**BERLE VII: AN ASPEN INSTITUTE/BERLE CENTER SYMPOSIUM**

**“The Nature of the Modern Corporation”**

**MAY 26-27, 2015**

**SEATTLE, WASHINGTON**

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BERLE VII: DAY ONE

TUESDAY, MAY 26, 2015

7:30 am BREAKFAST

8:10 am WELCOME
• CHUCK O’KELLEY, The Adolf A. Berle, Jr. Center on Corporations, Law & Society
• MIGUEL PADRO, Aspen Institute, Business and Society Program

SESSION A

8:15 am DOUG MCADAM, PROFESSOR OF SOCIOLOGY, STANFORD UNIVERSITY
“The Existential Function of the Social”

Is there a “workable” alternative to the one dimensional economic man that so dominates economic analysis of the firm? In Chapter 2 of A Theory of Fields, Doug McAdam and Neil Fligstein provide an overview of an alternative, sociologically based, theory of human nature. In his session Doug will lead a discussion of this topic (as his passions dictate) and will certainly help us better understand the existential functions of the social.

9:15 am NEIL FLIGSTEIN, PROFESSOR OF SOCIOLOGY, UNIVERSITY OF CALIFORNIA AT BERKELEY
“All the Incentives were Wrong: Explaining Systemic Fraud in the Banking Industry in the Wake of the Financial Crisis”

From a “field theory” point of view, Neil will explore and explain why financial institutions committed predatory fraud and securities fraud in the run up to the financial crisis.

10:15 am BREAK

SESSION B

10:30 am BRETT MCDONNELL, PROFESSOR OF LAW, UNIVERSITY OF MINNESOTA
“Benefit Corporations and Strategic Action Fields or (The Existential Failing of Delaware)”

Boldly going where angels fear to tread, Brett will apply what he has learned from a close reading of A Theory of Fields to a legal puzzle, an explanation of the rise and evolution of the benefit corporation in Delaware, the cradle of American corporate law.
11:30 am  **TAMARA BELINFANTI, PROFESSOR OF LAW, NEW YORK LAW SCHOOL**

“A Pattern Language: Designing the Mission-Controlled Corporation”

Tamara explores the social architecture of business organizations that are explicitly designed around shared prosperity rather than private profit creation, and devises what renowned architect Christopher Alexander calls “a pattern language” for generative design that can be replicated by other interested corporations. In his seminal work, *The Timeless Way of Building*, Alexander explores the physical architecture of buildings and communities that make them feel “alive”. To articulate and more precisely define this quality Alexander suggests that we attempt to first discern the patterns that make the building feel alive, and then we need to develop a language to describe them – a patterned language. Similarly Tamara identifies the patterns present in corporations successfully designed around shared prosperity, and the law’s impact in enabling or hindering each identified pattern.

Tamara will author this paper with Marjorie Kelly, a leading business consultant and author of *Owning Our Future* and the *Divine Right of Capital*.

12:30 pm  **LUNCH**

**SESSION C**

1:30 pm  **MARINA WELKER, ASSOCIATE PROFESSOR OF ANTHROPOLOGY, CORNELL UNIVERSITY**

“Notes on the Difficulty of Studying the Corporation”

Media, activist, and scholarly discourses commonly depict corporations as coherent, intentional, profit-maximizing actors. This renders the corporation as a knowable and culpable actor, but relies on dematerialized ideologies of the liberal person and *Homo economicus* that social theorists widely criticize. By applying anthropological models of relational personhood to analyze the multiple ways in which corporations are enacted, Marina argues for decoupling corporate agency and responsibility from intentionality, using human rights abuses in extractive industry zones in Indonesia as a case study. In dialogue with social studies of the state, she seeks to move beyond the critique of reification to examine how complex institutions are enacted and entwined with social violence.

2:30 pm  **GREG URBAN, PROFESSOR OF ANTHROPOLOGY, UNIVERSITY OF PENNSYLVANIA**

“The Corporation and the Flow of Culture”

Greg presents a potential breakthrough in conceptualizing the corporation from the point of view of culture — namely, viewing it as a nodal point within the circulation or flow of culture. His paper will distinguish the for profit business enterprise as cultural formation from the legal notion of the corporation, but also relate the cultural conception to the law and legal institutions. It will also contrast the nodal point within cultural flow idea from Coase's economic conception of the firm as a device for reducing transaction costs.
3:45 pm  **Jerry Davis, Professor of Management, University of Michigan**  
“What might replace the modern corporation? Capitalist institutions after Nikefication?”

Public corporations were a good fit with forms of production and distribution characterized by vertical integration and economies of scale (e.g., mass production of cars; large-scale infrastructure such as land-based telephone networks). But production today is increasingly disaggregated, and capital equipment keeps getting cheaper and smaller in scale; thus, the number of public corporations in the US has been declining for 15 years. Jerry will explore alternative organizational formats enabled by dispersed production methods and globally shared information.

4:15 pm  **Jerry Davis, Professor of Management, University of Michigan**  
**Josh Klein, Hacker/Technologist/Futurist**  
**Miguel Padro, Aspen Institute**

Discussion Topic -- “How to enable a humane future, even with lawyers.”

To kick off this discussion, Jerry and Josh will educate us about the present and the future. First, Jerry will divulge “the things you thought were true but aren’t any more about the organization of our economy,” and then Josh will reveal “a bunch of things happening now that sketch out divergent future possibilities.” Miguel will moderate.

5:15 pm  **Conclusion of Day One**

6:00 pm  **Cocktails Followed by Dinner at The Rainier Club**  
(WE WILL BE SEATED FOR DINNER AT 7:00 PM)

8:00 pm  Remarks by **The Honorable Jed Rakoff**
BERLE VII: DAY TWO

WEDNESDAY, MAY 27, 2015

7:30 am BREAKFAST

SESSION E

8:15 am SAULE OMAROVA, PROFESSOR OF LAW, CORNELL UNIVERSITY
BOB HOCKETT, PROFESSOR OF LAW, CORNELL UNIVERSITY
“The Public Nature of the Private Corporation: The Real Sense in which Banks are ‘Special?’”

Saule and Bob will elaborate their interpretation of the U.S. banking system as a public-private partnership aimed at assisting the process of capital formation by households and small enterprises. Viewing the banking system through this lens offers two critical policy-relevant insights. One is that most features of the U.S. bank-regulatory regime that set it apart from other finance-regulatory regimes - e.g., those governing securities firms and investment companies - are readily justified. The other is that to understand these defining features of the bank-regulatory regime is also to understand the original purpose of the extraordinary privilege known as shareholder limited liability - even in nonbanking settings. Modern bank regulation, which continues to rely heavily upon capital regulation and strict prohibitions on ultra vires activity, is in essence the sole vestige of what used to be - and should once again be - corporate regulation. Just as the banking system still is, so did the (conditional) limited liability regime used to be: a means by which the state partners with private capital to foster the never-completed task of local and national development.

9:15 am CLAIRE HILL, PROFESSOR OF LAW, UNIVERSITY OF MINNESOTA
“The Law and Morality of Externalities”

It is uncontroversial that corporations ought to 'internalize' their negative externalities. The paradigmatic example is pollution. But when attention turns to what we might call corporate good citizenry, the tension with shareholder value maximization is stressed. Claire will argue that the difference turns on an unacknowledged and undefended value-laden construction of what constitutes an externality.

10:15 am BREAK
SESSION F

10:30 am  GWENDOLYN GORDON, ASSISTANT PROFESSOR OF LEGAL STUDIES AND BUSINESS ETHICS, UNIVERSITY OF PENNSYLVANIA
“Who Speaks the Culture of the Corporation?”

In a recent paper, Gwen looked at the concept of culture in corporate law, and specifically at the way that jurists articulate their understandings of the relationship between homogeny and group formation. This paper will argue that theorizations of group-identity visible in recent cases -- Burwell v. Hobby Lobby Stores and Citizens United chief among them -- evince a new understanding of the nature of the corporation and its place in society, one that in many ways resembles Adolf Berle’s mid-career corporatism.

11:30 am  PHILIP STERN, ASSOCIATE PROFESSOR OF HISTORY, DUKE UNIVERSITY
“The English East India Company & the Company State—Implications for our Understanding of the Modern Corporation”

To the extent that the literature on the English East India Company engages the implications of the Company’s history on that of the modern corporation, it is as primarily a business concern: that is, as the first “modern multinational.” Building off of his previous work on the early East India Company specifically and his current book-in-progress on the role of the corporation in shaping the early modern and modern British empire, Phil suggests a different perspective on the legacies of the early East India Company entirely: that is, as a political rather than commercial body. Thinking about the East India Company in the context of the wider ecology of early modern corporations, he suggests that for the vast majority of its life span, the corporation generally and the East India Company particularly was as much a form of government as business, and that the controversies and considerations surrounding it were indeed less about its capacities as a rights-bearing individual and more as a fellowship, association, society, and, in Hobbes’s words, “a political system.” Phil will conclude by reflecting on what perspective the history of the colonial corporation can offer on our understanding today of what the corporation is, and perhaps what it should (and should not) be.

12:30 pm  LUNCH
Credit ratings play an important role in the allocation of credit, the regulation of financial institutions, and risk management in derivatives markets. Bruce's paper discusses the invention and spread of credit ratings, drawing on perspectives from institutional theory and the sociology of knowledge, and problematizes the issue of their predictive accuracy. The issue of accuracy is closely tied to the legal status accorded to ratings. That status was contested for much of the nineteenth century, settled for much of the twentieth, and is being re-opened following the 2008 financial crisis.

David argues that the corporation, which serves as neoliberalism's homo economicus—its paradigmatic economic actor—is in fact the source of its greatest internal contradictions. Postwar neoliberals immediately recognized that overcoming the "problem of the corporation" was the key precondition for the acceptance of neoliberal doctrine. Overcoming it required not just theorizing away the problem of monopoly, but also retheorizing the corporation itself. Free-market doctrine could hardly have been put across were it conceded that corporations, our lead market actors, are state-created, legally privileged entities, and thus alien to a truly free market. Corporations thus had to be reinterpreted as a form of private partnership, a "nexus" of private contracts among self-interested actors. Institutionalized, this produces the neoliberal corporation, which operates on the novel imperative of maximizing short-term share price. But, argues David, this manner of papering over the fundamental contradiction between free market principle and the corporation's government origins only exacerbates other contradictions. Once the true nature of the corporate form is understood, the neoliberal project of a free market corporate economy is shown to be a deleterious contradiction in terms.
Session H

3:45 pm  **FRANK DOBBIN, PROFESSOR OF SOCIOLOGY, HARVARD UNIVERSITY**  
“The Shareholder Value Revolution”

**WITH COMMENTARY BY BILL BRATTON, PROFESSOR OF LAW, UNIVERSITY OF PENNSYLVANIA**

Frank will take a field approach and a sociology of knowledge approach to understanding the shareholder value revolution. Why did only parts of it spread — not key parts that were to protect shareholders from executive incompetence (board independence) or malfeasance (executive equity)? Why does it still prevail despite a remarkable lack of econometric evidence that it is does what it is claimed to do (increase shareholder value), and relatedly why is it that an untested theory from a couple of economists had such an influence? Characteristics of the field and fields in general go a long way to explaining this.

4:45 pm  **CLOSING REMARKS AND THOUGHTS**

5:00 pm  **CLOSING RECEPTION**