179, at 127; FRANK BARDACKE, TRAMPLING OUT THE VINTAGE: CESAR CHAVEZ AND THE TWO SOULS OF THE UNITED FARM WORKERS 167 (2011); MIRIAM PAWEL, THE UNION OF THEIR DREAMS: POWER, HOPE, AND STRUGGLE IN CESAR CHAVEZ'S FARM WORKER MOVEMENT 51 (2009); see SHAW, *supra* note 176, at 13 (noting that the New Deal left out farmworkers).

strategies to bring powerful growers to the bargaining table.¹⁹³ Without a formal legal structure for organizing, Chavez had to turn to informal networks among farmworkers to create cohesion and solidarity among UFW members.¹⁹⁴ Chavez initially did not appreciate how agricultural labor itself allowed co-workers to form strong bonds of cooperation as a buffer against precarity.¹⁹⁵ These ties ultimately provided a foundation for sustained loyalty in the campaign for recognition of workers' demands.¹⁹⁶ By defining the UFW's mission as a struggle for justice, Chavez tapped into this sense of mutual trust and respect. Low wages, a lack of benefits, and unsafe working conditions left UFW members feeling dehumanized and degraded.¹⁹⁷ They wanted growers to acknowledge their work ethic and essential labor, just as members acknowledged one another's worth.¹⁹⁸

Unconstrained by federal labor law, Chavez was able to experiment with new tactics drawn from social justice movements, methods unavailable to traditional unions. For example, Chavez used consumer boycotts to bolster workers' demands.¹⁹⁹ Though both the UFW and the UNIA experimented with novel ways to redress inequities in the market, Chavez diverged markedly from Garvey by building alliances with whites to advance the farmworkers' cause. Because Chavez did not frame his movement in racial or ethnic terms, it made perfect sense to

193. See GARCIA, *supra* note 179, at 127 (explaining how Chavez privately shifted his position on National Labor Relations Act inclusion for farm workers after realizing the power of the economic boycott, which could be curtailed by federal labor law restrictions on secondary boycotts).

194. *Id.* at 296 ("At the height of the boycott, volunteers from diverse backgrounds . . . buil[t] effective networks that shut down the grape markets and forced growers to seek a strategy of moving sales beyond their traditional strongholds. These movements precipitated new coalitions among farm worker advocates . . .").

195. Robert J. Thomas & William H. Friedland, *The United Farm Workers Union: From Mobilization to Mechanization?*, CTR. FOR RSCH. ON SOC. ORG. UNIV. OF MICH. 1, 28–29.

196. *Id.*

197. *Id.* at 42.

198. See BARDACKE, *supra* note 192, at 34, 42 (describing the "cooperative nature of much of their work" as well as "the dominant ethos of the crews" built on "collective abilities and internal solidarity" as critical to the success of the UFW's organizing efforts).

199. See generally GARCIA, *supra* note 179, at 62–69, 75–112, 127–28 (describing how Chavez revived the consumer boycott as a critical strategy for building up the political strength of the UFW); PAWEL, *supra* note 177, at 182–96 (same); SHAW, *supra* note 176, at 18–50 (same). However, many still feared that the UFW's use of boycotts would be challenged despite the exemption of farmworkers from the National Labor Relations Act. LEVY, *supra* note 176, at 470.

ask a predominantly white consumer base to join in the UFW's quest for fairness and dignity.²⁰⁰ Given the prominence of the civil rights movement in the 1970s, Chavez was able to enlist leading white politicians like Senator Robert Kennedy and Governor Jerry Brown to endorse the UFW's aims and force growers to take the fledgling union seriously.²⁰¹ With high-profile support from Kennedy, the federal government convened hearings on the treatment of the agricultural labor force, and Brown agreed to pass state legislation that would provide some protections to farmworkers.²⁰² Though Chavez rejected a civil rights label for the UFW, the interracial political alliances he forged were, in truth, an outgrowth of the ongoing quest for racial equity.²⁰³

Despite early support from prominent officials like Kennedy and Brown, the law proved to be a double-edged sword for Chavez just as it was for Garvey. Like the UNIA, the UFW came under intense government surveillance from its inception, reflecting fears that the union was a communist, subversive organization.²⁰⁴ Concerns about the UFW's radicalism persisted, even though it was pressing for a bigger share of the economic pie for members, just as other unions did.²⁰⁵ In addition, law enforcement officers suppressed some organizing efforts, for example, by arresting farmworkers for unlawful assembly when they protested labor conditions.²⁰⁶ Incidents of violence increased when the Teamsters signed contracts with the growers to prevent the UFW from representing workers.²⁰⁷ In response to the escalating conflict, the UFW filed complaints about police mistreatment of picketing farmworkers during the 1970s, but Nixon administration officials deflected the requests by distinguishing

200. GARCIA, *supra* note 179, at 6.

201. *Id.* at 55, 147, 159.

202. SHAW, *supra* note 176, at 89–91, 156; PAWEL, *supra* note 177, at 123–24, 167–68; GARCIA, *supra* note 179, at 55, 147–48, 159–60; BARDACKE, *supra* note 192, at 215–18, 306–07, 484–87.

203. See SHAW, *supra* note 176, at 26–28 (describing how Chavez acknowledged a commitment to civil rights and used it to pursue strategic political objectives much to the chagrin of traditional union leaders).

204. JOSÉ ANGEL GUTIÉRREZ, *THE EAGLE HAS EYES: THE FBI SURVEILLANCE OF CÉSAR ESTRADA CHÁVEZ OF THE UNITED FARM WORKERS UNION OF AMERICA, 1965–1975* 37–54 (2019).

205. *Id.*

206. PAWEL, *supra* note 192, at 121–22, 124–27; PAWEL, *supra* note 177, at 219.

207. GUTIÉRREZ, *supra* note 204, at 166–67.

between a labor dispute and a civil rights matter.²⁰⁸ Ironically, this distinction capitalized on Chavez's own claim that the UFW involved union organizing pure and simple.²⁰⁹ Federal officials noted that although the UFW members belonged to a "minority race," there was still no basis to intervene in a conventional labor dispute.²¹⁰

Growers used other legal maneuvers to thwart the union, seeking injunctions to prevent UFW members from picketing the fields and filing challenges to state agricultural labor relations laws to delay their enforcement.²¹¹ These legal skirmishes prompted a frustrated Chavez to redirect resources from labor organizing and boycotts so that the UFW could wage an ultimately unsuccessful battle over the regulatory framework governing agricultural labor.²¹² That fateful decision ultimately contributed to the UFW's downfall as Chavez grew increasingly distant from the grass-roots mobilization that had driven the union's early victories.²¹³ When Chavez turned to the law as a primary tool for reform, he lost sight of the central importance of organizing.²¹⁴ As the UFW faltered, Chavez grew increasingly suspicious of allies and purged some of the talented individuals who had made the UFW's initial successes possible.²¹⁵ UFW membership fell precipitously, and the hard-won gains for farmworkers evaporated as wages declined and working conditions deteriorated.²¹⁶ Chavez put family members in charge of the UFW's operations, and after his untimely death at sixty-six, they mainly devoted themselves to burnishing his legacy.²¹⁷ Chavez is remembered with a holiday and a

208. *Id.* at 166–67, 182–84, 186–87.

209. Bender & Aoki, *supra* note 176, at 13.

210. GUTIÉRREZ, *supra* note 204, at 187–88.

211. GARCIA, *supra* note 179, at 157.

212. *Id.* at 151, 154, 156–63. These legal battles continue to this day. The United States Supreme Court recently heard a case in which an agricultural property owner successfully challenged a California law allowing union organizers to enter as an unconstitutional taking that violates the Fifth Amendment. The Court held that the California law allowed the right to invade property, and this was a per se physical taking requiring compensation under the Takings Clause in the Fifth Amendment. Cedar Point Nursery v. Shiroma, 923 F.3d 524 (9th Cir. 2019), *rev'd, sub nom.* Cedar Point Nursery v. Hassid, No. 20-107, slip op. (U.S. June 23, 2021).

213. GARCIA, *supra* note 179, at 176–77.

214. *Id.* at 215–17.

215. *Id.* at 219–20; SHAW, *supra* note 176, at 50.

216. GARCIA, *supra* note 179, at 289–91.

217. GUTIERREZ, *supra* note 204, at 256–64; BARDACKE, *supra* note 192, at 737–38; Jennifer Medina, *Family Quarrel Imperils a Labor Hero's Legacy*, N.Y. TIMES (May 13, 2011) <https://www.nytimes.com/2011/05/14/us/14chavez.html>

postage stamp, and schools and streets are named after him.²¹⁸ Ironically, those honors depict him as a civil rights icon rather than a labor organizer.²¹⁹

C. *The Promise and Peril of Economic Strategies for Full Inclusion and Empowerment*

The histories of the UNIA and the UFW illustrate both the promise and peril of economic strategies for full inclusion and empowerment. When Marcus Garvey promoted self-reliance as a means to advance the Black community, he initially benefited from increased community activism and optimism about a post-war economy.²²⁰ Under these circumstances, his call for entrepreneurialism resonated so powerfully that it led to a mass mobilization. When Cesar Chavez began his union organizing, the rise of the civil rights movement lent credence to his call to lift up the disadvantaged and dispossessed.²²¹ As a result, he was able to use strategies like boycotts and protests to bolster the claims of farmworkers who lacked legal protection and material resources.

Although Garvey and Chavez launched their movements for economic empowerment in different eras, there are some fundamental similarities. Both Garvey and Chavez strategically deployed disaggregation to identify core constituencies. Though Garvey adopted a “Race First” philosophy²²² while Chavez eschewed an ethnic lens, neither built coalitions that encompassed all of their racial or ethnic communities. Garvey drew class distinctions among Black Americans, while Chavez focused on undocumented status among workers of Mexican origin. Garvey and Chavez both developed innovative strategies that were attuned to their supporters’ aspirations. For Garvey, the emphasis was on entrepreneurship, while Chavez elevated the dignity of work. Garvey experimented with alternative methods of capital accumulation, while Chavez deployed novel forms of labor organizing. Both were able to enjoy initial success, so long as they did not run afoul of legal regulation. Yet, both the UNIA and the UFW eventually succumbed to regulatory regimes that policed

[<https://perma.cc/A8TA-9PLM>] (describing a “drift” in leadership by Chavez’s family, which did little for farmworkers but did promote Chavez’s image).

218. BARDACKE, *supra* note 192, at 739; Mariscal, *supra* note 175, at 44–46.

219. Mariscal, *supra* note 175, at 46.

220. See *supra* note 127 and accompanying text.

221. See *supra* note 174 and accompanying text.

222. See *supra* note 129 and accompanying text.

economic participation, whether by constraining access to capital or to the bargaining table.

The experiences of the UNIA and the UFW stand in marked contrast to contemporary calls to recognize Latinx market power. The LDC and the Aspen Institute draw no distinctions among Latinx, readily deploying a pan-ethnic label and ignoring internal heterogeneity rooted in class differences or immigration status.²²³ Because the work is research-driven and treats the rise of Latinx economic power as largely a *fait accompli*, there are no plans to mobilize for economic change. As a result, aggregation can magnify the message of market impact without raising any concerns about the solidarity needed to effect change. For similar reasons, the studies largely take the workings of the economy as a given, so there are no proposals for dramatic innovations that would disrupt conventional market dynamics. As a result of this faith in the market, the research evinces little concern that regulatory regimes might hamper the growth of Latinx economic power.

These sharp contrasts raise an intriguing question: what is it about the contemporary ethos that makes it so appealing to rely on the Latinx population's aggregated market power, instead of mass mobilization, to demand equal respect and inclusion? Some of the appeal may lie in the transformation of the Latinx community itself. The LDC and Aspen Institute reports rely on indisputable evidence that the Latinx population is growing and that this growth is bringing newfound economic clout.²²⁴ Precisely because of the demographic shift, there may be less need to frame Latinx as a discrete and insular minority, one that must depend on grass-roots mobilization to gain recognition. In fact, it could become increasingly difficult to achieve any show of Latinx solidarity, given the community's sheer size and heterogeneity. Proliferating differences among Latinx are likely to

223. See *supra* text accompanying notes 83–107, 109–14 (describing strategies of aggregation used to calculate Latino GDP and measure rates of Latinx entrepreneurship).

224. See Monika Mantilla, *The G.R.E.A.T. Gacela Theory: Increasing Capital and Conditions for Success for High-Potential Latinx Entrepreneurs Capable of Transforming Our Economy and Our Country*, ADVANCING U.S. LATINO ENTREPRENEURSHIP: A NEW NATIONAL ECONOMIC IMPERATIVE 347, 350 (2020) (noting that Latinx-owned businesses are “poised to lead in the next economic recovery” as a “significant engine of new business creation” in the United States); Hamilton et al., *supra* note 1, at 4 (citing the total economic output of Latinx as \$2.6 trillion in 2018).

undermine any sense of mutual interdependency, making it difficult to achieve a cohesive identity and voice.²²⁵

Aggregation offers a way to capitalize on a common interest in prosperity and mobility without delving too deeply into intragroup differences, whether they relate to class or immigration status.²²⁶ Given this broad vantage point, the work done by the LDC and the Aspen Institute can add up the numbers and present the market as a significant—if not complete—alternative to full inclusion through the civic square. History counsels otherwise, however, suggesting that racial and ethnic groups are riven by divides that bear on access to economic opportunity. As a result, it is worth considering how an agenda for full market participation might change if salient distinctions among Latinx were fully acknowledged.

IV. BEYOND AGGREGATION: CLASS, IMMIGRATION STATUS, AND THE LATINX PATH TO FULL INCLUSION THROUGH THE MARKETPLACE

Drawing on the lessons of history, this Section analyzes how a Latinx agenda for the marketplace might change if key differences in the community were considered. The aggregate impact of Latinx on the economy is undoubtedly impressive, but here, I will explore the implications of class distinctions and immigration status, two dividing lines that emerged during the Garvey and Chavez movements to promote economic empowerment. I look at these issues in the context of labor and entrepreneurship, the primary concerns of Chavez and Garvey. In addition, I evaluate the relevance of consumer activism, which was a vital element of the UFW's push to bring growers to the bargaining table. This more granular focus reveals that advancements in the marketplace often are inextricably linked to reforms in the civic square. For working-class Latinx, some of whom are undocumented, investments in human capital and regularization of immigration status

225. See Louis DeSipio, *Latino Civic and Political Participation*, in *HISPANICS AND THE FUTURE OF AMERICA* 447, 447–49 (Marta Tienda & Faith Mitchell eds., 2006) (examining the divergent ways in which different segments of the Latinx population organize around national origin identities or other forms of community identification based on socioeconomic status).

226. For example, in 2016, Latinx in the 90th percentile of the earnings distribution made \$76,847, while those in the 10th percentile made \$9,900. The median income was \$30,400. Rakesh Kochhar & Anthony Cilluffo, *Income Inequality in the U.S. Is Rising Most Rapidly Among Asians*, PEW RSCH CTR. 10 (July 12, 2018), <https://www.pewsocialtrends.org/2018/07/12/income-inequality-in-the-u-s-is-rising-most-rapidly-among-asians> [<https://perma.cc/A533-HSF5>].

are key to maximizing opportunity. For middle-class Latinx, programs that address segregated social networks and discrimination will be critical to economic progress. Traditional civil rights law can tackle ongoing issues of discrimination, but a more robust set of interventions will be needed to address the full range of obstacles to Latinx economic participation.

A. *Labor: The Promise and Perils of Latinx Power*

The aggregate impact of Latinx on the labor force is already significant and growing. Based on 2014 data, the Center for Economic and Policy Research reported that Latinx made up 16.2% of the American workforce,²²⁷ and by 2028, they are projected to account for 20.9%.²²⁸ In some parts of the country, the figures already are much higher. In New Mexico, for example, Latinx make up 44.7% of the labor force, while in California and Texas, they represent 37.2%.²²⁹ As Professor Richard Alba explains, this demographic transition is being “accomplished largely through birth-cohort replacement, since everywhere younger cohorts are far more diverse than older ones. The current period is especially momentous because of the synchronization of this process to another demographic phenomenon: the aging of the baby boomers.”²³⁰ The boomers are overwhelmingly native-born whites who are retiring from the workforce in large numbers, and Latinx are playing a critical role in filling the resulting gaps in the labor market.²³¹ The LDC has deployed a narrative of aggregation to make this transformation visible, but that approach is a

227. Cherrie Bucknor, *Hispanic Workers in the United States*, CTR. FOR ECON. & POL'Y RSCH. 4 (Nov. 2016), <https://cepr.net/images/stories/reports/hispanic-workers-2016-11.pdf> [<https://perma.cc/4V4N-PCS7>].

228. *Hispanic Share of the Labor Force Projected to Be 20.9 Percent by 2028*, TED: THE ECON. DAILY (Oct. 2, 2019), <https://www.bls.gov/opub/ted/2019/hispanic-share-of-the-labor-force-projected-to-be-20-point-9-percent-by-2028.htm> [<https://perma.cc/64ZW-7HJ2>] (citing Bureau of Labor Statistics). *See generally* Lisa Catanzarite & Lindsey Trimble, *Latinos in the United States Labor Market*, in *LATINOS IN THE UNITED STATES LABOR MARKET: CHANGING THE FACE OF AMERICA* 149, 150–51 (Havidan Rodriguez, Rogelio Saenz & Cecilia Menjivar eds., 2008) (noting that Latinx made up 13.3% of the American workforce in 2005 and were expected to contribute disproportionately to growth in the labor force).

229. *Hispanics Made up 44.7 Percent of the Labor Force in New Mexico in 2019*, TED: THE ECON. DAILY (Oct. 13, 2020), <https://www.bls.gov/opub/ted/2020/hispanics-made-up-44-point-7-percent-of-the-labor-force-in-new-mexico-in-2019.htm>.

230. ALBA, *supra* note 11, at 182.

231. *Id.*

bit like doing a group snapshot. The panoramic view reveals very little about the backstory of the individuals in the picture. Nor does it provide any sense of what the future might hold for them. To rectify these omissions, this Section explores the different challenges facing Latinx workers based on class and immigration status as well as Latinx' prospects for intergenerational mobility.

1. *Working-class and immigrant Latinx and the challenges of organizing*

Working-class Latinx, especially those who are undocumented, face unique challenges to organizing for better wages and working conditions. A 2021 report done at the University of California, Los Angeles tried to quantify the impact of immigration status on workforce productivity.²³² The researchers argued that President Joseph R. Biden, Jr. should support comprehensive immigration reform because providing a pathway to citizenship for all unauthorized workers would generate an additional \$1.5 trillion in GDP over ten years.²³³ So far, that financial case has not broken the ideological logjam on federal immigration policy, but it does demonstrate the depressed returns on labor that undocumented workers face.²³⁴ In the absence of meaningful federal reform, some advocates have turned to labor organizing for low-wage, immigrant workers at the community level.²³⁵ This is admittedly an uphill struggle because steadily declining membership has greatly weakened unions.²³⁶ In 2015, for instance,

232. Raul Hinojosa-Ojeda et al., *A Path to Prosperity: The Macroeconomic Benefits of Four Immigrant Regularization Scenarios*, UCLA LATINO POL'Y & POL. INST. 4 (Mar. 23, 2021), <https://latino.ucla.edu/research/four-citizenship-scenarios> [<https://perma.cc/K2JR-TXQX>].

233. *Id.* at 5.

234. See Cindy Carcamo, *As Biden Narrows Immigration Focus, Dreamers Try to Stay Optimistic*, L.A. TIMES (June 15, 2021, 5:00 AM), <https://www.latimes.com/california/story/2021-06-15/comprehensive-immigration-reform-is-likely-dead-so-what-happens-next> [<https://perma.cc/NJT7-LGGBR>] (describing the ideological divides on immigration and the Biden administration's increasingly piecemeal focus on immigration reform).

235. See Richard C. Schragger, *Is a Progressive City Possible? Reviving Urban Liberalism for the Twenty-First Century*, 7 HARV. L. & POL'Y REV. 231, 245 (2013) (describing the localization of labor organizing as a means of shifting economic power from corporations to local laborers, particularly in the context of the land development process).

236. See Megan Dunn & James Walker, *Union Membership in the United States, Spotlight on Statistics*, U.S. BUREAU LAB. STAT. 1 (Sept. 2016), <https://www.bls.gov/spotlight/2016/union-membership-in-the-united->

only 11.1% of the American workforce belonged to a union compared to 20.1% in 1983.²³⁷ These figures conceal significant disparities between public and private sector workers. Although public sector workers have maintained steady rates of unionization, private sector rates have suffered steep drops.²³⁸ Black Americans have higher union membership rates than whites, in part due to their heavy representation in public sector jobs.²³⁹ By contrast, the membership rate for Latinx is the lowest of any racial or ethnic group.²⁴⁰

There have been exceptions to this general decline in union organizing. Some UFW veterans have revitalized the labor movement in Los Angeles.²⁴¹ Like Chavez, these organizers reject conventional models of business unionism by linking their efforts to social justice and political mobilization.²⁴² The innovations have been necessary precisely because of the unique obstacles faced by low-wage, immigrant workers.²⁴³ In keeping with Chavez's approach, campaigns like "Justice for Janitors" have adopted an industry-wide rather than a workplace-based approach, relying on strikes, protests, and fasts to put public pressure on employers.²⁴⁴ When Latinx workers mobilize, feelings of individual empowerment often come with a sense of collective obligation. As one local Teamster official explained as she spearheaded an organizing campaign by Mexican immigrants,

I think that's one of the main things that you learn to begin with: that you have a right to be active, you have the right to file an NLRB [National Labor Relations Board] charge, you have the right to do

states/pdf/union-membership-in-the-united-states.pdf [https://perma.cc/3VD6-UZKS] (examining the historical trends indicating declines in union membership).

237. *Id.* at 2.

238. *Id.* at 4.

239. *Id.* at 10.

240. *Id.*

241. SHAW, *supra* note 176, at 10, 165–78 (describing how UFW veteran Miguel Contreras turned Los Angeles into a union stronghold and transformed its electoral politics).

242. *See id.* at 7, 178–80, 183 (describing a transformation of California politics due to the strong voter mobilization resulting from UFW's labor-based organizing efforts).

243. E. Tammy Kim, *Organizing the Unorganizable*, DISSENT (2015), <https://www.dissentmagazine.org/article/worker-centers-immigrant-organizing> [https://perma.cc/XKE6-PZSZ].

244. JENNIFER GORDON, SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS 61–62 (2005); Stephen Lerner & Jono Shaffer, *25 Years Later: Lessons from the Organizers of Justice for Janitors*, TALK POVERTY (June 16, 2015), <https://talkpoverty.org/2015/06/16/justice-for-janitors> [https://perma.cc/S8MV-ACXL].

[this] Once you learn your rights, you start teaching other people their rights. And then, you start enforcing your rights.²⁴⁵

Organizing efforts have been most successful in communities like Los Angeles or Las Vegas where the Latinx population is large.²⁴⁶ Far from being a discrete and insular minority, Latinx are the backbone of some municipal, regional, and even state workforces.²⁴⁷ Under these circumstances, sheer numbers can be leveraged to demand change if workers have a sense of shared fate and the service jobs they perform cannot be readily outsourced to defeat unionization.²⁴⁸ In areas with concentrated Latinx populations, organizing also can become a gateway to amassing political power. In Los Angeles, for example, union locals have become the training ground for some of the most influential Latinx leaders in the United States.²⁴⁹ Even so, successful organizing efforts remain exceptional, and as a result, Latinx have extremely low rates of union participation.²⁵⁰

2. *Worker centers and the importance of trust*

With the decline of unions, additional innovation is essential. Sociologists Bruce Western and Jake Rosenfeld have argued that when unions were a dominant force in the American economy, they played a significant role in mitigating income and wealth inequality by protecting working-class interests.²⁵¹ According to legal scholar Cesar F. Rosado Marzan, worker centers can assume at least part of this role by bolstering a moral economy of fairness in labor markets for low-wage, immigrant workers.²⁵² Unlike conventional unions, worker centers typically are local rather than national in reach.²⁵³ With limited

245. Paul Apostolidis, *Immigration, Liberal Legalism and Radical Democracy in the U.S. Labor Movement*, 35 HIST. REFLECTIONS 137, 140 (2009).

246. See SHAW, *supra* note 176, at 181 (indicating the success of political engagement campaigns among hundreds of thousands of Latinx voters).

247. See *supra* note 229 and accompanying text.

248. See AFL-CIO *Commission on the Future of Work and Unions*, Report to the AFL-CIO General Board, AFL-CIO 15 (Sept. 2019) (“The strength of worker bargaining power overall will depend on whether we are able to build inclusive working-class solidarity and prevent working people from being pitted against one another . . .”).

249. SHAW, *supra* note 176, at 180–81.

250. Dunn & Walker, *supra* note 236, at 10.

251. Western & Rosenfeld, *Workers of the World Divide*, *supra* note 66, at 89, 94–96, 99; Bruce Western & Jake Rosenfeld, *Unions, Norms, and the Rise in U.S. Wage Inequality*, 76 AM. SOCIO. REV. 513, 517–19 (2011).

252. Rosado Marzan, *supra* note 74, at 409–10, 433.

253. *Id.* at 415.

resources, centers rely on building networks of influence that draw attention to unfair labor practices like wage theft.²⁵⁴ To do that, centers facilitate relationships with local employers as well as clergy and political leaders.²⁵⁵ Centers do not limit their activities to organizing, but they deploy many tactics that resemble those used to mobilize low-wage, immigrant labor.²⁵⁶ In this way, centers make a concerted effort to target gaps in legal and institutional protections for the most vulnerable.²⁵⁷

For working-class Latinx, efforts to capitalize on labor force participation are most likely to succeed when relationships of trust facilitate cooperation. The UFW's experience demonstrates that immigrant workforces predominantly from one country of origin can develop strategies of cooperation and solidarity to survive on the job.²⁵⁸ Both immigrant organizing and worker centers use a localized approach that can minimize difficulties arising from internal divisions within the Latinx community. With the exception of the Northeast, most regions of the United States are dominated by particular national-origin groups, for instance, Mexican-origin residents in the Southwest and West.²⁵⁹ Moreover, the worksite itself can deepen bonds of mutuality and trust if Latinx employees, particularly immigrants, acquire their jobs through ethnic networks of referral and occupy a similar place in the workforce hierarchy.²⁶⁰ These bonds, so critical to

254. *Id.* at 415–19.

255. *Id.* at 417.

256. *Id.* at 424.

257. *Id.* at 424–25 (describing how worker centers overcome “structural holes” in the decision-making framework).

258. Susan Eckstein & Giovanni Peri, *Immigrant Niches and Immigrant Networks in the U.S. Labor Market*, 4 RSF: RUSSELL SAGE FOUND. J. SOC. SCIS., 1, 13–14 (2018), <http://www.bu.edu/pardeeschool/files/2018/01/rsf.2018.4.1.01.pdf> [<https://perma.cc/VS9E-243U>] (describing interpersonal ties that create and sustain immigrant niches in the U.S. job market); *see also* ROGER WALDINGER & MICHAEL I. LICHTER, *HOW THE OTHER HALF WORKS: IMMIGRATION AND THE SOCIAL ORGANIZATION OF LABOR* 119 (2003) (describing kinship network strategies to promote solidarity).

259. Douglas S. Massey & Amelie Constant, *Latinos in the Northeastern United States: Trends and Patterns* 1, 5–8 (Office of Population Research, Princeton University, Working Paper 2017), <https://flpabf2.files.wordpress.com/2017/05/massey-and-constant-white-paper.pdf> [<https://perma.cc/42B8-JT6N>].

260. *See* MARY WATERS & MARISA GERSTEIN PINEAU, *THE INTEGRATION OF IMMIGRANTS INTO AMERICAN SOCIETY* 281 (2015) (describing the concentration of Mexican and Central American immigrants in low-skilled jobs with few chances for advancement); WALDINGER & LICHTER, *supra* note 258, at 101–02, 118–19; ANGELA STUESSE, *SCRATCHING OUT A LIVING: LATINOS, RACE, AND WORK IN THE DEEP SOUTH* 87–92 (2016)

the success of immigrant organizing and worker centers, can promote better conditions on the job, but they do not necessarily provide a bridge to other opportunities.²⁶¹ For that reason, it becomes critically important to explore Latinx upward mobility.

3. *The immigrant bargain, Latinx upward mobility, and exclusionary social networks*

This is arguably a highly propitious moment for Latinx to achieve upward mobility. According to Professor Alba, whites have long dominated the most prestigious occupations in the United States but are now leaving those jobs in substantial numbers.²⁶² Those departures suggest that there will be increasing diversity in the middle and upper classes in the coming years.²⁶³ Two factors are significant in assessing Latinx' middle-class prospects: the intergenerational mobility of Latinx youth and the experience of Latinx who enter the middle class. Many Latinx who come to the United States make "the immigrant bargain."²⁶⁴ That is, these workers take low-wage jobs on the assumption that their sacrifices will translate into a better life for their children.²⁶⁵ In recent years, that bargain has become a more plausible proposition, as rates of high school graduation and college enrollment rise for Latinx.²⁶⁶ However, Latinx still lag behind whites and Asian Americans in college completion rates.²⁶⁷

(describing how recruitment networks of immigrants throughout the South contributed to workforce patterns in Mississippi industry); ROCIO ROSALES, FRUTEROS: STREET VENDING, ILLEGALITY, AND ETHNIC COMMUNITY IN LOS ANGELES 25, 49–51 (paperback ed. 2020); Roger Waldinger, *The Making of an Immigrant Niche*, 28 INT'L MIGRATION REV. 3, 3 (1994). These networks also can lead to segregative, exclusionary tendencies, and in workplaces with more than one racial or ethnic group, the result can be division and distrust. FINE, *supra* note 73, at 62.

261. ROSALES, *supra* note 260, at 11–12, 138–39 (describing immigrant social networks among fruit vendors in Los Angeles as an "ethnic cage").

262. ALBA, *supra* note 11, at 183–84.

263. *Id.* So far, Black Americans have made only modest gains in the top quartile of jobs, while Asian Americans, both immigrant and native-born, have made substantial gains. *Id.* at 184–85.

264. VIVIAN LOUIE, KEEPING THE IMMIGRANT BARGAIN: THE COSTS AND REWARDS OF SUCCESS IN AMERICA 6 (2012) (describing a term first coined by Robert Courtney Smith in 2006).

265. *Id.*

266. Jens Manuel Krogstad, *5 Facts about Latinos and Education*, PEW RSCH. CTR. (July 28, 2016), <https://www.pewresearch.org/fact-tank/2016/07/28/5-facts-about-latinos-and-education> [<https://perma.cc/C3MW-XPW7>].

267. *Id.*

So far, nearly all the literature on disparate outcomes for Latinx in higher education focuses on academic preparedness and financial support.²⁶⁸ These are undoubtedly significant factors, but an emerging body of literature has identified a third barrier to upward mobility that arises because of segregated social networks on campus.²⁶⁹ Latinx from working-class backgrounds may be ill-prepared to penetrate these networks. Many of these youth have grown up in communities isolated by ethnicity, poverty, language, and immigration status.²⁷⁰ Whatever the hardships, sociologist Maria Rendón has noted, “[t]he internalization of their parents’ hardship and struggle discouraged [these young people] from giving up; well attuned to the immigrant bargain, they felt that they had to redeem their parents’ sacrifice.”²⁷¹ Family and friends in turn affirmed the youth’s ongoing faith in a meritocratic system that rewards hard work.²⁷² Education scholar Anthony Jack’s study of first-generation, low-income students at an elite Ivy League university reinforces Rendón’s conclusions.²⁷³ He found that the “Doubly Disadvantaged,” that is, low-income youth who attended segregated public high schools, “express[ed] strong faith in the idea of meritocracy—believing that focusing on ‘the work’ is enough for success.”²⁷⁴

According to Rendón, the community networks that sustain Latinx students’ aspirations are not necessarily enough to launch them into the middle class.²⁷⁵ As she explains, they often find college and university campuses hard to navigate, and without mentors, they do not know how to pursue professional opportunities.²⁷⁶ Jack’s study

268. See, e.g., Kate Sablosky et al., *Debt, Doubt, and Dreams: Understanding the Latino College Completion Gap*, UNIDOS US 2–3, 6–9, 18–26 (Nov. 2020), <https://communitycapital.unc.edu/wp-content/uploads/sites/340/2020/11/Debt-Doubt-and-Dreams-Updated-Final.pdf> [<https://perma.cc/HG6R-TX9J>].

269. See, e.g., Marlene Chavez, *Examining the Experiences of Latinx STEM Baccalaureates 16–18* (May 2018) (Ph.D. dissertation, Loyola University Chicago), https://ecommons.luc.edu/cgi/viewcontent.cgi?article=3785&context=luc_diss [<https://perma.cc/K2WY-PLVD>].

270. Rachel F. Moran, *Persistent Inequalities, the Pandemic, and the Opportunity to Compete*, 27 WASH. & LEE J. CIV. RTS. & SOC. JUST. 589, 595–96, 597–602 (2021).

271. RENDÓN, *supra* note 18, at 193.

272. *Id.* at 194–202.

273. See generally ANTHONY ABRAHAM JACK, *THE PRIVILEGED POOR: HOW ELITE COLLEGES ARE FAILING DISADVANTAGED STUDENTS* (2019).

274. *Id.* at 127.

275. RENDÓN, *supra* note 18, at 230–32.

276. *Id.* at 244–45.

reaches similar conclusions, finding that the Doubly Disadvantaged often are unable to tap into necessary networks of support and guidance to make the most of their college opportunities.²⁷⁷ Because networking skills developed in college can affect entrée into business and professional networks, both Rendón and Jack recommend programs that teach the “hidden curriculum” in higher education and how best to access it.²⁷⁸

Even when Latinx complete college or obtain an advanced degree, they still can face unequal access to middle-class opportunities in the workforce. There is a persistent wage gap of about 30% between Latinx and white men and over 40% between Latinx and white women.²⁷⁹ Some of these disparities are attributable to differences in age, education, and experience, but the gaps—although narrower—remain even after controlling for these factors.²⁸⁰ Educational attainment alone is not a safeguard against wage gaps: male Latinx college graduates face a larger wage gap than their less educated Latinx counterparts, while for female Latinx college graduates, the gap is about the same.²⁸¹ Just as differential access to social networks can hinder Latinx college students’ success, middle-class Latinx struggle with similar dynamics on the job. As scholars Marie T. Mora and Alberto Dávila observe:

white workers have more established social networks than black and Hispanic workers do, and . . . these social networks help them procure employment more easily in part because employers believe these networks are more reliable in the recruitment process. These favored social networks provide college-educated white workers with greater job mobility than college-educated minority workers, and thus provide an advantage in securing higher pay.²⁸²

277. JACK, *supra* note 273, at 107–13, 126–27.

278. RENDÓN, *supra* note 18, at 244–45; JACK, *supra* note 273, at 128–31, 196.

279. Marie T. Mora & Alberto Dávila, *The Hispanic-White Wage Gap Has Remained Wide and Relatively Steady*, ECON. POL’Y INST. 13 (July 2, 2018), <https://files.epi.org/pdf/147311.pdf> [<https://perma.cc/5XK3-AGZY>]. In addition, Latinx experience greater instability in employment than non-Hispanic whites even as their levels of education rise, and those gaps have not narrowed in recent years. Ryan Zamarripa, *Closing Latino Labor Market Gap Requires Targeted Policies to End Discrimination*, CTR. FOR AM. PROGRESS (Oct. 21, 2020), <https://www.americanprogress.org/issues/economy/reports/2020/10/21/491619/closing-latino-labor-market-gap-requires-targeted-policies-end-discrimination> [<https://perma.cc/4B5N-JAMW>].

280. Mora & Dávila, *supra* note 279, at 14–17.

281. *Id.* at 23–25. In this, Latinx resemble Black American workers. *Id.* at 24.

282. *Id.* at 24–25.

Although Rendón and Jack focus on equitable access to information about networking opportunities on campus, Mora and Dávila briefly brook the possibility that wage gaps could be a product of discrimination.²⁸³ If better information is in fact the solution, measures like orientation, training, and mentoring programs should suffice to address the disparities. However, if discrimination, whether conscious or not, plays a role, then civil rights protections are relevant to full inclusion. Unfortunately, it is not easy to bring discrimination claims successfully, especially when decisions about elite college programs or high-level hiring involve substantial discretion related to subjective judgments about “fit” with the institutional culture.²⁸⁴ In fact, exclusive social networks may involve the kind of structural discrimination that civil rights laws do not effectively reach.²⁸⁵

In sum, aggregation conceals important disparities among Latinx in the labor force, obscuring the portfolio of strategies needed to forge a path to full inclusion. For working-class Latinx, especially immigrants, social networks can be an important source of job opportunities and a critical buffer against unstable employment. Mobilization through unions and worker centers can build on these existing networks, but limited skills and undocumented status remain significant impediments to a stable financial footing. As a result, government programs can be an important way to bolster human capital and ensure fair treatment, whether through training programs, protection against predatory labor practices, or regularization of immigration status. For Latinx who already have high levels of human capital, new challenges emerge. Upwardly mobile students and workers can be stymied by segregated social networks at college and on the job. As the middle-class work force diversifies in coming years, it will be critical to determine whether full participation can be achieved with equitable access to information about network dynamics or whether ongoing biases, explicit or implicit, perpetuate exclusionary practices. If discrimination does play a part, civil rights advocates should develop new strategies to address the impact of closed social networks on career opportunities.

283. *Id.* at 15.

284. See LAUREN RIVERA, PEDIGREE: HOW ELITE STUDENTS GET ELITE JOBS 275–76 (2016) (describing how hiring decisions about “fit” replicated class and race privilege).

285. See Austin Howard, *Networking Away the American Dream: How Reinterpreting Title VII Can Reduce Employer Reliance on Exclusive Networks in Hiring and Broaden Access to Professional Opportunity*, 41 CARDOZO L. REV. 721, 722–28, 746–54 (2019).

B. Consumption: The Neglected Path to Latinx Market Power

As the history of the UFW demonstrates, consumers can send meaningful messages in the marketplace. Chavez enlisted the help of sympathetic whites, but today, Latinx represent a potent market force in their own right. In 2015, Latinx accounted for one of every ten dollars of disposable income in the United States, and in places like California and Texas, they accounted for one in five dollars.²⁸⁶ Of course, not all Latinx are similarly able to send a message with their spending. About one in six Latinx households lived in poverty in 2019,²⁸⁷ and Latinx earnings lagged behind those of whites and Asian Americans at every level of the income distribution.²⁸⁸ Income inequality among Latinx is similar to that for whites but lower than for Asian and Black Americans.²⁸⁹

1. The rise of political consumerism

Despite disparities in earnings, Latinx as a whole wield substantial consumer power. That power might be used to promote full inclusion through “political consumerism,” a strategy that has grown in popularity in recent years.²⁹⁰ As Margaret Scammell explains,

As workers, most of us have less power now for all the familiar reasons: technological revolution and economic globalization, abetted by the deregulating governments of the 1980s and 1990s that systematically dismantled many of the legal rights of labor unions.

286. *Power of the Purse: How Hispanics Contribute to the U.S. Economy*, NEW AM. ECON. (Dec. 14, 2017), <https://research.newamericaneconomy.org/report/power-of-the-purse-how-hispanics-contribute-to-the-u-s-economy> [<https://perma.cc/6XSV-2NBZ>].

287. Valerie Wilson, *Racial Disparities in Income and Poverty Remain Largely Unchanged amid Strong Income Growth in 2019*, WORKING ECON. BLOG, ECON. POL’Y INST. (Sept. 16, 2020), <https://www.epi.org/blog/racial-disparities-in-income-and-poverty-remain-largely-unchanged-amid-strong-income-growth-in-2019> [<https://perma.cc/6WTS-Y46N>].

288. Kochhar & Cilluffo, *supra* note 226, at 30–31. In 2017, the median household income for Latinx was \$50,486 compared to \$68,145 for Whites and \$81,331 for Asian Americans. Only Black Americans had a lower median household income at \$40,258. U.S. Census, Figure 1. Real Median Income by Race and Hispanic Origin: 1967 to 2017, <https://www.census.gov/content/dam/Census/library/visualizations/2018/demo/p60-263/figure1.pdf> [<https://perma.cc/L8B3-BT36>].

289. Kochhar & Cilluffo, *supra* note 226, at 4.

290. Homero Gil de Zúñiga et al., *Political Consumerism: Civic Engagement and the Social Media Connection*, 16 NEW MEDIA & SOC. 488, 488–89 (2014).

As consumers, though, we, at least in the developed North, have more power than ever. We have more money and more choice.²⁹¹

To exercise this leverage, the political consumer makes “purchasing decisions based on ethical or political considerations.”²⁹² This “lifestyle politics” approach “reflects the broader tendency to see political meaning in recreational experiences, entertainment choices, fashion decisions, and other personal happenings.”²⁹³ Political consumerism depends on “politics by other means” through “a movement away from institutional and formal modes of engagement.”²⁹⁴ As the decline of labor unions clearly illustrates, these institutional and formal options are increasingly unavailable or ineffectual, given the realities of neoliberal politics in a globalizing economy.²⁹⁵ The politics of consumerism can be personal, permitting individuals to assert their identities and ideologies through purchasing decisions.²⁹⁶ Some scholars attribute the growing interest in political consumerism to the challenges of “managing and expressing complex identities in a

291. Margaret Scammell, *The Internet and Civic Engagement: The Age of the Citizen Consumer*, 17 POL. COMMUNIC. 351, 351 (2000).

292. Gil de Zúñiga et al., *supra* note 290, at 489.

293. Dhavan V. Shah et al., *Political Consumerism: How Communication and Consumption Orientations Drive “Lifestyle Politics,”* 611 ANNALS OF THE AM. ACAD. POL. & SOC. SCI. 217, 219 (2007); *see also* Benjamin J. Newman & Brandon L. Bartels, *Politics at the Checkout Line: Explaining Political Consumerism in the United States*, 64 POL. RES. Q. 803, 806 (2011).

294. Shah et al., *supra* note 293, at 219.

295. LAWRENCE B. GLICKMAN, *BUYING POWER: A HISTORY OF CONSUMER ACTIVISM IN AMERICA* 306 (2009); Shah et al., *supra* note 293, at 219; Michael Schudson, *Citizens, Consumers, and the Good Society*, ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCES 236, 238, 246–48 (2007); Newman & Bartels, *supra* note 293, at 807; Eric J. Arnould, *Should Consumer Citizens Escape the Market?*, 611 ANNALS OF THE AMERICAN ASSOCIATION OF POLITICAL AND SOCIAL SCIENTISTS 96, 105 (2007); Benjamin R. Barber, *Globalizing Democracy*, 11 THE AM. PROSPECT 1, 2 (2000); Dietlind Stolle et al., *Politics in the Supermarket: Political Consumerism as a Form of Political Participation*, 26 INT’L POL. SCI. REV. 245, 247 (2005); W. Lance Bennett, *The UnCivic Culture: Communication, Identity, and the Rise of Lifestyle Politics*, 31 PSONLINE 741, 749 (Dec. 1998), dhi.ac.uk; Deborah Doane, *Taking Flight: The Rapid Growth of Ethical Consumerism—The Ethical Purchasing Index 2001 at 2* (New Economics Foundation, Oct. 2001).

296. *See* MICHELE MICHELETTI, *POLITICAL VIRTUE AND SHOPPING: INDIVIDUALS, CONSUMERISM, AND COLLECTIVE ACTION* 11–12 (2003) (“[I]ssues of consumption engage people who are both interested in furthering the public interest and those who want to protect and defend their private interests from detrimental outside forces.”).

fragmenting society,” which in turn makes collective identity and grand political projects increasingly fragile and elusive.²⁹⁷

2. *Boycotts and buycotts*

Political consumerism deploys both boycotts and buycotts to influence company behavior.²⁹⁸ Market boycotts ask consumers to avoid products in order to deter corporations from bad behavior.²⁹⁹ These efforts are often reactive and short-lived, ending when the company responds to complaints or consumers lose interest in the face of corporate intransigence.³⁰⁰ The UFW’s boycott is one example of an effort to mobilize purchasing decisions to bring growers to the bargaining table.³⁰¹ Precisely because it is hard to coordinate market behavior, activists increasingly have shifted their focus to media boycotts that target a firm’s image.³⁰² These campaigns can shame companies, even if consumer behavior does not change dramatically.³⁰³ Whatever the boycott strategy, it can be difficult to determine whether the effort actually achieved its aims except on rare occasions when a cause-and-effect connection can be found.³⁰⁴

Buycotts are another way to change consumers’ behavior, this time urging them to make purchases to reward companies’ good conduct.³⁰⁵ Buycotts have addressed, among other things, environmental issues, fair trade concerns, and food safety and quality.³⁰⁶ While boycotts are often ephemeral, proponents of buycotts have pushed for

297. Bennett, *supra* note 295, at 755; see Arnould, *supra* note 295, at 102.

298. Gil de Zúñiga, *supra* note 290, at 490; Newman & Bartels, *supra* note 293, at 808.

299. Gil de Zúñiga, *supra* note 290, at 490.

300. Michelle Orelup, *The Success and Failure of Consumer Boycotts*, HUBPAGES (Aug. 18, 2020), <https://www.discover.hubpages.com/politics/The-Success-and-Failure-of-Consumer-Boycotts> [https://perma.cc/SE5M-4JDD].

301. UNITED FARM WORKERS OF AMERICA, <http://www.nfwm.org/farm-workers/farmworker-partners/united-farm-workers-of-america> [https://perma.cc/CK5R-3WLM].

302. MONROE FRIEDMAN, CONSUMER BOYCOTTS: EFFECTING CHANGE THROUGH THE MARKETPLACE AND THE MEDIA 218–19 (1999).

303. *Id.* But cf. GLICKMAN, *supra* note 285, at 307–09 (noting that historically, boycott campaigns have relied on adverse publicity to damage companies’ corporate images).

304. FRIEDMAN, *supra* note 302, at 222–23; Monroe Friedman, *Consumer Boycotts in the United States, 1970–1980: Contemporary Events in Historical Perspective*, 19 J. CONSUMER AFF. 96, 113–14 (1985).

305. Gil de Zúñiga et al., *supra* note 290, at 490; Newman & Bartels, *supra* note 293, at 808.

306. MICHELETTI, *supra* note 296, at 92–99.

“mainstreaming,” that is, embedding changes like labeling to make political consumerism sustainable.³⁰⁷ Even so, the impact of labeling remains unclear, in part because the number of affected products and the issues that boycotts can address are necessarily limited.³⁰⁸ In many instances, companies voluntarily participate in labeling campaigns, and the message must be innocuous enough to avoid any severe backlash against the product.³⁰⁹

3. *Latinx and the missed opportunity to leverage consumer power*

Given the historical example of the UFW, increasing Latinx spending on consumer goods, and the general rise of political consumerism, boycotts and buycotts might seem like a useful tool in forging a path to full economic inclusion. So far, though, Latinx have not made much use of strategies that mobilize consumers, and those efforts typically have involved demands for immigration reform. Consider, for example, “The Great American Boycott,” also known as “A Day without Immigrants,” on May 1, 2006.³¹⁰ The organizers asked foreign-born residents to refrain from patronizing businesses, stay home from work or school, and instead participate in protest rallies around the country.³¹¹ That day, sympathetic labor unions in Latin America observed a “Nothing Gringo Boycott” by refusing to purchase products made in the United States.³¹² The boycott, announced in Los

307. *Id.* at 108.

308. David Vogel, *Tracing the American Roots of the Political Consumerism Movement*, in *POLITICS, PRODUCTS, AND MARKETS: EXPLORING POLITICAL CONSUMERISM PAST AND PRESENT* 83, 97 (Michele Micheletti et al. eds, 2004).

309. Perhaps the most prominent consumer backlash relates to growing skepticism of products’ eco-friendly claims, sometimes called “greenwashing” or “eco-exaggeration.” That backlash has led to grass-roots campaigns and litigation challenging assertions about the products’ environmental impact. Michelle Diffenderfer & Keri-Ann C. Baker, *Greenwashing: What Your Client Should Know to Avoid Costly Litigation and Consumer Backlash*, 25 *NAT. RES. & ENV’T* 1 (2011), <https://www.llw-law.com/wp-content/uploads/2016/04/Greenwashing-What-Your-Client-Should-Know-to-Avoid-Costly-Litigation-and-Consumer-Backlash.pdf> [<https://perma.cc/9BG8-ZQZZ>].

310. Dan Glaister & Ewen MacAskill, *US Counts Cost of Day Without Immigrants*, *GUARDIAN* (May 1, 2006), <https://www.theguardian.com/world/2006/may/02/usa.topstories3> [<https://web.archive.org/web/20211111062112/https://www.theguardian.com/world/2006/may/02/usa.topstories3>].

311. *Id.*

312. Danna Harman, *‘Nothing Gringo’ Day Echoes US ‘Day Without Immigrants,’* *CHRISTIAN SCI. MONITOR* (May 3, 2006), <https://www.csmonitor.com/2006/0503/p25s01-woam.html> [<https://perma.cc/8L7F-YTBB>].

Angeles, was the brainchild of grass-roots activists inspired by Cesar Chavez and the UFW.³¹³ The action was short-lived but widespread, sought to alter consumer behavior, and relied on large rallies to bolster the impact of an admittedly fleeting mobilization.³¹⁴ Even so, some Latinx distanced themselves from the effort by forming the “You Don’t Speak for Me” coalition and making clear that they were offended by demands for comprehensive immigration reform.³¹⁵

More recently, a number of Latinx leaders and organizations announced that they were boycotting a Latinx-owned business, Goya Foods, because of CEO Robert Inanue’s expression of admiration for then President Donald J. Trump’s leadership despite his administration’s harsh immigration policies.³¹⁶ The League of United Latin American Citizens called Inanue’s remarks “insensitive, calloused and disrespectful to the workers and consumers who buy Goya Foods products.”³¹⁷ Unlike the “Great American Boycott,” the Goya boycott mainly relied on high-profile media announcements to shame the corporation and its CEO.³¹⁸ Even if sales were not dramatically affected, the negative media publicity might be a source of pressure in its own right. Before the boycott, the Goya family had been exploring opportunities to sell the company for \$3 billion.³¹⁹ To avoid damaging controversy, a competitor predicted “[a] change in leadership and a public apology.”³²⁰ So far, neither has been

313. Randal C. Archibold, *Immigrants Take to U.S. Streets in Show of Strength*, N.Y. TIMES (May 2, 2006), <https://www.nytimes.com/2006/05/02/us/02immig.html> [<https://perma.cc/9776-NH5J>].

314. Glaister & MacAskill, *supra* note 310 (reporting that 400,000 participated in rallies in Chicago, 300,000 in Los Angeles, and 75,000 in Denver).

315. Cinnamon Stillwell, *The ‘Day Without Immigrants’ Backfires*, SF GATE (May 10, 2006), <https://www.sfgate.com/politics/article/The-Day-Without-Immigrants-Backfires-2497884.php> [<https://perma.cc/G8DP-JNK5>].

316. Claire Atkinson, *After Trump Doubled down on Goya, Has It Helped Boost—Or Tank—Sales of the Hispanic Brand?*, NBC NEWS (Aug. 11, 2020, 3:53 PM), <https://www.nbcnews.com/business/consumer/after-trump-doubled-down-goya-has-it-helped-boost-or-n1234743> [<https://perma.cc/NF9F-FYJB>].

317. *Id.*

318. Corporate shaming through the media is a tactic that the LGBTQ community used to good effect in its campaign to legalize same-sex marriage. Sasha Issenberg, *Cancel Culture Works. We Wouldn’t Have Marriage Equality Without It*, N.Y. TIMES (June 5, 2021), <https://www.nytimes.com/2021/06/05/opinion/gay-marriage-boycotts.html> [<https://perma.cc/33EQ-WH6N>].

319. Atkinson, *supra* note 316.

320. *Id.*

forthcoming.³²¹ As was true with the Great American Boycott, the media campaign against Goya triggered its own backlash. This time, Trump called on his supporters to buy Goya products, and the ultimate impact on the company's bottom line remains unclear.³²²

If Latinx advocates' use of boycotts has been limited, it is not because boycotts have been a viable alternative. As it turns out, it may be easier to punish bad behavior than to reward good behavior. For one thing, if Latinx were to organize to patronize Latinx-owned companies, there would be relatively few large-scale enterprises to support.³²³ (Ironically, Goya Foods is one of them.) Even when a Latinx product or brand is available, boycotts still can fail to materialize. In 2021, as movie theaters were reopening, a film version of Lin-Manuel Miranda's Broadway musical "In the Heights" arrived in theaters.³²⁴ With a story about Dominicans in New York and a Latinx cast, there were hopes that the film would be a huge box office hit.³²⁵ Its success might demonstrate that Latinx could carry a major motion picture, much as "Crazy Rich Asians" and "Black Panther" had done for other underrepresented groups.³²⁶ That message seemed important because, although Latinx account for 29% of movie tickets sold, only 3% of starring roles go to

321. Kate Gibson, *Goya Foods CEO "not apologizing" for praising President Trump*, CBS NEWS (July 10, 2020), <https://www.cbsnews.com/news/goya-foods-ceo-robert-unanue-not-apologizing-praising-trump> [<https://perma.cc/QK7J-TGZ9>].

322. Atkinson, *supra* note 316.

323. According to a 2013 article, the five most successful Latinx businesses produced under \$10 billion in revenue. *Latino Voices: 5 Latino Companies that Achieved Billions in Revenue*, HUFFINGTON POST (Nov. 25, 2013, 9:42 AM), https://www.huffpost.com/entry/latino-companies_n_4337332?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cu

Z29vZ2xILmNvbS8&guce_referrer_sig=AQAAAAF7wY9XccWjcFmOkj_5sJmMKM_GUft39HWRO54JvMQCBwN8_qO6gYa9TvMo1odSdTcJH02WwQLbszccgd7y7QMdxGWwh5C_JSNZIVtkxTumkVvZWAQtsU_WpiM9iTTUGgm2XQjCARtVBpbjydgewbHicLQ9-9bPYAlln3q-H6U [<https://perma.cc/5FE5-BF36>]. By contrast, Walmart, which tops the Fortune 500 list, brought in over \$500 billion in revenue. Zameena Mejia, *Make It: Meet the Family Whose Business Has Been the No. 1 Fortune 500 Company for 6 Straight Years*, CNBC (May 23, 2018), <https://www.cnbc.com/2018/05/23/walmart-is-the-no-1-fortune-500-company-for-the-6th-straight-year.html> [<https://perma.cc/3FKE-22LT>].

324. Sigal Ratner-Arias, *'In the Heights' Lifts Hopes for a Latino Film Breakthrough*, AP (June 9, 2021), <https://apnews.com/article/in-the-heights-latino-cast-e11b77381996bcdab193af1aef92ea9b> [<https://web.archive.org/web/20211104164231/https://apnews.com/article/in-the-heights-latino-cast-e11b77381996bcdab193af1aef92ea9b>].

325. *Id.*

326. *Id.*

Latinx performers.³²⁷ Despite positive reviews, the film had a lackluster opening.³²⁸ The audience was 40% Latinx, 43% white, 9% Black, and 4% Asian American.³²⁹ The reasons for the film's disappointing ticket sales remain the subject of speculation. But the casting did trigger a backlash of its own, as Afro-Latinx criticized their lack of representation in the movie, especially in leading roles.³³⁰ Miranda ultimately apologized for the film's colorism.³³¹ Instead of being a breakthrough, then, "In the Heights" became something of a cautionary tale. The hoped-for boycott did not materialize on the scale needed to advance Latinx representation in films. At the same time, the internal heterogeneity of the Latinx community led to an embarrassing confrontation about racial hierarchy and inclusion.

In light of the difficulties in mobilizing a Latinx consumer base, it seems likely that activists will continue to make limited use of boycotts and boycotts. Media shaming could become the preferred strategy because success need not be measured solely by the impact on consumer choices and the bottom line. For instance, media pressure can prompt corporations to enhance their philanthropy to build goodwill in the Latinx community.³³² Those responses can be counted as a victory, even if Latinx consumer preferences remain varied and unpredictable. For even modest forms of political consumerism to succeed, they typically must be combined with other types of activism. As the UFW's experience demonstrates, political consumerism is most effective when it is part of a larger strategy with a clear reform agenda and a mobilized base of deeply committed advocates. The work of these advocates is reinforced, not replaced, by the far more amorphous and ephemeral signal sent by consumer behavior. Only in the area of

327. *Id.*

328. Rebecca Rubin, *Box Office: 'In the Heights' Disappoints with \$11 Million Opening Weekend*, VARIETY (June 13, 2021), <https://variety.com/2021/film/box-office/box-office-in-the-heights-opening-weekend-1234995371> [https://perma.cc/NPM7-N3WQ].

329. *Id.*

330. Ellise Shafer, *Lin-Manuel Miranda Addresses Lack of Afro-Latino Representation in 'In the Heights': 'We Fell Short'*, VARIETY (June 14, 2021), <https://variety.com/2021/film/news/lin-manuel-miranda-in-the-heights-afro-latino-representation-1234996523> [https://perma.cc/3K3G-8RPG].

331. *Id.*

332. This was one result of a boycott targeting Philip Morris for its support of Senator Jesse Helms, a leading opponent of AIDS funding and civil rights for the LGBTQ community. N. Offen et al., *From Adversary to Target Market: The ACT-UP Boycott of Philip Morris*, 12 TOBACCO CONTROL 203, 205 (2003).

immigration has there been an analogous effort to meld political consumerism with sustained reform efforts.

C. Entrepreneurship: Access to Capital and the Limits of Latinx Market Power

As the LDC and especially the Aspen Institute data reveal, Latinx entrepreneurship has had a substantial impact on the American economy. In recent years, researchers have consistently found that Latinx business creation is an important driver of economic growth in the United States.³³³ Although members of the Latinx community command lower levels of income and wealth than white Americans,³³⁴ they are 50% more likely to start a business.³³⁵ In fact, the Latinx population has the highest rate of entrepreneurship of any racial or ethnic group in the country.³³⁶ The rate among immigrants is especially high. Of immigrant entrepreneurs, 90% are Latinx.³³⁷ The cumulative effect of Latinx business creation is significant. In 2016, these enterprises accounted for \$473 billion in revenue and 2.3 million jobs.³³⁸ Moreover, the growth in Latinx-owned businesses has outpaced that of non-Latinx-owned businesses.³³⁹ These numbers may not even tell the whole story, given that nearly one-third of Latinx enterprises are unregistered and operate in a largely invisible, informal economy.³⁴⁰

These aggregate statistics conceal a more complicated picture of widely divergent entrepreneurship experiences. As sociologist Zulema Valdez notes:

333. Mantilla, *supra* note 224, at 350.

334. DEMOCRATIC STAFF OF JOINT ECON. COMM., 114TH CONG., THE ECONOMIC STATE OF THE LATINO COMMUNITY IN AMERICA 6, 9 (2015), https://www.jec.senate.gov/public/_cache/files/96c9cbb5-d206-4dd5-acca-955748e97fd1/jec-hispanic-report-final.pdf [<https://perma.cc/4FD5-2FR3>] (Latinx households have 10% of the wealth that white households do, and median earnings for Latinx are 29% lower than for whites).

335. *Id.* at 8.

336. Robert Fairlie & Sameeksha Desai, Ewing Marion Kauffman Foundation, *2019 Early-Stage Entrepreneurship in the United States: National and State Report* 12 (2020), <https://www.ssrn.com/abstract=3607936> [<https://perma.cc/FE73-UCXD>].

337. DEMOCRATIC STAFF, *supra* note 334.

338. Alvarez, *supra* note 1, at 5.

339. Monica Fisher & Paul A. Lewin, *Push and Pull Factors and Hispanic Self-Employment in the USA*, 51 SMALL BUS. ECON. 1055, 1055 (2018).

340. Michael J. Pisani & Alfonso Morales, *Informality and Latino-Owned Businesses: A National Portrait of Unregistered Latino-Owned Businesses*, 101 SOC. SCI. Q. 588, 600 (2020).

[t]he dominant approach to ‘ethnic entrepreneurship’ employs a monolithic, homogeneous treatment of ethnicity and underscores its primacy in explaining the entrepreneurial activity of different ethnic groups. In particular, it presumes that members of the same ethnic group possess the same ethnic-based resources and support, or social capital, and consequently share the same entrepreneurial outcomes.³⁴¹

In truth, Valdez concludes, class is one trait that can lead to very different experiences for ethnic entrepreneurs.³⁴² As she explains,

middle-class Latinos/as are more likely to possess resources that are highly valued in the modern market economy, such as substantial schooling and skills, and economic resources such as personal savings, inheritance, or the creditworthiness needed to access financial capital through market-based institutions, such as a national bank or investment firm.³⁴³

By contrast, “lower-class Latinos/as are likely to possess fewer resources that are valued in the market economy, and thus confront greater market uncertainty.”³⁴⁴ As a consequence, it is necessary to explore how these distinctions affect entrepreneurship in the Latinx community.

1. Working-class Latinx, immigration status, and entrepreneurship by necessity or choice

Although free-market rhetoric often equates entrepreneurship with individual initiative, at least some working-class Latinx launch businesses out of necessity rather than by choice. High rates of entrepreneurship can reflect disadvantages, such as discrimination, language barriers, limited education and skills, and undocumented status, which depress wages and push Latinx out of the conventional labor market.³⁴⁵ At the same time, though, Latinx can decide to establish a business based on the pull of cultural and personal factors.

341. ZULEMA VALDEZ, *THE NEW ENTREPRENEURS: HOW RACE, CLASS, AND GENDER SHAPE AMERICAN ENTERPRISE* 5 (2011).

342. *Id.*

343. *Id.*

344. *Id.* at 6.

345. Fisher & Lewin, *supra* note 339, at 1056; *see also* Michael J. Pisani et al., *Small Business Enterprises and Latino Entrepreneurship: An Enclave or Mainstream Activity in South Texas?*, 15 J. INT’L ENTREPRENEURSHIP 295, 297 (2017) (describing the role of necessity entrepreneurship in ethnic enclaves); Dolores Trevizo & Mary J. Lopez, *Neighborhood Segregation and Business Outcomes: Mexican Immigrant Entrepreneurs in Los Angeles County*, 59 (3) SOCIOLOGICAL PERSPECTIVES 668, 671 (2016) (describing concentrated disadvantages and the impact on entrepreneurship in ethnic enclaves).

These can include the influence of a culture of entrepreneurship in the home country³⁴⁶ as well as an individual desire for greater autonomy, maximum returns on knowledge and skills, or a flexible work schedule.³⁴⁷

There is evidence that necessity is a driver of some Latinx entrepreneurship. For one thing, many Latinx entrepreneurs have lower levels of education than their white counterparts.³⁴⁸ In 2012, just 28.1% of Latinx women who owned businesses held at least a bachelor's degree compared to 46.1% of white women.³⁴⁹ For male business owners, the disparity was comparable with 27.3% of Latinx men and 48.7% of white men holding a bachelor's degree or more.³⁵⁰ Limited English proficiency also can constrain conventional employment options, even as it hampers Latinx entrepreneurs' ability to build enterprises that extend beyond an ethnic niche.³⁵¹

For entrepreneurs of necessity, another significant impetus is undocumented status. Without access to the traditional labor market, the undocumented must resort to work that is "uncertain, unpredictable, and risky from the point of view of the worker" and must accept cash payments that are off the books.³⁵² Employers can easily exploit unauthorized immigrants because they are not likely to

346. Fisher & Lewin, *supra* note 339, at 1056.

347. *Id.* at 1068.

348. See Eisenach & Kulick, *supra* note 1, at 31 (noting that Latinx have lower levels of education on average than the white population).

349. SUSANA MARTINEZ-RESTREPO & GERI STENGEL, HISPANIC WOMEN ENTREPRENEURSHIP: UNDERSTANDING DIVERSITY AMONG HISPANIC WOMEN ENTREPRENEURS 21 (2017).

350. *Id.*

351. See *id.* at 28–29 (citing survey estimates of English proficiency among Latinx populations); ALBERTO DAVILA ET AL., BETTER BUSINESS: HOW HISPANIC ENTREPRENEURS ARE BEATING EXPECTATIONS AND BOLSTERING THE U.S. ECONOMY 19 (2014), <http://www.newamericaneconomy.org/wp-content/uploads/2014/04/hispanic-entrepreneurs-final.pdf> [<https://perma.cc/Y3TQ-ALLB>] (discussing the obstacles Latinx entrepreneurs face because of limited English proficiency and how Latinx entrepreneurs overcome those obstacles). See generally Trevizo & Lopez, *supra* note 345, at 684 (describing Mexican-origin entrepreneurs' positive feelings about the ability to conduct business in Spanish with co-ethnics, even as segregation created barriers to business expansion).

352. Zulema Valdez et al., *Precarious Entrepreneurship: Day Laborers in the U.S. Southwest*, 63 AM. BEHAV. SCIENTIST 225, 226 (2019); see also ROSALES, *supra* note 260, at 52–78 (describing the precarious status of undocumented immigrants who work as fruit vendors and their strategies for managing risk).

report wage theft or other forms of abuse.³⁵³ Under these precarious circumstances, entrepreneurship can be a welcome and even essential alternative. Consider, for instance, day laborers who act as solo entrepreneurs. Researchers in Texas found that approximately half of those studied had resided in the United States for twenty-one years or more, and of these long-term residents, a little over 40% were undocumented.³⁵⁴ This statistical portrait departs from the traditional image of day laborers as “young” and “recently arrived.”³⁵⁵ Instead, survival entrepreneurship has become a way of life for many undocumented immigrants.

If some Latinx entrepreneurs are driven by necessity rather than choice, they are apt to be working on their own because they lack the capital to hire employees. Census figures show that Latinx-owned businesses are disproportionately likely to be sole proprietorships.³⁵⁶ In 2012, for example, only 2.6% of all firms with paid employees were Latinx-owned.³⁵⁷ Moreover, of all Latinx-owned firms, only 5.6% had staff on the payroll.³⁵⁸ Even these figures may understate the prevalence of sole proprietorships if the data fail to fully account for survival entrepreneurs who perform marginal work in the informal economy.³⁵⁹ Without capital, entrepreneurs of necessity concentrate their businesses in vulnerable industries with low barriers to entry.³⁶⁰ In general, “these undercapitalized businesses will likely have lower sales, profits and employment and will be more likely to fail than

353. See Valdez et al., *supra* note 352, at 225, 233, 235 (describing day laborers’ disadvantaged social location and lack of means to make clients pay).

354. *Id.* at 233.

355. *Id.*

356. *Statistics for All U.S. Firms by Industry, Gender, Ethnicity, and Race for the U.S., States, Metro Areas, Counties, and Places: 2012*, U.S. CENSUS BUREAU (Sept. 15, 2016), <https://data.census.gov/cedsci/table?q=SB1200CSA01&tid=SBOCS2012.SB1200CSA01> [<https://perma.cc/JF9A-27AR>].

357. Zulema Valdez, *The Great Recession and Precarious Wealth Among Middle-Class Mexican-Origin Entrepreneurs*, 18 J. ETHNIC AND MIGRATION STUD. 3874, 3877 (2019).

358. *2020 State of Hispanic Wealth Report*, 2020 HISPANIC WEALTH PROJECT 1, 14.

359. See Valdez et al., *supra* note 352, at 226 (describing how undocumented immigrants find work in an unregulated, “informal” economy).

360. See Craig Wesley Carpenter & Scott Loveridge, *Factors Associated with Latino-Owned Business Survival in the United States*, 49 REV. OF REG’L STUD. 73, 77 (2019) (analyzing why Latinx entrepreneurs concentrate in sectors perceived as relatively vulnerable); Marlene Orozco et al., *Introduction: Advancing U.S. Latino Entrepreneurship*, in *ADVANCING U.S. LATINO ENTREPRENEURSHIP: A NEW NATIONAL ECONOMIC IMPERATIVE* 3, 8 (Marlene Orozco et al. eds., 2020) (describing how lack of access to capital can be a barrier to entrepreneurship).

businesses receiving the optimal amount of startup capital.”³⁶¹ As a result, survival entrepreneurship is by no means a complete escape from insecurity in the labor market.

2. *Innovative approaches to capitalism for working-class Latinx*

For the most vulnerable survival entrepreneurs, reforms should address their limited job opportunities. For example, comprehensive immigration reform would allow undocumented Latinx to regularize their status so that they could work legally in the formal economy.³⁶² Opportunities for adult education might rectify the gap in knowledge and skills between Latinx and white business owners.³⁶³ In addition, programs to acquire English language proficiency should be widely available and easily accessible in immigrant communities.³⁶⁴ Although none of these proposals involves traditional civil rights advocacy, all of them turn on policy interventions that reflect a commitment to full integration of working-class Latinx communities.

In addition to problems of limited human capital, working-class Latinx lack access to fiscal capital. When they launch their own businesses, they are likely to draw on their own assets as well as those of family and friends.³⁶⁵ This makes the launch challenging, given that the median wealth of Latinx households is about 10% of that of white households.³⁶⁶ Less affluent Latinx often rely on informal sources of

361. ROBERT W. FAIRLIE, U.S. SMALL BUSINESS ADMINISTRATION, OFFICE FOR ADVOCACY, *LATINO BUSINESS OWNERSHIP: CONTRIBUTIONS AND BARRIERS FOR U.S.-BORN AND IMMIGRANT LATINO ENTREPRENEURS* 11 (2018); *see also* ALGERNON AUSTIN, CENTER FOR GLOBAL POLICY SOLUTIONS, *THE COLOR OF ENTREPRENEURSHIP: WHY THE RACIAL GAP AMONG FIRMS COSTS THE U.S. BILLIONS* 4–5 (2016) (explaining that business without employees have a much lower average profit per year).

362. *See* Hinojosa-Ojeda et al., *supra* note 232, at 7–8 (arguing for productivity gains based on regularization of undocumented workers’ immigration status).

363. FAIRLIE, *supra* note 361, at 55.

364. *See* Trevizo & Lopez, *supra* note 345, at 670, 682, 685–86 (describing how Mexican-origin entrepreneurs with limited English proficiency who launch businesses in immigrant enclaves have worse outcomes due to the isolation in low-income communities).

365. *See* Norena Limon, *2019 State of Hispanic Wealth Report*, 2019 HISPANIC WEALTH PROJECT 1, 12 (personal assets); Carpenter & Loveridge, *supra* note 360, at 73 (informal loans from family and friends); Orozco et al., *supra* note 360, at 7 (“[T]he ethnic entrepreneur must harness other powerful systems such as kinship, coethnicity, politics, or religion” to overcome disadvantage).

366. AUSTIN, *supra* note 361, at 18.

funding because they are unbanked or underbanked.³⁶⁷ Due to limited credit histories, Latinx business owners fear being rejected for loans and are less likely to seek financing from banks than are whites.³⁶⁸ These anxieties are well-founded: Latinx are more likely to be denied loans than whites, even after holding qualifications constant.³⁶⁹ Latinx generally do not seek help from government agencies either. In fact, in a 2015 survey, 22% of Latinx business owners were not familiar with the SBA; 51% had not heard of small business investment companies; and 56% were unaware of the SBA Innovation research program.³⁷⁰

In the face of these challenges, immigrants have adopted some unique strategies to pool resources, an approach consistent with Garvey's vision of collectives as a form of capitalism for poor people. Rotating savings and credit associations, known as tandas or cundinas, offer a way to raise funds to start or sustain a small business.³⁷¹ Every participant regularly contributes a fixed amount of money to the pool, and at specified intervals, one member receives the entire amount contributed.³⁷² These informal arrangements operate on the honor system and allow members to convert reputational capital into fiscal capital.³⁷³ Yet, precisely because tandas and cundinas are informal

367. See FAIRLIE, *supra* note 361, at 11–16 (describing the discrepancy between minority business owners and white business owners in trying to secure funding).

368. *Id.* at 16.

369. *Id.*; Marlene Orozco et al., STANFORD LATINO ENTREPRENEURSHIP INITIATIVE, 2020 RESEARCH REPORT: 2021 STATE OF LATINO ENTREPRENEURSHIP 1, 4, 10 (2020), <https://www.gsb.stanford.edu/sites/default/files/publication-pdf/report-2020-state-of-latino-entrepreneurship.pdf> [<https://perma.cc/S7XH-RB5L>].

370. Marlene Orozco, *SLEI-Education Scaling Program: A Business Program of "National Economic Imperative,"* in ADVANCING U.S. LATINO ENTREPRENEURSHIP: A NEW NATIONAL ECONOMIC IMPERATIVE 317, 321 (2020).

371. Tim Gaynor, *U.S. Migrant Money Pools Thrive in the Recession*, REUTERS (July 2, 2009), <https://www.reuters.com/article/use-usa-savingsclubs-idUSTRE5613J420090702> [<https://perma.cc/95T2-Y8A2>].

372. *Id.*

373. See Shereen Marisol Meraji, *Lending Circles Help Latinas Pay Bills and Invest*, NPR (Apr. 1, 2014), <https://www.npr.org/sections/codeswitch/2014/04/01/292580644/lending-circles-help-latinas-pay-bills-and-invest> [<https://perma.cc/4NJ5-2FPM>] (describing how the peer pressure keeps participants paying and explaining the trust that goes into participating). See generally ROSALES, *supra* note 260, at 81–82 (describing how tandas operated among fruit vendors to allow them to acquire carts and trucks for their businesses).

arrangements, successful participation typically does not improve a member's access to the formal banking system.³⁷⁴

Several reforms could assist working-class Latinx entrepreneurs by legitimizing and amplifying the resource-sharing strategies used to overcome limited access to conventional capital markets. There have been a few fledgling policy initiatives along these lines. California enacted legislation to make cooperatives sustainable alternatives to the traditional corporate form.³⁷⁵ In addition to allowing worker-members to pool small amounts of resources without being subject to securities laws, the act permits alternative funding from community investors.³⁷⁶ So far, however, the statute's impact on the use of cooperatives remains unclear.³⁷⁷ A different approach would allow those who successfully use informal resource-sharing to gain access to the formal financial market. Mission Asset Fund, a nonprofit based in San Francisco, works with participants in tandas and cundinas to use that positive experience to bolster credit ratings and eligibility for bank loans.³⁷⁸

Even with innovations like these, it will be important to expand opportunities to obtain formal financing. Policymakers should consider how to develop a market for micro-loans, which could enable Latinx entrepreneurs to sustain small businesses in hard times and expand them in good times. Many Latinx come to the United States from home countries in which micro and small enterprises play a significant role in the economy.³⁷⁹ Micro-funding therefore could be

374. Cf. Mark Kear, *Peer Lending and the Subsumption of the Informal*, 9 J. CULT. ECON. 261, 263 (2016) (explaining that while lending circles may empower their participants, they do not have official recognition). *But cf.* Gaynor, *supra* note 371 (giving examples of one bank that recognizes the merit of the tandas and one organization that is working to get tandas officially recognized by lending institutions).

375. CAL. CORP. CODE §§ 12238(f), 12253(c) (West 2016) (community investors); § 25100 (r) (West 2020) (securities exemption).

376. *Id.*

377. Although there are no official reports on the Worker Cooperative Act's impact, in 2019 advocates of a sharing economy in California were calling for a Cooperative Platform Act to further strengthen this sector of the economy. Nithin Coca, *Will the Passing of AB5 in California Lend Strength to the Cooperative Platform Economy Act*, SHAREABLE (Sept. 11, 2019), <https://www.shareable.net/will-the-passing-of-ab5-in-california-lend-strength-to-the-cooperative-platform-economy-act> [<https://perma.cc/X8HJ-7H2Z>].

378. See Mission Asset Fund, <https://missionassetfund.org> [<https://perma.cc/U3QQ-ULFE>] (describing their mission of “designing programs that transform everyday financial practices into savings and credit building opportunities”).

379. See OECD & CAF Dev. Bank of Lat. Am., *Policies for Competitive SMEs in the Pacific Alliance and Participating South American Countries*, 2019 SME POLICY INDEX: LATIN

an appealing way to support business growth.³⁸⁰ Community development financial institutions provide one way to serve communities that are unbanked or underbanked by allowing them to access modest amounts of support.³⁸¹ Unfortunately, these institutions represent an extremely small portion of the financial market, and they are unlikely to meet current demand for these services without significant expansion.³⁸²

None of these innovations will succeed if entrepreneurs are unaware of the opportunities. Outreach and education therefore will be important components of any successful strategy to enhance access to capital for working-class Latinx. Every new financing initiative should include a budget for informing eligible applicants about the programs. Outreach could include presentations to community organizations, for instance, in immigrant enclaves as well as media announcements. These meetings and announcements should be bilingual and could showcase entrepreneurs who have successfully used the program's services. General outreach alone, however, will not be sufficient. Policymakers must allocate resources for individual counseling to assist entrepreneurs uncertain about whether and how to apply for support. Again, these services should be bilingual.

AMERICA AND THE CARIBBEAN 1, 31 (2019), www.oecd.org/latin-america/regional-programme/productivity/sme-development [<https://perma.cc/W7CQ-R9TP>] (small and medium-sized enterprises account for 99.5% of firms in the Latin American region with almost 9 of 10 qualifying as micro-enterprises).

380. Jasmine Aguilera et al., *Rising from the Ashes: Latino-Owned Businesses Are Poised to Spur the Postpandemic Recovery*, TIME, Oct. 11/Oct. 18, 2021, at 99, 101 (describing efforts to support micro-lending to Latinx business owners in cities like San Antonio, Texas). See generally PABLO SANGUINETTI ET AL., FINANCIAL SERVICES FOR DEVELOPMENT: PROMOTING ACCESS IN LATIN AMERICA 15, 33, 37–38 (2011), [https://scioteca.caf.com/bitstream/handle/123456789/942/Cap%
c3%adtulo%201%20RED%202011%
20traducido%20al%20ingles.pdf?sequence=1&isAllowed=y](https://scioteca.caf.com/bitstream/handle/123456789/942/Cap%c3%adtulo%201%20RED%202011%20traducido%20al%20ingles.pdf?sequence=1&isAllowed=y) [<https://perma.cc/6LMF-FBKH>] (defining and explaining micro-funding institutions and comparing micro-funding institutions and informal credit institutions).

381. Mark Pinsky, *Taking Stock: CDFIs Look Ahead After 25 Years of Community Development Finance*, BROOKINGS (Dec. 1, 2001), <https://www.brookings.edu/articles/taking-stock-cdfis-look-ahead-after-25-years-of-community-development-finance> [<https://perma.cc/S5ER-74FN>].

382. See *id.* (discussing how the demand for these funds is more than triple the supply).

3. *Middle-class Latinx, closed social networks, and persistent discrimination*

Scholars have not paid as much attention to middle-class Latinx entrepreneurs, even though they are more likely to start a business than their working-class counterparts.³⁸³ Although immigrant Latinx are highly entrepreneurial, native-born Latinx are more apt to create successful businesses, in part because of their higher levels of education, English fluency, citizenship status, and access to capital.³⁸⁴ Advantages like these allow U.S.-born Latinx to begin businesses on a larger scale than immigrant entrepreneurs.³⁸⁵ Moreover, the most affluent among middle-class Latinx can draw on personal resources to sustain businesses in hard times.³⁸⁶ Yet, even middle-class Latinx business owners, especially those with modest assets, worry about the precariousness of their wealth during a recessionary economy.³⁸⁷

Although certainly better off than their working-class counterparts, middle-class Latinx still do not have access to capital comparable to that of white, middle-class entrepreneurs. Even Latinx with comfortable incomes typically do not benefit from the advantages of wealth, especially inherited wealth, that whites often enjoy.³⁸⁸ Middle-class Latinx also are more apt to be denied credit than whites, even after controlling for qualifications.³⁸⁹ Finally, middle-class Latinx entrepreneurs' access to social networks of investors and business owners is frequently more limited than that of white entrepreneurs.³⁹⁰

383. VALDEZ, *supra* note 341, at 2.

384. FAIRLIE, *supra* note 361, at 19–20, 29.

385. *Id.* at 29.

386. *See* VALDEZ, *supra* note 341, at 5–6 (describing how middle-class Latinx entrepreneurs are more likely to possess resources that are valuable for starting and running a business).

387. *See id.* at 72 (describing how a recessionary economy posed challenges even for a middle-class Latinx entrepreneur).

388. Rakesh Kocchar & Anthony Cilluffo, *How Wealth Inequality Has Changed in the U.S. Since the Great Recession, by Race, Ethnicity, and Income*, PEW RSCH. CTR. (Nov. 1, 2017), <https://www.pewresearch.org/fact-tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income> [<https://perma.cc/BFW2-NLJ2>] (median wealth for white middle-class households was over two to three times greater than for Latinx middle-class households between 2007 and 2016).

389. *See* FAIRLIE, *supra* note 361, at 15–16 (“all minority groups were more likely than [white people] to have unmet credit needs”); *see also* Orozco et al., *supra* note 360, at 4, 10 (discussing market distortions that affect ethnic minorities).

390. Alvarez, *supra* note 1, at 23.

Perhaps for that reason, Latinx are less likely to obtain venture capital or attract angel investors than are whites.³⁹¹

This lack of access to capital affects the size and growth of businesses that middle-class Latinx launch. Of businesses that begin with \$100,000 or more in capital, only 4% are Latinx-owned, while 82% are white-owned.³⁹² In fact, Latinx businesses are uniformly small with 94% bringing in less than \$250,000 in annual sales.³⁹³ Even in firms with paid employees, Latinx-owned businesses are twice as likely as white-owned business to be microenterprises with \$100,000 or less in annual revenue.³⁹⁴ Latinx businesses not only start small but stay small. They are less likely than white-owned businesses to scale up to enterprises with \$1 million or more in annual sales.³⁹⁵ According to a 2018 report, just 3% of Latinx-owned enterprises had grown to that level compared to 6% of white-owned businesses.³⁹⁶ The size of Latinx businesses in turn correlates with an increased risk of failure. A 2016 Kauffman Foundation study found that firms that start with \$100,000 or more in capital are 23% less likely to close than those that begin with less than \$5,000.³⁹⁷ For middle-class Latinx entrepreneurs, then, lack of access to capital leads to financial challenges, most notably economic stagnation as businesses fail to expand.

For these entrepreneurs, the challenge is to equalize access to conventional financial markets, so that businesses can grow. As with intergenerational mobility and middle-class jobs in the labor market,

391. See *id.* at 10–11 (explaining that white investors are typically less likely to invest in Latinx-owned businesses).

392. Emily Fetsch, Ewing Marion Kauffman Foundation, *Including People of Color in the Promise of Entrepreneurship*, ENTREPRENEURSHIP POL'Y DIG. (Dec. 2, 2016), <https://www.kauffman.org/resources/entrepreneurship-policy-digest/including-people-of-color-in-the-promise-of-entrepreneurship> [https://perma.cc/LDR2-8AUT].

393. Mantilla, *supra* note 333.

394. CLAIRE KRAMER MILLS ET AL., STANFORD GRADUATE SCHOOL OF BUSINESS, STANFORD ENTREPRENEURSHIP INITIATIVE, *LATINO-OWNED BUSINESSES: SHINING A LIGHT ON NATIONAL TRENDS* 5 (2018), <https://www.gsb.stanford.edu/faculty-research/publications/latino-owned-businesses-shining-light-national-trends> [https://perma.cc/EX3K-WRHF].

395. Arnobio Morelix, *The U.S. Economy Is in Serious Trouble if Latinx Founders Don't Get More Funding. Here's Why*, INC. (Jan. 21, 2020), <https://www.inc.com/arnobio-morelix/latinx-founders-entrepreneurship-index-scale-growth.html> [https://web.archive.org/web/20211104171508/https://www.inc.com/arnobio-morelix/latinx-founders-entrepreneurship-index-scale-growth.html].

396. MILLS ET AL., *supra* note 394, at iv.

397. Fetsch, *supra* note 392, at 2.

two steps are key: rectifying differential access to influential networks and addressing persistent discrimination. Aspen Institute research has noted that Latinx remain largely invisible in powerful business circles.³⁹⁸ Calls to make networks of influence more accessible do not fit neatly within traditional civil rights law. Advocates of economic empowerment therefore must develop innovative strategies to address these informal dynamics of exclusion. Dealing with the barriers will be critical in penetrating highly discretionary investment practices like those at venture capital firms. These firms rely heavily on informal networks to establish trust and overcome uncertainties related to limited information and expertise about proposed start-ups.³⁹⁹

As for ongoing discrimination, studies on lending practices show that Latinx continue to face unfair barriers based on ethnicity, regardless of their creditworthiness.⁴⁰⁰ Although innovations in civil rights advocacy are necessary to tackle problems associated with exclusionary networks, conventional remedies could offer meaningful relief from discrimination in the banking industry. Here, legal protections should be workable, given the highly regulated nature of the industry and the quantifiable criteria used in making lending decisions. To move forward on this front, advocates must raise Latinx borrowers' awareness of discriminatory practices as well as the avenues of relief available to challenge them.⁴⁰¹

Beyond tackling various forms of exclusion in capital markets, affluent Latinx should consider ways of pooling resources to create new opportunities. For instance, the Aspen Institute has suggested a

398. See *supra* note 123 and accompanying text (describing a lack of Latinx influence in the existing power structures).

399. See Friedemann Polzin et al., *The Wisdom of the Crowd in Funding: Information Heterogeneity and Social Networks of Crowdfunders*, 50 *SMALL BUS. ECON.* 251, 253–54 (2018), <https://link.springer.com/content/pdf/10.1007/s11187-016-9829-3.pdf> [<https://web.archive.org/web/20211104171929/https://link.springer.com/content/pdf/10.1007/s11187-016-9829-3.pdf>] (describing how social networks are used to overcome concerns based on information asymmetries of funders and entrepreneurs when venture capitalists provide support to start-up companies).

400. See *supra* note 389 and accompanying text (explaining that Latinx people are more likely to be denied loans than white people).

401. See Justin Stiel et al., *The Social Structure of Mortgage Discrimination*, 33 *HOUS. STUD.* 759, 773 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6084476> [<https://perma.cc/HJ9F-HBPH>] (describing lack of consumer awareness in fighting discriminatory home loan practices).

fund of funds to promote Latinx entrepreneurship.⁴⁰² To date, relatively few investment funds permit investors to choose a portfolio of Latinx-owned businesses or even businesses that are Latinx-friendly. One exception is the Ramirez Hispanic Index Fund, which includes stakes in the ten largest, most liquid Latinx-owned businesses in the United States.⁴⁰³ Latinx financiers could expand on this type of effort by launching socially responsible investment funds that support companies with diverse workforces that include threshold percentages of Latinx employees or executives. Initiatives like these could use Latinx spending power to leverage access to capital as well as labor market opportunities. So far, however, these efforts have not materialized either because Latinx lack the information and resources to launch the funds or because they are not motivated to direct their resources to this kind of investment.⁴⁰⁴

In sum, whether the focus is on labor, consumption, or entrepreneurship, aggregation conceals significant differences in Latinx' path to full inclusion through the marketplace. Class differences and immigration status figure prominently in shaping economic opportunity. For working-class Latinx, enhancement of human capital through adult education classes and English-language training is critical. For undocumented immigrants, a pathway to legal work is vital. As for middle-class Latinx, penetrating networks of influence and combating discrimination are key to advancement. Accounting for these distinctions makes clear that government has a pivotal role to play in addressing obstacles to full economic participation for both working- and middle-class Latinx. Traditional civil rights law can reach some concerns about discriminatory workplace and lending practices, but a broader portfolio of strategies will be essential to address disadvantages related to immigration status, limited human capital, and exclusionary social networks.

402. See *supra* note 119 and accompanying text (explaining that this fund would support Latinx entrepreneurs as well as other entrepreneurs of color).

403. Samuel A. Ramirez & Company, Inc. *Introduces the Ramirez Hispanic Equally-Weighted Portfolio*, HISPANIC BUS. (Feb. 12, 2004), https://web.archive.org/web/20082323032804/http://www.hispanicbusiness.com/news/2004/2/12/samuel_a_ramirez.htm.

404. See Ralinda Harvey Smith, *Businesses Promised BLM Changes. We're Still Waiting*, L.A. TIMES (June 14, 2021) (describing a lack of transparency with respect to diversity, equity, and inclusion efforts at large corporations).

CONCLUSION

The rise of neoliberalism undoubtedly has weakened the civic square's importance as a pathway to full inclusion. Recent research tells a hopeful story about the market as an alternative route to belonging for Latinx. This work identifies powerful trends that are independent of today's crimped interpretation of civil rights and the vagaries of polarized politics. In the market, raw numbers matter, and Latinx already represent more than a discrete and insular minority when it comes to labor, consumption, and entrepreneurship.

That said, simply adding up the numbers will not be enough to realize the full inclusion that Latinx seek. Reformers must rely on a range of strategies to empower Latinx in widely disparate economic situations. As a result, the optimal power of Latinx' market share will be unleashed only when government officials address ongoing barriers to access, such as limited education, precarious immigration status, and discrimination in the financial world. To leverage growing numbers, then, Latinx must forge innovative approaches that recognize the intricate interdependency of the civic square and the marketplace.