# Cards---Round 1---DRR

## New Affs

### 1NC

Disclosing ‘new’ when asked is a voting issue:  
1. UNFAIRNESS. New exploits every bias: card docs, reactivity, and the lack of a preround all destroy the neg and advantage the aff with a whole week (!!!) to comb our wiki.  
2. RESEARCH. The expectation of ‘new’ moots the pre-tournament, and novelty inflates the risk of otherwise asinine positions. Worse, the neg is forced to rush to generics, decimating education. That proves this resolutional: the preround is key to exclusive T interps, deterring untopicality.  
Disclosure solves. They get the benefit of novelty while equalizing costs for the neg.

## Delaware

### 1NC

#### Delaware CP.

#### The State of Delaware should determine that corporations have a duty to [bargain in good faith between distributors and antitrust-exempt farmworker collectives].

#### The counterplan alone ensures DExit

George Shepherd 21. Professor of Law, Emory University School of Law. "Not Just Profits: The Duty of Corporate Leaders to the Public, Not Just Shareholders." University of Pennsylvania Journal of Business Law, 23.3, 823-861.

The currently dominant view of the corporation ignores history, is harmful and unfair, and should be rejected in favor of the view that existed for the United States’ first 150 years. Corporate leaders should be required to manage their corporations in the public interest as compensation for the state’s granting their corporations limited liability. Without limited liability, the corporation could not exist. Only because of limited liability can a corporation raise sufficient sums from equity investors to complete its projects.85 Limited liability is a valuable resource that the government controls. As it did in the United States’ early decades, the government should distribute this resource to corporations only on the condition that corporations compensate the government for the valuable resource by operating in the public interest.

A way to assure that corporations implement this duty to serve the public interest would be to impose the duty not only on the corporation itself, but also on the corporation’s officers and directors. In other situations where the government distributes benefits to professionals, the professionals are required to promote the public interest.86 For example, state governments provide lawyers with the valuable monopoly right to sell legal services; no one other than lawyers can provide such services. In return, lawyers are required to act as “officers of the court,” and to act in the public interest. 87 Furthermore, they are held to a higher standard of behavior than nonlawyers: the state will deny a legal license to a person who has been convicted of a serious crime.88

Similarly, certified public accountants have a duty to act in the public interest.89 Again, this is appropriate because the government has provided the accountants with the large benefit of the monopoly right to perform certain accounting services.90

Corporate officers and directors too should have a duty to lead their corporations in the public interest. The states have provided corporations with the valuable benefit of limited liability. Like lawyers and accountants, corporate officers should be required to reciprocate by acting in the public interest. Because the state has provided the corporation with the benefit of limited liability, the corporation’s leader has a duty to run the corporation to benefit the public.

Perhaps this duty should be described in a way that resembles how the duty for lawyers is described. A lawyer is called an “officer of the court.” A corporate officer or director might be called an “officer of the public.”

This duty for corporate leaders to manage their corporations as officers of the public would help protect groups that are vulnerable to corporations’ behavior. A corporation might protect communities that surround its factories by not immediately closing less-profitable factories. Cigarette manufactures might choose to leave the cigarette business, even if the business were profitable.

The penalties for violating this duty would be the same penalties that punish lawyers and accountants who violate their respective ethical duties. Just as some criminal acts disqualify a person from serving as a lawyer, a person’s acts that harm the public interest should disqualify said person from serving as a director or officer of a corporation. If a corporate leader causes their corporation to harm the public interest, the government should have the authority both to remove them from their corporate position and to eliminate their corporation’s limited liability.

Although federal or state courts, especially Delaware courts, might impose this duty as part of the common law, the duty might be best imposed at the federal level, by federal statute. Otherwise, state courts and state legislatures have a strong economic interest not to impose such a requirement. A state that did impose such a requirement would be at a disadvantage in the market for incorporations in which states compete to attract corporations to incorporate there. For example, Delaware might fear that it would lose its dominance in this market if it imposed a requirement that corporations promote the public interest. Corporations would reincorporate in other states that did not impose the requirement. To assure that the requirement governs all corporations in all states, federal legislation might be necessary.91

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This is not an extreme proposal. Instead, the proposal would return corporate governance to the requirements that existed for the United States’ first 150 years.92 Until the mid-1950s, it was understood that corporations should operate in the public interest.93 The current prevailing approach of hard profit maximization is extreme, deviating from a system that had existed for almost 200 years. My proposal is conservative: it would return corporate governance to its moderate mainstream.

VII. Current Responses Are Inadequate

In the last decades, and even more recently, there have been halting suggestions that corporations assume obligations to more than shareholders. As discussed in the introduction and bibliographical appendix, scholars have made various proposals.94 Two other approaches have arisen from industry itself. First, some companies have chosen to become “benefit corporations,” also called B corporations. Second, a group of corporate leaders has suggested that corporations should have duties to more than shareholders. I discuss each in turn and explain why both are inadequate to achieve the goal of appropriate corporate responsibility.

A. Benefit Corporations

Benefit Corporations are normal corporations that have voluntarily committed to serving interests other than those of shareholders. Indeed:

Just what is a benefit corporation? A for benefit corporation has the same structure as a traditional for-profit corporation. Each has a board of directors, officers, and shareholders who own shares in the company. The officers and directors run the business, yet the shareholders can hold them accountable for the decisions they make. Shareholders have several means to do this, including filing a shareholder lawsuit.

The difference between a traditional corporation and a benefit corporation is in its purpose. A traditional for-profit corporation’s purpose is to make profits for shareholders. This means that corporate managers are judged based on the company’s financial performance. They may face shareholder action if they make decisions that sacrifice profits to achieve nonmonetary goals.

A benefit corporation still has a profit-making goal, but it also has a broader public benefit purpose: to make a material positive impact on society and the environment. Managers must work to achieve this purpose and therefore they have flexibility to make decisions that balance profits with social causes and environmental responsibility.

The first benefit corporation law was enacted in Maryland in 2010, and currently about 30 states allow them. A benefit corporation is best suited to a company that has an important social or environmental mission but also wants to generate profits. For example, Yonkers, NY-based Greyston Bakery was founded in the early 1980s to give hard-to-employ people a new chance in life. It is profitable, has stayed true to its mission, and has developed new community programs. It reorganized as New York’s first benefit corporation in 2012. 95

Additionally, while it may vary from state to state, forming a benefit corporation is no more difficult than forming a normal C corporation:

Benefit corporation laws vary somewhat from state to state but, in general, a benefit corporation must have a general benefit purpose stated in its articles of incorporation. A B corporation is formed by filing articles of incorporation with the state—the same as with a traditional corporation.

In most states, a BENEFIT ORGANIZATION must demonstrate that it is upholding its public benefit purpose by publishing an annual benefit report that assesses social and environmental performance using a third-party standard. The report must be sent to shareholders and published on the company’s website. State law also may require it to be filed with the state.

Because they may sacrifice profits in order to achieve social goals, for-benefit companies may not be as popular with investors as traditional profit-centered corporations. Owners of benefit corporations may have to develop a strategy to attract investors that value contributions to social or environmental causes as highly as they value profits.96

Whether a given benefit corporation achieves the goals that it establishes for itself is based on the honor system; by itself, registering as a benefit corporation does not require the corporation to achieve these goals. However, the corporation may also agree to monitoring by an outside entity. For example, the corporation may not only become a benefit corporation, but also become certified by an outside organization as a certified B Corporation:

Another way to show that a business is focused on environmental and social goals is to apply for B CORP. CERTIFICATION through the nonprofit organization B Lab. Certification is available to all types of businesses, including traditional corporations and LLCs. Some businesses, like King Arthur Flour Company and Greyston Bakery, are organized as benefit corporations and also are B Lab certified B corporations.

Certification involves completing an assessment that evaluates the company’s overall impact on its stakeholders. The assessment is then reviewed by B Lab staff members, who may require supporting documentation. Some companies must amend corporate formation documents or bylaws to include a general benefit purpose. B Lab also offers a free tool that can assist companies in meeting their annual benefit corporation reporting requirements.

Forming a benefit corporation can help a company fulfill a social purpose without risking shareholder action for placing social good ahead of profits. Certification and reporting requirements help business managers assess progress and set new goals. And, in an era where so many are trying to be authentic and sustainable, becoming a BENEFIT COMPANY helps you stand out from the crowd by demonstrating your commitment to your employees, your community, and the environment.97

That some corporations may choose to become benefit corporations is admirable. However, the existence of benefit corporations does not achieve the goal of imposing a duty to serve the public interest on all corporations. A corporation becomes a benefit corporation only if its organizers choose to do so. The large majority of companies that do not choose to become a benefit corporation have no enhanced duty to the public.98

B. The Business Roundtable’s Statement

The Business Roundtable is an association whose members are CEOs of major U.S. corporations.99 For decades, the group indicated that the goal of a corporation should be to promote the interests of the corporation’s shareholders.100 However, in 2019, the group issued a statement that suggested that corporations should consider the interests of a broader group of stakeholders. The “Statement on the Purpose of a Corporation” provided:

Americans deserve an economy that allows each person to succeed through hard work and creativity and to lead a life of meaning and dignity. We believe the free-market system is the best means of generating good jobs, a strong and sustainable economy, innovation, a healthy environment and economic opportunity for all.

Businesses play a vital role in the economy by creating jobs, fostering innovation and providing essential goods and services. Businesses make and sell consumer products; manufacture equipment and vehicles; support the national defense; grow and produce food; provide health care; generate and deliver energy; and offer financial, communications and other services that underpin economic growth.

While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders. We commit to:

Delivering value to our customers. We will further the tradition of American companies leading the way in meeting or exceeding customer expectations.

Investing in our employees. This starts with compensating them fairly and providing important benefits. It also includes supporting them through training and education that help develop new skills for a rapidly changing world. We foster diversity and inclusion, dignity and respect.

Dealing fairly and ethically with our suppliers. We are dedicated to serving as good partners to the other companies, large and small, that help us meet our missions.

Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses. Generating long-term value for shareholders, who provide the capital that allows companies to invest, grow and innovate. We are committed to transparency and effective engagement with shareholders.

Each of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and our country.101

As with the benefit corporation, the Business Roundtable’s statement is merely aspirational. It does not require corporations to do anything. It is a suggestion by some powerful CEOs that they might consider the interests of stakeholders other than shareholders. It does not require the CEOs to consider these other interests.

Moreover, the statement is unenforceable. If a CEO were to ignore other stakeholders’ interests and continue to focus solely on shareholders’ interests, neither the CEO nor their corporation could be punished. No one would be able to sue to enforce any rights of other stakeholders.

Looked at most favorably, the statement is a statement of aspiration that might inspire some corporate leaders to think more broadly beyond shareholder maximization. A more cynical view would be that the statement is public relations hot air, which is designed to make corporations seem more appealing, while requiring them to do nothing.

The statement does not appear to have marked a dramatic turning point in corporate behavior. Indeed, a recent study shows that, more than a year after the statement was issued, those companies whose executives signed the statement have done no better in serving the public interest than those whose executives did not sign it. 102 Corporations whose executives signed the statement did not change their objectives beyond shareholder primacy. 103

This failure is easy to understand. As before, a CEO who focused on something other than profits might soon be out of a job. Disgruntled shareholders would have them fired. Alternatively, the resultant declining stock price would make the corporation an enticing takeover target, which again would result in the CEO being fired.

As with the benefit corporation, the statement allows corporate leadership to continue on as before, but with a new public relations halo.

VIII. Corporate Responsibility And Vulnerability

Various stakeholders of corporations are uniquely unprotected from their vulnerability to the corporations.104 Often, a corporation holds large power over the workers and surrounding community, and they are at the corporation’s mercy. Workers and the surrounding community must make large investments in the corporation, which, under traditional law, the corporation can destroy at its whim, with no recourse for the workers and community. 105

A. Employees of the Corporation

Employees of a corporation must often make large investments in the corporation, the value of which the corporation can easily destroy. For example, workers often must move to a new community when the corporation hires them, cutting off valuable ties with their former communities.

Likewise, workers must invest in the specific skills that the corporation requires, skills which often will not be transferable to another corporation.

The workers and their families establish valuable social ties with institutions in the community, such as schools and churches.

The workers buy houses in the community.

The value of all of these investments will decline or even be completely lost if the corporation decides to close its local plant. If the workers are forced to move, the workers’ ties to the community will be lost. The value of the workers’ non-transferable employer-specific skills will be destroyed.

Likewise, if the corporation closes, this will cause the value of the real estate in the surrounding area to decline, decimating the value of the former workers’ homes.

Examples of this are the many workers in the industrial middle of the United States, whose lives were shattered when corporations closed manufacturing plants.

B. The Surrounding Community

Apart from the workers, the community surrounding a major corporate employer is also unprotected from its vulnerability. Families and businesses invest in the community. If the corporation leaves, the whole community is devastated.

Likewise, if the corporation begins emitting larger amounts of pollution, the community is often defenseless. Because the community depends so deeply on the corporation, the community can neither confront the corporation nor defend itself against the corporation, for fear that the corporation will leave.

Examples of communities that have been devastated by corporate decisions are present through the U.S.’s industrial middle.

C. The Environment

Because the corporation holds power over the surrounding community, the surrounding community cannot effectively demand that the corporation reduce pollution. The community fears that environmental activism will cause the corporation to leave for another area or another country. Accordingly, the environment enjoys few protections against its vulnerability.

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D. Unions

Because the corporation can threaten to leave, the corporation has effective power to destroy unions. Unions have declined as corporations have moved their factories from union areas in the U.S.’s north to non-union areas in the south. Workers have gotten the message: if you try to organize a union, the corporation will leave and destroy your community.

This is what happened when Amazon suddenly revoked its commitment to build a large headquarters near New York City. The community had made various requests that Amazon protect workers and the environment. Rather than agree to them, Amazon left. To workers and communities, the message is clear. If you request protections from a corporation, your jobs and community are at risk.

The duty that I propose in this paper would permit corporations’ workers and communities to enjoy some resilience and to be protected to some degree from their vulnerability to corporations. Corporate law presently provides many protections to shareholders who have invested in a corporation. My proposal provides protections to the workers and communities who have invested in a corporation not just with money, but with their lives. My proposal would require a corporation to consider the interests of all investors in it, including workers and the surrounding community, not just shareholders.

The proposal would also be fair and efficient. Just as it is fair and efficient for shareholders to expect a reliable return on their money investment in the corporation, the corporation should be required to attempt to provide its workers and the surrounding community with a similar reliable return on their nontransferable investment—or, at minimum, to consider in the corporation’s decision-making the workers’ and community’s interests.

IX. Conclusion

Over the past century, corporations have freed themselves of a duty that they previously had: the duty to promote the public interest. The recent development of the benefit corporation does not change this. Any publicspirited acts that corporations take as benefit corporations are purely voluntary. A corporation can choose not to be a benefit corporation. If it chooses to be a benefit corporation, it still has complete discretion whether to act in the public interest.

Likewise, the recent statement by the Business Roundtable does not impose any new duties. It merely suggests that corporate leaders might aspire to promote the interest of “stakeholders” other than stockholders. However, the statement does not specify how exactly the leaders should do this. Nor does it provide any enforcement or penalties if they don’t.

Instead, a new duty should be created for corporate leaders to act in the public interest. Just as lawyers are required to be “officers of the court,” corporate leaders should be “officers of the public.” Just as some criminal acts disqualify a person from serving as a lawyer, acts that harm the public interest should disqualify people from serving as directors and officers of corporations. If a corporate leader harms the public interest, the government should have the authority both to remove them from their corporate position and to eliminate their corporation’s limited liability.

Furthermore, if corporations violate this duty to act in the public interest, limited liability should be eliminated for that corporation’s shareholders. If the corporation fails to provide the quid, then the corporation and its shareholders should no longer receive the quo.

This new duty could be created by the courts. For example, the Delaware courts could hold that corporate directors and officers have a fiduciary duty that runs not only to the corporation, but also to other stakeholders. Just as lawyers and accountants have duties beyond serving their clients, corporate leaders would also have duties to serve the public interest.

Alternately, this public duty could be achieved through legislation. It could be done at the state level. For example, the Delaware legislature could pass a statute that imposes the new duty.

The duty could also be imposed by federal legislation.106 There would be benefits of this. With federal legislation, the duty would be consistent across all jurisdictions. In contrast, market forces would probably prevent this duty from arising in the states, either in state legislatures or state courts. No state would act individually to impose such a duty for fear of losing incorporations to other states that do not impose the duty. Accordingly, the best way to impose the duty would be through federal legislation, which applies to all states, and which gives no state an advantage in the market for incorporations.

#### DExit is key to eliminating shareholder primacy

Adam Chodorow and James Lawrence 20. Jack E. Brown Professor of Law at the Sandra Day O’Connor College of Law at Arizona State University. Associate at Fennemore Craig, P.C., J.D. 2019, Sandra Day O’Connor College of Law at Arizona State University. "The Pull of Delaware: How Judges Have Undermined Nevada’s Efforts to Develop Its Own Corporate Law." Nevada Law Review, 20.2, 401-426.

III. Nevada’s Story

In 1991, Nevada sought to join the ranks of states that had rejected Unocal and Revlon117 by adopting Nevada Revised Statute (NRS) 78.138.118 Nearly identical to the Massachusetts statute discussed above, NRS 78.138 permitted directors and officers of Nevada corporations to consider the interests of employees, customers, society as a whole, and the long-term interests of the corporation.119 Perhaps most important, Nevada’s constituency statute also plainly applied in the takeover context, noting that directors may consider whether “these interests [are] best served by the continued independence of the corporation.”120 The stated purpose of the statue was to modernize Nevada corporate law with regard to takeovers and to “encourage[] those wishing to acquire [Nevada] corporations to negotiate with the board of directors . . . before attempting to do so.”121 But despite these efforts to deviate from Delaware law, Nevada courts were reluctant to do so.

In Hilton Hotels Corp. v. ITT Corp., 122 the United States District Court for the District of Nevada relied extensively on Delaware case law to enjoin ITT’s use of defensive tactics in a takeover battle.123 In 1997, Hilton Hotels Corp. announced a $6.5 billion124 tender offer for the stock of Nevada-based ITT Corp.125 ITT sought to block Hilton’s acquisition by staggering the board126 so that only one-third of ITT’s board would be up for election at any annual shareholder meeting,127 thereby preventing Hilton from quickly gaining control of ITT’s board of directors.128 ITT moved to implement its plan without shareholder approval.129 Hilton sued to enjoin ITT from doing so, arguing ITT’s plan breached its directors’ fiduciary duties.130

Despite NRS 78.138, which explicitly applied to hostile acquisitions, the Hilton court began its analysis by noting that there was no on-point Nevada statutory or case law dealing with hostile takeovers or the ability of target boards to implement defensive measures.131 The court then turned to Delaware case law.132 The ITT board “argue[d] that Nevada does not follow Delaware case law [because NRS] [Section] 78.138 provides that a board, exercising its powers in good faith and with a[] view to the interests of the corporation can resist potential changes in control of a corporation based on the effect on constituencies other than the shareholders.”133 But the court interpreted Nevada’s constituency statute as consistent with the Delaware’s heightened standards: “Delaware case law merely clarifies the basic duties established by the Nevada statutes,” the court noted.134 “This Court will not eliminate the principles articulated in Unocal . . . and Revlon . . . without any indication from the Nevada Legislature . . . that that is the legislative intent.”135 The court permanently enjoined ITT’s defensive measures.136

A. The Nevada Legislature Responds

In response to Hilton Hotels Corp., the Nevada Legislature amended the state’s corporate law in 1999 to make explicit that Nevada does not follow Delaware case law.137 The legislative intent behind the amendments was to abrogate the Hilton court’s use of Delaware’s enhanced standards and “preserve[] the application of the business judgment rule even in takeover situations” for Nevada corporate boards.138 The Nevada Legislature created NRS 78.139, dealing specifically with takeovers.139 Much like the Maryland and Indiana anti takeover laws discussed above140 , NRS 78.139 precluded courts from reviewing director conduct with any greater scrutiny than the business judgment rule, even in takeover situations.141 The amendments also refined Nevada’s constituency statute by reinforcing the notion that corporate boards could appropriately resist takeover by considering non-shareholder interests and that neither Revlon nor Unocal apply in such cases. 142

#### Shareholder primacy causes extinction

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[[Begin Abstract]]

The purpose of the corporation is contested. The heart of the debate is whether corporations ought to maximize shareholder value, or rather balance shareholder gains against the welfare of other constituencies. Lawyers and policymakers alike commonly hold that most corporations rightly regard the interests of shareholders as their highest priority. Even after repeated challenges from scholars,1 high-profile statements from corporate executives,2 and the promise of ESG investments,3 the common view is that maximizing shareholder value is the law. And while other non-corporate legal fields such as labor law, tax law, consumer laws and environmental laws may strive to protect the interests of stakeholders, corporate law instructs officers and directors to prioritize shareholders.

The paper challenges this interpretation of corporate law. It argues that even without any changes to current regulation, a constituency-oriented obligation to consider the social and economic impact of corporate conduct on corporate stakeholders exists within current corporate law.

By analyzing the legal framework of corporate law in Israel, the US, and the UK it is possible to show that corporate law itself is capable of a broader interpretation; and that such interpretation—one that considers the impact of corporate behavior on social welfare—is necessary for a sustainable society. With unprecedented corporate power, and the threats it poses to the environment and to democratic principles, its reinforcement of structures of privilege and its role in deepening inequality, the interpretation of corporate law needs to re-conceptualize corporate purpose. After a series of global crises has exacerbated and exposed the frailty of our social structures, a new interpretation of corporate law is required, one which identifies the duty to consider the wellbeing of the corporate constituencies. We argue that this duty is already embodied in current regulation. The law of corporations in all three jurisdictions allows for such a reading.

[[End Abstract]]

Introduction

On February 24, 2022, Russia launched a full-scale invasion to Ukraine.4 A coordinated response by the West followed; many countries sent military and humanitarian aid,5 and a unified front of the U.S., the EU, and the UK implemented a series of economic sanctions against Russia. The U.S. banned Russian oil imports, and the UK joined in freezing the assets of Russia’s central bank and in seizing assets of the oligarchs of Putin’s inner circle. The objective of these sanctions was to cut Russian economy off from the global markets. Interestingly, the role of transnational corporations in Russia’s isolation was vital. After only a few days of war, large multinational corporations have pulled out of the Russian economy. Oil and gas companies such as BP, Shell, and ExxonMobil cut their investments in Russian energy companies;6 finance companies such as Visa, MasterCard, American Express, and PayPal suspended their business dealings in Russia;7 tech giants Samsung and Sony suspended shipments to Russia, and Apple has restricted its Apple Pay services.8 The most significant blow to Russian economy was its partial disconnection from SWIFT, the global messaging system for financial transactions. SWIFT is a non-state international cooperative of banks, linking more than 11,000 institutions in over 200 countries,9 founded as a member-owned cooperative society under Belgian law, and is controlled and owned by its members.10 While some central banks are also members of SWIFT, its governing structure guarantees that the control of the organization is proportional to the volume of usage of its services. As an organization comprised mostly of private banks, it is regarded as a “neutral third party” and in previous political crises, such as that of Iran in 2012, it was very late to respond to an international campaign pressing it to join the sanctions against Iran. In its attempt to stay neutral in 2012, SWIFT initially insisted that the system is “only a secure messaging service,” and that its activities fell “beyond the remit of current law.”11 A press release from February of 2012 by SWIFT, along the same lines, stated that it was “committed in maintaining its role as a neutral global financial communications network.”12 It wasn’t until the U.S. Senate Banking Committee proposed legislation to permit the sanctioning of SWIFT that it reluctantly joined the effort to cut off Iranian finance. On this occasion, however, SWIFT has joined the sanctions against Russia.

The significance of the private sector’s cooperation with the embargo on Russia in 2022, illustrates the extent to which corporate discretion and conduct impacts geopolitical, economic, and social issues. While the majority of transnational corporations chose to join the opposition against Russia’s aggression on this occasion, it seems that things might have turned out very differently had they acted only in accordance with their financial interests and refrained from acting on ethical grounds. In the past, more often than not, they turned a blind eye. The very same companies that withdrew from Russia have not only ignored, but have also, at times, benefitted from atrocities taking place in other parts of the world. Boeing, for instance, which suspended its operations in Russia in March of 2022,13 has made huge profits from the war in Yemen,14 a war that, according to the UN, has placed over 20 million people in need of humanitarian aid.15 Shell, quick to divest from Russian oil and gas companies, has been accused of complicity in horrific crimes committed by the Nigerian military in the 1990s.16 BP was responsible for the single largest environmental disaster ever, the oil spill in the Gulf of Mexico in 2010.17 Other examples abound.18 For better or worse, corporate impact far exceeds an imagined neutral and detached marketplace.

It is our contention that law does not do enough to hold private power responsible for undermining human well-being. The reason, however, lies not in law itself, but in its cultural environment.19 This is true not only in the face of wars, a global pandemic, or the imminent climate crisis, but also in what may seem the most mundane of circumstances, that in fact shape our public sphere, communities, and lives.

Indeed, corporate power is everywhere. From Google, Amazon, and Meta, to Pfizer and Moderna, state regulators and legal scholars alike express growing concerns with the overwhelming power of corporations.20 But while countless articles and books are written on corporate excessive power, and while high-profile declarations by corporate leaders promise to “ensure a more inclusive prosperity” through corporate action,21 not much real change is in evidence. Corporations rarely consider the detrimental impact of their conduct on other constituencies and focus on share value as the (almost) exclusive measure of their success. The law of corporations, as currently understood, is failing to respond. We argue that the reason for this is that corporate culture pushes the interpretation of law towards an assumption of shareholder primacy. But that this is neither the only possible interpretation of the law, nor a desirable one.

The paper challenges the conservative, dominant, interpretation of corporate law in the U.S., the UK, and Israel. It argues that the multifold, and growing, power of corporations, and the threats it poses to democratic principles and environmental issues, its reinforcement of structures of privilege and its role in deepening inequality, mandates the adoption of a different, constituency-oriented, reading of the law. We will show that the law in all three jurisdictions already allows for such a reading and argue that adopting a constituency-oriented interpretation reflects an understanding of the corporate entity which is better fitted for today’s challenges.

The paper proceeds as follows. It starts, in the first part, with a depiction of the growing corporate power, through the lens of a series of global crises that have both exacerbated and exposed much of the frailty of our social structures; it then moves to discuss the changing equilibrium between corporations and states, mainly through privatization in its many forms; the last section of the first part focuses on the rise of the CSR discourse and the changing social expectations from corporations, which have led, in part, to growing doubts about the dominant paradigm of shareholder value maximization. Special attention will be devoted to the web platform corporations, the global impact of which on people’s lives has become unparalleled. The purpose of this part is to present the overwhelming increase of corporate power in the past few decades, in both magnitude and reach. This, we argue, mandates re-thinking the role of corporations that can be facilitated through a broader reading of corporate law.

The most urgent change, we believe, is to re-conceptualize corporate purpose. Corporations are not neutral economic spheres but social institutions, embedded within society. This must lead to recognizing their legal responsibility. The integration of a standard of responsibility into corporate regulation will naturally result in the rejection of the shareholder primacy norm as a legal imperative.

We will not engage with the economic case for rejecting the shareholder primacy norm. Rather, we will build on it, and focus our attention on highlighting the urgency of pushing back on corporate power by re-interpreting current law, and re-conceptualizing corporate purpose. We show that this transformation does not require any legislative amendments, as current law already includes a latent requirement for corporate responsibility and already allows for a broader reading of corporate purpose. What needs to change is the doctrines that coddle corporate interests.

The second part of the paper will analyze the legal status of corporations in Israel, the UK and the U.S. It will show that while much has been written about the purpose of the corporation as more than just a vehicle to enable investment or produce profits, and while the laws prescribing its status allow for a broader understanding than the shareholder primacy norm, these broader interpretations have not been applied.

Against this backdrop, the third part of the paper will offer a different perspective on corporate law. Its essence is a re-conceptualization of the place of corporations in society, one that denies their standing as a private entity operating in an allegedly neutral economic sphere, but rather highlights their status as socio-economic enterprises, inseparable from the broader social context in which they operate.

I. Corporate Power

In 1995, when the Israeli Corporate Law Reform bill was introduced in Parliament, Larry Page and Sergey Brin had only just met, and the Google corporation was, at best, a vague idea. Facebook was founded as an open social network just two months prior to the enactment of the UK Companies Act of 2006, and Apple’s iPhone had not yet been released. The world we live in today, in which the total market value of the five big tech companies is at 7 trillion USD,22 is different from any world the legislators of both company laws could have even imagined. The transformation in corporate power, its ubiquity and countless manifestations, translates into an ever-growing impact on both global and local social realities. Corporate power, and its potential to cause harm, require a more suitable legal perception of the corporate entity. Dethroning the shareholder primacy paradigm as the overarching interpretive norm of corporate law is a necessary first step, as it impedes such change.

Corporate power, however, is only one aspect of the new global reality. The changing equilibrium between transnational corporations and states should be considered as well, as it exposes the diminishing power of people around the world to take part in shaping their own environment. The globalization process, which in many ways was only emerging when the Israeli corporate law reform bill was introduced, played a crucial role in these two parallel processes: on one hand, the boosting of corporate power—legally, economically and politically;23 and on the other hand, the retreat of the state, and the erosion of its sovereignty in shaping independent socio-economic policies, especially in fiscal and monetary aspects, and, in turn, in terms of the robustness of welfare policies.24 Globalization affects the power balance between corporations and governments in various ways: first, the global mobility of corporations induces a “race to the bottom,” reflected in tax breaks and trade agreements, intended to draw corporate investment. Corporate global mobility also allows corporations to make use of tax havens and financial secrecy agreements and regulations. Both practices, in turn, reduce tax revenues for hosting states, and diminish the scale and quality of the social services it can offer.25 In addition, aggressive tax planning allows further wealth accumulation by corporations, fortifying their economic power. This too works in their favor vis-à-vis states. Finally, trade agreements and regulatory contracts that corporations take a major role in drafting, and which are only loosely overseen by parliaments, leads to light, nontransparent regulation that usually serves the interests of capital, rather than those of the public.26

Another aspect of the effects of globalization on the erosion in state sovereignty is the impact of international institutions, such as the world bank and the IMF on the economic policies of many states. These have advanced a neoliberal agenda that has led many poor countries to eliminate trade barriers, as well as reducing subsidies in support of their local agriculture or industry. The direct beneficiaries were banks and transnational corporations.27

Yet another aspect of the weakening of the state is the privatization of public services. Under the neoliberal philosophy, “government is not the solution to our problem; government is the problem,” as President Reagan famously declared.28 The implications are setting the “small government” as an objective, strengthening the private sector, and the recommodifications of goods and services. The culmination of this process is the privatization of services that are traditionally thought of as distinctively public, such as defense, incarceration, and policing.29 The assumption of superior private efficiency, and the quest for international economic competitiveness are important contributors to the retreat of the state from a variety of economic activities. The natural beneficiaries are corporations, who correspondingly acquire a more central position in the social and economic sphere.

The implications of these processes for the public interest are not encouraging. The IMF, in itself an agent of globalization for many years, published in 2017 a comprehensive study concluding that the mobility of capital and labor, coupled with the small government agenda, are a major cause of the rapid growth in inequality.30 Research also shows that when governments are more involved in public services, inequality decreases, and economic growth is enhanced.

One of the most significant aspects of corporate dominance is the growth of the tech platform giants (Google, Meta, Apple, Amazon, etc.), who have become, in the past two decades or so, major actors in the global economy. The “Big Data” age, and the unprecedented monitoring of every aspect of human activity, has turned cyberspace into the most salient locus of the changing equilibrium between states and corporations. The platform corporations have become the gate keepers of the vast content available on the web. Through search engines, social networks, e-commerce and more, these platform corporations control, via nontransparent algorithms, the way information is presented, used, interpreted, and exposed to billions of users around the world. Their advantage in dictating the terms of agreement with individual clients, and the ability to take down, promote or block content or users, endows the platform corporations with de facto control over knowledge, its hierarchy, its traffic, focus, and ultimately over public opinion, and its perception of reality—actual or imagined.31

Under the current interpretation of corporate law, these companies strive to maximize shareholder value, which often leads to harmful business strategies affecting personal autonomy, democracy, mental wellbeing, etc.32 An example is Facebook’s exploitation of user information without their consent or knowledge in the Cambridge Analytica scandal to support Trump’s presidential campaign.33 In this sense, the power of these corporations transcends that of governments, and reflects the potential danger they pose to human rights and wellbeing. This new reality challenges the classic theory that considers the state as the major threat in this regard.

It is not surprising, therefore, that new attempts to better regulate these aspects of private power—in both antitrust and privacy34—are slowly becoming more common. As we will argue below, however, these specific regulatory additions are not enough. What is required instead is a new interpretive paradigm for corporate law—one that is not guided by the shareholder primacy norm but rather takes into account the broad implications of corporate conduct on society at large.35

We have thus far described the shift in power relations between states and corporations, especially as a result of the globalization and privatization processes, and with a focus on the unique position of platform corporations as significant agents of this change. These have resulted in the rise of the corporate social responsibility movement and the changing expectations from corporations.

Since the end of the 1990s and especially following the uncovering of harmful practices by transnational corporations, the discussion of corporate social responsibility has made progress, especially among civil society organizations, but also among the general public. Stakeholder discourse is becoming more demanding and various civil-society campaigns are trying to rein in corporate conduct. As the private sphere expands into the public domain, the interest of the public in the private sphere grows. This includes a deeper scrutiny of harmful corporate practices, production conditions, employment terms, detrimental impact on the climate and human rights breaches. Civil society organizations push corporations to meet higher normative standards. Using consumer boycotts, urging divestments, fair trade campaigns, class actions, etc., these demands may resonate in corporate boardrooms.36

Another aspect of the same phenomenon is the “business and human rights” discourse that has also developed in recent years with an impact on social expectations from corporations. The business and human rights movement argues that human rights law, mostly restricted to states, should be extended to transnational corporations.37 Its efforts are bearing fruit, and in 2011, the UN Human Rights council published guiding principles on Business and Human Rights, asserting that corporations, in addition to states, must also respect human rights.38 While this is not a legally binding document, the UN principles enjoy wide support from leading corporations as well. In 2019, the UN Human Rights Council issued a draft-treaty aimed specifically at corporations in relation to human rights.39 While there is still a long way to go before, and if, it is ratified, the draft is yet another signal for the growing understanding that private power must be restrained, and that managing the company to maximize shareholder value is no longer viable (if indeed it ever was).

In response, corporations themselves and especially those in the public eye, have started to voluntarily adopt a range of socially responsible practices,40 which in turn further stimulated social expectations of responsible behavior. The academic managerial discourse, especially in Europe,41 has also begun to focus more on questions of business ethics, corporate social responsibility, sustainability, and business-and-community relations, reflecting a shift from the contractual-corporate paradigm to a stakeholder model. It seems fair to say, then, the debate today no longer questions the necessity of corporate social responsibility, but rather considers its proper scope.

As will be shown below, however, these changes have not permeated into law itself, or, more accurately, have not informed a broader interpretation of equivocal legal concepts. Corporate and legal actors throughout are still prioritizing shareholder value.42

The first part of the paper focused on the profound transformation in the power relations between states and corporations, showing that globalization, privatization, and the rise of platform corporations have brought about an urgent need to review the overarching principles that inform corporate purpose. A change in public opinion, more aware of the problems of the unregulated power of large corporations and its potential to cause harm, have made possible a normative shift in which corporate social responsibility is now expected. In terms of law, this shift should translate into a new perception of corporate purpose.

It is impossible to discuss the role of corporations in society without mentioning the crises the world has gone through over the past few years— some of which are linked directly to corporate conduct. Most urgent is the climate crisis, defined by the UN as the “defining crisis of our time.”43 Human activity, mostly carried out by corporations, is responsible for the emission of greenhouse gas into the atmosphere. Mining, production, and use of coal, oil and gas releases billions of tons of CO2 causing an unprecedented, and dangerous, rise in temperatures. The consequences are, and will become, devastating.44 The arctic is melting, causing sea levels to rise, threatening the flooding of inhabited lands and cities across the globe; extreme weather conditions, natural disasters and non-perishable human trash lead to soil degradation and desertification. Hyper consumerism leads to reckless deforestation. Business as usual has, literally, devastating implications. However, the fossil fuel industry is still on course to invest billions of dollars into new infrastructure, and to further extract coal, oil and natural gas in both Europe and North America.45 In Europe, it was only following the Russian invasion to Ukraine in February of 2022 that the Nord stream project, owned and led by a consortium of European energy companies, was re-considered. The Nord Stream gas pipeline, described as a climate disaster,46 is one of the largest energy infrastructures in Europe. In addition to its detrimental effect on gas emissions when put to use by consumers, it is also putting the Baltic ecosystem in danger.47 Energy corporations are making huge profits while we edge closer to an ecological disaster. A 2019 study shows that only twenty corporations are responsible for 35% of the total CO2 emissions since 1965, when the dangers of fossil fuel were already known.48

Corporations are accelerating the climate crisis by blocking regulatory initiatives. The hyper consumerist culture corporations strive to foster and spread drives societies across the globe to an excessive use of natural resources. The paradigm of maximizing shareholder value and short-term growth leads these corporations to externalize the costs to society and the environment. As the next part will show, current law allows a much-needed paradigm change. It is up to legal actors to apply a different interpretation to the law, one that corresponds better to the challenges.

### AT: Preemption---1NR

#### More importantly, it doesn’t take out the net benefit---preemption challenges take years to resolve, and employers are forced to act as though it’ll be enforced

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Other states have faced legal challenges in the past, and more challenges are expected. For example, lawsuits were filed against Oregon and Connecticut challenging their respective captive audience legislation as preempted by the NLRA. More recently, the Illinois Policy Institute filed a lawsuit on August 8, 2024, which it amended on October 30, 2024, in the United States District Court for the Northern District of Illinois (Eastern Division), trying to block Illinois' captive audience law from going into effect January 1, 2025 on First Amendment grounds. Illinois Policy Institute v. Flanagan, Case 1:24-cv-06976. No decision has been rendered yet.

The outcome of the California lawsuits remains uncertain, as both cases are sealed, and the NLRB is in a state of flux, given the current litigation surrounding Board Member Wilcox. For now, employers should apply applicable state law and federal law when it comes to captive audience meetings but remain cognizant of the ongoing litigation.

### Uniqueness---1NR

#### Best data proves

Stephen M. Bainbridge 24. William D. Warren Distinguished Professor of Law at UCLA School of Law. "DExit Drivers: Is Delaware’s Dominance Threatened?" Harvard Law School Forum on Corporate Governance. 09/06/2024. https://corpgov.law.harvard.edu/2024/09/06/dexit-drivers-is-delawares-dominance-threatened/

For over a century, Delaware has dominated the competition for corporate charters. Over the last several decades, however, a number of states have attempted to chip away at Delaware’s lead. The most successful of these competitors has been Nevada, but other states such as Texas, Maryland, and Wyoming have also sought to gain incorporations. This competition recently made headlines when Elon Musk advised his followers on X.com to never incorporate their business in Delaware, which triggered discussion in both the popular and legal press about whether companies might leave Delaware for purportedly more friendly climes. My article DExit Drivers: Is Delaware’s Dominance Threatened? provides both an empirical and a qualitative analysis of firms that reincorporated from Delaware to another state between 2012 and 2024. It analyzes these firms based on size, filing status, and new state, along with their stated motivations for reincorporating.

The data suggest two main conclusions. First, almost all reasons given for reincorporation seem implausible. If DExit becomes more frequent, plaintiff lawyers should scrutinize these disclosures, particularly focusing on enhanced liability protections for controllers, directors, and officers, suggesting possible conflicts of interest requiring entire fairness review. Second, the number of reincorporations from Delaware remains minimal compared to the vast number of new incorporations Delaware attracts annually. Given the strong inertia behind the initial incorporation decision and the weak drivers for DExit, it is unlikely to become widespread soon.

#### The benefits of moving to Nevada are too small now

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In addition, although the perceived benefits of Nevada’s legal environment may attract some firms, but Delaware’s systemic advantages and robust legal infrastructure will often outweigh these considerations. In particular, the comprehensive protections offered by Delaware law, while burdensome for controlling shareholders, contribute to its attractiveness for investors and overall market stability. The combined effect of investor resistance and the general inertia behind the original decision to incorporate in Delaware suggests that DExit will remain rare.

Conclusion

While Nevada offers some legal advantages, the systemic strengths of Delaware’s legal environment continue to provide significant incentives for firms to remain. Specifically, although Delaware’s rigorous enforcement of fiduciary duties is perceived as a risk, rigorous enforcement of those duties ensures high standards of corporate governance that can be beneficial in attracting investors. The balance of risks and benefits, combined with the inertia of Delaware’s dominant position, suggests that litigation concerns will not trigger a large-scale departure from Delaware in the near future.

In sum, Delaware’s dominance in corporate law is unlikely to be threatened in the near future due to its strong legal infrastructure and the inertia of existing incorporations. While Nevada presents some competition, the benefits of reincorporating there are not compelling enough for most firms.

## Adv 2

### Ag Inevitable---1NC

#### Ag resilience is resilient!

Sören Köpke 22. Postdoctoral researcher and lecturer in International Agricultural Policy and Environmental Governance. “Interrogating the Links between Climate Change, Food Crises and Social Stability.” 2022. Earth. Vol 3. Issue 2. https://www.mdpi.com/2673-4834/3/2/34

The line of argument of both the environmental security school and collapse theorist, at least with regard to agriculture-dependent developing countries, follows this chain of causation, loosely adapted from the critical discussion by Peluso and Watts [26] (p. 17): climate change → food crisis → heightened competition → breakdown of social order (1)where “climate change” is one instance of adverse environmental change, and food crisis stands for the social effects of environmental scarcity. There is a severe disconnect between the body of knowledge produced by scholars of famine and food insecurity, and the environmental security school, as well as climate collapse theorists. The latter tend to ignore the rich historical evidence on the character, societal context, political economy, and anthropology of large-scale devastating food crises. As will be elaborated in the following, contemporary famine scholars are fairly unanimous that (a) drought and other severe climatic disasters are not necessarily the main factors leading to famines, even if it appears that way, since (b) famines have a political context that is often more important than other factors; in addition, (c) famines and the distribution of suffering reflect social hierarchies within the afflicted societies, and (d) even large-scale famines do not necessarily lead to a complete collapse of a polity’s functioning, as (e) food systems are highly interconnected and complex. These five statements will now be discussed in turn. Agricultural drought—the insufficient availability of water, or, more precisely, soil moisture, for crop cultivation—is among the most frequent causes of yield failure and may lead to food insecurity crises, and in the most extreme, famine. Drought years are recurrent in water-stressed regions and countries. There are manifold coping strategies to drought on the household level pursued by rural people and subsistence-farming households, including, but not confined to, using up supplies on stock, taking up debt, leaving out meals, making use of “famine food”, searching for off-farm work, selling land, farm animals and valuable items, and temporal migration (i.e., to distant relatives) [62,63,64,65,66]. In a number of regional contexts, there is also the phenomenon of seasonal hunger [67,68], essentially a coping strategy to get by with scarce food resource over the year. On the level of famine management and mitigation by state authorities or international donors, famine relief in the form of humanitarian emergency food aid is often applied; additional measures include food price stabilization and bans on exports [69,70]. Although these interventions have their own setbacks [71], food aid and other famine management measures are much more preferable for the avoidance of high mortality rates than neglect and lack of response on the side of the governing authorities, as historic examples show [72,73]. Mid-term strategies for prevention of drought-famine include technological interventions, such as investments in irrigation infrastructures and landscaping against soil erosion or introduction of famine-resistant crop varieties [74], or governance intervention, such as the implementation of social security systems and public health care, and instatement of early warning systems [75,76]. Hence, drought-famines are not mere natural disasters, but represent a failure of policies and institutions. This points to the political nature of large-scale food crises. Furthermore, food insecurity crises often arise in the context of armed conflict and interstate wars, a statement which does not only apply to organized violence in the 20th century but holds true to these days. Table 1 lists major famines from 1917–2018; climatic aspects are in the foreground for a number of modern famines, yet the context of armed conflict is present in a large number of cases. Strong evidence of authoritarian politics as a direct cause of devastating famine can be found in the Stalinist famine (Holodomor) in 1930s Soviet Ukraine [77,78] and the Great Leap Forward famine in the People’s Republic of China (1958–1962) [79,80]. The latter is arguably the most lethal hunger catastrophe in history in terms of victims’ number quantity. Hunger is weaponized by aggressors against unwanted populations; the Siege of Leningrad (1941–1944) by Nazi Germany is a historical example [81]. The strong interrelation between organized violence and large-scale food crises leads Alex de Waal [82] to speak of many modern famines as “forced mass starvation”. Having now established that many, if not most, modern famines are not the result of drought and harvest failure alone, but consequences of armed conflict, policy failure, and neglecting assistance to starving populations, the question can be raised of who is suffering from famine and food crises. The dominant view with regard to the political economy of food crises is based on Amartya Sen’s [83] insight that, rather than declining food availability, the lack of ability to access food—the lack of “entitlements” to food—was crucial in understanding the genesis of famine. When purchasing food becomes costly, the poorer parts of a population are suffering and starving at first. Famines are then as much an issue of distributive justice as of food economics or agriculture [84]. This “distributionist” perspective [24] is principally accepted [85]; however, it does not appear to convince neo-Malthusians of the fallibility of their arguments. Following these three general arguments, it is clear that elites and upper strata of society are generally affected by food crises to a much lesser degree than more vulnerable populations, creating what Ó Gráda calls “hierarchies of suffering” [86]. This does not preclude that famines do not have lasting and traumatic consequences to surviving individuals and households and to affected communities and societies, yet it raises questions surrounding hunger crises and social stability, which have a complex interrelation. Acute famine is generally not associated with social upheaval, as famine-affected people are likely to be too weak to engage in protest or even armed uprising [73]. Yet, there is a very robust linkage between food insecurity crises and social unrest. The vector connecting both variables is usually food prices. Food (price) riots are a phenomenon observed up to the present day [87,88,89,90]. While empirical evidence suggests that food security crises as consequence of rising food prices are neither a necessary nor a sufficient condition for social unrest, the expectation of food insecurity can be a strong motivator to engage in protests or riots [91]. In recent history, the 2010–2011 “Arab Spring” appears as a confluence of conditions where rising food prices overlapped with radical loss of legitimacy of authoritarian rulers and long-boiling socioeconomic tensions [92,93]. Here, the connection between global food price volatility and political consequences on the national level underline the last argument: The interdependence within the global food economy links production, processing, and consumption through trade in international markets [94]. Upstream—through trade in fertilizers, pesticides, machinery, and irrigation technology—and downstream—food exports—commodity chains are creating complex interdependencies [95].

### India-Pakistan Defense---1NC

#### No India-Pakistan war.

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It is cavalier, therefore, to dismiss the possibility of nuclear deterrence with the wised-up line that correlation does not equal causation. Indeed, it suggests incuriosity, given we have historical evidence to draw upon. Nuclear-armed states really have hesitated to attack other nuclear-armed states, given the prospect of suffering unacceptable return fire. India and Pakistan since proliferating have not ceased competing. But both have been more mutually cautious than during the pre-nuclear era, when they fought three conventional wars. Every postwar generation entertains the dream of global disarmament Since then, they have engaged in brinkmanship they have taken care to control, such as the 1990 Kashmir confrontation, and fought a brief and highly constrained peripheral war in 1999. Nuclear proliferation in its early, “nascent” phase can trigger threats and instability. But there is an unignorable pattern of limitation followed by de-escalation efforts between states with nuclear forces, as when India and China squared off in border skirmishes recently. Indeed, evidence of the real force of nuclear deterrence lies precisely in the United States’ determined efforts to prevent proliferation by others. Wanting a free hand, it knows proliferation would constrain its power. Even the slight risk of nuclear escalation either precludes options to attack, or takes them quickly off the table. In crises, even the superpower was deterred. Washington’s cautious, calibrated steps in the 1958 Berlin crisis drew partly on President Dwight Eisenhower’s increasing risk-aversion, his well-founded belief that the coming of the Soviet Union’s thermonuclear capability would mean, in the event of escalation, tens of millions of immediate fatalities. Likewise, in most hypothetical wargames, including on the Soviet side, possessors were reluctant to engage in massive nuclear strikes. In recent time, hawks in the Trump presidency advocated a “bloody nose” limited pre-emptive strike on North Korea, only for the executive branch to conclude “no attack plan could confidently preclude escalation or collateral damage”. Now compare the reluctance to attack North Korea, which successfully advanced its nuclear programme, with the fates of Libya’s Colonel Gaddafi and Iraq’s Saddam Hussein, who abandoned theirs. So nukes really do inhibit wars between nuclear “pairs”, if only we care to look. And like most things, nukes have mixed effects and varying outcomes. Nuclear deterrence doesn’t always work in warding off attacks. It just works a hell of a lot.

### India-Pakistan Defense---2NC

#### No nuke escalation---stability/instability paradox caps escalation.

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Nuclear war theorists tell us that competing nuclear-armed states inhabit what is called a “stability/instability paradox”. The fear of mutually assured destruction can create a form of stability at a strategic level (as we saw during the Cold War). But nuclear weapons can simultaneously create instability by making lower levels of violence relatively safe, because escalation up the nuclear ladder is perceived as too dangerous. In other words, by creating a nuclear ceiling that both sides do not wish to breach, there is also space for conflict underneath that ceiling. How large that space is will depend on the players involved. The India-Pakistan relationship is a great example of this. Pakistan has been a master in pursuing asymmetric strategies against India underneath the nuclear ceiling. This has included adopting a first-use doctrine and the deployment of tactical nuclear weapons in an effort to blur nuclear red lines (creating space underneath the ceiling). It has supported major terrorist attacks inside India, including the 2001 attacks on the Indian Parliament and the 2008 attacks in Mumbai. It has of course long supported terrorist attacks in Kashmir. In past years, the nuclear threat from Pakistan has prevented New Delhi from responding forcefully to these actions – India’s failure to undertake a military response to the 2008 Mumbai attacks being one example. India is essentially a status quo power, whose first objective is often just to maintain the status quo. But as Pakistan is learning, the stability/instability paradox works in both directions. In 2016, after Pakistan-supported terrorists attacked an Indian Army base at Uri, Modi ordered a raid by Indian special forces against an insurgent’s camp in Pakistan occupied Kashmir. The so-called “surgical strike” was heralded as a major victory against terrorism. But while whole books have even been written about it – and even a movie – the details remain somewhat hazy. For its part, Islamabad claimed that the so-called “surgical strikes” never happened, and later invited foreigners to tour the area to “prove” that nothing happened. Each side, wanting to believe its own version, went away with honour served. We are seeing a similar dance now. These latest strikes allow the Modi government to trumpet a major victory against Pakistan, apparently “pre-empting” further imminent attacks against India. This time Delhi turned up the heat a little, striking near Balakot in (undisputed) Pakistan territory rather than in Pakistan occupied Kashmir. And, perhaps incidentally, Balakot is only around 60km from the city of Abbottabad, Osama bin Laden’s old hangout. For its part, Pakistan has again claimed that the strikes never happened and that the Indian planes were in fact forced by the Pakistan Air Force to jettison their bombs in uninhabited mountains and flee. Again, Pakistan has offered to show foreigners around a place somewhere near Balakot to show that nothing happened there. Nevertheless, Pakistan Prime Minister Imran Khan met with Pakistan’s National Security Committee (which controls Pakistan’s nuclear weapons) and then announced that Pakistan would respond to the (non) attack “at the time and place of its choosing”. Whether Delhi and/or Islamabad feel the need to take further public action remains to be seen. But both will seek to manage events. The stability/instability paradox tells us that there may be room to move underneath the nuclear ceiling – sometimes considerable room – but also that the nuclear ceiling is still definitely there.

### AT: Radicalization---2NC

#### No food-based radicalization or societal collapse.

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A criticism of *Food or war* is that the titular argument that food has a role in the *genesis* of conflict becomes muddled with the positive feedback loop argument couched within the food–war nexus Cribb describes. The former seems to neglect the role of conflict in causing food and hunger crises, emphasizing only a one-way relationship from food crisis to war. This is not to say that Cribb does not present both pathways of this nexus—he does and in compelling fashion—but rather that the evidence supports a slightly different and more cyclical hypothesis than the central thesis.

Similarly, in emphasizing the inarguably important role of food in relationship to conflict, other variables critical for understanding the conflict cycle are ignored. Full bellies do not premise utopia as Cribb seems to extrapolate from his material. A well-fed populace is not one without ideological, moral, or political differences—all of which have been implicated in the conflict cycle. At times Cribb likens food stress to “tinder” (e.g., pp. 140–141, 149), which would suggest, perhaps more appropriately, that the state of the food system is a necessary but not sufficient element of initiating conflict. While the argument posited is never that food is the only cause, the other contributors are rarely if at all mentioned, leaving the non-expert reader without a sense of what else contributes to this complex issue.

Finally, while the main argument is persuasive (if at times muddled) some statements would benefit from supporting evidence while others would specifically be better supported by scientific evidence rather than popular science journalism or news media. This is particularly true of each instance in which the female gender is ascribed particular personality traits in universal fashion in apparent disregard for feminist critiques of stereotyping. Trying to anticipate this very critique, Cribb states, “This isn’t gender stereotyping. It’s an observation about how different kinds of humans think” (2018, p. 201), which does not offer the credibility to his argument that he thinks it does. From a science communication perspective, the mixing of scientifically supported and unsupported claims at times makes it difficult to determine what is a tested and true understanding and what is Cribb’s personal perspective.