

Fundamentals of Governance—Syllabus

FOR BIDDING PURPOSES ONLY

B8575, Winter
Monday, 12:30-3:45
Uris 303

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Office Hours: hour before/after class

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Course Description

Topics: The Public Firm, Stewardship, Social Impact and Social Ratings, Gender and Boards, Political Contributions, Blockchain Trading Platforms.

Organizations and firms, and how well they are governed, drive the wealth and happiness of a society. The standard view of corporate governance is to posit that governance seeks to make organizations more efficient. This has been the case for the shareholder model of governance. Yet there is more than just efficiency. Governance is also always about power as much as it is sometimes about efficiency and effective leadership. We will study different forms of governance structures to understand how they function and how well they express power and achieve – sometimes – efficient outcomes. To this, we also join the question of whether the exercise of power is fair and just.

A typical presumption has been that governance by the public corporation represents a standard with which to understand the potential of good governance. But the public corporation is besieged—stock exchanges show net de-listings, raiders are challenging venerable corporations, regulatory requirements impose heavy costs on IPOs. Is it true that the public firm, and in particular the American varietal, joins both a just distribution of power and an efficient form of governance?

These questions are lodged in a larger, often political, debate. Are public or private firms delivering an economic performance that rewards the many stakeholders: shareholders, employees, society? Whom do corporations serve? What is their performance? Are they betraying national interests by outsourcing, by employing immigrants, or by locating overseas, sometimes by inversions for primarily tax benefits?

As this course is short and quick, we focus on the United States and compare across the types of governance, e.g. the public firm, the private firm, the ESOP, the sports league, and the non-profit. The primary institutions discussed will be the board, the shareholders, institutional investors, the stakeholders, and management. However, there will also be plenty of moments to think about the dynamics and personalities of families, CEOs, and directors.

There are a variety of perspectives from which questions of governance can be formulated and addressed but it has been economic analysis that has largely dominated contemporary discussions of the subject. Most theories

of governance are preoccupied with the relationship between institutions of governance and economic performance. We expand this perspective to ask ultimately, are there forms of governance that are competitors to the public corporation? Would they satisfy stakeholders, and the wider public, more than the shareholder governance that is so much under assault today?

It may help you also to understand what the course is *not* about. Because we are looking comparatively, we will not attempt to 'go deep', instead we 'go wide.' This means, we will not look very deeply at the issues of *corporate* governance, the relevance of law and regulation, and the functioning of governance at particular junctures, such as bankruptcy, acquisition, or in a proxy contest. Some of these issues are handled in more depth in other specialized classes.

This time, though, I have put more emphasis on both the public firm and on social impact. ESG rated companies and sustainability goals are often in the news and in investment reports. These markets consist of green bonds, social funds, and impact investing. Recently, the largest private equity funds have created specialized funds for impact investing. This includes 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.

Teaching at a top university should be on the edge of what we know and have us think about possible evolutions that may or may not happen. Be open to forward-looking discussions. Not everything is looking backward through a case study....

Your instructor: Bruce Kogut

Taught in many places around the world, lived many years in Europe (primarily France but also Sweden and Germany), was chaired full professor at Wharton, INSEAD, before coming to CBS in 2007. I have served on corporate and non-profit boards primarily outside the US. These include the board to 3i Infotech India and to the non-profit board of the International School of Paris, academic boards to 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. I work currently 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 performance of firms and micro-finance organizations, among other things including...governance.

You can find a clip of me on the John Stewart Show (John Oliver), trying to explain what ethics is about for MBAs. The Bernstein Center has also produced a film on [financial innovation](#), starring star academics (Nobel prize winner Robert Solow and Bruce Greenwald), business professionals (Blythe Masters), politicians (Barney Frank). 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 Jacques Chirac; Forbes on the Greening of the Apple. Just Google the above along with my name. Have a look.

What is expected of you?

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

All written assignments for prepping for each class should be submitted by sending your responses to me and the TA by 9 pm the night before. Your work for the class day assignment can be done in teams of 4. Make sure to email to us in time. These are meant to be short responses, but longer than poll responses.

Polls

You will be asked to answer poll questions for each day, due by 9 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 Heads-Up

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.

The session #3 (February 3rd) is a 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 questions that are about governance but are controversial. 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 will 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.

Final Exam

The final exam is take-home and will be designed to focus on specific questions that are related to the course materials. You will be allocated a 12-hour period to do the exam during the exam week. Late submissions will not be accepted. More details will be provided verbally during the course.

Course Grade

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

40% of your grade will be the exam.

30% is participation.

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

A frank discussion. I have a super high opinion of the ethics among MBAs and for that reason, I have a very harsh policy on any infraction.

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

Second, missing a class cannot be excused without writing me ahead of time (at least the day before). 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.

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

- Bob Tricker, *Corporate Governance: Principles, Policies, and Practices*, Oxford University Press, Oxford, UK: Oxford University Press, 2014. -various chapters

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, it is also less dogmatic in favoring a single logic to determine the best governance choice.

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

January 27

Session #1: Introduction to Governance

Topic: Overview of Governance

Assignment: See the Assignment for evaluating a company using the ISS Governance Score on page 3.

Reading: Tricker, chapters 1 & 2 (this 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.

Session #2:

Topic: Strategy and Governance

Case Reading: The Uber Board Deliberates: Is Good Governance Worth the Firing of an Entrepreneurial Founder?, Columbia CaseWorks

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? What would you have liked to know more about?

February 3

Session #3: Group Behavior and Board Decision-Making

Guest: [Ellen Kaden](#), former General Counsel, Campbell Soup

Bio: Ellen Kaden retired in 2015 after a 38-year career in business, law and academia. For almost 17 years, she served as the chief legal officer of Campbell Soup Company, where she managed the global Legal Department, the Office of Government Affairs, and the Public Affairs and Corporate Social Responsibility groups. Prior to joining Campbell, she was Executive Vice President and General Counsel of CBS. Earlier in her career, she was a member of the Faculty of Law at Columbia Law School, and then practiced law at Cravath, Swaine & Moore in New York.

Ms. Kaden is a Trustee Emerita of Columbia University, where she served as the Chair of the Audit Committee. She has also served on the boards of the Institute for Judicial Administration and the Columbia University Press, and as a member of the Corporate Advisory Committee of the National Legal Aid and Defender Association and the Steering Committee of the International Rule of Law Council of the Lawyers Committee for Human Rights (now, Human

Rights First). Ms. Kaden earned her B.A. from Cornell University, where she was named the Cornelius W. De Kiewet Scholar, and her M.A. from the University of Chicago as a Graduate Fellow of the Danforth Foundation. After earning her J.D. from Columbia Law School, she served as a law clerk to Hon. Marvin E. Frankel of the United States District Court for the Southern District of New York.

Group assignment:

Prepare for possible selection to be the “Uber Board” in session #3. I would like short written answers to the questions at the end of the case. Don’t forget to include your names. One or 2 pages.

Prepare alone your possible role in a reenactment of the Uber board meeting what to do. Each person is assigned one of the key participants in the Uber case: we will email you your role and you don’t share your role with others on your team. Two teams will play these roles during the class.

- Attention: You will have to prep especially for this class, so READ the material.
 - The Uber case.
 - Read the private information about your character that will be emailed/given to you the day before the case
 - Prep questions for your role:
 - If you were a member of that board, what would you do?
 - What actions should the board have taken to arrive at the best decision?

Session #4: Why not keep it private?

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

Bio: Alan Jones was Chairman of Morgan Stanley’s Global Private Equity Investment Committee and also served as a member of the Investment Committees for Morgan Stanley Private Equity Asia, Morgan Stanley Expansion Capital, Morgan Stanley Infrastructure Partners, and Morgan Stanley Credit Partners, and as a member of the Merchant Banking Department Executive Committee and Risk Committee. He currently serves as a Director of HBF, CoAdvantage, Access Cash, and ReachOut Healthcare America. He has previously served as a Director of McKechnie Aerospace, EmployBridge, Creative Circle and Zenith (UK).

Reading: Morgan Stanley Dean Witter. The Aftermath of the Merger (read pages 9-22)

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?
4. Bonus question: are activist investors in the interest of shareholders and long-term value of the firm?

February 10

Session #5: Rating Companies for their Social Impact

Guest: [Martin Whittaker](#) (CEO, [Just Capital](#))

Reading: Tricker, chapter 9, "Social Corporate Responsibility and Sustainability"

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.

Question -Discuss in a group: Why is S in ESG so hard to evaluate, how does Just Capital evaluate it, and what do you propose?

Session #6: Engagement and the Common Ownership Problem

Guest: [Ray Cameron](#) (Managing Director and Head of Investment Stewardship for The Americas, Blackrock)

Jeff Sommer, article on [common ownership](#), New York Times December 12, 2019

Larry Fink, CEO Blackrock, Annual letter to CEOs, "[A Sense of Purpose](#)"

Business Roundtable, "[Statement on the Purpose of the Corporation](#)", August 2019

Review: Tricker, section on Stewardship, *Corporate Governance: Principles, Policies, and Practices*, Ch 2

Question to prepare in a team: What does engagement mean for the portfolio selection of companies and evaluating mutual fund performance?

February 17

Session #7: Governance and Diversity

We start with a discussion of ESG and Engagement, and then discuss corporate purpose. The second half of this class session will discuss mandated quotas.

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?](#)

Question: Do you think that legislated mandates for female quotas is in contradiction of the right to private property? Do you think society has the right to interfere in the governance decisions of a private publically-traded company?

Session #8: Should firms have first amendment rights to finance public advertising?

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. What should be the system to regulate campaign contributions by firms?

February 24

Session #9: Reflections on the State of the Debate on Corporate Purpose and Protest

Readings: Bob Tricker, *Corporate Governance: Principles, Policies, and Practices*, Ch 9

Preparation:

[Business Roundtable, 2019: Corporate Purpose](#)

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, 2020.

Hart and Zingales: Serving Shareholders Doesn't Mean Putting Profit Above All Else

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. Do you find the Hart and Zingales argument for a common good to be persuasive? Does it extend beyond the public firm?

Session #10:

Topic: Designing Governance: ICOs and Blockchain

Guests:

[Vanessa Grellet, Consensys](#)

[Clark Thompson, Consensys](#)

Case in early draft: Blockchain Governance for Supplying a Syrian Refugee Community

Readings:

[The Brooklyn Project](#)

[Blockchain for Social Impact](#)

In case you want to see the Satoshi original manifesto:

[Bitcoin: A Peer-to-Peer Electronic Cash System](#)

Question to be prepared in team and submitted by 9 pm February 23:

What are the issues for governance of a distributed autonomous organization?

What the implications for a “permissioned” supply chain for delivery to refugee camps?

March 2

Session #11: Governing of Professional Sports Leagues: Soccer

Guest Speaker: [Sunil Gulati](#) (Professor of Economics, Columbia; President, United States Soccer Federation)

Reading: [US Soccer Association Governance](#)

Background reading: [Governance: How FIFA Works](#)

Questions:

1. What are the challenges of governance for professional sports?
2. For whom should the sports league be governed?
3. Why are there ethical challenges in sports and can good governance help?
4. How to govern sports and admissions at universities?

Session #12: Future of Governance

Five Challenges of Governance

1. Inclusiveness in an Inegalitarian World
2. Sustainability of Private Property
3. Technology and Governanace
4. State Capitalism and Shareholder Democracy
5. Getting along without Going Along

Reading:

Note to be posted: Bruce Kogut, Five Challenges to Better Governance