

taken as a whole, to comply with this prescriptive norm, the firm's statements to its various stakeholders would have to express in over-determined fashion how each of the firm's stakeholders stand to benefit or are exposed to risk by corporate decisions.

Courts could enforce this standard only in the limited ways that they presently enforce fiduciary discourse standards owed to shareholders. While courts could not enforce substantive standards or impose liability for "bad" decisions for fear of undermining the authority and discretion of the board of directors, the overarching obligation of candor, completeness and good-faith is one that courts can and do undertake to enforce on behalf of shareholders through the mechanisms of shareholder derivative suits under state law. The fiduciary discourse obligation could similarly be enforced on behalf of other stakeholders through "stakeholder derivative" suits to enforce directors' obligations to them.ⁿ⁸⁶ Or the standard might be enforced by ex [*221] tending the reach of the federal securities laws to non-shareholding stakeholders.ⁿ⁸⁷

2. Integrity in Firm Governance

As noted above, since the 1930s corporate law scholars have for the most part been pre-occupied with the "agency problem" in corporate law.ⁿ⁸⁸ One of the most prominent contemporary analysts of the agency problem, Michael Jensen, has late in his career come to the conclusion that the traditional agency problem has been well-enough solved.ⁿ⁸⁹ Jensen, working with co-authors Werner H. Erhard and Steve Zaffron, asserts that the more pressing contemporary problem of unrealized corporate value relates not to failures in the principal-agent relationship, but rather failures in the more intimate relationship between the agent and herself. Jensen refers to this as the problem of "integrity"-or the lack of integrity, in the life of the agent. What is of particular interest to the present inquiry is Jensen's conclusion that the "integrity" of corporate agents can be improved through the adoption [*222] of a different kind of discourse norm than presently prevails in corporate speech.ⁿ⁹⁰

By integrity, Jensen means wholeness, completeness, and coherence.ⁿ⁹¹ People or systems that lack integrity always underperform, sometimes catastrophically.ⁿ⁹² He argues that things, processes, individuals, and relationships all have more "workability" when they operate with integrity. Critics may argue that Jensen's new project differs little from familiar concepts of efficiency and that all that is new here is a proposal to pursue a presently underappreciated approach to efficiency gains. This critique is almost inevitable given Jensen's insistence that his program of integrity is not a normative guidepost but an agnostic map of "workability."ⁿ⁹³ Others might reasonably think that while it is nice to have Jensen in the conversation, work on the relationship between integrity and productivity has been a long-standing theme in progressive-especially feminist-corporate theory.ⁿ⁹⁴ I nevertheless think Jensen's work is valuable as an illustration of this Article's claim that discourse norms can be instrumentally deployed to achieve desired results in corporate operations.

Jensen argues that the best way that individuals and relationships can operate with integrity is through people living by their "word." To be a person of integrity a person must honor their word. Now, for Jensen, honoring one's word is not the same as keeping one's word. To keep one's word means to do or not do exactly what you say you will. But only a person with a very small life, and very few responsibilities, could possibly keep their word

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