

To be sure, there is plenty of evidence that some corporations sometimes can do best for their shareholders by doing good for all corporate stakeholders.<sup>n36</sup> There are some investment funds which in [\*205] vest only in firms that are "socially responsible." Some of these funds have outperformed investment funds without "social responsibility" restrictions or purposes.<sup>n37</sup> It is not at all surprising that corporate operations that actually serve the interests of all stakeholders would be among the best performing firms in the market. But this success in no way casts doubt on the fact that there are other profit opportunities that are available in more exploitative arrangements that lie beyond the parameters of the social responsibility investment funds, but well within the parameters of the law. There is plenty of evidence that there are times when the profitable thing is for a corporation to act sharp with one of its stakeholders. Just because the forty dollars lying on the ground at the top of the sunny hill will be seen and gathered does not mean that the twenty dollars buried under the ground in the dark valley will be left alone.<sup>n38</sup> [\*206]

It is therefore important to emphasize that the problems that corporate law presents for non-shareholders cannot be remedied by hoping for better corporate governance within the shareholder primacy paradigm. The Pareto fallacy of corporate profitability debilitates honest discussion and communication about hard choices that need to be made in social policy.

In its most complete articulation, shareholder primacy theory is not committed to the claim that shareholder primacy in firm governance will always serve all stakeholder interests. Instead, the dominant view is dependent upon the idea that government regulation can protect non-shareholders from corporate misconduct where contract proves an inadequate mechanism to protect non-shareholders from the exploitative power of the shareholder primacy firm.<sup>n39</sup> The trouble is that shareholder primacy itself compels firms to work within the political realm to undermine the development of such profit-stifling regulations. In other work I have analyzed the broad public choice dynamics which inhibit the proper functioning of the political systems on which shareholder primacy theory relies for its coherence.<sup>n40</sup> Here I am concerned with analyzing in particular the irreconcilability of the discourse norms that govern corporate political speech, on the one hand, [\*207] and those that are expected in the arena of political speech, on the other.

### c. Corporate Political Speech and the Norm of Public Reason

Modern liberal political theory considers speech to be an essential element of legitimacy in social organization.<sup>n41</sup> Political theorists argue that people have a fundamental moral obligation to speak with each other about proposed solutions to hard and contested problems.<sup>n42</sup> Speaking with each other provides us a non-violent, orderly, reasonable way of getting along with each other even though we may strongly disagree about important matters.<sup>n43</sup>

It is not just any speech, but rather a particular kind of restrained speech which is needed if society is to successfully evade the destructive threat of other forms of dispute resolution, such as fighting. The liberal political tradition has developed a discourse norm of "public reason" which purports to fit the bill. The norm of public reason differs from the discourse norms evident in family, fiduciary, contractual, or legal-adversarial relationships. The purpose of the norm of public reason is "to identify normative premises all political participants find reasonable (or at least, not unreasonable)."<sup>n44</sup> The norm of [\*208] public

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