

Fundamentals of Governance—Syllabus
MBA Winter-Spring 2022
Speaker invites to be confirmed; Draft Syllabus

FOR BIDDING PURPOSES ONLY

Bruce Kogut

TA: TBA

Sanford C. Bernstein Professor of Leadership and Ethics
Office Hours: hour before/after class; on request

Course Description

Topics: The Public Firm, The Private Start-up, Stewardship, Social Impact and Social Ratings, Gender and Boards, Political Contributions, Blockchain Trading Platforms and Blockchain supply chains, business groups, country differences.

The success of organizations and firms in driving the wealth and happiness of a society depends greatly on how well they are governed. In the standard view of the shareholder model of governance, corporate governance seeks to make organizations more efficient. In reality, governance is more complex than that; it is as much about power as it is about efficiency. In this course, we analyze how different governance structures function, express power, and achieve efficient outcomes and sometimes fail.

We will also discuss questions often missed, if not avoided, in classes on governance. If and when is the exercise of power fair and just? In whose interest should governance be exercised? Is it true, as often presumed, that the American public firm balances a just distribution of power with an efficient form of governance? These questions have taken on an unusual salience today and are lodged in a larger, often political, debate. Are public or private firms delivering providing stakeholders, such as shareholders, employees, and society as a whole, with economic benefit? Whom do corporations serve? What is good performance? Are they betraying national interests by outsourcing, by employing immigrants, or by locating overseas to gain tax benefits and maximize profits?

Questions of governance can be formulated and addressed in many ways, but law and economics analysis largely dominates contemporary discussions of the subject. Many theories of governance are preoccupied with the relationship between legal institutions of governance and economic performance from the shareholder perspective. We expand this perspective to ask ultimately, are there alternative forms of governance to the public corporation? Would they satisfy stakeholders, and the wider public, more than the shareholder governance that is so much under assault today?

As this course is short, we focus primarily, though not entirely, on the United States. We compare the governance systems of the public firm, the private firm, the sports league, and the non-profit. We will primarily discuss the board, shareholders, institutional investors, stakeholders, and management. However, there will also be plenty of moments to think about the dynamics and personalities of families, CEOs, and directors. We will analyze issues of *corporate* governance by drawing on the relevant aspects law and regulation. However, we will not look deeply at the functioning of governance at particular junctures, such as bankruptcy.

This course also aims to address governance as it relates to currently relevant issues. We study the public firm how to think about its social impact. ESG rated companies and sustainability goals are often in the news. Innovations have created new financial instruments and markets consisting of green bonds, social funds, and impact investing. Recently, the largest private equity funds have created specialized funds for impact investing. These include Apollo, Carlyle, TPG, and KKR. Goldman Sachs has launched a Social Impact ETF through a partnership with Just Capital to provide the indexing. This is a new and fast-moving space, and I've allocated two sessions to it. Be open to forward-looking discussions. Not everything is looking backward through a case study. This is why the final day consists of a discussion, and your presentations, on designing governance for blockchain communities.

Your instructor: Bruce Kogut

I have taught in many places around the world. I lived in Europe (primarily France, but also Sweden and Germany) for many years, and I was a chaired full professor at Wharton and INSEAD, before coming to CBS in 2007. I ran intensive training programs for the ANC soon after the collapse of apartheid and a program for multi-religious dialogue and entrepreneurship financed by the Ariane de Rothschild Foundation. I have served on the boards of corporations and non-profits primarily outside of the US, including the board of 3i Infotech India, the non-profit board of the International School of Paris, the academic boards of IFMR (Chennai), Skema (France), and Skolkovo (Russia), and the advisory boards to chief economist at the EBRD, Unlimited India., and the Institute for Advanced Study in Berlin.

I am currently a member on the advisory board to the Institut Polytechnique de Paris. I also founded INSEAD's Social Enterprise Program and have run centers for research and curriculum at Wharton and Columbia Business school and served as the Scientific Director of EIASM located in Belgium. Currently, I work on applications of data analytics to the virality of fake news, to political bias in economic text, to the effects of AI on the future of work, and to the performance of firms and micro-finance organizations, among other things including...governance.

You can possibly still find a clip of me on the John Stewart Show (John Oliver), trying to explain what ethics is about for MBAs. While leading the Bernstein Center, I helped produce a film on financial innovation, starring among others star academics (Nobel prize winner Robert Solow and CBS faculty Bruce Greenwald), business professionals (Blythe Masters, Peter Stringham), politicians (Barney Frank), Journalists (Andrew Sorkin), City government (Alicja Glen). I encourage you to read some articles that I have written for the more popular press such as HBR on social enterprise; 538 on political influence in economic research; Medium on Zombie owners (with D Wang) and on the passing of Jacque Chirac; Forbes on the Greening of the Apple. Just google the above along with my name. Have a look.

General Class Structure

Every class is broken approximately into two periods. Please consult the calendar and syllabus at the start of the day for updates.

We will have a few speakers. They are remarkable people who are spending valuable time speaking to our class. Let's be great hosts and come prepared and engaged.

You will be asked to answer poll questions for each day, due by 7 pm the night before. These are done individually. The TA reads these polls, and I review ones that are good, provocative, or solar systemic.

Some sessions require you to submit work. Be attentive to reading the syllabus and to a helpful grid that we will provide.

Expectations

I expect that you read the cases and required readings before the class. The class will fail if you do not read the material, so don't free ride. We need your participation.

I expect you to submit your short-written assignments for each class by sending your responses to me and the TA by 9 pm the night before.

Some Heads-Up

First Assignment: Before the start of the first class, you are required to go on to this page, ISS Quick Governance Score, scroll down and click on "Search Governance QualityScore" (see blue banner), and then find the score of a company of your choice. Be prepared to explain if you agree with the score. You may have to register on the site to gather the data. I will call on you.

The Uber case includes a short mock simulation of the decision to redesign the governance system after the resignation of Travis Kalanick as CEO and his unexpected placement of two new directors on the board. You will be assigned randomly to new groups and you will need to access this from Canvas the week before. It is a disaster if you don't come prepared, with case read, and the background chapters too.

We discuss controversial questions about governance. These conversations are open and give a chance to explore different views and experiences on questions of our times. These discussions are very much appreciated by participants, and I continue this tradition though it bears the risk that you will hear an opinion you don't like, or you may not agree with me in taking, or not taking, a perspective. Be tolerant. For example, we discuss if you think there should be quotas mandating minimal percentage of women on boards. You may disagree. You may feel you know more about this than others. The point is to learn from each other. Who knows –your influence may be felt after class, so don't be disappointed if others don't agree, yet.

Other in-class graded Assignments

There will be an in-class graded quiz at the mid-term of the class.

Final Exam

You will be assigned to form groups and to design a governance solution to a failed Ethereum project. You may also request to do a different company/organization with my approval **prior** to the final class April 9.

Course Grade

Class attendance and assignments are mandatory. I adhere to the grading distribution policy of CBS.

30% of your grade will be final exam to develop a governance plan for the blockchain community “The Dao” discussed under final exam.

10% In-class quiz July 22th.

30% is participation.

30% are the assignments (e.g. polls, any one-page assignments) to prep for the classes.

Ethics

Some things to know:

First, remember that citations and references to all quoted and used material are **mandatory**. Please do not overlook this requirement.

Second, I accept only urgent family matters (sickness and death), babies delivered (photo required). Weddings, parties of any sort, or anything else are not excused absences. These are not my rules. These are the rules of CBS.

Finally, I will submit a random selection of all written work to be checked algorithmically. Cheating is not CBS compliant: don't do it.

Required Sources for the Course

- All primary readings are required. The most important reading will be the case if one is assigned. Don't wait for the class to start without reading through them. Read the Uber case in detail in particular. The textbook, described below, is very easy to read. You will need to read the assigned pages if you want to come ready to discuss governance. The rest of the readings come from short articles (with a few exceptions). I expect you to read them (you are CBS students!!!).
- Bob Tricker, *Corporate Governance: Principles, Policies, and Practices*, Oxford University Press, Oxford, UK: Oxford University Press, 2014. -various chapters are listed in the syllabus. PLEASE PURCHASE THE BOOK.

This book is a broad textbook, informed by comparison between countries and by different ideas of how to govern. While less analytical than the Hansmann book (see below), it is also less dogmatic in favoring a single logic to determine the best governance choice. Sometimes, in particular, it does not cover adequately a topic. The Powerpoint slides are posted every day, and you will be responsible for knowing their contents.

Recommended:

- Hansmann, Henry, *The ownership of enterprise*. Cambridge, UK: Harvard University Press, 2009.

This book presents the classic law and economics approach to governance of many kinds of enterprises and organizations. The argument relies upon a principle of finding the right governance form that most efficiently organizes the activities of the governed entity.

- Cornelius, Peter, and Bruce Kogut. *Corporate governance and capital flows in a global economy*. Oxford University Press, USA, 2003.

This book was financed by the World Economic Forum, Wharton, and INSEAD, and presented in a day-long series of panels and discussions at the annual meeting in 2002. The book was written just following the passing of the Sarbanes-Oxley Act and the Act was already having an impact on governance around the world. The chapters are written by academics, industry, and government leaders.

Course Outline

Day one: Fundamentals of Corporate Governance: Power and the Contenders for Control

Sessions #1/2: Governance and Power

Individual Assignment: Before the start of the first class, you are required to go on to this page, [ISS Quick Governance Score](#), scroll down and click on “Search Governance QualityScore” (see blue banner), and then find the score of a company of your choice. Be prepared to explain if you agree with the score. You may have to register on the site to gather the data. I will call on you.

Case: [The East India Company \(A\)](#). Please read the case even if you are shopping. Focus on pages 4 to 9.

Reading: Tricker, chapters 1 & 2 (this book is a big print easy read that you will like)

Additional reading: Peter Cornelius (now senior economist at AlpInvest/Carlyle) & Bruce Kogut, *Governance* – first pages may be of interest. Introduction chapter to a book for the World Economic Forum, 2003.

Questions:

1. What were the key elements of the VOC strategy?
2. Why was changing the charter so important to the directors of the VOC?
3. Did the VOC have a competitive advantage compared to its rivals, e.g. EIC?

What you will learn: Why do firms prefer one governance form to another? What is the role of the state? What is the charter? Why does power matter?

Day 2:

Session #3/4: For whom is Governance?

Case: For Whom do We Play? The Super Football League

Reading: [How the Super League Fell Apart, NYT, May 18, 2021](#)

Background Reading: [How FIFA Works](#)

Other Preparation: You will also find podcasts, such as the NYT's *The Daily*.

Questions:

1. What are the challenges of governance for the European Football Teams?
2. For whom should the sports league be governed?

Speaker: TBA

Individual Assignment for February 4: *You need to prepare for the next class, in which we will reenact the Uber board meeting, if you have not done so already. You will receive an email in the morning that assigns the role of one of the key participants in the Uber case. Please don't share your role with others on your team until you meet at 1:10. Two teams will play each role during the class.*

- Read the Uber case.
- Read the private information about your character that will be emailed/given to you the day of the case
- Prep questions for your role:
 1. If you were a member of that board, what would you do?
 2. What actions should the board have taken to arrive at the best decision?

Group Assignment: *On February 4th just before the class meets, you should meet in your assigned groups. (Please be patient and flexible with group assignments, as we won't know final registration until the first day.)*

Day 3: Going Public and Taking Private: IPOs and Private Equity Acquisitions

Session #5: The Private Firm

Case: [The Uber Board Deliberates: Is Good Governance Worth the Firing of an Entrepreneurial Founder?](#), Columbia CaseWorks

Reading: Tricker, chapter 4 (important chapter; make sure to know pages 96-99)

Highly recommended reading: Tricker, chapter 15 (pages 379-383; bottom page 389-401)

Questions:

1. How far should the board extend governance into the decisions of management for a private firm?

2. Were there violations of good governance?
3. As a board member, did you have enough information to make a decision regarding the future of Kalanick?
4. Why is the Softbank investment so important to governance?

Day 4: Why not keep it private? Value of Principal-Agency Theory (3:30 - 5:00 PM)

Guest Speaker: Alan Jones (former Managing Director and Head of Global Private Equity, Morgan Stanley)

Reading: Tricker, chapter #3 (read carefully pages 59-64); chapter 11 (don't miss pages 279-281)

Questions:

1. What changes when a partnership becomes a public corporation?
2. Why not reverse the decision and take the firm private?
3. Why would anyone work for a public firm if they could work for a private firm in the same industry?

Day 5: Who Governs When Boards Do Not?

Session #7: The Public Firm and Watch Dogs (9:00 - 10:30)

Read newspaper articles to read for this session:

[“In Defense of SPACs”](#), David Davidoff Solomon, New York Times, June 12, 2021. ([archived](#))

[“EV Startups Are in Trouble. Investors Don't Care”](#), Wall Street Journal, June 12, 2021. ([archived](#))

Readings: Tricker, Chapter 10, The Governance of Listed Companies (especially 250-256); Tricker, chapter 11 (especially pages 268-271; [John Coffee, “Guarding the Gatekeepers,” New York Times, May 13, 2002](#); [China government assigns officials to companies including Alibaba](#), Louise Lucas, September 23, 2019.

Break: Use the time to review the article on Frank and Steve.

Session #8: Debate: Hostile and Activist Investors (11:00 AM – 12:15 PM)

Chief Article: [“Frank and Steven's Excellent Corporate-Raiding Adventure”](#), Frank Partnoy and Steven Davidoff Salomon, Atlantic Monthly 2017.

Readings:

- Activists come to Germany: [Thyssenkrupp splits under pressure from activists](#), Economist, October 6, 2018. ([archived](#))

- Tricker, chapter 4, review again pages 84 to 96; carefully read the description of supervisory board and employees on board. These are elements of the German governance system.

Questions:

1. Do you think activists play a positive role in capital markets?
2. Should governments regulate activists and hostile acquirers?

In-class exercise: We will provide you with documents on Tejon Canyon. You will meet in groups to decide whether or not you would engage in activism.

Day 6: Shareholder Governance, Whistle Blowers, and Societal Oversight

Session #9: Facebook and Governance of Social Media Platforms

Individual Assignment: Look up the ISS governance ratings for Facebook

Readings: (to be updated in light of new developments)

- Notes to a case on Facebook and Social Responsibility
- Facebook has put growth ahead of governance for too long, Fana Faroohar, FT, December 2018. ([archived](#))
- Oversight Board, Facebook.
- Statement from Social Science Research Council President Alondra Nelson on the Social Media and Democracy Research Grants Program, SSRC, August 27, 2019.

Highly Recommended Reading:

- Privacy concerns could derail unprecedented plan to use Facebook data to study elections, Jeff Mervis, ScienceMag, September 2019; Privacy Not a Blocker for ‘Meaningful’ Research Access to Platform Data, TechCrunch, June 25, 2020

Questions:

1. Should Facebook be treated as a public utility, with stronger regulatory duties?
2. Should a citizen’s oversight board be independent of shareholders’ preferences and oversight?

Session #10: Non-Profit

Open discussion on non-profits, social enterprises, and for-profits.

Readings:

1. [Carnegie Hall: Donors and Boards](#) ([archived](#))
2. [New York Public Library: Modernizing the Branch Library Mission](#) ([archived](#))
3. [Apollo: Global Institution and Harlem](#)
 - a. [Apollo Board today](#)
 - b. [Apollo History](#)

Assignment:

We will post sign-up sheets for groups of 5 to be prepared to speak about one of the three non-profits above. All of these institutions have participated in our governance class.

Questions:

1. What is the governance challenge for non-profits?
2. What are your thoughts and advice?

Day 7: Social Impact and the Purposed Firm

Session #11: Debate: The purposed firm – in whose interest do we govern?

Assignment: Please go on-line and check out the social ratings of the top 100 firms evaluated by Just Capital. You may do this in a group. Please meet. I will call on you.

Case: [Etsy: The Conflict between Social Values and Financial Discipline](#)

Readings:

Tricker, chapter 9, “Social Corporate Responsibility and Sustainability.”;
SASB CEO Janine Guillot’s letter on SEC’s Initiative on Climate Change Disclosure.
Larry Fink, CEO Blackrock, Annual letter to CEOs, “A Sense of Purpose”
Business Roundtable, “Statement on the Purpose of the Corporation”, August 2019

Questions:

1. Do you find the letter by the 180 CEOs of public firms to be credible? Or is it a form of green-washing?
2. By their argument, should private equity, or any non-public corporate entity, have a corporate purpose?
 - a. Or to rephrase this question, is there a property of the public corporation that particularly ties their purpose to the common good?
3. Why is S in ESG so hard to evaluate, how does Just Capital evaluate it, and what do you propose?

Session #12: Stewardship in Practice: Promises and Perils

Case: Blackrock: Linking Profit to Purpose

Readings for Preparation:

- Business Roundtable, 1978: The Role and Composition of the Board of Directors of the Large Publicly Owned Corporation
- Elizabeth Warren, Letter to Jamie Dimon, October 19, 2019.
- Hart and Zingales: Serving Shareholders Doesn’t Mean Putting Profit Above All Else, HBR

Reading: When Larry Fink Met Greta Investors Join In Calls For Corporate Sustainability Jeff Sommer, “[Want a Bigger Say on Corporate Behavior? Move Your Money](#),” New York Times December 12, 2019. ([archived](#))
Tricker, section on Stewardship, Ch 2, pages 65-68.

Questions:

1. Should financial intermediaries act on the behalf of owners in their mutual funds?
2. What are the potential conflicts?
3. What are the risks to Blackrock?

Questions (to prepare in a team):

1. What does engagement mean for the portfolio selection of companies and for the evaluation of mutual fund performance?
2. What does materiality mean to this discussion?

Day 8: Power, Politics, and the Tepid Relationship of Firms and Governments

Quiz: On governance concepts. Questions are based on main readings (primarily Tricker), power points, class discussion. 20 minutes (9:00 – 9:20 -Exam starts precisely at 9)

Session #13: Should Boards Lobby and Make Campaign Contributions?

Reading:

“[Why corporate PACs have an advantage](#),” OpenSecrets, Karl Evers-Hillstrom, February 14, 2020.

Background Reading: Ten things You Should Know about Campaign Finance (Make sure to read #9)

The 10 Things They Won't Tell You About Money-in-Politics

Recommended Reading: Lucian Bebchuk and Robert Jackson writing on the political governance of Citizens United case, Harvard Law Review, 2010.

Questions:

1. Should firms have first amendment rights to finance public advertising?
2. What is the corporate governance objection to corporate political contributions?
3. Is civil society too conflicted to play an effective role in curbing corporate governance abuses, such as buying influence or its choice of directors to coopt watchdogs?
4. (Corollary question) Is Academia too compromised by business donations to science and professional schools?

Session #14. Should Governments have the right to regulate social justice? Mandating Women on Boards.

Class Note: [Board Gender Diversity Around the World](#)

Readings: These are short editorials or pop reports -please read.

[The California Mandated Quota for Woman Directors](#)
[Do quotas for corporate boards help women advance?](#)
[Kogut, Bruce: Do Boards Need Mandated Quotas?](#)

Questions:

1. Do you think that legislated mandates for female quotas is in contradiction of the right to private property?
2. Do you think society should have the right to interfere in the governance decisions of a privately-owned but publicly-traded company?

Day 9: States and Companies

Session #15: Privatization and Sovereign Risk (1:35 - 3:00)

Case: [Korea First Bank \(A\)](#)

Readings:

- Why focused Strategies may be wrong for emerging markets. Tarun Khanna and Krishna Palepu, Harvard Business Review, 1997.

Recommended Reading:

- Weijian Shjan, *Money Games: The Inside Story of How American Dealmakers Saved Korea's Most Iconic Bank*, New York: Wiley: 2020; read chapter 14, *The Hard Part*.

Questions:

1. Do you think that institutional financial organizations, e.g. the World Bank, were right in its economic argument to require the Korean government during a financial crisis to sell Korean First Bank to a foreign owner? (See the reading by Khanna and Palepu above.)
2. Should KFN have bought Hynix?
3. What are the limits of government participation in companies?

Session #16 Your Preparation

Preparation: Make sure to come to class having read the case reading and readings for sessions #21-22.

In Class: Group meetings to discuss presentations for April 8th class on Blockchain.

Day 10 Governance in China and India

Session 17: Governance in Mixed Economies

Readings: TBD

Questions:

1. Does it matter to the functioning of governance if the State is authoritarian or democratic?
2. How might the design of governance change?

Session 20: The Tata Family and the Mistry Family

Case: [Ratan Tata or Cyrus Mistry: Tata Steel's Shareholder Dilemma](#) and [spreadsheet](#)

Reading: Tricker, Chapter 10, The Governance of Listed Companies (especially 250-256);
Tricker, chapter 11 (especially pages 268-271);

["Clause 49 Compliance", KPMG, India \(one-page\)](#)

[John Coffee, "Guarding the Gatekeepers," New York Times, May 13, 2002.](#)

1. Do you think business groups are inefficient and should be broken up?
2. What is the governance problem at Tata?
3. What might be a solution?

Day 11. Innovative Solutions to the Problem of Governance

Sessions #21 & #22: Designing Decentralized Autonomous Organizations as Solutions

Case: Governance for Blockchain: The Collapse of the Ethereum Venture Capital Community
"The Dao"

Readings: Morley, John, [That Book on Blockchain. A One-hour Intro](#), published by author, 2017; for your purchase. (Price: \$7.75). (Read especially chapter on Ethereum that gives you background to our case, and also an introduction to smart contracts.)

Assignment: Design a governance solution for "The DAO". (Please use words, no code; avoid technical details -you may append if you wish.)

Advice: Governance is power. Governance is efficiency, fairness, accountability, transparency. Who should govern? To whom are they responsible -what powers do they have? What are the decision rules: fiat? Voting? Immutable code? You will need to think

about these elements if you want to design a better governance system than that of “the DAO”.

Preparatory questions:

- 1) Who has the power? Over whom and what?
- 2) Is there an equivalent to a shareholder?
- 3) Who has the right to decide?
- 4) Who has the right to the cash flows?
- 5) Is there an equivalent to the board?

Suggested readings:

- [More on Ethereum...](#)
- A leading law review article on trying to distill the promise of a bitcoin contract: [Cohney S, Hoffman D, Sklaroff J, Wishnick D. Coin-operated capitalism. Columbia Law Review. 2019 Apr 1;119\(3\):591-676. \(download\)](#)
- In case you want to see the Satoshi original manifesto for Bitcoin: [Bitcoin: A Peer-to-Peer Electronic Cash System](#)

Day 12: Global Perspective on Governance

Session # 23: A Global Perspective on Governance

Guest: [Lucy Quist](#) , Managing Director, Morgan Stanley. Lucy Quist has broad experience as a business leader in Ghana and now London with Morgan Stanley, an agent of reform for African football, and participation in many boards. She will talk to us about governance in Africa and in Europe, as well as about the many challenges facing business globally.

Suggested Reading: Lucy Quist, [The Bold New Normal -Creating the Africa where Everyone Prospers](#), Accra: DAKpabli and Associates. (Amazon: price ~ \$10.00)

Session #24: Future of Governance (3:20 – 5:00 PM)

Reading: Challenges of Governance, Bruce Kogut

Five Challenges of Governance (We will discuss 2, more or less)

1. Inclusiveness in an Inegalitarian World
2. Sustainability of Private Property
3. Technology and Governance
4. Getting along without Going Along
5. Governance and Resilience