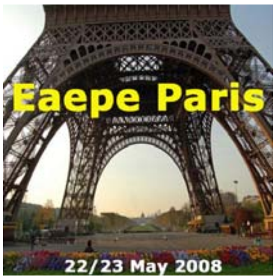


EAEPE International Conference

"Governing the Business Enterprise: Ownership, Institutions, and Society"

22 and 23 May 2008

CONSERVATOIRE NATIONAL DES ARTS ET METIERS

Abstracts, 22nd of May :

<u>9 :30 – 11 :00 « Regulating the Dynamics of Capitalism »,</u>
<u>moderated by **P. Petit** (Cnrs, CEPN)</u>

R. Boyer (Cnrs, PSE) – The Enterprise issue and the institutional analysis of capitalism

Güler Aras (Yildiz Technical University, Istanbul) et David Crowther (De Montfort University, UK) - The Durable Corporation: Re-examining sustainability in an era of global governance

For more than 20 years the starting point for any discussion of sustainable corporate activity has been the Brundtland Report. Its concern with the effect which action taken in the present has upon the options available in the future has directly led to glib assumptions that sustainable development is both desirable and possible and that corporation can demonstrate sustainability merely by continuing to exist into the future. There have been various descendents of Brundtland, including the concept of the Triple Bottom Line. This in turn has led to an assumption that addressing the three aspects of economic, social and environmental is all that is necessary in order to ensure not just sustainability but to also enable sustainable development. It is our argument that these conceptions is not just incorrect but also positively misleading through an obfuscation of the key issues and have led to an inevitable outcome of fallacious complacency. It is therefore time to re-examine the legacy of Bruntland and to redefine what is meant by sustainable activity. In order to do this we reject the accepted terms of sustainability and sustainable development, preferring instead the term durability to emphasise the change in focus. From this we argue for a rejection of the Triple Bottom Line as insufficiently refined for practical use, suggesting instead alternatives developed from our own work.

<u>11 :15 – 12 :45 « Governing the Business Enterprise »,</u>
<u>moderated by **O. Weinstein** (Université Paris XIII Nord)</u>

Th. Clarke (University of Technology Sydney, Australia, Centre for Corporate Governance) – The ownership perspective and beyond: a critique of Anglo-American model of corporate governance

There is a developing literature comparing different models of capitalism from alternative analytical frameworks highlighting the strengths and weaknesses of diverse forms of capitalism, and the prospects for institutional diversity when confronted with growing pressures for international economic integration.
This paper examines how different varieties of capitalism produce different levels of inequality. Specifically how the Anglo-American variant of corporate governance in its US manifestation afforded CEOs of large corporations inordinate power and wealth, and the consequences of this for inequality in wider society. Arrogation of an increasing share of the wealth of corporations by CEOs impacts upon relationships with other stakeholders and displaces CEOs objectives. The significance is that this is precisely the model of capitalism that is being propagated vigorously throughout the world.

This paper challenges whether a universal corporate governance system is practical, necessary or desirable. The increasingly recognized premium for governance is considered in the context of a globalizing economy. The implications of the deregulation of finance and the globalization of capital markets are examined, with a focus on the growth of equity markets and the dominant position of the Anglo-American stock exchanges. The convergence thesis is debated, examining different theoretical arguments for and against the inevitability of convergence of corporate governance systems. Finally the future direction of corporate governance trends is questioned, with the likelihood of greater complexity rather than uniformity emerging from current developments. While capital markets have acquired an apparently irresistible force in the world economy, it still appears that institutional complementarities at the national and regional level represent immovable governance objects.

A. Rebérioux (Université Paris X Nanterre) – Governing the business firm and labour relationships

Does corporate governance matter for employment? We use micro-data for French establishments to examine the influence of equity ownership structure (stock market listing and identity of shareholders) on human resource management practices. The evolutions of the French model of corporate governance have increased the requirements for financial returns on listed companies. Those requirements may influence the way labour is managed. Our findings confirm the importance of listing and, to a lesser extent, of the identity of shareholders as determinants of human resource management practices, considering temporary work arrangements (agency work, fixed-term contracts and sub-contracting), pay policy (wage levels and use of variable pay) and training expenditures. More precisely, we find that financial return requirements result in HRM practices focused on a limited core of stable employees who enjoy relatively favourable working conditions, in terms of wages and training. However, these employees are not entirely shielded from the business cycle, because of the very pronounced use of variable and reversible forms of pay.

15 :00 – 16 :30 « Accounting and Economics of the Firm as an Entity »,
moderated by **C. R. Baker** (Adelphi University)

S. Sunder (Yale University) – Accounting for Enterprise Income and Value

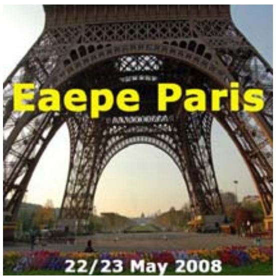
In the neoclassical model of the firm, surplus of the firm is assumed to accrue to its owner --the supplier of equity capital. Contract model suggests a distribution of the surplus among various agents depending on the imperfections of the markets in which they transact with the firm. If the share of the surplus to an agent declines with the perfection of the market in which he transacts, shareholders should be expected to get only a small piece of the pie, violating the usual assumption. The paper explores an extensive income and value concepts that include income from enterprise to all participants, and the problems of measurement. It also examines the implications of extensive income and value for what we do and do not know about the consequences of corporate mergers and acquisitions.

Y. Biondi (Cnrs, CERAG and Cnam) – Accounting, Economics and Law of the Firm as an Enterprise Entity

For those concerned with the nature and role of the firm in economy and society, these are challenging times. The scandals surrounding the failures and shortcomings associated with Enron, WorldCom and many other corporations have focused attention on accounting, governance and regulation policies in a way many may never imagined and few welcomed. As many scholars have recently acknowledged, reforms are necessary, in some instances to protect shareholders.

The idea of the firm as an enterprise entity implies a comprehensive approach that integrates economics, accounting, and law. For a new perspective appears to be required to challenge some received doctrines and promote a better understanding of the current state of the firm. That idea may provide the clue for comprehending the firm as a managed dynamic system, characterized by different structures of production: institutional, organizational or epistemic (related respectively to the nature and role of institutions, internal organization, and knowledge in the firm).

Accordingly, the accounting system may constitute the field where the view of the firm as an enterprise entity may show the joint implications of economic, accounting, and legal matters. In a world featured by real dynamics and complexity, the accounting system copes with the economic and monetary process generated by the whole enterprise, and deals with the representation of its business capitals and incomes. It constitutes the mode that allows this special process to exist and function under autonomy from and interaction with external markets or institutionalised ownership claims. This entity approach has relevant implications for overwhelming issues of enterprise governance, regulation and accountability.



Abstracts, 23rd of May :

9:00 – 10:30 « The Regulation of the Business Enterprise », moderated by **A. Canziani** (Università di Brescia)

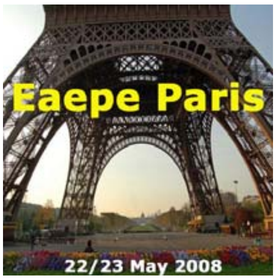
K. Strasser and Ph. Blumberg (University of Connecticut School of Law) – Law and Economics of Enterprise Groups

Modern large business is, in economic reality, one integrated enterprise, with common control and economic integration throughout. Yet the prevailing legal models are, for the most part, oblivious to this. These models see many separate corporations which make up the business and often overlook the larger whole. The result of this outdated view is a mismatch between business reality and legal form which can lead to poor legal and regulatory decision-making and ineffectual public control. While there is some change evident today, overall the law's response to this mismatch has been piecemeal and unsystematic. After reviewing how we got to this unhappy point, this paper will sketch out a new legal theory of enterprise analysis to replace the existing legal models. Enterprise analysis looks to the policies and rules of the specific body of law at issue, such as securities, tax, or bankruptcy, to determine a specific model for the legal problem presented.

R. Avi-Yonah (University of Michigan School of Law) - Taxation, corporate social responsibility and the business enterprise

Under the aggregate or nexus of contracts view of the corporation, which is the dominant view among contemporary corporate scholars, corporate social responsibility (CSR) is an illegitimate attempt by managers to tax shareholders without their consent, and leads to managers being unaccountable to the shareholders that elected them. If so, management can be argued also to have a responsibility to maximize shareholder profits by minimizing corporate taxes as much as possible, and the state has no business in encouraging corporations to engage in illegitimate CSR through the tax system. This paper argues that both of these views, when taken to their extreme, are misguided. First, if corporations are not permitted to engage in CSR, then all social responsibility functions devolve on the state. Both taxing and spending become, to use Milton Friedman's language, purely governmental functions. But if corporate managers are required to minimize tax payments as much as possible, that could mean that the state is left without adequate resources to fulfill its governmental function. Thus, the aggregate view of the corporation, taken to its logical extreme, is self-defeating, because it could mean that neither corporations nor the government can fulfill their responsibilities to society. That is not an acceptable outcome. Second, even if from the perspective of management CSR is an illegitimate tax on shareholders, the government could still legitimately try to encourage corporations to engage in CSR by giving tax incentives. Assuming that some CSR activities are better performed by the private sector than by the government, it seems acceptable for the government to refrain from collecting certain amounts of tax in order to incentivize the private sector to engage in those activities. This is just as legitimate as the government taxing and then using is procurement muscle (paid for by the taxes) to encourage corporations to engage in CSR, as many governments have recently done.

Unfortunately, **Prof. Avi-Yonah** can not attend the conference.



10 :40 – 12 :10 « The Firm in the Knowledge Economics », moderated by **Y. Biondi** (Cnrs, CERAG and Cnam)

M. Dietrich (Sheffield University) et J. Krafft (Cnrs, Gredeg) – Firm Governance in the knowledge economy

The basic message of this paper can be set out in terms of three statements:

1. Firm governance appears to be complex and multi-faceted, and that this complexity exists for sound reasons.
2. Any analysis of firm governance that suggests a single, optimal set of structures and procedures is probably inconsistent with this empirical observation.
3. The fundamental issue involved with the complexity of firm governance concerns the management of knowledge as well as the management of authority.

This paper is an attempt to unravel the issues involved with statements (1), (2) and (3).

B. Coriat et O. Weinstein (Université Paris XIII Nord) – Intellectual property regimes, firms, and the commoditization of knowledge

This paper aims to study, in an historical and institutional perspective, the evolution of intellectual property regimes (IPR), and more specifically patents regimes, since the emergence of industrial capitalism, in the United States. We will thus analyse intellectual property in the context of the overall transformations of capitalism, by focusing on two historical periods. First, the "fordist" phase of formation of corporate capitalism, dominated by large firms. Later, the recent period, beginning in the 1980s, characterized by the rising power of finance. By adopting an institutional complementarities approach, we will try to show how the characters and implications of IPR regimes may be understood only in relation with the transformations of the main institutional forms of capitalism: forms of firms, conditions of labor relations (the "wage-labor nexus) and characters of markets (product and financial markets).

14 :00 – 15 :30 « Law and Economics of the Firm » moderated by **Th. Kirat** (Cnrs, IRISES)

P. Zumbansen (Osgoode Hall Law School, York University, Toronto, CLPE Network) – Knowledge Society Corporate Governance: The New Political Economy of the Embedded Firm

The emergence of the knowledge society has been prompting a reconceptualization of public and private forms of governance. Both political and private' actors such as non-governmental organizations, corporations, collectives and individuals operate under conditions of extreme uncertainty. On the one hand, governments and governmental actors have become increasingly dependent on fragmented, societal knowledge, which leads to an important reconfiguration of the relations between political and civil society actors. The state, in its dependence on constantly updated information, is at the same time implicated in the production of that very information by creating rules and facilitating institutional growth for knowledge production and dissemination. On the other, corporations and other societal actors face pressing governance challenges that in many ways mirror those of contemporary political governing bodies.

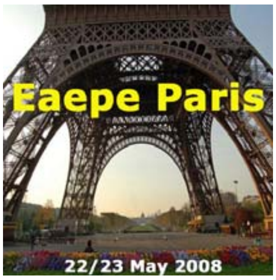
The dependence of management on expert knowledge, which is generated and communicated both in- and outside of the firm, has grown in correlation with the expanding reach of business activities and their impact. With governments and corporations as knowledge actors, producers and consumers, the pressure on law to facilitate and to enable these processes has exponentially grown. No longer clearly situated in an either exclusively public or private sphere, political', private', corporate actors are both authors and receivers of the rules that govern their behaviour. While this new embeddedness of societal activity in a decentralized, deterritorialized and dehierarchized knowledge society suggests a paradigmatic move beyond distinctions based on institutional manifestation (state/market) or political, normative demarcation (public/private), many of the formerly posed formal and substantive questions remain unanswered. The present paper traces the parallel governance challenges that present themselves to both present-day political governments and corporate management by placing particular emphasis on the knowledge-driven and knowledge-driving nature of all decision-making. The paper suggests that former distinctions are helpful in identifying the different normative starting points in a debate, they must today be detached from the institutional framework within which they were continuously developed. As governments and corporations are today faced with the need to navigate a knowledge society marked by extreme forms of functional differentiation, the role of law must be reconceived with regard to this structural transformation.

R. Dibadj (University of San Francisco School of Law) – Theory of the Firm: Norms and Interdisciplinarity

Existing theories of the firm are weak, as witnessed by recurrent crises in corporate governance. This Article identifies and begins to remedy this gap. It argues that the firm needs to be conceptualized as an entity that evolves norms within a social construct.

Orthodox economic models remain focused on equilibria that putatively emerge from the activities of rational actors. While an improvement, institutional economics persists in incorrectly modeling the firm as a series of efficient contracts. For its part, the behavioral project analyses individuals, not institutions like the firm. Organizational behavioral economics has yet to emerge.

Firms evolve norms. But these norms can be dangerous not only to those outside the organization, but also to those within it. Not only does a norms-based theory of the firm better accord with actual firm behavior, but it provides a fertile direction for law and economics. Institutional economists can tackle the problem of incomplete contracts using norms as responses to high contracting costs; behavioral economists can extend their insights to organizational entities by conceptualizing norms as collective heuristics. Perhaps even more importantly, a norms-based theory of the firm invites interdisciplinary collaboration: accounting, psychology, sociology, and even anthropology also have important places at the table.



15 :45 – 17 :15 « Managing the Social Responsibility »,
moderated by **R. Perez** (Université de Montpellier, emeritus)

A. Hatchuel (Ecole des Mines, Paris) – The corporation against the enterprise: Can research foster new models of collective management?

The current corporate and business crises occur simultaneously in the relationships between employees and managers, and between managers and shareholders. They reveal an important theoretical deficiency: except from classical corporate contracts, no other model supports firms' activities. But corporate contracts, and especially the French publicly traded corporations (Sociétés anonymes), doesn't capture the firm as an essential form of collective action creating knowledge, values and social welfare. To capture the reality of contemporary enterprise and its creative processes, this article suggest a new model of an enterprise where flows of collective activities, shaped by a management capability, aims at creating new common potentials for its members. This model enables us to design new legal norms which could be consistent both with the reality of creative collective action and with a free and competitive market.

M. Rubinstein (Université Paris VIII Diderot) – The social responsibility of business: from business ethics to business strategy

Since the nineties, the social responsibility of business (CSR) is increasingly appreciated by listed corporations. Generally speaking, just like the stakeholder model, the CSR model grapples with economic efficiency. In fact, the recent transformations of the business firms suggest new perspectives on the matter. CSR is being to be considered a constitutive part of business strategies, because of economic rents and enhanced property rights it allows.