Seeing the People in Corporate Law

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I. INTRODUCTION

Vice Chancellor J. Travis Laster's *Eras Tour of Delaware Corporation Law*[1] does not purport to be a defense of the nation's leading jurisdiction for corporate incorporation. The Article never once mentions Nevada. It does not discuss the Texas business courts, or the Cayman Islands for that matter.[2] Only in its final pages does it mention the massive 2025 overhaul of Delaware's corporate law.[3] What Laster's Article does is tell a story—something that the Delaware courts and opinions are wont to do.[4] And for Laster, Delaware's story is one of "adherence to the rule of law, embodied by its independent judiciary reaching case-specific decisions as challenges emerge and conditions change."[5] It's a defense of judicial expertise and of the importance of equitable power in a rapidly changing world.[6]

In his Article, the Vice Chancellor tells the story of nine chronological eras of Delaware corporate law, beginning before there was such a thing and concluding in an era of Delaware's fragile dominance, despite a number of rising threats. Laster's Delaware history is a surprisingly human account. Though corporate law has long been dominated by academics in the law and economics tradition,[7] Delaware law is

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1. *See generally* J. Travis Laster, *An Eras Tour of Delaware Corporate Law*, 50 J. CORP. L. 1189 (2025) (offering a chronological history of nine eras of Delaware corporate law) [hereinafter *Eras Tour*].

2. *See generally* William J. Moon, *Havens for Corporate Lawbreaking*, 103 WASH. U.L. REV. 829 (2026) (describing jurisdictional competitors to Delaware).

3. *Eras Tour*, *supra* note 1, at 1260–62.

4. Edward B. Rock, *Saints and Sinners: How Does Delaware Corporate Law Work?*, 44 UCLA L. REV. 1009, 1016 (1997) ("Delaware opinions can be understood as providing a set of parables—instructive tales—of good managers and bad managers, of good lawyers and bad lawyers, that, in combination, fill out the normative job description of these critical players."); *see also* Mark J. Roe & Roy Shapira, *The Power of the Narrative in Corporate Lawmaking*, 11 HARV. BUS. L. REV. 233, 235 (2021) (explaining the importance of narrative in popular perceptions of market forces).

5. *Eras Tour*, *supra* note 1, at 1191.

6. To continue the Taylor Swift metaphor of Laster's title, if forced to choose an era, one can only assume Laster would choose *Reputation*. TAYLOR SWIFT, Reputation, (Big Machine Records Nov. 10, 2017).

7. *See, e.g.*, FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW (1991) (conceptualizing the corporation as a "nexus of contracts" and relying on economic analysis to explain the relationships among managers, investors, and others involved with the firm); *see generally* Jeffrey N. Gordon, *The Mandatory Structure of Corporate Law*, 89 COLUM. L. REV.

hardly a story of cold economic efficiency. While so much of corporate law's foundational theory is focused on the management of agency costs,[8] those agents are people, with all their attendant personalities, flaws, and irrationalities. Delaware's doctrinal history is littered with the marks of people's egos and failings and creativity and successes. For better or for worse, equity makes room for the humanity of corporate law to peek through.

This Essay seeks to respond to Laster's compelling work of legal history by highlighting a throughline in his story—the occasional but important humanity in Delaware's law of corporations. I argue that—whether he intends to or not[9]—Laster makes a persuasive case for Delaware's continuing legitimacy as the dominant force in corporate law *because of* the expert judiciary's equitable power to grapple with the messy realities of the humans at the helm of firms and the human lives those firms will ultimately impact.

The story of modern Delaware that Laster tells is of characters in conversation—bench, bar, and the academy openly and actively debating whether doctrinal evolutions have adequately met the moment. This Essay begins by exploring this social and political dimension of how Delaware corporate law works. I then consider the places where economic theory is insufficient to explain the doctrinal developments that Laster recounts, describing the way equity makes room for more human considerations. And I consider the way this account of Delaware lends itself to public perceptions of the corporate law's legitimacy through the court's transparency and responsiveness.

But Delaware is vulnerable to the same critiques that we might levy against any space shaped by corporate power. I close this Article by pointing out some threats that have plagued this history, and how they might creep into the next era of Delaware law. For one, for all the deliberative and transparency benefits of the public conversations that drive Delaware corporate law, there are many impacted voices who

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1549 (1989) (engaging with a "positive theory of agency" and considering the relationship between contractarian economic theory of the firm and mandatory features of corporate law, such as fiduciary duties).

8. *See generally* Ronald J. Gilson & Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activists Investors and the Revaluation of Governance Rights*, 113 COLUM. L. REV. 863 (2013) (looking at the interrelated roles of institutional investors and shareholder activists through the lens of agency costs); *see generally* Zohar Goshen & Richard Squire, *Principal Costs: A New Theory for Corporate Law and Governance*, 117 COLUM. L. REV. 767, 769 (2017) ("For the last forty years, the problem of agency costs has dominated the study of corporate law and governance"); *see generally* Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976) (positing a theory of ownership of the firm drawing from theories of agency, property, and finance); ADOLF A. BERLE, JR. & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 119–23 (1933) (describing the "agency problem").

9. I suspect that he does.

are left out.[10] And, second, though Delaware corporate law has traditionally resisted political polarization, the current moment challenges that assumption.[11]

For all these flaws—and they are serious flaws—one might fairly ask, what alternative do we have? Indeed, that is the question that many corporate leaders have been asking, albeit for different reasons. And while the early evidence of the "DExit" panic suggests that most major corporate actors have chosen to stay put, the outliers are noisy.[12] Just this summer, a *New York Times Magazine* headline proclaimed that "Elon Musk's Feud with Delaware May Transform Corporate America."[13] While this may be true, Laster's *Eras Tour of Delaware Corporate Law* shows us that leaving Delaware might come with a cost, within and beyond the boardroom.

II. THE PEOPLE IN PRACTICE

In the story Vice Chancellor Laster tells, Delaware corporate law doctrine does not arrive as a result of a monastic judicial exercise or a deal made in a smoky backroom. Instead, much of the story Laster tells is of open, public conversations among the leading voices in corporate law from the bench, the bar, and the academy, negotiating the right balance of interests among mostly powerful parties. The conversation is driven by big personalities, names that are peppered across many pages of the *Eras Tour*—Lipton, Strine, Allen, and so on.[14] The political economy of Delaware corporate law finds itself concerned not only with the many loud voices within the state, but also with the most powerful voices in New York corporate practice. The academy is there, too. The *Eras Tour* is full of examples of the Delaware

10. This is true of the bench and bar as well as of the parties who are formally entitled to have a say in Delaware corporate governance. As to the first point, *see* Afra Afsharipour & Matthew Jennejohn, *Gender and the Social Structure of Exclusion in U.S. Corporate Law*, 90 U. CHI. L. REV. 1819, 1819 (2023) (finding a "dramatic and persistent" gender gap in litigators before the Delaware Court of Chancery); *see generally also* NAT'L CTR. FOR STATE CTS, IMPROVING DIVERSITY IN THE DELAWARE BENCH AND BAR: STRATEGIC PLAN: REPORT AND RECOMMENDATIONS (Jan. 31 2022) (noting the limited diversity of the Delaware bench and bar). As to the second, see Grant M. Hayden & Matthew T. Bodie, *The Problem of Purpose in Corporate Law*, 62 HOUS. L. REV. 611, 631 (2025) (arguing for the extension of governance rights to impacted stakeholders).

11. Ofer Eldar & Gabriel Rauterberg, *Is Corporate Law Nonpartisan?*, 2023 WIS. L. REV. 177, 179 (2023) (describing the value of and challenges to Delawares nonpartisan corporate law); *see generally* Stephen M. Bainbridge, *Corporate Purpose in a Populist Era*, 98 NEB. L. REV. 543 (2020) (describing the corporate purpose debate in explicitly political terms); Brian D. Feinstein & Daniel J. Hemel, *The Market Value of Partisan Balance*, 119 NW. U.L. REV. 1201, 1261 (2025) ("[O]ur results suggest that—at least for investors in small and mid-cap firms—partisan-balance requirements on Delaware courts appear to be an important element of 'the Delaware way.'").

12. *See* Andrew Verstein, *An Update on DExit, from the Corporate Census*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Jan. 15, 2026) https://corpgov.law.harvard.edu/2026/01/15/an-update-on-dexit-from-the-corporate-census/#_ftnref6 [https://perma.cc/233Z-62UN] ("Despite fears that Delaware's recent judicial and legislative turmoil would trigger a corporate 'DExit,' new formation data show the opposite: Delaware experienced a sharp increase in corporate incorporations in 2025, both absolutely and relative to other states."); Craig Anderson, *Delaware Fights to Keep Its Corporate Crown Amid the Rising 'DExit' Trend*, L.A. TIMES (May 17, 2026), https://www.latimes.com/b2b/law-legal/story/2026-05-17/delaware-corporate-incorporation-dexit-fight [https://perma.cc/EH6E-J9N3] (describing high profit re-incorporations and threats to reincorporate outside of Delaware).

13. Michael Steinberger, *Elon Musk's Feud With Delaware May Transform Corporate America*, N.Y. TIMES MAG. (June 17, 2026) https://www.nytimes.com/2026/06/17/magazine/elon-musk-delaware-corporate-law.html?searchResultPosition=1 (on file with the *Journal of Corporation Law*).

14. One might attempt to measure influence on Delaware law by the frequency with which these names appear in the Article. By this metric, appearing as a Vice Chancellor, Chancellor, Chief Justice, and later practitioner Leo Strine, Jr., outpaces all competitors, appearing in the Article 115 times.

judiciary working with, drawing from, or speaking to prominent academics and their scholarship.[15]

Large personalities craft doctrine out in the open. The Article is full of examples, but Laster perhaps most colorfully explains this dynamic by telling the story of a series of decisions beginning in what he called "a watershed year" in M&A litigation: 1985.[16] In that year, in what the *Eras Tour* refers to as the "High Reformation," the Delaware Supreme Court issued a quartet of blockbuster opinions shaping how boards could respond to hostile takeover attempts.[17] *Smith v. Van Gorkom*[18] held that directors had breached their fiduciary duty of care for "failure to inform themselves of all information reasonably available to them," despite the fact that the third-party buyer paid a premium over market price.[19] The decision prompted an outcry among Delaware law experts.[20] The Supreme Court did not stop there—within a year, it decided three more landmark cases of Delaware Corporate Law: *Unocal Corp. v. Mesa Petroleum*,[21] *Moran v. Household International*,[22] and *Revlon v. McAndrews Forbes*.[23] When the Chancery Court was faced with implementing these new precedents, Chancellor Allen read this string of cases to require a target company—Interco—to redeem its shareholder rights plan.[24] What is striking about this story is the back and forth between the bench, academics, and leaders in practice. Marty Lipton—the preeminent voice in New York corporate practice and the inventor of the poison pill—in response to the *Interco* decision, circulated a "To Our Clients" memo suggesting that if doctrine did not change, he would advise his clients to reincorporate in other states to avoid the effect of these doctrinal developments.[25] The same year, another Delaware judge issued another decision requiring a board to redeem its rights plan.[26] And Marty Lipton issued another client memo.[27] And then Delaware began to—in Laster's words—"retreat" in light of the charter competition threat that Lipton's client memos posed.[28] The Chancery Court issued more director-friendly decisions, and Lipton's clients stayed put.

One can put a positive or negative gloss on this story. The negative version is that, in Delaware, power wins out. A small cadre of affluent corporate law leaders

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15. *See, e.g.*, *Eras Tour*, *supra* note 1, at 1197–98, 1235, 1259. It is worth noting, too, that the Delaware judiciary frequently writes important works of legal scholarship while on and off the bench. The *Eras Tour* is but one example.

16. *Id.* at 1205.

17. *Id.*

18. Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985).

19. *Id.* at 876, 893; *see also Eras Tour*, *supra* note 1, at 1205–06.

20. *Eras Tour*, *supra* note 1, at 1206.

21. *See generally* Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946 (Del. 1985) (holding that directors who adopt takeover defenses receive business judgment rule protection only after showing reasonable grounds to perceive a threat to corporate policy and effectiveness and a response reasonable in relation to the threat posed).

22. *See generally* Moran v. Household Int'l Inc., 500 A.2d 1346 (Del. 1985) (upholding a board's preemptive adoption of a poison pill under *Unocal*).

23. *See generally* Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. 1986) (holding that directors must maximize sale value once a sale is inevitable).

24. City Cap. Assocs. Ltd. P'ship v. Interco, Inc., 551 A.2d 787, 803 (Del. Ch. 1988).

25. *Eras Tour*, *supra* note 1, at 1211.

26. *See generally* Grand Metro. Pub., Ltd. Co. v. Pillsbury Co., 558 A.2d 1049 (Del. Ch. 1988) (ordering redemption of a poison pill used against a noncoercive, all-cash offer); *see also Eras Tour*, *supra* note 1, at 1212 (noting Retired Justice William Duffy ordered a target board to redeem its rights plan.).

27. *Eras Tour*, *supra* note 1, at 1212.

28. *Eras Tour*, *supra* note 1, at 1213.

get to buy the law they choose through threats to reincorporate in another state.[29] The judiciary and business leaders play a game of chicken—with the judiciary attempting to rein in management, but only to the extent that it can do so without upsetting their advisors so much that they take all their marbles and go home.

But there's a more positive read of this tale. What happened in the "High Reformation" to anti-takeover law was the product of a highly transparent negotiation among experts and interested stakeholders. The issues are thoroughly litigated in thousands of pages of academic articles, in infamously long judicial opinions, and in the public practitioner commentary. Laster points to Professor Ed Rock's canonical Article, *Saints and Sinners: How Does Delaware Corporate Law Work?*[30] In that Article, Rock argued that Delaware opinions were not so much about imposing liability but about creating a series of parables expressing behavioral expectations for managers and their lawyers.[31] For his own part, Chancellor Allen agreed with this read of what Delaware Chancery opinions are intended to do. In an interview he gave years after he left the bench, he explained his philosophy that:

> Directors, by and large, are people who, if they do not have a financial interest in the matter—a financial interest opposed to the company—will both be a little bit lazy but will want to do the right thing. They are essentially good people. They need to be told what to do. And if they are told what their duty is, they will tend to do it. So, this is not the bad man theory of law, which Oliver Wendell Holmes had . . . It's a good person theory of corporation law, which is if they are told what their duty is, they will tend to do it.[32]

Chancellor Allen may have had more faith in corporate directors as people than perhaps they always deserved.[33] But it is meaningful that he thought about them as people rather than considering what the most profit-maximizing, ruthlessly efficient, most rapacious corporate governance machine might do. And the Delaware courts issue decisions instructing managers how to "do the right thing" via their opinions—even without imposing liability—leading corporate law firms to package those opinions into client alerts, shaping industry best practices.[34]

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29. This critique of Delaware's process might be most convincingly deployed to describe the Delaware corporate law's 2024–2025 amendment process. *See* Assaf Hamdani & Kobi Kastiel, *Courts, Legislation, and Delaware Corporate Law*, 51 J. CORP. L. 1059, 1099–1102 (2025) (describing the way the DGCL 2024–2025 amendment process differed from prior legislative amendments).

30. *Eras Tour*, *supra* note 1 at 1217 (citing Edward B. Rock, *Saints and Sinners: How Does Delaware Corporate Law Work?*, 44 UCLA L. REV. 1009, 1063–64 (1997)).

31. Rock, *supra* note 4, at 1016 ("Taken as a whole, the Delaware opinions can be understood as providing a set of parables—instructive tales—of good managers and bad managers, of good lawyers and bad lawyers, that, in combination, fill out the normative job description of these critical players.").

32. U. PA. CAREY L. SCH., *Technicolor, Caremark, Interco, Paramount & Blasius: William Allen Interview*, at 1:29, (YouTube, July 19, 2018), https://www.youtube.com/watch?v=HObhcQ63DHU&list=PLR5Q3wC5nyVnedOquIuZNinYhL5av4ybh&index=23 [https://perma.cc/LC9D-X466].

33. There are, of course, a multitude of examples where corporate managers should not have been given the benefit of the doubt. *See, e.g.*, Elise Bernlohr Maizel, *Illegal Corporate Cultures*, 75 DUKE L.J. 1, 19–26 (2025) (describing circumstances where directors of corporations have acted in bad faith in instances that caused significant public harm).

34. Law firm guidance on the *Caremark* doctrine probably provides the clearest example of this type of dynamic. Though director liability under *Caremark* is quite rare, law firms still advise board to go beyond the bare minimum required. *See, e.g.*, WACHTELL, LIPTON, ROSEN & KATZ, AUDIT COMMITTEE

Whether we tell the positive version of the story or the negative one, the process reflects a measure of transparency, sophistication, and responsiveness. The value of how Delaware works is in the litigated negotiation—it considers a variety of perspectives and—most importantly—it happens out in the open.

III. THE PEOPLE IN DOCTRINE

In Laster's *Eras Tour*, we also see places where equity leaves room for more human considerations in the doctrine itself. Two examples stand out. The first is in the development of corporate oversight doctrine. And the second is the way an understanding of how complex human nature might shape doctrines regarding director independence. In these ways, Delaware breaks from assumptions based on pure economic rationality and makes room to account for the actual human beings within firms and the actual human beings those firms will go on to impact.

For one, the *Eras Tour* points to the development of the *Caremark* doctrine as a key innovation in Delaware derivative actions.[35] Under *Caremark*, corporate directors are charged with overseeing a corporation's compliance with law. The *Caremark* doctrine expresses the limits of pure economic decision-making and of shareholder wealth maximization by explicitly rejecting the notion of law as price.[36] Laster credits Strine with the critical innovation that a fiduciary of a Delaware corporation cannot act loyally by causing that corporation to violate the law, even if doing so would be profitable.[37] Negotiations have limits. Through *Caremark*, Delaware doctrine recognizes that certain externalities are intolerable—a dealbreaker for the judiciary. And while the derivative actions brought under *Caremark* are brought based upon the harm to the firm and, by extension, its stockholders, it is not a defense to say that the lawbreaking at issue was profitable.[38] If, for example, many years of skirting environmental regulations saved more money than it cost in fines for pollution, this economic efficiency would not be a defense to a *Caremark* claim. This is why scholars such as Jennifer Arlen, Elizabeth Pollman, and Roy Shapira have all observed that *Caremark* serves a public protection function.[39] And though corporate law is typically described as purely "private law," this doctrinal advance looks beyond the relationships in privity with the firm to consider relationships with the state and the broader public.

GUIDE (2026), https://www.wlrk.com/FirmMemos/WLRK/WLRK.29954.26.pdf [https://perma.cc/6RPG-WBYH]; *see also* Roy Shapira, *Max Oversight Duties: How* Boeing *Signifies a Shift in Corporate Law*, 48 J. CORP. L. 119, 134–35 (2022) (describing the impact of law firm memos as creating normative behavioral expectations for directors).

35. *Eras Tour*, *supra* note 1, at 1242.

36. *Id.* at 1243.

37. *Id.*, *see also In re* Massey Energy Co., 2011 WL 2176479 at *20 (Del. Ch. May 31, 2011) ("Delaware law does not charter lawbreakers.").

38. Ann M. Lipton, *The Legitimation of Shareholder Primacy*, 51 J. CORP. L. 83, 118 (2025) (explaining that, in a *Caremark* claim "there is not (and cannot be) any interrogation of whether the expected gains from lawbreaking exceeded the expected losses from failing to adopt a detection system").

39. Jennifer Arlen, *Evolution of Director Oversight Duties and Liability Under Caremark: Using Enhanced Information-Acquisition Duties in the Public Interest*, *in* RESEARCH HANDBOOK ON CORPORATE LIABILITY 194, 203–04 (Martin Petrin & Christian Witting eds., 2023); Elizabeth Pollman, *The History and Revival of the Corporate Purpose Clause*, 99 TEX. L. REV. 1423, 1449 (2021) ("[Caremark] obligations serve a public function . . . . The requirement of fidelity to the law aims to protect society's interests.") (footnote omitted); Roy Shapira, *Conceptualizing* Caremark, 100 IND. L.J. 467, 469 (2025) ("Oversight duties thus represent a departure from the conventional wisdom that treated corporate anti-social behavior as a matter for other laws and regulations rather than as an internal corporate law issue.").

In the same vein, Laster recounts another departure from pure economic reasoning—the evolution of Delaware doctrine on director independence.[40] This is another Strine innovation. In assessing whether a director would be considered independent in *In re Oracle*, then-Vice Chancellor Strine emphasized that people are complicated and can be influenced by a whole host of motivations beyond financial self-interest, including "love, friendship, and collegiality" as well as potentially "a guiding creed or set of moral values."[41] While the Delaware Supreme Court initially resisted this more nuanced approach to assessments of independence, eventually Vice Chancellor Strine became Chief Justice Strine and implemented this view that "Delaware law should not be based on . . . the least sophisticated notions of the law and economics movement."[42]

Through these (and other) stories, Laster shows how doctrine in Delaware has been crafted to see people in their complexity and to break from pure economic assumptions. The human impact of corporate activity cannot be boiled down to the economic cost of lawbreaking. The relationships between and among corporate managers are not simply measured by the financial interest one expects to accrue. Though the whole of corporate law rests on the legal fiction of legal persons, there is a limit to the mythmaking. Delaware will, occasionally, examine the man behind the curtain.

IV. THE PEOPLE AND PUBLIC LEGITIMACY

Having demonstrated, across 75 law review pages, that Delaware law is characterized by transparency, flexibility, and expertise, Laster concludes that "a court achieves legitimacy by applying principles transparently, even-handedly, and in accordance with the rule of law."[43] It is difficult to imagine a more important time for the nation's leading business court to be viewed as a legitimate legal authority. Large corporate actors control an ever-increasing swath of American life.[44] Federal law enforcement against large corporations is in retreat.[45] Public institutional trust is

40. *Eras Tour*, *supra* note 1, at 1244.

41. *Id.* (quoting *In re* Oracle Corp. Derivative Litig., 824 A.2d 917, 938 (Del. Ch. 2003)).

42. *Id.*

43. *Id.* at 1263.

44. Stavros Gadinis & Chris Havasy, *The Quest for Legitimacy: A Public Law Blueprint for Corporate Governance*, 57 U.C. DAVIS L. REV. 1581, 1599 (2024) ("Through corporate law, our society entrusts vast resources and power to corporations tasked with organizing production in our economy, harnessing the forces of innovation, running our infrastructure, and providing livelihood for millions.").

45. *See generally* Dave Michaels & Sadie Gurman, *The Justice Department Is Pulling Back on Prosecuting Corporate Crime*, WALL ST. J. (July 18, 2026), https://www.wsj.com/finance/regulation/the-justice-department-is-pulling-back-on-prosecuting-corporate-crime-dabf95a2 (on file with the *Journal of Corporation Law*) (describing the Trump administration's pull back on prosecuting corporate crime); Kyle Campbell, *Study Shows Decade-long Decline in Federal Enforcement Activity*, AM. BANKER (July 8, 2026), https://www.americanbanker.com/news/study-shows-decade-long-decline-in-federal-enforcement-activity [https://perma.cc/SQU5-BDD7]; Erica L. Green & Niko Gallogly, *At Trump's Direction, Federal Agencies Are Abandoning Discrimination Cases*, N.Y. TIMES (July 5, 2026), https://www.nytimes.com/2026/07/05/us/politics/trump-dei-order-eeoc-discrimination.html (on file with the *Journal of Corporation Law*); Chris Prentice & Kanishka Singh, *US SEC Enforcement Activity Drops Dramatically as Agency 'Resets'*, REUTERS (Apr. 7, 2026), https://www.reuters.com/legal/government/us-sec-says-it-filed-456-enforcement-actions-during-fiscal-year-2025-2026-04-07/ [https://perma.cc/K5P4-D76A].

in decline.[46] Wealth and corporate power are increasingly consolidated in the hands of a few.[47]

Legal scholars have drawn from political theory to describe a taxonomy of three genres of legitimacy—sociological legitimacy, legal legitimacy, and moral legitimacy.[48] Sociological legitimacy comes from the public regarding an institution or decision as legitimate.[49] Legal legitimacy results from a decision or institution being lawful or legally binding.[50] And moral legitimacy results from an institution being morally justified and worthy of respect.[51] Per this extensive literature, key ingredients for legitimacy include expertise,[52] transparency,[53] reason-giving,[54] and procedural fairness.[55] Beyond the formal procedural integrity of legitimate legal decision-making, there is also a human component—empirical studies have repeatedly shown that the interpersonal treatment of those impacted by legal systems has a meaningful impact on perceptions of legitimacy and, in turn, compliance.[56]

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46. Claudia Deane, *Americans' Deepening Mistrust of Institutions*, PEW (Oct. 17, 2024), https://www.pew.org/en/trend/archive/fall-2024/americans-deepening-mistrust-of-institutions [https://perma.cc/86QS-XDMV].

47. Patricia Cohen, *Billionaires' Billions Are Increasing Faster Than Ever*, N.Y. TIMES, (June 13, 2026), https://www.nytimes.com/2026/06/09/business/economy/billionaires-musk-gabriel-zucman.html (on file with the *Journal of Corporation Law*); *see generally* Lina M. Khan & Sandeep Vaheesan, *Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents*, 11 HARV. L. & POL'Y REV. 235 (2017) (describing wealth and corporate consolidation); Joseph Fishkin & William E. Forbath, *Anti-Oligarchy, Anti-Authoritarianism, The Constitution, and the Court*, 72 UCLA L. REV. 1370, 1372 (2026) ("The United States is in the thick of a crisis of oligarchy. Too much wealth and too much economic and political power are concentrated in too few hands.").

48. *See* Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787, 1794 (2005) (introducing the taxonomy); Brian D. Feinstein, *Legitimizing Agencies*, 91 U. CHI. L. REV. 919, 928–29 (2024) (describing these overlapping but distinct conceptual categories of legitimacy); Gadinis & Havasy, *supra* note 44, at 1596.

49. Fallon, *supra* note 48, at 1795–96.

50. *Id.* at 1794.

51. *Id.* at 1796.

52. Feinstein, *supra* note 48, at 935.

53. Gadinis & Havasy, *supra* note 44, at 1590; Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement*, 20 PSYCH., PUB. POL'Y, & L., 78, 82 (2013) ("Transparency or openness about how decisions are being made facilitates the belief that decision making procedures are neutral when it reveals that decisions are being made in rule based and unbiased ways."); Cary Coglianese, *Legitimacy and Corporate Governance*, 32 DEL. J. CORP. L. 159, 164 (2007).

54. Ashley S. Deeks, *Secret Reason-Giving*, 129 YALE L.J. 612, 620 (2020) ("Reason-giving is a way to secure the consent of the public by lending legitimacy both to the specific decision and to the process more broadly."); Feinstein, *supra* note 48, at 935; *see generally* Glen Staszewski, *Reason-Giving and Accountability*, 93 MINN. L. REV. 1253 (2009) (arguing that reason-giving is critical for legitimacy in the administrative law context); Tyler & Jackson, *supra* note 53, at 82 (suggesting legal authorities are perceived as legitimate where those authorities "explain or justify their actions in ways that show an awareness of and sensitivity to people's needs and concerns").

55. *See, e.g.*, Daniel S. Nagin & Cody W. Telep, *Procedural Justice and Legal Compliance*, 13 ANN. REV. L. & SOC. SCI. 5, 9–11 (2017) (overview of empirical findings linking procedural justice and perceptions of legitimacy); Tracey L. Meares & Tom R. Tyler, *Justice Sotomayor and the Jurisprudence of Procedural Justice*, 123 YALE L.J. F. 525, 539 (2014) (describing Justice Sotomayor's emphasis on procedural fairness as "central to legitimating the court to the American public"); Tom R. Tyler & Justin Sevier, *How Do the Courts Create Popular Legitimacy?: The Role of Establishing the Truth, Punishing Justly, and/or Acting Through Just Procedures*, 77 ALB. L. REV. 1095, 1100 (2013/2014) ("Recent social science research suggests that subjective judgments about the procedural justice of the courts play a central role in public evaluations of the legitimacy of the courts.").

56. Tom R. Tyler & Robert J. Bies, *Beyond Formal Procedures: The Interpersonal Context of Procedural Justice*, *in* APPLIED SOCIAL PSYCHOLOGY AND ORGANIZATIONAL SETTINGS 77–98 (analyzing

Specifically, giving voice to and showing respect to people in a legal decision-making process leads to improved perceptions of the legitimacy of such a process.[57] Per this research, procedural justice has a "human side."[58]

Held up against this definition of legitimacy, it is not difficult to see the value of Delaware courts in Laster's account. The judiciary are experts in business law. In infamously voluminous opinions, Delaware courts offer detailed reasoning and contend with arguments raised through formal channels by litigants and through public practitioner and academic commentary.[59] In cases questioning the conduct of managers, plaintiffs usually lose—but not before the managerial conduct has been seriously considered.[60] And, critically, where Delaware corporations have caused public harm, that harm is acknowledged—the wrong named and the victims recognized.[61] Legitimacy comes through as the product of litigation. Not the fee award or the ultimate result, but in the public assessment of whether some of the world's most powerful corporate leaders have made good on their obligations to their shareholders and to society. To return to Ed Rock's *Saints and Sinners*, Delaware's "'morality play' . . . may promulgate community standards for the community of senior managers at the same time that it justifies the exercise of extraordinary power by unelected judges of the second smallest state."[62]

This assessment invites comparison to Delaware's latest competitors. Many of the jurisdictions challenging Delaware's dominance have sharply restricted the ability of shareholders to bring suit or to inspect a corporation's books and records in the event of suspected misconduct.[63] Corporate law designed to close the courtroom

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empirical research concerning the "interpersonal context of formal decision-making" and its impact on perceived legitimacy).

57. *Id.* at 89–92 (considering the social construction and "human side" of procedural justice); *see also* Tyler & Jackson, *supra* note 53, at 82 ("The issue of interpersonal treatment consistently emerges as a key factor in reactions to dealings with legal authorities.").

58. Tyler & Bies, *supra* note 56, at 94 (identifying "human dignity," and "normative expectations regarding interpersonal treatment," as relevant to perceptions of legitimacy); *see also* Tyler & Jackson, *supra* note 53, at 82 ("[P]eople are sensitive to whether they are treated with dignity.").

59. For one recent example of this dynamic, we might look to Vice Chancellor Laster's own opinion extending *Caremark* oversight duties to officers in *In re McDonalds Corp*. Over the course of a 66-page opinion, the Vice Chancellor engaged in an extensive analysis of the yet undecided question of whether an officer may be held liable for an oversight failure. *In re* McDonald's Corp. S'holder Derivative Litig., 289 A.3d 343, 360 (Del. Ch. 2023). The opinion comprehensively addressed the scholarly literature on the subject matter, as well as the parties' arguments. And, of course, *McDonalds* is not nearly the longest Chancery opinion in recent memory. *See, e.g.*, Kuramo Capital Mgmt., LLC v. Seruma, C.A. No. 2021-0323-KSJM, slip op. (Del. Ch. Apr. 30, 2024) (totaling 96 pages); *See, e.g.*, *In re* BGC Partners, Inc. Derivative Litigation, Consol. C.A. No. 2018-0722-LWW, slip op. (Del. Ch. Aug. 19, 2022) (totaling 113 pages).

60. *See* Rock, *supra* note 4, at 1016 ("These richly detailed and judgmental factual recitations, combined with explicitly judgmental conclusions, sometimes impose legal sanctions but surprisingly often do not.").

61. *See, e.g.*, Leb. Cnty. Emps' Ret. Fund v. Collis, 287 A.3d 1160, 1182 (Del. Ch. 2022) (acknowledging corporate responsibility for the horrors of the opioid crisis); *See, e.g.*, Ontario Provincial Council of Carpenters' Pension Tr. Fund v. Walton, 2023 WL 3093500, at *37 (Del. Ch. Apr. 26, 2023) (describing in detail Walmart's compliance failures around the dispensing of opioids); *See, e.g.*, City of Birmingham Ret. & Relief Sys. v. Good, 177 A.3d 47, 65 (Del. 2017) (detailing the failures of Duke Energy to protect "the environment, wildlife, and public health").

62. Rock, *supra* note 4. at 1105.

63. *See* Moon, *supra* note 2, at 853 (explaining that "Delaware's emerging competitors retain formalistic acknowledgments that corporations chartered in those jurisdictions can only engage in lawful activities," but that in practice "[p]owerful procedural barriers also constrain the ability of shareholders to bring claims even when directors and officers actively participate in lawbreaking"). Delaware may have compromised its own legitimacy in restricting books and records access for shareholders in its most recent

door may come at a cost—the public legitimacy that comes from judicial review and the blessing or the critique of managerial behavior. Perhaps that is the point. Some scholars have noted that managers would quite rationally prefer not to be criticized and may well choose reincorporation to avoid being "named and shamed" or to face the risk of what they perceive as frivolous litigation.[64]

But if we widen the aperture just a bit, it is difficult not to marvel at the ability of the private sector's most powerful actors to move a corporate empire just to avoid criticism.[65] Or that the risk of some amount of "frivolous" litigation[66] is not the very least cost of doing business under a system that otherwise grants extraordinary discretion and deference to the leaders of some of the world's largest firms.[67] It may be more fiscally efficient to avoid this channel of accountability, but the cost may be paid in popular legitimacy in the eyes of shareholders and stakeholders.

V. THREATS AND THE NEXT ERA

To say that Delaware may hold a legitimacy advantage over its newest competitors is not at all to say that it does not face its own challenges. For one, Delaware's cast of characters is drawn from a limited pool. The personalities in Laster's story are almost entirely men, almost entirely white, and almost entirely

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major legislative changes. As part of Delaware's 2025 corporate law reforms, the state restricted its own shareholder books and records inspection rights under DGCL § 220. *See* Roy Shapira, *An Overlooked Cost of Delaware's Corporate Law Overhaul*, COLUM. BLUE SKY BLOG (Feb. 26, 2025), https://clsbluesky.law.columbia.edu/2025/02/26/an-overlooked-cost-of-delawares-corporate-law-overhaul/ [https://perma.cc/K5UZ-6P8C]. And yet, despite these restrictions, Nevada and Texas offer an even narrower range of documents to a smaller range of shareholders. *Compare* DEL. CODE ANN. tit. 8, § 220 (2025) *with* TEX. BUS. ORGS. CODE ANN. § 21.218 *and* NEV. REV. STAT. ANN. § 78.257; *see also* Robert A. Ragazzo, *Texas's Attempt to Compete with Delaware*, 31 FORDHAM J. CORP. & FIN. L. 469, 495–96 (2026) ("[W]ith respect to public companies, Texas has more severely restricted shareholder access to corporate books and records than Delaware."); Michal Barzuza, *Delaware v. Nevada*, 52 J. CORP. L (forthcoming 2027) (manuscript at 3) (on file with the *Journal of Corporation Law*) (noting that Nevada law "does not grant shareholders of publicly traded firms the right to inspect corporate records . . . combined with Nevada's high burden of proof . . . creates a formidable barrier for shareholders seeking accountability"); *see generally* Jospeh Landau et al., *Alternatives to Delaware? Evaluating Corporate Law in Nevada, Texas, and Wyoming*, 30 FORDHAM J. CORP. & FIN. L. 265, 275 (2025) (quoting UNLV professor Benjamin Edwards as distinguishing Nevada's book and records law from Delaware's Section 220, arguing "that is, from Nevada's perspective, an efficient benefit").

64. Jonathan R. Macey, *From First-Best to Least-Worst: Emerging Threats to Delaware's Dominance that the Legislature Can't Fix*, 51 J. CORP. L. 763, 768 (2026) ("[F]ounders and high-profile CEOs of high-tech firms in particular . . . are understandably reticent about incorporating in a state where they will be scrutinized and evaluated by judges who do not value their contribution to the success of their companies."); Stephen Bainbridge, *The Case Against Naming and Shaming*, BAINBRIDGE ON CORPS. (July 7, 2025) https://www.bainbridgeoncorporations.com/p/the-case-against-naming-and-shaming [https://perma.cc/67Y9-R2DL]; Francisco V. Aguilar & Benjamin P. Edwards, *Why Public Companies Are Leaving Delaware for Nevada*, WALL ST. J. (June 9, 2024), https://www.wsj.com/opinion/why-public-companies-are-leaving-delaware-for-nevada-9bd6183f (on file with the *Journal of Corporation Law*) (citing a risk of being exposed to frivolous litigation in Delaware and arguing "the benefit of catching bad actors must balance against the price of embroiling more public companies in expensive litigation").

65. *See generally* Carliss Chatman & Tammi S. Etheridge, *Federalizing Caremark*, 70 UCLA L. REV. 908 (2023) (arguing for a federal *Caremark* to avoid compliance failures due to failings at the state corporate law level to enforce oversight obligations).

66. I should note that Delaware judges are able to, and do, enforce the Court of Chancery Rule 11 when claims are actually frivolous. *See, e.g.*, Fintech Consulting LLC v. TSR, Inc., 2023 WL 228402, at *1 (Del. Ch. Jan. 18, 2023).

67. Indeed, Laster makes mention of the business judgment rule on nearly half the pages of the *Eras Tour* Article. *See generally* Eras Tour, *supra* note 1.

affluent. This is hardly a decades-old historical artifact—a relic of Delaware's Antecedent through Moderating Eras. A 2023 empirical study by Afra Afsharipour and Matthew Jennejohn demonstrates that there is a "dramatic and persistent gender gap" among litigators and judges in the Delaware Chancery Courts.[68] A 2021 Diversity Strategic Planning effort of the Delaware Supreme Court noted a significant lack of diversity in the Delaware legal profession and the judiciary.[69] Officers and directors of publicly traded companies—the frequent and most high-profile subjects of suits brought in Chancery Court—are similarly overwhelmingly white, overwhelmingly male, and overwhelmingly wealthy.[70] If Delaware's value is in its open and transparent conversation, it is worth asking who is allowed to be part of the conversation and who is left out.

And, of course, these are only the players in the game. Corporate decisions and "private ordering" do not occur in a vacuum. They impact a broad universe of stakeholders who are typically not formally represented in the corporate governance litigation that takes place in the Delaware Court of Chancery.[71] Corporate law's perpetual corporate purpose debate has been reignited in the last decade, renewing questions as to whether corporate managers ought to be more concerned with stakeholders.[72] As Stavros Gadinis and Chris Havasy have explained, corporate law's legitimacy "has emphasized the firm's legal authority, hoping that moral and sociological legitimacy will follow suit through managerial decision-making attuned to shareholder primacy."[73] But, as Gadinis and Havasy argued, these assumptions rely upon external regulators adequately protecting society's interests—assumptions that are undermined by lobbying, weak enforcement, and regulatory capture.[74]

These legitimacy challenges also begin to expose the weaknesses of using private law to gap-fill for the failures of a captured or apathetic administrative state. Corporate governance is increasingly load-bearing against the backdrop of minimal or no public enforcement. It is no secret that scholars are obsessed with *Caremark*.[75] It is a place where corporate law and private ordering look outward at the externalities of doing business—even if only technically to apportion responsibility between the firm and its managers.[76] And yet, as Ann Lipton has argued, this public-regarding

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68. Afra Afsharipour & Matthew Jennejohn, *Gender and the Social Structure of Exclusion in U.S. Corporate Law*, 90 U. CHI. L. REV. 1819, 1852 (2023).

69. NAT'L CTR. FOR STATE CTS, *supra* note 10, AT 10–15.

70. Merel Spierings, *US Public Company Board Diversity in 2023: How Corporate Director Diversity Can Contribute to Board Effectiveness*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Nov. 24, 2023), https://corpgov.law.harvard.edu/2023/11/24/us-public-company-board-diversity-in-2023/ [https://perma.cc/MHU5-JXDP]; John Armour, Jeffrey Gordon & Geeyoung Min, *Taking Compliance Seriously*, 37 YALE J. ON REG. 1, 36 (2020) (noting the wealth and background of typical independent directors).

71. Grant M. Hayden & Matthew T. Bodie, *The Corporation Reborn: From Shareholder Primacy to Shared Governance*, 61 B.C. L. REV. 2419, 2421 (2020) (critiquing the shareholder primacy model and its limited focus on shareholder wealth maximization and proposing a shared governance model that includes stakeholders in the corporate franchise).

72. *See generally* Edward B. Rock, *For Whom Is the Corporation Managed in 2020? The Debate over Corporate Purpose*, 76 BUS. LAW. 363 (2021) (highlighting this debate).

73. Gadinis & Havasy *supra* note 44, at 1606.

74. *Id.*

75. Roy Shapira, *A New* Caremark *Era: Causes and Consequences*, 98 WASH. U.L. REV. 1857, 1860–63 (2021) (describing a "parade of law review articles" about the doctrine both before and upon the arrival of the "new *Caremark* era").

76. Teamsters Loc. 443 Health Servs. & Ins. Plan v. Chou, 2020 WL 5028065, at *2 (Del. Ch. Aug. 24, 2020) ("At issue is *not* whether specific or society-wide victims may themselves receive a remedy for corporate misconduct. Instead, the issue is whether the corporation, whose directors have allegedly allowed

facet of Delaware doctrine sometimes forces the Chancery Court into the role of *de facto* regulator, an inherently political position.[77] In Lipton's view, the fact that corporations are now threatening to depart from Delaware because of a perception of increased liability for misconduct exposes the façade.[78] Incorporation in Delaware is a "legitimizing symbol," and that "legitimacy-washing is a tool to maintain [shareholder primacy], a system that benefits a few at the expense of the many."[79]

Ann Lipton's point may be Delaware's most devastating and compelling critique. She is almost certainly correct. But alternative jurisdictions offer little solution. The political reality is that we are unlikely to see a dramatic improvement in public enforcement any time soon. For those who are most skeptical about the motives of corporate leaders, Delaware still represents the best shot at oversight, transparency, and accountability under a system that has, to a large extent, privatized the enforcement function and placed it in the hands of internal compliance departments.[80] Most of Delaware's leading competitors have limited or eliminated oversight duties.[81] In a far less than perfect world, Delaware still operates from the principle that firms owe something to the communities in which they operate and that their managers can, occasionally, be accountable in both public and private channels when they fail to prevent public harm.[82] Shareholders can get a day in court if harm is done in their name. If this is accountability theatre, at least we still get to see the play.

VI. CONCLUSION

Vice Chancellor Laster's *Eras Tour* is a lesson in the way Delaware has always had to posture for legitimacy in the market for corporate law. Laster carefully recounts the back and forth between those who would call the market for corporate charters a "race to the bottom" or a "race to the top."[83] This discourse exposes a delicate dance the courts, managers, investors, and academics do. Never crafting quite enough liability to drive firms away, but never so little that the jurisdiction loses legitimacy. Whether through the performance of accountability or through actual shareholder and societal protections, the process of litigation in the Delaware courts at the very least exposes the human decision-making inside the corporate behemoths that shape our lives and our society.

As the Vice Chancellor's Article demonstrates, there have always been critics and competitors to Delaware's dominance. And yet, a throughline has always been that equity makes room for human judgment in the doctrine and practice of Delaware corporate law. It allows the Chancery Court to look beyond economic oversimplifications or to investigate, acknowledge, and sometimes punish corporate

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it to commit bad acts, should *itself* recover damages that ultimately inure to the benefit of the corporate owners, its stockholders.").

77. Lipton, *supra* note 38, at 123–24.

78. *Id.* at 125.

79. *Id.*

80. Maizel, *supra* note 33, at 39–41.

81. Moon, *supra* note 2 at 835; *see also* Ragazzo, *supra* note 63, at 514–15 (noting that Texas has yet to clearly define the scope of its fiduciary oversight obligations, if any might exist).

82. *See, e.g.*, *In re* Boeing Co. Derivative Litig., 2021 WL 4059934, at *1 (Del. Ch. Sept. 7, 2021); *see also* Roy Shapira, *Max Oversight Duties: How* Boeing *Signifies a Shift in Corporate Law*, 48 J. CORP. L. 121, 137 (2022) ("[P]rivate enforcement of companies' compliance efforts via corporate law litigation could complement what is often limited and inadequate regulatory enforcement.") (emphasis omitted).

83. *Eras Tour*, *supra* note 1, at 1197–99.

harms—even when they are profitable. If we are to draw lessons from the vast literature on law's legitimacy, it may be that equity's human voice in Delaware law has a critical legitimizing function. And in the throes of yet another battle for corporate law, that legitimacy may be Delaware's best defense.