

been an important part of the struggle for freedom and equality in our society.⁸⁷ Nevertheless, there is widespread concern that corporate speech routinely impedes the development of sound public policy. Here I pursue the theoretical case that we do indeed have a corporate speech problem,⁸⁸ and I explore a possible solution to the problem which does not [*192] require the kind of corporate censorship that the Supreme Court has disallowed on First Amendment grounds.

Specifically, I argue that corporate speech can be usefully reformed by altering corporate law. I argue for the institutionalization of firm governance dynamics which will change the way that corporations speak to and about their shareholders, workers, consumers, the community at large, and government. This approach seeks to solve the corporate speech problem by generating more socially useful corporate speech, rather than constraining or silencing it through external governmental regulation.

I. THE PROBLEM OF CORPORATE SPEECH

A. The Source of Corporate Power

While many organisms communicate, the human ability to deploy elaborate expressive and representational systems in a community of similarly capable individuals is among the defining attributes of our species.⁸⁹ In the longue duree of human history speech has played a crucial part in our ability to achieve the coordination necessary to build and maintain civilization. This is not to say that speech explains it all—sheer force, inexpressible love, the tides, the winds, the will, all of these are also essential components of the human condition. But speech is an important category in any conception of the important elements of human life. In contemporary society, the corporation is among the most significant institutions that organizes, produces, circulates and listens to speech acts.

Corporations are powerful institutions because they can efficiently coordinate the activity of many individuals and groups, including holders of capital, workers, and consumers.⁹⁰ This capacity for coordination is generated by the corporation's centralized, authoritative decision-making structure.⁹¹ The corporation's board of directors makes all decisions about how the resources brought by each group will be deployed. Various stakeholders all accede to the boards' deci [*193] sions, or else they do no business with the firm. The coordinating power of the board is a beautiful thing. The consumer who wakes in the morning desiring an internet-ready cell phone need not drive down the street looking for electronic engineers, designers, and programmers with whom she might set up a meeting to talk about producing the item in exchange for her cash. The coal miner need not say each morning to some holder of capital that she is skilled in the hefting of the pick and knows a good place for digging, the two then writing a contract over breakfast regarding what land should be purchased for digging on that afternoon. Instead labor and capital both submit their particular assets to the centralized decision-making structure of the firm, which deploys the labor and capital in the most beneficial way, returning wages and profits to labor and capital far greater than either could have generated on their own. The consumer is offered a pre-designed, internet-ready phone on a take-it-or-leave-it basis at a specified price, undoubtedly cheaper than she could have come up with on her own.⁹²

The authoritative decision-making advantage of the firm, brilliant as it is, also constitutes one of the corporation's greatest design flaws. Having turned over control of

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