

diversified shareholders would prefer their firms to be more risk-preferring. Older, infirm, or impatient shareholders want short-term profits, while younger, healthier or more patient shareholders want to wait on steady growth. Preferred stockholders prefer certain-short term gains but common stockholders prefer riskier long-term strategies. Some shareholders want profits without regard to ethical consequences, other investors are willing to ease up on the profit throttle if it means doing less harm to others. Proponents of shareholder primacy in firm governance have not considered the inevitable conflicts in simultaneous commitments to these different groups of shareholders to be an insurmountable problem. Instead, the inevitability of conflicts between different groups of shareholders is advanced as one of the key reasons why corporations must be run by an independent, authoritative board of directors which can manage such conflicts in a way that best serves the interests of all competing parties.<sup>74</sup> Directors presently do this with almost no guidance from courts or statutory law as to whose interests are to be privileged in what circumstances when conflicts inevitably arise. The confidence that corporate law already evinces in directors' ability to overcome the two-masters problem across different groups of shareholders should also serve to assuage doubts that directors can effectively manage conflicts across different groups of stakeholders. **[\*217]**

Nevertheless, the reality of conflicts between different stakeholders should be reflected in the discursive practices of multi-stakeholder corporate governance. Directorial speech about stakeholders need not always be concerned with maximizing trust. Indeed, once trust has been established in a relationship, our motive for coherence and the threat of dissonance sometimes keeps us trusting too much, which can leave us vulnerable to manipulation.<sup>75</sup> We tend in our explanations of our behavior (to ourselves and others) to minimize the inconsistency in competing obligations in order to reduce the cognitive dissonance we would otherwise suffer.<sup>76</sup> As Claire Hill and Erin Ann O'Hara recently pointed out, social policy should be concerned not with "maximizing" trust, but with optimizing it.<sup>77</sup> The discursive goal of corporate speech must then be clarity and honesty, rather than necessarily trust-inducing in every case. Directors should be encouraged to recognize conflicts between stakeholders and to communicate openly and honestly about them.

## B. Prescriptive Discourse Norms

Corporate law scholarship must help boards of directors to develop effective ways of engaging in multi-stakeholder discourse. In this section I briefly examine two different "prescriptive" discourse norms authored by two leading scholars for use in other areas, but which I think might usefully be deployed to help develop a new default discourse norm for use in multi-stakeholder corporate governance.

### 1. Expressive Overdetermination in Firm Governance

Earlier, I reviewed Dan Kahan's critique of the norm of public reason, and showed the ways in which his critique is relevant to the problems of corporate political speech.<sup>78</sup> Kahan follows his critique with the offer of an alternative discourse norm that he argues is psychologically realistic and more instrumentally promising than the norm of public reason. He urges the adoption of "expressive overdetermination"-a norm with a somewhat cumbersome name, but one which is nevertheless well worth considering. Expressive overdetermination has two basic elements. First, it requires political speakers to recognize

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