

their assets to the board of directors, the firm's stakeholders are beset with the problem of holding the board of directors accountable. This is the agency problem: how do you ensure that corporate directors (agents) operate faithfully on behalf of their stakeholders, rather than in directors' own interests through general malingering or outright stealing of corporate assets? <sup>n13</sup>

The prevailing view is that different stakeholders should get different solutions to the agency problem. Shareholders require the exclusive fiduciary attention of directors inside the corporate boardroom because of their (the shareholders) distance from firm operations. Workers, in comparison, are physically present on the shop floor and can therefore monitor and negotiate the terms of their labor themselves, individually or collectively. Consumers are present at the cash-register and can monitor their interest in corporate activity by inspecting the goods, services, and prices offered. In sum, the agency problem is managed for shareholders by imposing fiduciary obligations to shareholders on the board of directors, while the agency problem for workers and consumers is managed primarily by particularized terms in specific contracts on a negotiated or take-it-or-leave-it basis. Where workers and consumers are vulnerable and cannot protect their interests through contract, corporate theory calls for such vulnerabilities to be solved through external governmental regulation such as labor laws and consumer protection statutes, rather than through any departure from shareholder primacy in firm governance. <sup>n14</sup>

Corporate law theorists contend that this organizational design is in the best interest of capital, labor, and consumers. It is therefore the regime that these stakeholders would voluntarily agree to if they sat down and negotiated the matter (or at least it is the regime they would all agree to after hearing a lecture on shareholder primacy theory). <sup>n15</sup> But these groups do not actually negotiate and plan the design themselves. To do so would be as transactionally-burdensome as driving down the street looking for a designer to build an internet phone. Instead, the basic organizational design is incorporated by law into corporate charters as an "off-the-rack" ready-made system. Users of corporate charters are free to delete default corporate governance provisions and replace them with some other schema, perhaps one in which important corporate decisions are submitted directly to a vote by all stakeholders. In practice this does not happen. Corporate stakeholders stick with the default rules of directorial authority and shareholder primacy for one of two reasons. First, maybe it really is the rule that stakeholders would settle on if they designed the corporate governance structure themselves, so there is no impetus to change it. Second, stakeholders may stick with the default rule because they find it prohibitively costly, in terms of time, intelligence, and logistics, to negotiate an alternative arrangement. Thus, they stick with the default because they are stuck with it. <sup>n16</sup>

For reasons I explore below, corporate law's purported solutions to the agency problem leave non-shareholding stakeholders vulnerable to manipulation and exploitation by corporations acting on behalf of shareholders. Here I will focus in particular on non-shareholder's susceptibility to the adverse influence of corporate speech. To track this influence, I explore the distinct discourse norms that attend corporate speech to different corporate stakeholders, including shareholders, workers, and consumers. I contend that these discourse norms should themselves be regarded as default rules of corporate law, and I argue that the discourse norm defaults should be altered in order to improve

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