

corporate operation for non-shareholding stakeholders. My focus on discourse norms provides a heretofore unexcavated foothold in the quest for a post-shareholder-primacy model of corporate governance.

B. Discourse Norms and Corporate Law

1. Discourse Norms and Speech Generally

By "discourse norms," I am referring to the practical and moral expectations that give semantic value to speech acts. I also mean the phrase "discourse norms" to refer to people's conscious or subconscious expectations about how they should be talking in particular circumstances. ⁿ¹⁷ Discourse norms, like norms generally, are associated **[*196]** with behavioral expectations that can be regulated both legally and extra-legally, both formally and informally. ⁿ¹⁸

Discourse norms can be identified and distinguished by examining the significance of speech acts in different contexts. Consider for example a hypothetical circumstance in which President Bill Clinton, in the private family quarters of the White House, tells his wife Hillary that there "is no sexual relationship" with a particular intern in the Office of the President. ⁿ¹⁹ Suppose it was the case that Bill had in fact engaged in extensive sexual activity with the intern over a period of many months, but that there had been no such encounter for several months before he said "there is no sexual relationship" to his wife. Norms refer to shared expectations about what the use of particular words, phrases, and sentences in particular contexts mean. Under the discourse norms of family discussion, Bill's statement pretty clearly counts as a lie. It at least counts as "misleading" in a way that invites condemnation and reform, if Bill and his wife are to remain in the relationship of marriage. The discourse norms of romance, family, and **[*197]** friendship generally occasion an expectation of co-operation with respect to the meaning of what is said. There is an assumption that the speech of the lover, the parent, the child, the friend, will be useful to the relationship of the interlocutors, and not solely to the individual speaking. These assumptions are a part of and lend meaning to the speech acts within such relationships.

If, however, Bill spoke the words "there is no sexual relationship" in a different context, governed by different discourse norms, his words might have a very different import. For example, if he spoke them under cross-examination before a grand jury or a special-prosecutor's investigation, and if when he spoke them there had been no sexual encounter with the intern for several months, then the statement would probably not count as a lie. It would probably not even be considered "misleading" in a sense which would trigger condemnation or response. The accused's relationship to the prosecutor is adversarial, and the discourse norms in such a relationship presume a less forthcoming, more self-interested mode of expression. ⁿ²⁰ The point is that especially with respect to hard questions about the meaning and significance of speech, the discourse norms are often decisive.

2. Discourse Norms and Corporate Law

a. Different Speech for Different Stakeholders

Under prevailing law, different discourse norms attend corporate speech depending on the category of corporate stakeholder addressed.

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