

# The Economic Crisis of 2008-2009: Governance and Consumer Democracy

DORVAL BRUNELLE\*

## ABSTRACT

The article begins with an overview of the causes of the economic and financial crisis that struck in the fall of 2008. It then sets out to show how the failure to give due consideration to collective consumer interests and representation led to a lopsided interpretation of the role control agencies were expected to play. It concludes with the idea that effective political involvement by consumers is an essential safeguard in a democracy and an important factor for softening the impact of economic crises on consumers in the future.

**Key words:** consumer interests, regulatory agencies, governance, collective rights, democracy.

## RESUMEN

Este artículo inicia con un panorama de las causas de la crisis económica y financiera que golpeó en el otoño de 2008; después continúa mostrando cómo el error que significó no dar la consideración debida a los intereses colectivos de los consumidores llevó a una interpretación miope del papel que las agencias de control debían desempeñar. Concluye con la idea de que un involucramiento político de los consumidores es una garantía fundamental para una democracia y un factor importante para suavizar el impacto de las crisis económicas sobre los consumidores en el futuro.

**Palabras clave:** intereses de los consumidores, agencias regulatorias, gobernanza, derechos colectivos, democracia.

\* Professor in the Department of Sociology and director of the Montreal Institute for International Studies (Institut d'études internationales de Montréal, IEM) at the Université du Québec à Montréal (UQAM).  
Brunelle.Dorval@uqam.ca

THIS ARTICLE IS BUILT around two related themes: governance and consumer democracy. But before I come to the crux of my argument, I would like to present a brief overview of what analysts had to say about the causes of the economic crisis that struck in the fall of 2008 in order to bring to the fore that particular blind spot into which consumer interests have fallen over the years. Furthermore, I want to use the last of the six explanations reviewed, the one on corruption, to present what can be construed as a *collective* right benefiting each and every investor or regulator, whereas debtors or homeowners acting on their own hold mere *individual* rights. Clearly, this apparent paradox must be laid out in order to understand the legal and sociological nature of the process of representation of interests in public agencies. These two dimensions will be presented in section 1, while sections 2 and 3 will tackle the issue of governance and set out to show how the failure to give due consideration to *collective* consumer interests and representation led not only to a lax interpretation of existing regulations, but more significantly, to a lopsided reading of the role control agencies were supposed to play in these circumstances. I will conclude with the idea that effective collective consumer involvement is an essential safeguard in a democracy and, as such, an important factor, if not for preventing crises in the future, for softening their impact on those who should not be made to pay and suffer for the bungling coming out of financial wizardry. I should add that neither *The Financial Crisis Inquiry Report*, released in January 2011,<sup>1</sup> nor the European Commission's working document *Corporate Governance in Financial Institutions: Lessons to Be Drawn from the Current Financial Crisis, Best Practices*, dated February 6, 2010,<sup>2</sup> address the issues raised here. This does not mean nor does it imply that consumer groups and organizations were not consulted by agencies or even by the Federal Reserve Consumer Advisory Council. On the contrary; but, as the report to Congress states quite clearly, the warnings from consumer representatives had no impact whatsoever on policy or ongoing practices at the time. In this sense, the main hypothesis advanced here holds that consultation mechanisms are insufficient and inadequate, as the unfolding of the financial and mortgage crises has shown, and that some form of collective and political representation of consumer interests within agencies and regulatory

<sup>1</sup> The Financial Crisis Inquiry Commission was set up by Congress and signed into existence by the president in May 2009. Congress followed this by passing in January 2010 the Dodd-Frank Wall Street Reform and Consumer Protection Act which provides (in Section 1014) for the establishment of a Consumer Advisory Board "to advise and consult with the Bureau of Consumer Financial Protection" (set up under Section 1001 of the Act). This is probably a step in the right direction, but the issue raised here has more to do with the lack of collective representation of consumers in public agencies before the 2008 crisis hit than with the effectiveness of the remedies proposed in its aftermath.

<sup>2</sup> The document in question was prepared by the commission staff as an accompanying document to the Green Paper on Corporate Governance in financial institutions and remuneration policies.

boards could serve as a countervailing power to the rights and privileges of bankers and investors, and thus offer consumers some measure of protection.

## DIAGNOSING THE CRISIS

There are far too many interpretations of the 2008 crises to be presented in the space allotted for this article. I therefore propose a brief overview of six explanations starting off with an oddity: an argument according to which the crisis, even though it was manufactured by humans, was put in the hands of computers and has led us toward some kind of “creative destruction” –Schumpeter’s expression– gone wild. This interpretation was proposed by Richard Dooling in an article entitled “Market Velocity. Machines of Mass Destruction,” in which he starts off by recalling that, “Years ago, Warren Buffett called derivatives ‘weapons of financial mass destruction.’” Dooling follows this up with the idea that, like the developers of nuclear weapons before them, the Wall Street geeks, the quantitative analysts (“quants”) and masters of “algo trading,” probably felt the same irresistible lure of “illimitable power” when they discovered “evolutionary algorithms” that allowed them to create vast empires of wealth by deriving the dependence structures of portfolio credit derivatives. He adds, “Somehow the genius quants fed [US]\$1 trillion in subprime mortgage debt into their supercomputers, added some derivatives, massaged the arrangements with computer algorithms, and –poof!– created [US]\$62 trillion in imaginary wealth. It’s not much of a stretch to imagine that all of that imaginary wealth is locked up somewhere inside the computers, and that we humans, led by the silverback males of the financial world, Ben Bernanke and Henry Paulson, are frantically beseeching the monolith for answers. As the current financial crisis spreads (like a computer virus) on the earth’s nervous system (the Internet), it’s worth asking if we have somehow managed to colossally outsmart ourselves using computers. Only computers can understand and derive a correlation structure from observed collateralized debt obligation. Which leads us to the next question: Just how much of the world’s financial stability now lies in the ‘hands’ of computerized trading algorithms?” (Dooling, 2008: 8).

This argument, eccentric though it may seem, carries a serious implication: that we could be caught up in a new form of alienation *cum* –that is, with– reification on a grand scale for which there are no foreseeable exit strategies at this point, barring some kind of collapse of the system itself (Honneth, 2006). Some of the comments made at the time by bankers seem to point in this direction. For instance, following a meeting of central bank governors at the headquarters of the Bank for International Settlements in Basel, Jean-Claude Trichet, at that time president of the

European Central Bank, declared that “as regards to the perspective we have in front of us, in terms of the real economy, it’s a very complex situation where we have a very large number of parameters to take into account” (Trichet, 2009). Which is probably a polite way of saying that both he and his colleagues were clueless as to what to do and what to expect.

Nevertheless, for an overwhelming number of analysts, the financial and ultimately economic crises of 2008 were the product of market liberalization implemented in the 1980s. For some, liberalization was a good thing that was not pursued with the required determination and was left unfinished, with the result that the ensuing crisis –as with any crisis– cannot be imputed to liberalization *per se* basically because crises are unavoidable and unpredictable by nature; they simply have to be contended with. For others, market liberalization had gone too far and some measure of control and regulation should be brought back into the system. An interesting and most indicative combination of pro-market ideology and government bailout was provided by *The Economist*, a staunch propagandist of free trade since 1843. Writing on the White House plan to rescue the financial sector in fall 2008, its editorial board decided to “put dogma aside” and plead for intervention:

In America, Congress dithered over the Bush administration’s [US]\$700 billion bail-out plan....This is a time to put dogma and politics to one side and concentrate on pragmatic answers. That means more government intervention and co-operation in the short term than taxpayers, politicians, or indeed free-market newspapers would normally like.

...The twist is that this credit crisis is deeper (it affects many more types of markets) and broader (many more countries). Any solution has to be both more systemic and more global than before. (*The Economist*, 2008a: 15)

Clearly such a departure from dogma was justified under the circumstances and should be renounced as soon as conditions warrant. In the meantime, governments were requested to act as intercessors of last resort, even though nothing was said concerning the impacts of these rescues on the taxpayers who would ultimately foot the bill. But further on in the very same issue, in a report entitled “When Fortune Frowned,” the writers had this to say about government intervention: “Provocative as it may sound in today’s febrile and dangerous climate, freer and more flexible markets will still do more for the world economy than the heavy hand of government” (*The Economist*, 2008b: 5). To sum up, as far as *The Economist* was concerned at least, “putting dogma aside” meant that the right hand ignored what the left one was doing, which seemed like a fit reflection of what a lot of governments and organizations were doing at the time.

Be that as it may, if *The Economist* sought the roots of the crisis in “the biggest housing and credit bubble in history” (2008a: 4), in his critique of Stiglitz’s *Making Globalization Work*, Robert Skidelsky wrote that the crisis in question was but a sign of a flight toward “liquidity preference,” diagnosed by Keynes back in the 1930s.<sup>3</sup> According to this interpretation, a host of new financial instruments (notably collateralized debt instruments or CDIs and structured investment vehicles or SIVs) were “dragging down the American economy.” And he adds, “It is a perfect example of how a financial storm can suddenly come up out of nowhere, destroying all those sophisticated, pseudo-scientific techniques of ‘averaging’ risk by which rational people try to convince themselves that the world is more predictable than it can ever be” (Skidelsky, 2008: 64). In his eyes, the solution lay in macro-economic policy where to this day two options prevail: either Keynes’s approach to market regulation or that of Hayek on market deregulation.

Another, albeit radical, interpretation of the crisis, invoked a so-called “shock doctrine.” According to this view, instead of coming out of nowhere or out of market indifference, crises are either engineered or taken advantage of in order to create new opportunities. Naomi Klein (2007) offered a most stimulating –and damning– interpretation of this process when she set up to analyze “disaster capitalism.” If capitalism has been exploiting the planet and its people for some two or three centuries in order to create and accumulate capital, the new regime –or better still, its new spin-off– brought about under the aegis of neoliberal and neo-conservative fundamentalism, deliberately seeks either to instil, to program, or to create chaos as a precondition and as a state of affairs out of which economic growth can then proceed unhindered.<sup>4</sup> In Klein’s view, little can be done to avert or to oppose this strategy outside of political self-organization by groups and victims at grassroot levels, an alternative that ties in with what I will have to say later about the collective rights of consumers.

For his part, writing at the height of the crisis, George Soros pointed to the fact that if “the proximate cause is to be found in the housing bubble or more exactly in

<sup>3</sup> “Liquidity preference” refers to a predilection for holding cash over other instruments. In Keynesian theory, this preference is tied to three circumstances: as a means for transactions (buying and selling), as a precautionary measure, or for speculative reasons. And since Keynes held that the lower the rate of interest, the higher the speculative demand for money, what Skidelsky seems to imply here is that, in a context where interest rates had been kept low for some time, speculation became rampant, while risk aversion was at its highest. This is what led financial institutions to devise appropriate instruments that fed both needs at once.

<sup>4</sup> To expand briefly on Naomi Klein’s thesis, one reviewer summed up her argument this way: “The start of the 21st century has seen the emergence of the welfare state’s evil twin, the warfare state, which regards war and natural catastrophe as opportunities to engage in plunder, corruption, and the redistribution of wealth from the poorest to the richest sectors of society. This is Klein’s thesis in a nutshell” (Featherstone, 2009).

the excesses of the sub-prime mortgage market...the crisis spread with amazing rapidity to other markets. Some highly leveraged hedge funds collapsed and some lightly regulated financial institutions, notably the largest mortgage originator in the U.S., Countrywide Financial, had to be acquired by other institutions in order to survive" (Soros, 2008: 63). But, in the end, and contrary to what had happened previously, "the crisis was generated by the financial system itself...[and] with the financial system in cardiac arrest, resuscitating it took precedence over considerations of moral hazard –i.e., the danger that coming to the rescue of a financial institution in difficulties would reward and encourage reckless behavior in the future– and the authorities injected ever larger quantities of money" (Soros, 2008: 63).

Apparently, this "moral hazard" (rescuing the reckless) took precedence over the obverse "practical hazard" that led to the deprivation of home-owners, lured into easy credit schemes and victimized by financial institutions, of their homes. His solution sounded simple: "Since [financial markets] are prone to create asset bubbles, regulators such as the Fed, the Treasury, and the SEC must accept responsibility for preventing bubbles from growing too big. Until now financial authorities have explicitly rejected that responsibility" (Soros, 2008). But *rejection* is a misnomer in these circumstances precisely because the regulators in question have in fact assumed a most commendable responsibility in their own eyes, that of protecting their own interests and those of the financial markets at the same time. But more on this later.

Turning now to a review of Greenspan's autobiography written six months before the subprime and mortgage crisis hit, Benjamin M. Friedman warned that "The U.S. financial markets are suffering their rockiest period since the nation's savings and loan industry collapsed at the end of the 1980s. The economy either is on the verge of the first business recession since 2001 or is already in it.... Today the wreckage, consisting of abandoned houses, defaulted loans, displaced homeowners, banks making good on the billions of dollars of losses they had guaranteed, and uninsured investors marking down their portfolios, can be seen everywhere. The damage will surely get worse before it begins to abate. Regulation of financial markets in the United States is both spotty and fragmented among numerous agencies. One problem, from which many individual homebuyers suffered, is a straightforward gap in existing regulation" (2008: 25-27). Here, for once, the author points in the right direction even though he faults the fragmentation among agencies, which is a reinforcing factor at best, over what he calls a "gap" in regulation, which had a direct impact on homebuyers, as we shall see.

Finally, there is also the idea that the system itself is not to blame, but that corrupt individuals succeeded in manipulating it for their own benefit. There are two sides to this argument: for some, capitalism institutionalizes corruption and there

is not much one can do about it outside of outright destruction of the system.<sup>5</sup> For others, the system itself cannot be faulted, but the individuals who were in charge at the time should be held accountable for their actions. If we look closer into this for a moment, we find that corruption can be defined as either handing out or obtaining an advantage through means that are illegitimate, immoral, and/or inconsistent with one's duty or the rights of others. More to the point, corruption can also be defined as an abusive use of delegated power for private ends by a *delegatee* (Council of Europe, 2009). There is an interesting inversion at play here: even though CEOs in the financial and banking sectors, as well as auditors, supervisors, and watchdogs, are all *delegates* by law, given a certain set of circumstances or in a given context, they are liable or susceptible to act either as owners of the investments (capital) with which they are entrusted, or they may act—or refrain from doing so, which is the same thing—in the sole interests of capital holders to the detriment of everyone else, be it the public at large or certain stakeholders in particular.

But let us suppose for an moment that corruption—which, let it be said in passing, undoubtedly did play a major role in the financial crisis<sup>6</sup>—is not the central issue and that what we are faced with is actually the playing out of a simple legal logic or, better still, of a legal priority provided by a right to preference that places all those who do not have such a legally enforceable lien, at best in a position of subordination, and at worse in outright exclusion. In order to understand this argument, I will quote from the French jurist and philosopher Emmanuel Lévy who, back in 1939, published a small book entitled *Les Fondements du droit* (The Foundations of Law), to which I now turn for the sake of the argument I want to make here. In his book, Lévy explains that, with the arrival and implementation of the joint-stock company, there comes about a dissociation or a disengagement between rights and duties. In this situation, no one can actually claim ownership of a firm, its assets, and its stock. Such a right can be exercised only when the firm is sold or liquidated. Meanwhile, capitalists, CEOs, and the like are *mere* holders of debt claims. What this legal dissociation entails is that under a system of publicly traded stocks, capital assumes all duties, and capitalists hold all the rights.<sup>7</sup> As such, capitalists are the real creditors; they are the holders of debt claims against an invested sum of capital. Lévy goes even

<sup>5</sup> Witness the title of an article in the French magazine *Marianne* (2009): "...et si tout le système était une escroquerie?" ("...and if the whole system was a swindle?").

<sup>6</sup> For a recent analysis of the role played by both deregulation and corruption, see Krugman and Wells (2011: 28-29). This article is a review of the book published by Madrick, *The Triumph of Finance and the Decline of America. 1970 to the Present* (2011).

<sup>7</sup> In the present context, both notions should be understood in legal terms. Thus, *capital* refers to a legal entity (*persona moral*, in Mexican Spanish), while *capitalist* refers to the natural person (*persona física*, in Mexican Spanish).

further and adds that such rights held and exercised by capitalists and investors are not individual rights, they are *collective rights*, in that they do not accrue to a capitalist or to an investor *qua* individual, but they accrue to a given *collectivity*, or unity, or group of capitalists or investors, an accretion which profits each and every member of the group in question.

To make his point, Lévy applies his reasoning to the unfolding of the legal situation in which a worker finds himself *vis-à-vis* the company that employs him, and he goes on to show that, as long as the worker in question operates through the negotiation of an individual labor contract, he has no bargaining power whatsoever, and his remuneration tends toward a minimum living wage or even less. *In fine*, his so-called right to a wage and to decent working conditions are variable rights; they are rights without any substantial content since they can be systematically reduced at will by the other party to the contract. But if workers come together as a group and stake their claims through a process of collective bargaining, and thereby exercise a collective right in the fullest sense of the word, those claims that make it into their labor contract provide them with rights in the fullest sense of the word, rights that have a substantial content and can be legally enforced. In other words, through collective bargaining, workers become *collective* holders of a given debt claim on gains and profits, a legal status that places them in a position equivalent or at least comparable to the one that CEOs, investors, or stockholders already find themselves in by the mere fact that their claim holds precedence over all other substantive claims, and all the more so over non-substantive ones.<sup>8</sup>

This kind of reasoning is most rewarding because it cuts through and breaks open the apparent individualism at play in the rewards accruing to the top, while all the rest must contend and make do with whatever is left once the plunder is over. Because what is at play here is not tied to some individual qualification, but is actually the full legal extension of a right held by each and every CEO, investor, or stockholder collectively. In this regard, blaming a given capitalist, investor, or banker is a useless exercise. No matter who you put in these positions, private profiteers or public servants, they will inevitably fall back on their “collective” rights, interests, or advantages before they even start thinking –if they think at all– about the rights of others, workers or consumers, let alone about the general good or the common interest. Better to take stock of these legalities and push for the introduction of counter-claims based on some other collective right.

<sup>8</sup> This distinction between a collective right as opposed to an individual right can best be illustrated with the example of the right to strike, in essence a collective right that allows a group of workers to resort to a work stoppage to further its social and economic interests, whereas the individual who resorted to this action would merely renounce his or her contract altogether.



I will come back to this line of argument in my last section, but for the moment, I want to explore another avenue and look at the crisis through the issue of governance.

## THE CRISIS AND GOVERNANCE

Because many of the interpretations of the crises of 2008 raised the issue of governance, a few reminders and comments are in order. The so-called “ungovernability” of democracies was first invoked in the *Report to the Trilateral Commission* published in 1975 under the authorship of Crozier, Huntington, and Watanuki. Over the ensuing years, the notion of governance came into universal use and was made a mantra of a sort by one and all: governments, businesses, the World Bank, and global citizens’ movements. In this regard, it has become quite customary to denounce the recent crisis as a failure of networking at the international, regional, national, or local levels, and as a form of delinking –or lack of linking– between economic, financial, or political institutions. In their often idealistic way of looking at things, one of the committees set up by the European Parliament, the Committee of the Regions on “the social dimension of globalization,” had this to say about the issue at hand:

“Good governance” of globalization can only be the result of a positive interlink between supra-national, national as well as regional and local actors in the private and the public sector. The framework of global governance is no longer be [sic] determined alone by the behaviour and rules of nation states. Besides the national level, the interaction between global actors, such as the European Union, corporate governance, and regional and local authorities is indispensable at this level playing field. The degree of their commitment to multilateralism, to universal values and common goals on [the] one hand, [and] the extent of their sensitivity to the cross-border impact of their policies, and the weight they attach to the social consequences of their actions at a global scale on the other are all vital determinants of the quality of global governance. All these actors, in managing their internal affairs, decide and influence to [what] extent people will benefit [from] globalization and be protected from its negative effects. (European Parliament, 2005)

Unfortunately, as far as the recent financial crisis is concerned, we learned the hard way that multiple governance schemes were neither complementary nor interlocked. This leads us to propose three reasons why global governance schemes have proven so inadequate and are being challenged as never before. The first has to do with their inability to smooth out the cycle of economic and financial booms

and busts that have struck the world economy over the past decades with their tangle of environmental, energy, food, and security offshoots, which throw into stark relief the unsustainability of the prevailing neo-liberal development model.

The second reason, closely tied to the first, and more specifically to the role granted market forces as the ultimate regulators of every aspect of economic, political, social, and cultural life, is the benign neglect extended to questions of poverty and famine, as well as to citizens' well-being in general. This applies first and foremost to the international financial institutions and the numerous calls made since 1971 for setting up a new Bretton Woods Conference. It applies as well to the United Nations system itself, its bodies and organizations, which have been in dire need of repair –to say the very least– since the fall of the Berlin Wall over 20 years ago, a task picked up back in 1995 most notably by the Commission on Global Governance with no result at all. It also applies to regional initiatives like the North American Free Trade Agreement,<sup>9</sup> as well as to most of the free trade agreements negotiated in its wake over the years. Their overarching obsession with economic growth seems to create some kind of impunity as far as the immediate social and environmental impacts of their actions are concerned.

Points one and two above can be tied together and, in this regard, the so-called originality and the legitimacy of the G20,<sup>10</sup> should indeed come under severe scrutiny and questioning. A great deal was said by commentators about the boldness of the initiative and about the fact that the 20 countries in question accounted for 90 percent of world GDP and 80 percent of world trade, which is like saying that a national policy initiative in a given country could be validated by involving its richer regions, and excluding the poorer ones, or that a municipal program could be drafted by consulting the wealthier suburbs, and disregarding the poorer neighborhoods altogether. Obviously, in this regard, meetings such as the G20 cannot offer legitimate long-term alternatives to the shortcomings of either world or most regional governance schemes.

These considerations bring us to the third reason why these schemes are being challenged, which has to do with their lopsided representation. In principle, governance was supposed to pick up where governments and outdated business practices had failed, at least as far as their legitimacy –if not their legality– was concerned. And to do so, governance schemes were supposed to reach out toward a greater number of stakeholders beyond the usual sponsors, interested parties, or partici-

<sup>9</sup> On the shortcomings of NAFTA, see Stephen Clarkson (2008).

<sup>10</sup> The G20 met three times in 2009, at the height of the financial crisis: in London, on March 29; in Pittsburg, on September 25; and in St Andrews, Scotland, November 7 and 8. None of the meetings had any practical results.

pants, namely politicians and business representatives. And when they do reach out toward duly organized civil society groups, these governance schemes are more likely to take into account labor, social, or environmental issues for which these groups are fighting than they would otherwise.

## THE CONSUMER AS CITIZEN

Coming back to the issue of consumption and consumer rights, I now wish to draw attention to the fact that rights, claims, interests, mobilizations, and organizations of consumers as social groups or as political forces probably represent one of the more enduring blind spots in the field of political economy, as I already mentioned at the onset.<sup>11</sup> For over two centuries, political economy has dedicated time and energy to the study of production, circulation, distribution; to capitalists, banks, investors, workers, and employees; and, comparatively speaking, little time and energy to the end point—and even less to the ultimate goal—of the production cycle. This situation is all the more paradoxical, as seen from a sociological and a political perspective at least, since, with the advent of the so-called “Keynesian Revolution,” consumption was a central measure of economic activity as well as a determinant variable in the establishment of a national economic cycle. For Keynes, personal expenditures and household consumption were part of the main determinants of final demand, the other three being investments, government spending, and net exports.

In this regard, the study made by historian Lizabeth Cohen in her *Consumer's Republic* (2003) can fill an important gap. Cohen shows that over the past 80 years or so, we witnessed the emergence of two ideal types: on the one hand, the emblematic figure of the so-called “consumer-as-king” who takes it upon himself to protect the nation's welfare and, to do so, nudges or pushes government into defending the rights, the security, and the equal treatment of consumers in the marketplace; and, on the other, the consumer as buyer, whose sole contribution to society consists of, and is strictly limited to, the exercise of his or her purchasing power, a gesture far removed

<sup>11</sup> This judgment should be qualified. For instance, in his book *American Capitalism. The Concept of Countervailing Power* (1956), John Kenneth Galbraith framed the role played by purchasers as a countervailing power under monopoly capitalism, but this expression did not include the final consumer or final consumption as such. This being said, Galbraith would tackle the issue in *The Affluent Society* (1958), a book dealing with mass affluence and indebtedness as the products and by-products of artificial needs created by advertizing agencies. However, in *Monopoly Capital* (1966), Paul A. Baran and Paul M. Sweezy went even further and showed that the “sales effort” by advertizing agencies, in particular, played a central role, along with military spending, deficit financing, and tax subsidies, in the absorption of surplus production under “monopolistic competition.” But, in both these cases, the consumer is seen more as an extra—if not a victim—than a social and political actor in his or her own right.

from any political or social commitment. The first scenario emerges in the wake of “the Keynesian revolution, [when] consumers were becoming responsible for higher productivity and full employment, whereas a decade earlier that role had uncontestedly belonged to producers” (Cohen, 2003: 55). She adds the following comment:

How the tension between citizen consumer and purchaser consumer was resolved would have far-reaching consequences for postwar life. It would redefine gender roles, how women and men exerted influence in their families and communities and how that influence was recognized by the state. It would reshape class politics, as the labor movement began to embrace mass consumption as a legitimate terrain for organizing and collective bargaining....And the nature of reconversion would even determine the physical reconstruction of metropolitan landscapes, both residential and commercial. At stake was nothing less than the future contours of American democratic society. (Cohen, 2003: 100)

Consumers’ movements and their mobilization peaked in the early 1960s when, on March 15, 1962, President Kennedy sent a special message to Congress proposing the adoption of a *Consumer Bill of Rights*, incorporating six basic rights: 1) the right of consumers to be protected against injuries; 2) the right to choose freely; 3) the right to be heard; 4) the right to be informed; 5) the right to education; and finally, 6) the right to service including warranties, costs of loans, and labelling.

At the time, writes Cohen,

consumer activists inside and outside of government made three levels of demands, with the first two achieving more success than the third. The first level sought to pass laws to protect consumers better [sic!] in the marketplace. The second level aimed to reorient the government’s regulatory authority toward the public interest....The third level, on which the least headway was made, aimed to give consumers a permanent voice in government through a separate department of the consumer or other such agency within the executive branch. In essence, this third level sought to broaden protection in the economic sphere to representation in the political sphere, binding consumer and citizen ever closer. (2003: 358)

But in the wake of a series of attacks mounted by manufacturers’ associations and business organizations dating from the McCarthy years and pursued relentlessly up until today, consumer activists and organizations were dealt a series of political blows and deprived of effective representation in federal agencies.<sup>12</sup> Never-

<sup>12</sup> According to many activists in the consumer movement as well as analysts, the Reagan administration’s pro-business stance played a crucial role in dismantling consumer protection. See Pertschuk (1982) and Mayer (1989).

theless, this does not mean or imply that there were no gains in the form of legislation or even in the form of government regulation in consumers' interests. Lizabeth Cohen lists 33 measures enacted between 1960 and 1977 alone, starting with the Federal Hazardous Substances Act of 1960 and ranging all the way to the Fair Debt Collection Practices Act of 1977. She gives 12 examples of regulations, among which are the Consumer Product Safety Commission of 1972 and the Freedom of Information Act of 1974 (2003: 360).<sup>13</sup>

Consequently, as a net result of these regulatory initiatives, combined with a flat rebuttal on the political front, "the Consumers' Republic is transmogrified into the Consumerization of the republic," an expression whereby Cohen implies that consumers as political actor—in the singular—have been superseded by the individual purchaser with his or her "what's best for me is what's best for America" attitude (2003: 397). In other words, the right of consumers to be protected against injuries and the right to choose freely failed to provide adequate protection against predatory practices of businesses and government agencies, a situation that will endure as long as nothing happens in terms of due representation for consumers in the political sphere. Such a demand is all the more justified and warranted when one underlines the fact that entrepreneurs, producers, investors, financiers, and the like all occupy central positions through their own representatives both within regulatory agencies and within governments as well.

In this regard, in his review of Greenspan's biography quoted above, Benjamin Friedman pointed to this lopsided interpretation of regulation when he underlined, "In addition, poorly disclosed compensation arrangements for brokers, which would be illegal in the securities market, have persisted in the mortgage market and give mortgage brokers substantial incentives to steer customers into loans that are excessively expensive or risky or both. But in the build-up to today's mortgage market mess, numerous potentially helpful government agencies also either dropped the ball or looked the other way. As early as 2001, the Treasury Department tried to get subprime lenders to adopt a code of 'best practices' and to submit to monitoring, but the large lenders objected and the Treasury did not press the matter. The Department of Housing and Urban Development likewise proposed a set of rules for real estate transactions but then failed to follow through. As recently as 2006 there was an interagency initiative to regulate non-traditional mortgage products such as packaged subprime mortgages, but again nothing came of it" (2008: 28).

<sup>13</sup> In the meantime, business interests reacted against consumer political demands and set up their own Consumer Federation of America (CFA) in 1967 (Cohen, 2003: 385).

These comments fit all too well with Cohen's own analysis and show that self-discipline or self-regulation, or even re-regulation, are clearly insufficient if they are not tied to some kind of consumer representation and a legitimate political review process carried on at the instigation of those who are collectively and directly concerned or affected by the rulings in question.

## CONCLUSION

In conclusion, I want to come back to the terminology I used in the title of this article. "Consumer democracy" is both a curious and an ambiguous expression. As often as not, in political science these days, a number of analysts see the political sphere itself as a market for promises made by power brokers who resort to a currency called the vote. In turn, and symmetrically, the citizen sees –or should see– him- or herself as a holder of this currency which he or she must use to his or her exclusive advantage and sole benefit. This "consumerization of democracy" –to borrow from Cohen– has little to do with the recognition, the promotion, and the enforcement of consumers' collective rights as political rights in a democracy.

In this regard, if there is no theoretical contradiction between electoral democracy and consumer democracy in the sense that the first does not preclude the second, in practice, electoral democracy as practised today is in many respects quite incompatible with democracy in society. This question then brings to the fore the nature of the consumer democracy that should be implemented. Essentially, the closer its ties to democracy in society, the less consumer democracy would fit and blend into present-day electoral democracy.

But as we saw when we introduced Emmanuel Lévy's argument on individual and collective rights, there seems to be a misunderstanding at play here. If, within the liberal mind space and interpretation, electoral democracy rests on the individual right of each and every voter, according to the alternative interpretation provided by Lévy, the isolated voter is a prey lured into thinking that he/she furthers his/her own individual interest while contributing to the establishment and consolidation of the collective rights of the holders of power positions, his/her so-called representatives. To understand this asymmetry and the permutation between collective and individual rights, in line with Pierre Bourdieu, one should establish power positions in a similar theoretical framework to the one Lévy used when he analyzed capital.<sup>14</sup> In essence, if power positions are forms of capital –or better still, forms of

<sup>14</sup> See, for instance, Bourdieu's classic contribution, "Social Space and Symbolic Power" (1989).

assets— they carry all the duties, and their holders have all the rights, among which is the right to use these power positions not for their own personal gain or advantage—that is called corruption— but surely for that of their principal,<sup>15</sup> their constituent, or more plainly for the advantage of their own in-group, circle, clan, coterie, or whatever. And if this fact is fully recognised for what it is, an inescapable reality, it would be better to let others on board who can defend their own collective interests with the same tools, as it were, instead of carrying on with the worn-out rationale about the grandeur of the minimalist approach to democracy provided by the ballot, which, all things considered, gives the advantage to the select few to the detriment of all others. Furthermore, the opposition between individualistic and collective interpretations of political responsibility and engagement could probably gain a lot if it were reframed in Guillermo O'Donnell's terms, when he opposed a low- and a high-intensity citizenship. In this sense, a citizen committed to an individualistic interpretation of power positions would engage in low-intensity citizenship, whereas one committed to an openly collective or social or even corporatist interpretation would exercise high-intensity citizenship (O'Donnell, 2004). And if those in power (bankers, investors, and shareholders) exercise this kind of high-intensity citizenship when they defend the interests of their own in-groups, consumers should not let themselves be caught up in low-intensity citizenship and consultation practices.

*In fine*, the collective rights of consumers, on the condition they are given fair and equitable treatment, applied in adequate and open schemes of governance within appropriate administrative, corporate, or political ruling bodies, could provide minimal safeguards to groups of consumers that mere consultation processes cannot provide. This would spare the individual consumer some of the hardships that result from the greedy practices expanded with impunity by their leaders and their lenders.<sup>16</sup>

<sup>15</sup> "In an agency relationship, the principal is the person who gives authority to another, called an agent, to act on his or her behalf." The Free Dictionary (n.d.).

<sup>16</sup> How these collective rights should be framed, and what governance scheme should be set up in order to provide maximum effectiveness, are questions that deserve separate treatment altogether, but one interesting precedent in this regard is the Consumer Bill of Rights of 1962. See Cohen (2003: 347).

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