

Shaping the Corporate Landscape

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List of Contributions

Name / Affiliation	Title / Abstract
<p>Nina Boeger Senior Lecturer in Law and Director of the Centre for Law and Enterprise, University of Bristol Law School</p>	<p>The New Corporate Movement The worldwide growth of social and cooperative enterprises is often perceived as a “movement”, but what it means and how it relates to the wider political economy is undertheorized. This article explains the emergence of these new corporate forms as a social counter-movement to global shareholder capitalism, at a time when traditional democratic structures suffer from systemic blockages (linkages between formal political process and global economic power organised in the shareholder corporate model). The underpinning framework follows Polanyi’s understanding of the relationship between markets and politics, as well as Touraine’s sociological work on what drives people to become social activists. The new corporate movement, this article argues, is a mode of social contestation characterised by entrepreneurial activism: it instrumentalizes economic freedom – the capacity to undertake economic actions – to transform the existing liberal into a more social market order.</p>
<p>Professor Mick Blowfield Director, Shaping Sustainable Markets, International Institute for Environment and Development</p>	<p>Business and the Sustainability Challenges: how the latter reshapes the former.</p>
<p>Philip Horrell Office of the Regulator of Community Interest Companies</p>	<p>The Future of the Community Interest Company This contribution discusses the success and challenges of the CIC format, with a brief outline of its purpose and the importance of governance in that success.</p>
<p>Professor Stuart Cooper Professor of Accounting, University of Bristol</p>	<p>Social Accountability: Reporting with values rather than reporting for providers of financial capital Social responsibility and sustainability reporting is now “standard practice” amongst the world’s largest companies (KPMG, 2015). Academic evidence, however, suggests that the quality of this corporate reporting remains low as it fails to provide a sufficiently balanced and complete account of corporate activities and impacts. Perhaps this is understandable given that such companies are expected to prioritise the needs of the providers of financial capital for decision-useful information rather than a broader stakeholder accountability. In this context, this paper explores the post-financial crisis reporting of Triodos Bank. All shares of Triodos Bank “are held in trust” so that it can protect its mission to “make money work for positive social, environmental and cultural change” (https://www.triodos.co.uk/en/about-triodos/who-we-are/mission-principles/, accessed on 24/3/16). This paper explores the extent to which a values-led organisation unhindered by pressures from the capital market can provide more transparent reporting and hence greater social accountability.</p>
<p>Professor Dr Gudula Deipenbrock Professor of Business Law, HTW Berlin, University of</p>	<p>Current Legal Issues of Managing a German Stock Corporation (Aktiengesellschaft) - More Risks than Freedoms? Managing a German stock corporation (German Aktiengesellschaft) has become increasingly complex and risk-encumbered. The management board of a German Aktiengesellschaft has</p>

<p>Applied Sciences, Berlin, Germany</p>	<p>been facing a continuously growing volume and complexity of duties. The growing volume of relevant laws and regulations has gradually limited the management board's entrepreneurial room for manoeuvre. In addition, the financial risks linked to any infringement of such duties have increased accordingly over the last decades. Apart from corporate failures in specific industry sectors such as those of financial markets, also other, individual corporate scandals have recurrently and only recently again ignited debates on whether the (internal) civil liability regime for members of the management board of a German Aktiengesellschaft vis-à-vis the company adequately balances the various interests at stake. The talk critically introduces selected aspects of these debates in the realm of the German law of stock corporations (Aktienrecht). Does the current internal civil liability regime strike the right balance between providing an adequate entrepreneurial room for manoeuvre on the one hand and responsibility of the members of the management board of a German Aktiengesellschaft for their conduct on the other hand?</p>
<p>Julie Ellison and Karl Belizaire Directors, Social Enterprise Works CIC, Bristol</p>	<p>Does the variety of legal forms available to the social enterprise help increase the social return on investment? The intention is to look at how the different structures and legal forms help to deliver social value. For example, the social firm provides meaningful employment for people with disabilities; the IPS for energy coops tackling fuel poverty and CIC for building community infrastructure with their profits.</p>
<p>Dr David Erdal Honorary Research Fellow, University of St Andrews, Author of 'Beyond the Corporation'</p>	<p>To fleece or not to fleece: employment, economic democracy and their consequences. Businesses constituted democratically, with the ownership rights (information, influence and participation in results) allocated to those who work in the business, make up some 3-5% of the economies of several developed nations. Evidence from the Anglo-American world on employee-owned companies, and from the Latin-European and Latin-American world on worker coops, shows unequivocally that such businesses consistently outperform traditional businesses in several dimensions, including most clearly productivity. Examples include long-lasting and substantial businesses: La Ceramica d'Imola (worker owned since 1874); Zeiss (1891); John Lewis (1929); Mondragon (1956) and many others. A key feature is the replacement of the employment relationship by a membership relationship, which acknowledges the individual as a responsible autonomous person cooperating voluntarily. This contrasts with the traditional legal fiction of selling labour in a master servant relationship which does not acknowledge the responsibility of the individual employed — except in the case of instructed criminal behaviour, when the reality of joint responsibility between master and servant is recognised in law. The fiction justifies the allocation of the constantly-created new wealth not to those responsible, but to the owners of financial instruments. Many of the serious economic problems now prominent have their roots in this institutional design flaw: it concentrates wealth away from wealth-creators, reduces local economic multipliers and gives power without responsibility to financial institutions. Democratic businesses do the opposite: spread wealth, strengthen local economies and reduce or eliminate the power of financial centres to determine corporate purpose.</p>
<p>Dan Gregory Director of Policy, Social Enterprise UK</p>	<p>The politics, policy, popular perception and practice of social enterprise <i>movement</i> in the 21st century This paper considers, first, the politics of social enterprise, in terms of its relationship to more macro political tides and sentiments, and emerging ideological currents. Second, social enterprise policy at the more functional level of Whitehall, through government departments, programmes and initiatives (mainly England focused but sometimes UK-wide). Third, it explores how popular perception of social enterprise has evolved over the same period; in the press, media and among the public at large. Finally, it assesses the more practical progress of social enterprise in our economy; in towns, cities and villages across the UK.</p>
<p>David Hunter Consultant, Bates Wells Braithwaite LLP</p>	<p>The emergence of B Corps in Britain: another milestone towards a holistic economy? When the Companies Act 1985 passed in law in the UK, the general perception was of a binary scenario where there were companies, which existed to maximise profits for their shareholders and there were charities, which existed not to make profits at all, but to help the disadvantaged or support particular causes. As the concepts of social enterprise and social investment have</p>

	<p>gained traction over the intervening thirty years, there has been renewed interest in co-operatives and industrial provident societies (now community benefit societies, or ‘bencoms’) and the creation of a new legal form, the community interest company (CIC). Lately, there has been growing interest in social businesses which do not have the restrictions on ability to distribute surpluses that apply to CICs and bencoms but are committed to a social purpose. The B Corp is the latest attempt to capture what this may look like and mean and this innovation is explored in the context of increasing pressure on business to recognise responsibilities and impact beyond the imperative to maximise short term profits.</p>
<p>Professor Paddy Ireland Professor of Company Law, University of Bristol</p>	<p>The Institutional Origins of Corporate Irresponsibility This paper will argue that much corporate irresponsibility can be traced back to the schizophrenic and Janus-faced nature of corporate shareholding whereby shareholders retain some of the key proprietary privileges of ‘insiders’ (owner-members of companies) at the same time as they enjoy the liability- and responsibility-free privileges of ‘outsiders’ (creditors external to companies). It will also consider the implications of this for corporate governance reform.</p>
<p>Professor Andrew Johnston Professor of Company Law and Corporate Governance, Sheffield University</p> <p>Professor Blanche Segrestin CGS, Mines ParisTech, PSL Research University</p>	<p>The Rise and Fall of the Enterprise: the role of law? In this paper, we look at the emergence of a specific conception of the enterprise which began to emerge in the late nineteenth century. It emphasised the central role of technically specialised management in confronting the unknown, guiding innovation in the face of uncertainty and taking on public service responsibilities. We show that the law accommodated these developments in various ways, but did not positively protect the enterprise. Changes to the law in 1948 and, later, the emergence of corporate governance undermined this type of industrial organisation, and the role of management came to be viewed as a financial rather than technical one. We use this account both to offer a different understanding of the function of management within enterprises, and to demonstrate the shortcomings of current approaches intended to remedy the problem of short-termism.</p>
<p>Dr Anita Mangan Senior Lecturer in Management, Keele Management School, Keele University</p>	<p>What’s in a name? Reflections on the marginalisation of the co-operative as an organisational form The co-operative organisational form has never been more successful in the UK, with co-operatives contributing over £37 billion to across all sectors of the economy in 2015 (Co-operatives UK, 2015). The healthy economic data would suggest that co-operatives are in rude health as they continue to grow in popularity. This article, however, argues that these figures might mask a more deeply rooted issue about the meaning that is attached to co-operation. Drawing on my experiences of participating in two community-focused social innovation workshops, I argue that co-operative principles and organisational structures are almost unknown outside those who already engage with co-operatives (either as member-owners, employee-owners or activists). Although there has been a surge of enthusiasm for terms such as co-production, co-creation, co-design and collaboration in recent years, the terms ‘co-operate’, ‘co-operation’ and ‘co-operative’ rarely feature in conversations about social innovation and social change. Social enterprise and collaboration seem to be the preferred terms in use. The article explores differences between co-operatives and social enterprises as organisational forms, arguing that co-operatives offer a wider range of possibilities for creating social action, social justice and social innovation.</p>
<p>Dr Saura Masconale Visiting Assistant Professor of Law, University of Chicago Law School</p>	<p>Incomplete Markets, Inequality and the Corporate Form This essay explains how the corporation emerges as a rational institution in a world of incomplete markets. Key corporate features such as limited liability, lock-in capital, freely transferable shares, and centralized management would be redundant under the assumption of complete markets, where consumers and producers can write state-contingent contracts. Viewed through this lens, the shareholder primacy rule — under which corporate directors are required to maximize shareholder wealth potentially at the expense of the interests of other stakeholders — emerges as part of the justificatory apparatus that legitimates inequality, rather than as an economically justified principle.</p>
<p>Professor Colin Mayer</p>	<p>The Purposeful Company</p>

<p>Professor of Management Studies, Saïd Business School, University of Oxford</p>	<p>This contribution presents findings from the Purposeful Company research project and report, carried out with the Big Innovation Centre and co-authored with Will Hutton.</p>
<p>Professor Peer Hull Kristensen, Department of Organisation, Copenhagen Business School</p> <p>Professor Glenn Morgan Professor of Management, University of Bristol</p>	<p>Danish Foundations as a form of corporate governance: origins and impacts on firm strategies and society</p> <p>Many of the largest Danish firms are in effect owned by foundations which have been set up by founding families. The paper will explore how this process originated with an emphasis on its social and legal foundations in the context of the development of Danish society in the 19th and 20th centuries. It will discuss what this means for the growth and development of the companies controlled by these foundations and in particular how this relates to the competitive advantages capabilities which characterise Danish companies under contemporary conditions of globalization.</p>
<p>Professor Martin Parker Professor for Organisation and Culture, School of Management, University of Leicester</p>	<p>Alternatives to the Corporation: Towards a School for Organizing</p> <p>One of the consequences of contemporary Business School education is that it cultivates the idea that only some people can organize. But let's consider this word more closely. If we ask, 'How are things organised?', we assume very little about what that particular arrangement looks like. Organizing is a general capacity for human beings, smart chimps who enjoy putting one thing on top of another. Asking about the ways in which human beings arrange and pattern their worlds is a general question, one that might be answered in different ways by any of the human sciences. It is a question that certainly might be answered by pointing to management, because that is a form of organization, but it's not the only one. A 'School for Organizing' would ask 'how do people and things come together to do stuff?' That's an enquiry which would produce descriptions of the shapes of the worlds that human beings make here and now, and that could be enlarged by adding descriptions from other times and places. History, politics, geography and anthropology would be just as relevant as accounting, finance and economics. The point of collecting such descriptions then also might become a kind of catalogue of possibilities, perhaps answering the question, 'How can people and things come together to do stuff?' Rather like a recipe book or toolbox, the catalogue doesn't tell us what we should do, but what we can do, what we are capable of.</p>
<p>Dr Gordon Pearson Honorary Senior Researcher, Management School, Keele University, Author of 'The Road to Cooperation'</p>	<p>Replacing Shareholder Primacy</p> <p>The content of this paper was prompted initially by my practical experience of the industrial corporate landscape. One aspect of that landscape came to be heavily influenced by the idea that company directors have a duty to maximise shareholder wealth, as expressed by Milton Friedman in Capitalism and Freedom in 1962. The widespread acceptance of Friedman's shareholder primacy approach, which took around two decades to become dominant, appears to have had important detrimental impacts on real economic progress and the common good. The historical, legal and theoretical foundations of shareholder primacy are inadequate to non-existent. The paper concludes that a stronger legal and theoretical foundation is available to support a long term company focus which would be less narrowly focused on shareholder interests, and more beneficial for the economy and population as a whole, including future generations.</p>
<p>Dr Rory Ridley-Duff Reader in Cooperative and Social Enterprise, Department of Management, Sheffield Hallam University</p>	<p>The internationalisation of the FairShares Model: navigating company law in the USA, UK and Australia</p> <p>This paper is a reflexive account of voluntary action to support the implementation of the FairShares Model in three Anglo-American settings. Between February 2015 and May 2016, social entrepreneurs in the UK, US and Australia worked on constituting three different FairShares Companies: Dojo4Life Ltd (UK), AnyShare Society (US) and AbilityMate (Australia). Data was retrieved and coded based on the research practice of naturalistic inquiry to establish variations in practice co-constructed by each set of actors. The paper interprets the influence of legal frameworks, national cultures and entrepreneurial preferences on each set of Articles of Association based on analysis of online exchanges at the FairShares Association, private correspondence made available by each company's founding members and interviews with members of the FairShares Association. The paper contributes to knowledge by giving the first rich picture of the internationalisation of the FairShares Model.</p>

<p>Professor Beate Sjøfjell Professor of Company Law, University of Oslo</p>	<p>The Corporation as Sustainable Market Actor</p>
<p>Professor Lorraine Talbot Professor of Company Law, University of York</p>	<p>How to Make the Company Fit for Social Purpose This paper maintains that the market is unable to deliver equality and human flourishing because the market itself is the operation of an unequal and exploitative relationship between capital and labour. It shows how this relationship is exacerbated in the corporate form as capital continues to claim uncompensated labour power but additionally its claims become fungible and transferable properties. This allows capital to extract values in both the national and international arena with little constraint on its movement. Political environments can modify the relationship between labour and capital, by, for example enabling organised labour. However in the current period there is little appetite for such equalising activities. Instead there is a perpetual shift of political power to capital at the expense of labour. The paper outlines a number of areas where capital, as represented by corporations, shape the political, regulatory and business environment. It examines the business of corporate lobbying, auditing and social auditing/CSR as some examples of the exercise of corporate control.</p>
<p>Dr Georgina Tsagas Lecturer in Law, University of Bristol</p>	<p>The modernisation of UK company law: towards a taxonomy of shareholders The UK Companies Act 2006 replaced the common law duty to act in good faith in the interests of the company, with the duty to promote the success of the company for the benefit of its members as a whole. Whether the adoption of the ‘Enlightened Shareholder Value’ norm of section 172 CA 2006 prompts directors to consider the interests of third parties forms only one aspect of the academic debate. Another question which deserves attention is ‘who the fictional shareholder to whom corporate managers owe a duty to’ is. Using section 172 CA 2006 as a point of reference, the paper analyses the investor horizons and incentives of different types of shareholders with an aim of creating a shareholder taxonomy that questions the efficacy of the shareholder primacy norm prevalent in UK company law.</p>
<p>Dr Jeroen Veldman Senior Research Fellow, Cass Business School, City University, London</p> <p>Professor Hugh Willmott Professor of Management, Cass Business School, City University London, and Research Professor in Organisational Studies, Cardiff University</p>	<p>The modern Corporation in theory and practice We will present two types of findings from the modern corporation project. Overall, we find that over the past thirty years conceptual and empirical developments in the field of corporate governance have been largely confined to a highly problematic concept of the corporation and its legal and economic constitution. This problematic concept has marginalized or disregarded questions about the legal, economic, and political status and outcomes of the corporation. It has also informed a limited dyadic conception of corporate governance where relations between boards and investors are privileged. The outcome has been a monoprogrammatic approach to corporate governance that excludes other considerations of what the corporation is, and who it could serve. Conversely, it has prioritized the preferences of shareholders, managers, and boards.</p> <p>We advance a broader concept of corporate governance in three directions. First, we provide a broader historical perspective on the governance of corporations to appreciate how the corporate form provides a highly specific legal construct – one that has provided strong privileges and protections to particular groups but on the basis of a tradeoff in terms of the release of ownership claims. We argue that this construct has a quasi-social status (see Berle & Means, 2007[1932]) that, logically, should be accompanied by broad protections for other constituencies that have a stake in the corporation, including employees, municipalities, states, and supranational trade blocs. Second, we provide a broader perspective on corporate governance from the perspective of the social sciences. Drawing upon the contributions of leading scholars from company law, economics, accounting, politics, and management, we provide an account of why and how the theory of the firm, and in its wake corporate governance theory and practice, can be expanded to become more inclusive. Third, we note the presence, internationally, of a diverse set of actors in the field of corporate governance - business people, financial actors, regulators, standard setters and others – that are expressing degrees of disillusionment with the dominant theory and practice of corporate governance and are supportive of alternatives. Congruent with their concerns, we present some bottom-up examples of working governance models and forms of ‘best practice’ drawn from our current</p>

	<p>project that is informed by our collaboration with these stakeholders. In these ways, we sketch an outline of new foundations for future governance as we identify theories, actors, business models and contexts that acknowledge the diversity of corporate (governance) models in use that can guide innovative and transformative practices in the domain of corporate governance.</p>
<p>Professor Charlotte Villiers Professor of Company Law, University of Bristol</p>	<p>Corporate Governance and an Ethics of Care</p> <p>In an article published in <i>Business and Society</i> in the late 1990's William Frederick wrote the following words: "New paradigms tend to emerge when conventional ways of thinking no longer provide satisfactory answers or when normal science produces only humdrum answers. But because new paradigms suggest novel approaches, they typically encounter resistance." He added that "corporate social performance theorizing has reached a crisis point, or very nearly a dead end. Few answers are emerging to the urgent pressures and crisis facing today's business and society." Indeed, we have witnessed since Frederick's paper an intensification of the problems he identified and corporate and financial crises that have shattered the trust of citizens around the world. In this paper I suggest that we are still stuck at the point Frederick was describing twenty years ago. I also suggest that we have an opportunity to pick up on an emerging paradigm in the ethic of care and its close relative, feminist justice. Instead of fiddling "while the world burns" we might adopt the normative direction offered by this theoretical perspective and thereby achieve some of the goals envisioned such as improvement of market functioning and internalization of a corporation's externalities.</p>
<p>Janet Williamson Senior Policy Officer, Economics and Social Affairs Department, Trade Union Congress</p>	<p>Challenging Shareholder Primacy – the case for workers' voice in corporate governance</p>