To: The members of ACURM and the Corporation

From: Michael Satlow, Dorot Professor of Judaic Studies and Professor of Religious Studies

Re: Against the Brown Divest Now Proposal for Divestment

I write as an active faculty member to oppose the Brown Divest Now (BDN) proposal currently before ACURM, and soon to be before the Corporation.¹

In her message to the community of August 1, 2024, President Christina Paxson reiterated that ACURM's charter details a three-pronged procedure for analysis of divestment proposals. First, the gravity of the social harm, particularly in relationship to other goals of the University must be weighed. If that *gravity* – and gravity is the key word here – rises to the level of requiring further consideration, then at least one of the two conditions must hold true:

- 1. such actions will likely have a positive impact toward correcting the specified social harm; or
- 2. when the company or industry in question contributes to social harm so grave that it would be inconsistent with the goals and principles of the University to accept funds from that source.

In the case of the BDN proposal, none of these conditions are fulfilled. Social harm is almost unavoidable for companies and government, but the gravity of these harms can only be assessed *in context* and through *comparison*. Though tragic, the situation in Israel/Palestine is a political issue that must be seen in the context of security and whose social harm falls far short of that of many other such harms inflicted across the globe, including in and by our own country. Neither BDN nor any other credible pundit asserts that divestment would have a positive impact. And I do not see how it would be possible to argue that the actions of companies such as Volvo rise to the level of contributing to "grave" social harm.

A technical argument against the BDN proposal, based on these three prongs, is thus easily made and does not require much effort or space. More concerning are the other issues that the proposal raises. A vote for it would further divide our community (something which previous investment actions have never done); chill academic discourse; hinder our ability to attract talented students and faculty who believe that Jews deserve a State of their own (which the vast majority of both Jewish and non-Jewish Americans do); and subvert our primary mission of promoting free and critical research and teaching that can create useful knowledge. The BDN proposal is at best a distraction. At worst, though, it actively undermines our ability to do what it is that we do best.

I strongly urge you to vote against it.

Executive Summary

This brief focuses on five reasons that the proposal to divest from some companies that do business with Israel should be opposed:

- 1. The gravity of Israel's "social harm" does not rise to a level that justifies divestment. "Social harm" is an inherently ambiguous term and its gravity can only be assessed through comparison and context. The standard for divestment is not simply, "does it commit social harm?" every country and nearly all companies do so to one degree or another but is the social harm so grave that we are compelled to act. The gravity of the social harms that Israel commits must be seen in the context of legitimate security needs and the political situation, as well as in comparison with the acts of other countries. Only someone who opposes the existence of Israel as a Jewish State or who thinks that the Israeli government has intrinsically evil policies (that are secret, because there is no evidence for this) could think that divestment is warranted.
- 2. The likely result of divestment, if any at all, would be to impede a timely resolution of situation on the West Bank and in Gaza. The goal of divestment is to "send a signal" that would ultimately result in companies leaving Israel and forcing Israel to the negotiating table. Its chance of succeeding is zero. Instead, it will drive Hamas and the Palestinian Authority to continue to insist that Israel simply submit to their demands, which would amount to destruction of the Jewish State. This has been the pattern in the past and it is unlikely to change in the future.
- 3. Divestment is about actually divesting, not "sending a signal," and there is no proposal to find a clear and transparent way to implement it. The closest that one can find to an implementation plan is the list in the Brown Divest Now document, which would divest from any company that supplies weapons to Israel, or the one kept by the American Friends Service Committee. The criteria used for this list are opaque, at the least, and the AFSC has been credibly accused of bias. The standard ESG screening lists do not take business with Israel into account, largely because Israel is not seen as committing social harm that makes it worthy of inclusion.
- **4. It is divisive.** Almost nobody, in the country or on campus, argued against the divestment from Sudan or the "divestment" from South Africa (see below on the reason behind the scare quotes). The governments of these countries had clearly morally reprehensible goals. When it comes to divestment from Israel, though, we are very far from consensus. The United States population is clearly against divestment, and even at Brown no more than 30% of the Brown community (not including alumni) have signaled their support. Moreover, a vote for divestment would divide our community even further, while also encouraging behavior that transgresses our usual codes of conduct. The Jewish community in particular would be disproportionately affected.

5. It would chill academic discourse. The situation in Israel-Palestine is complex. The university's mission is to provide a space where such matters could be rigorously and freely discussed and argued. For the university to take a one-sided institutional stand on the issue would freeze our ability to do this. Undergraduates would feel pressure to suppress opinions, particularly in class. Junior faculty and graduate students would also be vulnerable and more likely to direct their research toward less controversial topics. Research coming out of Brown that touches on this topic would be devalued due to the perception of bias. The impact would undoubtedly spread beyond the Israel-Palestine issue.

Discussion

1. The level of "social harm" does not have the gravity to warrant University action

The ACRUM charge reads:

ACURM may consider requests by any member of the University community to examine allegations of "social harm" with respect to the investment or expenditure of University financial resources. Social harm is defined for the purposes of ACURM as the harmful impact that the investment or expenditure of University financial resources may have on the University community, consumers, employees, or other persons, or on the human or natural environment.

Today, "social harm" is primarily used as a concept in ESG (Environmental, Social and Governance) investing. ESG investing has religious roots.² In the nineteenth century, John Wesley inveighed against investing in concerns that went against Methodist principles, such as liquor or gambling companies. Today, there are also scores of Islamic investment funds that adhere to Islamic principles, such as the prohibition on interest. Modern ESG investing is based on the idea that a holistic approach is necessary. In contrast to traditional investing, which focuses almost exclusively on potential returns and risks, ESG investing must consider a wide range of factors for each of its assets. Among the social factors ESG investors typically consider are labor practices, community relations, integrity, and product safety. A company that exploits workers or destroys the social cohesion of a community, for example, might be avoided out of concern for its "social harms." Increasingly, ESG investing also considers the notion of social good, such as the potentially positive impact of investment in green energy companies. An ESG approach can also promote engagement and advocacy, in order to drive companies to more ethical positions.³

The problem with a negative screening approach that depends on a determination of "social harm," is its inherent vagueness and subjectivity. Such determinations also necessarily must take account of the gravity of the perceived harm. It is clear for example that soda companies, such as Coca-Cola and Pepsi, produce and market products in a way that causes social harm. How do we measure the gravity of the harm, though, and determine whether such companies deserve to be screened out of a portfolio? Corporations today – not to mention governments and their agencies – routinely commit social harms.⁴ Even in ESG investing there remains deep debate about how to define the gravity of these harms in a way that can lead to actual investment decisions.⁵ Perhaps for this reason, few universities include a "social harm" clause in their guidelines for divestments.

In 2020, ACCRIP – the committee that preceded the formation of ACURM – recommended a limited (but unspecified) divestment from companies that do business with Israel. Leaving aside for a moment the fundamental flaws of this report (see Appendix A for a more detailed discussion), it also offers an outstanding example of how a consideration of "social harm" can lead to deep confusion. The ACCRIP report determines that Israel has inflicted "social harm" on

the Palestinian people in three ways: the building of establishments in the West Bank and East Jerusalem; the building of the separation wall "through Palestinian Land"; and collective punishment and home demolitions. The report further states that "there was not a single group that rejected the claim that the Palestinian people experience social harm under Israeli occupation." Much of the proof for these assertions comes from statements of the United Nations and International Criminal Courts. Both institutions are *political* rather than *moral* bodies. Their members unabashedly vote according to their own ethno-national interests rather than a neutral and objective deliberative process.⁷

It is certainly true that some Palestinians have experienced "social harm" (however defined) under Israeli occupation, just as some Palestinians experienced social harm under Jordanian, Lebanese, and Egyptian sovereignty; under the British during the Mandate period; and under the Ottomans, who settled many of the descendants of modern Palestinians there from elsewhere. We might look at the experience of any number of minority populations throughout the world, and in our own country, to find examples of "social harm."

The important point, though, is not whether the Israeli occupation inflicts social harm, but the *gravity* of that harm. (The more important point from the perspective of divestment is the gravity of the social harm committed by an individual company, which will be further discussed below.) The ACCRIP report never explains the rationale behind their comment that "the gravity of the social harm experienced by the Palestinian people living under occupation is sufficient" to compel action.

There is no way to assess the gravity of any social harm outside of its larger context. Harms can be unavoidable or be balanced against their consequent gains. Every social policy or corporate decision has winners and losers.

The Israeli occupation of the West Bank and Gaza has a history and a context. It is beyond the scope of this brief to even touch upon the many factors that must be considered for a full assessment of the occupation's social harms, including: the history of the Jewish people and their eviction from their homeland; the history of the Middle East; anti-Judaism as expressed in canonical Islamic texts and the treatment of Jews in Islamic lands; and the Holocaust. This document will thus limit itself to two immediate contexts that are not mentioned at all in the ACCRIP recommendation: (1) security and (2) modern political options.

Security. The immediate root of some of the harshest Israeli practices of the Occupation is the Intifada. There were two violent Palestinian uprisings against Israelis, both civilian and military. During the First Intifada (1987-1993), Palestinians in the West Bank and Gaza indiscriminately attacked Israeli soldiers and civilians alike, killing over 100 civilians and wounding another 1400 (not to mention the many Palestinian civilians murdered by the PLO during the violence). The Second Intifada (2000-2005) was far more violent; about 740 Israelis were killed, including 124 minors, many in attacks in Israel proper. The Second Intifada in particular – which was marked by terrorist attacks on civilians – changed the face of Israeli-Palestinian relations in the Occupied Territories without achieving any strategic goals. 9

Israel both built a separation wall and conducted demolitions of the homes of terrorist families (two of the three areas singled out in the ACCRIP report) as a response to the Second Intifada. There is a consensus that the separation wall was effective in reducing the murder of Israeli civilians. It is less clear if the home demolitions worked. From 2014 on, there were under 100 demolitions of homes of families of terrorists (the vast majority of Palestinian house demolitions are due to zoning code violations). Some of these families clearly aided and abetted terrorism, and we can never know for sure how many terrorists were deterred by the possibility of their families losing their homes. In both cases, the Israeli actions are not simply evil and punitive, they are rational (if imperfect) responses to terrorism that have saved lives.

Israel conducts several other security activities in the West Bank, such as raiding homes in search of wanted terrorists (some of whom are actively planning attacks on civilians). Army checkpoints can make Palestinian travel to Israel (where they are allowed to work and have workers' rights under the law), or sometimes simply within the West Bank, difficult and sometimes humiliating. These are also social harms but are seen by the government of Israel as the options that are least harmful to most Palestinians and that would assure the safety of Israel's citizens. There is no official government policy aimed at humiliating or "ethnically cleansing" any of the occupied territories.

Then there are the rockets. For more than two decades, Israel has had to fend off rockets from Gaza and Lebanon fired indiscriminately at population centers. Although most of those fired at population centers are intercepted, they cause all activity in these centers to halt as the air raid alarms sound and civilians seek cover. The rockets from the north regularly set Israeli forests and fields ablaze, and on October 7, 2023, Hamas used the rockets to provide cover for their troops. Israel's response throughout has been measured and disproportionately light – no other country would tolerate such regular behavior. Rocket attacks from Hamas led to two Israeli attacks in Gaza, in 2008-9 and 2014. In both cases, the international community called for quick ceasefires, which Israel accommodated, despite the fact that Israel had a legal right to conduct them and acted with great concern for the civilian population. In retrospect, those ceasefires may have been a mistake; they allowed for Hamas massacre of October 7. The cost to Israel of minimizing social harm in those conflicts was very high.

In response to that attack, Israel forces continue to try to root out an enemy that uses human shields (hostages and fellow Palestinians). Israel has every right to do this legally as long as they respond "proportionately" to the threat and avoid targeting civilians indiscriminately. There is no evidence that the IDF deliberately targets civilians. At the moment, it is impossible to assess the total casualty accounts, largely because the sources reporting them are untrustworthy. The latest numbers, however, suggest that the ratio of Palestinian civilians killed to Hamas fighters killed is in the range of 2:1, which is tragic but well under usual wartime ratios (often around 9:1 according to the UN). Such a ratio would be almost unprecedented, and de facto evidence of Israeli regard of civilian casualties. Current statistics thus also falsify claims that the IDF is committing "genocide" in Gaza. 15

Political Context. Israel never sought to occupy the West Bank and Gaza. It took those lands as part of a pre-emptive defensive war in 1967. Returning that territory (to Jordan, Syria, and Egypt) at that time, without a comprehensive political settlement that none of those countries was willing to negotiate, was not tenable from a security standpoint. Since then, there have been sporadic attempts to resolve the final status of these territories, but they have obviously not succeeded. U.S. policymakers have tended to attribute these failures to Palestinian intransigence (i.e., they refuse to make necessary but painful compromises because they still hope that they can ultimately have the entire State of Israel). Whether or not that is correct, it is undeniably clear that the Palestinian leadership is at least partially responsible for the deadlock.

There are three paths out of the status quo. The first is unilateral Israeli withdrawal. This was tried in Gaza and resulted in both enormous Palestinian instability and, of course, insecurity for Israel. In response to the takeover by Hamas (which involved murdering supporters of the Palestinian Authority), Israel and Egypt instituted a very selective blockade (in retrospect not effective enough), on materiel that could have military uses entering Gaza. Humanitarian aid flowed into Gaza, and Israel supplied water and electric services. Tens of thousands of Gazans crossed into Israel monthly to work and access state-of-the-art medical facilities. Gazans also always had the choice of crossing in and out of Egypt through the Rafah Crossing. Even so, Hamas abducted Israelis and fired indiscriminately on civilians throughout that period. In the north, the Israeli pullback from Southern Lebanon was met by rockets fired on Israeli cities by Hezbollah. There can be little doubt that without the Israeli blockade in Gaza, Hamas would have acquired far more lethal weapons from Iran. Their goal, as clearly stated in their charter, is the elimination of Israel and the establishment of an Islamist state. ¹⁹ Clearly, unilateral withdrawal is no longer seen as a viable option.

A second option is a one-state solution. There are many varieties of how such an entity could function, but all of them involve careful political negotiation and good-will. Israel is now a Jewish state, with all the complexity that that entails. Most Israelis want Israel to remain a Jewish state, and they are largely supported by Jews world-wide, who in light of Jewish history know the value of a secure refuge against violent antisemitism. Among American Jews, 80% say that "caring about Israel is an essential or important part of what being Jewish means to them." Annexation, and second-class citizenship to Palestinians, would be another way to create a single state, but that solution is anathema to most Israelis. In the cases where Israel has annexed land (the Golan Heights and East Jerusalem), full Israeli citizenship was offered to all the residents. In East Jerusalem, only 10% of the Palestinian population has taken advantage of this offer. There are other possible forms of confederation, but all other modern examples of states divided by language, religions, and/or culture work uneasily at best (with Canada on one end of the spectrum and Lebanon or Pakistan on the other).

The third option is the two-state solution. Most Israelis have historically supported a two-state solution (although those numbers are now complicated by the events of October 7).²³ Sometimes the Israeli settlements are held up as examples that Israel is not serious about pursuing a two-state solution. This is by no means obvious, though. Settlements are also political negotiating chips, and most can easily be dismantled, as they were in Sinai after the peace treaty with Egypt

(1982) and in Gaza during the Israeli withdrawal (2005). On a day-to-day basis, most of these settlements do little social harm, *pace* the implications of the ACCRIP report. This is not to deny that sometimes Israeli settlers acting against the law do inflict social harm on Palestinians, but those activities are outside of the law and are condemned in the Israeli press and government.

The Occupation ends with political negotiations. Palestinians have played an active role in resisting such negotiations. While there is plenty of blame to go around, it is also clear that the resistance of the Palestinian leadership to enter into serious negotiations is in part driven by their desire to maximize claims of Israeli social harm, with the hope that they will get better terms. In Gaza, this is precisely the strategy of Yahya Sinwar, Hamas's military leader.²⁴

When we evaluate the gravity of a social harm, we must consider the benefits along with the costs. The Israeli Occupation exacts a price, but it falls far short of the actual genocides in Sudan, Nigeria, and Rwanda; the ethnic cleansing in the Balkan states; the Chinese annexation of Tibet and persecution of the Uyghurs; the expulsion of the Hindus from the new Islamic Republic in Pakistan; the persecution of the Jews in Arab lands through the twentieth century; or the Columbian War on Drugs. The ranking of countries with "human rights" abuses is a contested and usually subjective affair, but in many of them Israel falls toward the better half. Israel is attempting to administer the Occupied Territories humanely but also with primary consideration for the safety of its own citizens. Like all nations, it sometimes falls short of its goals and ideals. France, for example, recently brutally suppressed an uprising in New Caledonia, which it has occupied since 1853. 26

It is incomprehensible how the gravity of the social harms of Israel's occupation can rise to the level of divestment.

2. Divestment would have no positive impact, and quite possibly a negative one

According to the ACURM Charge, divestiture can only be recommended when it "will likely have a positive impact toward correcting the specified social harm, or when the company in question contributes to social harm so grave that it would be inconsistent with goals and principles of the University to accept funds from that source." The ACCRIP recommendation of 2020 as much as admits that divestment would not result in a positive impact, although then asserts, with no evidence or argument, that "Withdrawal of direct investment in companies identified as complicit in this crisis will reduce social harm." The report further points to the University's divestment from Sudan and South Africa as precedents, but those cases, as discussed below, were completely different.

One of the key questions is what "positive impact" would look like in this particular case. According to the Brown Divest Now document, it would appear that "positive impact" occurs only when three conditions are met: (1) the end of "illegal" occupation and "colonization of all Arab lands"; (2) equal rights for all Israeli citizens; and (3) respecting the right of return for "Palestinian refugees." This amounts to taking a particular position in what should be the result of a negotiated political settlement, and leaves many of the key terms ambiguous. (We leave

aside here the strange demand of [2], since Israeli Palestinians have equal rights and often thrive in Israel.) By ignoring these issues, the ACCRIP report appears, rightly, to reject them as the indicators of "positive impact," although it is unable to articulate a replacement.

It would not be that hard for most people, in America, Israel, the West Bank, and Gaza, to come to a less radical vision of what "positive impact" might look like. A politically negotiated Palestinian State, existing alongside the Jewish State of Israel, would have an enormous positive impact. This is also the most difficult solution to attain. Measures along the way might include: eliminating rocket fire from Gaza and Lebanon as well as Palestinian terrorist activity from the West Bank; reducing the need for Israeli military interference in the West Bank, especially in territories designated "Area A"; and more efficient border crossings and ease of travel for Palestinians. Rebuilding Gaza as a new kind of Palestinian territory that grants equal rights and protections to Jews and members of the LBGTQ+ community – as Israel does – would be a step in the right direction. Due at least in part to Israeli support, Palestinians are among the most literate in the Arab World and they are given opportunities to study and thrive both in Israel and abroad (including at Brown itself). Nevertheless, there certainly is room for improvement in educational opportunities in the Occupied Territories.

Divestment will not have a positive impact toward achieving any of these goals, and not only because Brown has few, if any, actual investments in the sanctioned companies. Divestment's only real purpose is to "send a signal" (ACCRIP) that will lead to sanctioning and ultimately isolating Israel and forcing it to capitulate to Palestinian and Hamas demands, which ultimately (especially with the call for the "Right of Return" when understood in its largest sense) means the dismantling of the Jewish State.

The calls for divestment from companies that facilitate "social harm" in Israel, in fact, may well have exactly the opposite impact. In Gaza, it sends a signal to Hamas that the world is on their side and encourages them to hold out longer to maximize Palestinian casualties that would then accelerate condemnation of Israel. This does not seem to be the kind of "positive impact" that we want to encourage. Similarly, it encourages the Palestinian Authority not to commit to the kinds of painful concessions that are necessary for any political settlement. They too could feel that if they just hold out long enough, Israel will be compelled to a deal on their terms.

As for the Israelis, calls for divestment strengthen the hand of the very people who push for harsher measures against Palestinians. It provides more power to a national (but contested) narrative that Israel stands, and must always stand, alone. When ordinary Israeli Jews – the majority of whom are descendants of those forced to flee their homes in Arab lands – see the world give brief lip service to the October 7 massacre and its sexual violence, and then use Israel's response to renew calls for divestment, they understandably conclude that Israel should no longer care about the rest of the world. It causes a hardening of more extremist elements.

The current calls for divestment focus on just a few companies. Brown's divestment from these companies (if we had any stake in them) would have no impact on their continued ties to Israel. Even if those companies did cease their business relationships with Israel, it would have little impact on either their bottom line or the situation on the ground. There is, in fact, a very real

possibility of it having a negative impact. The same companies that sell equipment to Israel that are allegedly used to advance social harm also sell equipment that mitigates social harm. The construction equipment is also used to create infrastructure that benefits Palestinians. Many of the weapons, especially those that are more advanced (like surveillance and AI devices) help security forces (both Israeli and Palestinian) identify and neutralize terrorist threats while minimizing collateral damage. Even a limited divestment can have a negative economic impact on ordinary Palestinians.²⁷

The comparison with the divestments from Sudan and South Africa is instructive. Before university divestment, Sudan was in the midst of an all-out ethnic-cleansing operation that brought harsh sanctions from the United States and other countries. By the time Brown, along with many other universities, actually divested, the action was almost entirely symbolic: the vast majority of U.S. companies had been frightened away from Sudan by the sanctions (not to mention the uncertain business environment and their own moral qualms) before divestment was even on the table. Divestment followed rather than spearheaded the actions against Sudan. Even then, though, it had little effect. Now, again, true genocide is erupting in Darfur.

The case of South Africa is frequently held up as an exemplar of the effectiveness of divestment, but only by those with short historical memories. The South African system of apartheid had been recognized for decades almost universally as morally repugnant. By the time university protestors arrived, an entire raft of sanctions was in place. A set of principles, known as the Sullivan Principles, were developed. Companies doing business in South Africa were asked to sign on these principles, which included a commitment to help push positive change. An independent consulting firm, Arthur D. Little, compiled the lists of companies that made this commitment. The Brown "divestment" was from companies that did not commit to the Sullivan Principles. If a company did sign, they were not targeted for divestment. Later, when the Corporation reconsidered whether to divest from all companies with business relationships in South Africa, it declined to do so (with little student notice). It didn't matter, though, because just a couple of years after that apartheid fell.

The South Africa precedent is instructive not only due to the way it was operationalized (see more on this below), but also because of its emphasis on engagement. In his comments preceding the establishment of committees to examine divestment from South Africa, President Swearer emphasized that "most would agree that the key issue is whether [divestment]...would enhance or undercut efforts to end apartheid." In the later decision, the Corporation was convinced that "A decision by Brown to completely divest would have no impact on South Africa, and that whatever impact it may have as a symbolic expression is decisively outweighed" by financial considerations.²⁸

Brown went into the South African divestment discussion in lockstep with other universities. A joint statement was signed by the presidents of many elite universities, including Brown, that they are "committed to discussing long-term partnerships with South African universities and organizations that share a dedication to a non-racial, democratic society in South Africa." The approach was one of engagement, not divestment, sanctions, and isolation.

The South African precedent thus actually provides the argument for sustained engagement toward making a positive impact rather than divestment. In this case, that engagement might be establishing programs with Palestinian institutions that help to foster a more open, tolerant, and democratic civic society that reduces terrorism and paves the way for a successful state. It might be strengthening our partnerships with Israeli academics and their institutions, helping them to see other potential creative solutions to the problems of Occupation. In any case, our desire to have a positive impact should focus on doing what it is that we, as a university do best: create knowledge that changes lives.

There was a very strange claim in the ACCRIP report that the university has in the past hosted "speakers, seminars, and events on the conflict.... However, the consistent, growing activist pressure from the Brown community signals to us as a Committee that the University's efforts are insufficient." Insufficient for what? The university's job is to foster knowledge in the pursuit of creating a more just world, and those speakers and seminars (although they tended to be one-sided) were doing that. Divestment would not only have a negative impact on Israelis and Palestinians, but also on our own ability to create new knowledge (see below).

3. Operationalization would be ragged and arbitrary.

The ACCRIP report simply sidestepped the problem of how to guide investment managers in carrying out divestment. The report promised that the committee would return to this issue, which they never did. One reason that they never did is likely because it is impossible to operationalize this proposal for divestment in any rational and consistent way.

Previous "country oriented" proposals developed at least somewhat clear guidance for investment managers. In the case of South Africa, a third-party, neutral consulting firm (Arthur D. Little) kept the "canonical" list of whether companies committed to the Sullivan Principles. In the case of Sudan, Brown follows the guidance of a neutral third party (which at this time lists only a single U.S. company as deserving sanctions). Both mechanisms were imperfect, but they were clear and relatively transparent.

Designing a mechanism by which a trusted and neutral third party determined screening criteria of companies with business ties to Israel for inclusion on a sanction list would be extraordinarily complex. The criteria proposed by Brown Divest Now all involve the sale of goods or services that are used by Israelis to commit "social harm." This is an inherently flawed approach. Volvo, for example, is singled out as deserving sanctions because it sells excavators that are allegedly used "to destroy Palestinian infrastructure." Yet this same equipment is clearly used for social benefit as well. Textron is flagged for its sale of "roof-knock" bombs that the IDF uses to alert residents to evacuate buildings that are about to be destroyed. These alerts, though, have undoubtedly saved lives. Divesting from Boeing or General Electric because some of their equipment is used by the IDF simply denies Israel a right to acquire the advanced weaponry that it needs for self-defense.

There are two other issues related to operationalization that are equally complex. The first is the identification of companies in a way that can give concrete guidance to investment managers. Brown Divest Now suggests that managers do their own research based on three separate lists. None of these lists are run by neutral parties with transparent (and hopefully objective) standards. There is no neutral and transparent screening infrastructure in place, as there was in the case of South Africa, precisely because the idea of divestment from Israel has very little support. The MSCI ESG Screened Indexes do take into account the manufacture of "controversial weapons" (e.g., landmines) but nowhere contain criteria linked to political conflicts.²⁹

The second related issue concerns the specification of criteria for removal from the list of sanctioned companies. Brown Divest Now lists two companies that should be removed from the list because they ceased to do business directly with Israel (although one, Oakhurst Capital, must surely maintain investments that do not meet their stated screening criteria). It would thus seem that the only way to leave the list is for the company to cease doing business with Israel. Must Northrop Grumman cease to sell any weapons to the IDF to be removed from the list, or only the very specific weapons listed? In the case of South Africa, companies that signed the Sullivan Principles were taken off the list. There seems to be no such mechanism in place in this proposal.

As is well-known by now, the Brown endowment contains very few direct holdings, with most of its money invested through a variety of investment managers. These managers are charged with prudently investing the endowment funds while maximizing returns. They thus use a vast array of investment tools, including ETFs and index funds. Trying to exclude a few specific companies from this mix is not feasible. The Brown Divest Now proposal suggests using the American Friends Service Committee screening tool, but the AFSC is itself hardly a neutral or objective party, and it is doubtful if more than a handful of institutions (especially outside of the Quaker establishment) use the tool.³⁰

In her letter of March 9 to ACURM, President Christina Paxson flagged the inability of the ACCRIP proposal to identify "specific entities for divestment or the articulation for how financial divestment from the entities would address social harm as defined in the committee's charge." While there are now proposals for divestment from specific companies, the reasoning behind selecting these companies specifically is thin and incoherent. This is unsurprising given the real goal of the proposal, which is to "send a signal," not to distance the University from corporations engaged in grave social harm with the aim of having a positive outcome.

There would also be potential legal complications. The Corporation has a legal duty to guard the fiduciary health of the university. Following limited ESG guidelines, even if it resulted in slightly lowering the growth of the endowment, might be in accordance with this duty. Divestment from companies doing business in Israel, however, does not come under the ESG umbrella; it is *sui generis*.³² It is quite possible that should Corporation members vote to eliminate certain companies from their portfolio based on political considerations, and that that decision has an adverse effect on endowment returns, they would expose both themselves and the University to legal action.³³

4. It is divisive.

An action to divest requires a clear moral consensus. In her reply to an undergraduate student referendum in 2019, President Paxson said that "Brown's endowment is not a political instrument to be used to express views on complex social and political issues, especially those *over which thoughtful and intelligent people vehemently disagree.*" In the past five years, even with the October 7 massacre and Israel's response, this continues to be the case.

Proponents for divestment have presented evidence that there is community support for its proposals. That is certainly true: a not-insignificant minority of different Brown constituencies have signaled that they support some kind of divestment initiative. The undergraduate proposal from 2019 for divestment passed with about 2,122 votes, well under a third of the undergraduate student population. In all the various letters and petitions encouraging divestment signed by faculty, no more than 25% signed on. This is likely not the "tip of the iceberg" but the whole thing. Support for divestment among alumni is probably significantly lower. These numbers do not come close to indicating a moral consensus.

Many colleges are now dealing with similar issues. On one side is a very vocal and activist minority; the other side tends not to be as vocal. But volume does not substitute for argument, and the disagreements between the sides (and there are more than two) are real and deep. The Report of the Advisory Committee on Shareholder Responsibility (ACSR) at Williams College (May 2024), which recommended rejecting the request for divestment from Israel, captured this situation eloquently:

Regarding the existence of a broad and deep consensus view, the ACSR does not see a demonstrable, shared understanding among the college community of the current issues underlying the request for divestment. Nor does there seem to be a widely held, shared understanding of these issues among scholars and other experts. The ACSR did receive feedback from some student groups, some faculty, and some staff in support of the Jews for Justice requests. But oppositional perspectives within our community have also been expressed. The recent tumult on college and university campuses is but one reflection of the contentious nature of these complicated and emotionally charged issues.³⁵

The issue of divestment has already led to an extraordinary degree of divisiveness on campus. This issue, more than any other in recent memory, has fomented a level of vitriol and offensive speech that has overshadowed reasoned debate. Brown students have written of feeling targeted already in 2021.³⁶ On July 8, 2024, the Office for Civil Rights of the United States Department of Education, revealed that between October 2023 and March 2024 there were 75 reports of alleged discriminatory conduct based on Jewish, Palestinian, Arab, and/or Muslim ancestry, the large majority of which came from undergraduate students.³⁷ This is a shocking, and deplorable, statistic. This is a crisis, and the University's role now is to calm the climate by encouraging civility, not stoke it by taking a side.

The faculty have not gone unaffected. According to the Campus Climate Survey administered in April 2023, only 54% of faculty respondents agreed or strongly agreed with the statement "I believe Brown is welcoming of various social and political views and opinions" (the numbers for comfort within departments was similar). Other numbers as well paint a bleak picture.³⁸ These numbers are significantly worse than those from the last survey in 2018. The report (at least in its publicly released version) does not indicate which social and political views faculty members thought were unwelcome, but anecdotally it is clear that at least some proportion is due to the discourse on Israel-Palestine and divestment.

Avril Haines, the U.S. Director of National Intelligence, released a statement that intelligence services have observed "actors tied to Iran's government posing as activists online, seeking to encourage protests, and even providing financial support to protestors." No evidence has been found that links the protests at Brown to Iranian actors (or to other parties that are linked to Iran), but the fact remains that both Iran and Hamas have expressed support for the protests. This support derives less from a sincere desire to support a two-state solution than from the desire to sow dissent and dissatisfaction on American campuses. 40

This divisiveness has disproportionately affected the Jewish community on campus. The question of whether a particular statement, chant, or sign is or is not "antisemitic" most often does not lead anywhere productive. Many or most Jews, disproportionately as Jews, experienced the demonstrations as offensive or threatening. This feeling was only reinforced when the demonstrators knew this and yet deliberately refrained from making any changes in their slogans and language (which would not have necessarily implied any change in their demands or beliefs). There is every reason to expect that a recommendation for divestment would be disproportionately viewed as negative by the Jewish community, at Brown, in Rhode Island, and internationally.

Divestment is an action of last recourse taken only when there is near universal agreement about its necessity. Divestment from companies that do business in Israel, whatever their involvement, has only minority support and would roil the campus even further. None of Brown's previous divestments have had anywhere near the level of divisiveness that this would.

5. It would chill academic discourse.

The primary goal of the university – its purpose vis-à-vis society – is to serve as a forum for controversial ideas, a place where all views, however discomfiting, could be debated with relative impunity. The Kalven Report from the University of Chicago took this approach to its natural conclusion:

The neutrality of the university as an institution arises then not from a lack of courage nor out of indifference and insensitivity. It arises out of respect for free inquiry and the obligation to cherish a diversity of viewpoints. And this neutrality as an institution has its complement in the fullest freedom for its faculty and students as individuals to participate in political action and social protest. It finds its complement, too, in the obligation of the university to provide a forum for the most searching and candid discussion of public issues.⁴¹

This position, recently reinforced by Harvard University's decision not to issue statements on political or social issues, is not without problems.⁴² The university began specifically as a place to instill religion and moral formation, so there is something of an irony in this change.

In 1978, when Brown began an investment advisory committee, the Advisory and Executive Committee recognized this tension. They thus struck a modest approach:

With respect to Brown's corporate responsibility generally, the University recognizes that it cannot be socially or morally blind. At the same time, it must be aware that it possesses neither the talents nor the resources to deal with all the social and ethical issues of concern to various peoples in this country and abroad. And, as the Report notes, the University should remain neutral on political issues which do not directly affect its educational functions. Thus, institutional action through corporate investments should be limited to cases in which the duty to act is clear.

Brown's primary purpose and objective continue [sic] to be the discovery and dissemination of knowledge. That in itself is a challenging responsibility to discharge. It will require the best of our collective wisdom to decide which are those cases in which our social conscience compels us to act.

Divesting from Israel is equivalent to taking a stand in the ongoing Israeli-Palestinian debate. Such an action clearly stifles rather than encourages the kind of healthy debate and exchange of ideas that ground the modern university. The statement of principles from Boston University expresses this sentiment well:

A fundamental goal of Boston University is to create an environment in which an academic community can productively consider, discuss, and debate a variety of viewpoints on social and political issues, and that encourages freedom of inquiry. Such conditions allow scholars to pursue knowledge according to standards of evidence and logic without the encumbrance of an institutional position that may dampen discussion of alternative views. When the University, as an entity, adopts a single viewpoint or takes action relating to divestment, it risks undermining that goal.⁴³

The effects of a vote to divest would be significant. A student who supported an Israeli policy or Zionist idea would now be shunned or mocked (something that already, unfortunately, occurs in some classrooms on our campus). Zionism would become the new racism. Graduate students, who already feel too much pressure to conform to popular academic/social issues, would be particularly sensitive to an increasingly polarized environment. Non-tenured faculty would exercise increased caution about making certain statement in classrooms or conducting certain kinds of research for fear of potential consequences. Even tenured faculty, not wishing to be shunned in their department, might well avoid potentially productive research questions. It would also damage Brown's reputation as a place of free intellectual discourse. How would anybody be able to take a paper coming out of the Watson School on Israel/Palestine seriously, knowing that the university had already taken an institutional position?

Conclusion

Israel is an ordinary nation dealing with extraordinary political and security issues. Like the United States, it is also a robust democracy with freedom of the press, and its citizens regularly and intensely debate its government's policies. Like all countries, it is not perfect and continues to strive toward its highest ideals. This will always remain challenging until a political solution to the Israeli-Palestinian conflict can be found. The lack of such a solution cannot be blamed entirely on Israel. Divestment takes a political side, interferes with the university's commitment to foster free academic speech, will increase tension on campus, and will have no actual positive impact.

Universities specialize in the creation and teaching of knowledge. We serve a critical societal function by creating a space to allow open debate and critique of arguments. These are things that we, at Brown, do particularly well. We can, and should, use our particular strengths to improve lives. As we acknowledged in 1978, we "have neither the talent nor the resources" to deal with the world's many moral, political, ethical, and social problems. We should focus our resources on research and teaching, not divestment.

Appendix A

Procedural Problems with the ACCRIP 2020 Recommendation Vote

The motion passed by ACCRIP on December 2, 2019 regarding divestment was rushed, gave no time for Committee members to discuss the multiple complex aspects of the proposal, was predetermined to arrive at the outcome achieved, and is inconsistent with provisions of ACCRIP's charter.

- 1. As stated by the ACCRIP Chairman on December 2, 2019 and as described in the BDH article entitled "ACCRIP votes to recommend divestment" on December 3rd, the decision to proceed with votes on the determination of social harm and a subsequent motion for divestment was made because of the "urgency" of the matter and "so that the student organizers could be recognized for their activism." A decision on divestment, the ultimate punitive recommendation permitted by the ACCRIP charter, was neither urgent nor a prize for good work to be awarded to engaged students. The decision to proceed with both votes on December 2nd was rushed, unscheduled and did not adhere to the "Next Steps" outlined in the November ACCRIP meeting minutes, i.e. "(1) Discuss both divestment and anti-divestment presentations, and (2) Tentative initial vote to see if this issue constitutes social harm."
- 2. ACCRIP had twice considered a virtually identical divestment proposal during the 2013-2016 academic years and ultimately voted down the divestment proposal as committee members agreed that the identification of a standard of behavior and its subsequent application solely to one country was inappropriate. There was a consensus that Israel was held to a different and higher standard, that this was in and of itself discriminatory and necessitated a globally-applicable standard that could be applied in all instances of perceived social harm. BrownDivest's online statement following the March 21, 2019 referendum highlighted this unequal treatment, stating that the referendum represented "an emboldened and clear stand against the university's complicity in human rights abuses in Palestine and in similar systems of oppression across the world." BrownDivest opted to focus exclusively on the former while ignoring the latter, again repeating the behavior of placing Israel in a unique category as the subject of focus.
- 3. The extended period of deliberation and research in 2013-2016 was seen as necessary to deal with the complex and intractable issue of Israeli-Palestinian relations and the broader question of peace in the Middle East. During that period, ACCRIP received expert testimony from diplomats, from researchers and academics, from investment professionals and from the interested parties that had submitted the proposal. In 2019,

ACCRIP did none of these things. Over a total of 6 one-hour meetings, two of which did not have a quorum, ACCRIP received three presentations in support of divestment and two presentations against. There was no opportunity for the Committee to discuss the issues, to engage in conversation, to question experts, or to investigate any companies targeted for divestment. In normal circumstances, these deliberations would have occurred in executive session, but in the most recent instance, the limited questions and comments that were permitted were made in open session, complete with a cheering section and disrespectful comments directed at certain ACCRIP members and presenters. Despite an earlier written statement by the ACCRIP Chairman that the Committee would look to come to a resolution on the proposal by the end of the academic year, which would have provided committee members with time for discussion and analysis, the Committee went from presentation to a final vote within a matter of minutes. The ACCRIP Chairman denied multiple requests to permit discussion as well as a request to deliberate in executive session. Intellectual discussion of complex topics is and should remain a hallmark of decision-making at Brown; students, faculty, staff and alumni learn through engagement and vigorous debate. That did not occur on this critical topic.

- 4. The ACCRIP Charter contains very specific guidelines regarding how the Committee should consider steps up to and including divestment. Over the course of the six hours spent on the topic, the guidelines contained in the Charter were never discussed by the Committee. In fact, there was no mention that the Charter contained specific guidelines and they were never read to the Committee.
 - a. Per Section (c) of Article One, ACCRIP shall "consider requests by any member of the Brown Community to examine issues of alleged 'social harm' with respect to the activities of corporations in which the University is an investor. Social harm is defined for the purpose of this charge as the harmful impact that the activities of a company or corporation have on consumers, employees, or other persons, or on the human or natural environment." In addressing this question, there was no reference made to the Charter despite a request to do so and the Committee proceeded to a vote with zero discussion of what any company or corporation did to cause social harm. A simple vote to affirm that social harm exists in Palestinian territories is incompatible with the Charter's mandate to identify activities of a company or corporation that create that social harm. ACCRIP did not discuss any company, undertook no analysis of any company's behavior and made no linkage between a company's activities and a harmful effect. While BrownDivest had previously identified a list of companies from which Brown should divest, the motion did not include the names of any specific companies and was not followed by discussion of any companies' activities nor how they were linked to social harm.
 - b. Per Section (d) of Article One, ACCRIP shall "carefully balance (in making judgment on any specific question of social harm) the gravity of the social harm, the potential effectiveness of various means of influencing corporate policy, the University's need to maintain a sound financial policy, and the consistency of various proposed courses of action with the maintenance of an environment at Brown conducive to teaching and scholarly inquiry." The final clause of the

Section is confusing as it implies that the University should not be in a position to "contest a company's activities." Had the Committee been afforded the opportunity to discuss the provision, clarity could have been achieved but, as the Committee made no reference to the Charter in its deliberations, the clause remains unclear as to how it defines ACCRIP's mandate. This Section also mandates a number of other actions to be taken by the Committee, including analysis of the ability to influence corporate policy, the impact on the need to be fiscally responsible and the consistency with the University's broad mandate, none of which was done.

- c. On the matter of ability to influence corporate policy, the speakers in favor of divestment acknowledged that a positive vote would have little to no impact on any company's activities, highlighting instead the symbolic importance of a positive vote, the relevance of "speaking truth to power," pushing back against US military and monetary aid for Israel as a country that receives so much support that it "does not know how to stop itself" and, as noted in the draft meeting minutes, the importance of looking backward at the last 17 years of Palestinian injustice rather than focusing on the future. As no individual companies were identified as part of the discussion, there was clearly no ability to assess whether divestment from a company's shares would influence corporate policy.
- d. The concept of fiscal responsibility was not addressed by the Committee. Despite the presence of Investment Office staff, no questions were posed regarding the current holdings of the endowment, no explanation was requested of how the endowment actually invests, and no request was made to obtain an explanation of the practicality of asking external managers to cease investment in a large number of key US corporations that are represented across virtually all stock indices. And importantly, no analysis was done regarding the actual involvement of any US company in terms of the contribution of its activities in the Palestinian Territories to sales, revenues or any other metric that could gauge whether shareholder divestment could alter that company's behavior; this is a clear avoidance of the mandate to determine the potential effectiveness of divestment by Brown on corporate policy.
- e. Consistency with the University's broad mandate of teaching and scholarly inquiry also did not arise in consideration of the divestment amendment. Had discussion been permitted, it would have been useful to address the October 2019 study by the Institute for the Study of Global Anti-Semitism and Policy entitled "Antisemitism, Violent Extremism and the Threat to North American Universities: The Contextualization of the National Students for Justice in Palestine," which along with other sources notes an increase in anti-Semitic activity on campuses where BDS motions have been passed.
- f. Section (g) of Article One states that ACCRIP shall "recommend divestiture (keeping in mind the fundamental principle of sound financial policy, the legal responsibilities of the Corporation to sustain fiscal soundness and stability of the endowment fund, and the kinds of balanced judgment called for above) when divestiture will likely have a positive impact toward correcting the specified

social harm, or when the company in question contributes to social harm so grave that it would be inconsistent with the goals and principles of the University to accept funds from that source." Simply stated, the ACCRIP recommendation to divest does not reflect any consideration of what sound financial policy is, it does not consider at all the financial impact on the University's endowment and it makes absolutely no linkage between divestment and a positive impact on an identified social harm.

Notes

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