

St. Jerome's University in the University of Waterloo
Department of Sociology and Legal Studies
LS 431 (Section 001)
CORPORATE GOVERNANCE
Winter 2019
Wednesdays 2:30pm – 5:20pm, SJ1 3020

Instructor Information

Instructor: Susan Dianne Brophy, PhD
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Course Description

Corporations adopt different internal regulations depending on geography, size, industry, legal jurisdiction, political climate, and historical context. Students in this course examine each of these factors in order to understand the evolution of corporate governance. This framework prepares students for a critical assessment of the main theories of corporate governance, while a comparative approach invites debate about corporate legal obligations and social responsibilities. It also provides students with an interdisciplinary approach to the intersection between law and corporate responsibility, elevated on this occasion by the focus on political and historical context.

Course Goals and Learning Outcomes

The first goal is to encourage students to take ownership of the course by setting the tone and tempo of the in-class experience; the second is to foster an environment of respectful and knowledgeable critique. This means that students must be exceptionally well-prepared on a weekly basis to not only answer, but also ask pointed questions that demonstrate their critical reading and thinking skills.

The major learning outcome is to arrive at a holistic, future-oriented understanding of corporate governance that takes into consideration its legal, historical, economic, political, and global dimensions. To lay the groundwork for this outcome, we spend the first half of the course placing capitalism, business law, and the emergence of the corporation in historical context. From this, students will be able to assess the main theories of corporate governance that emerged during the twentieth century. In the second half of the course, we rethink these theories in light of the global financial crises of the early twenty-first century. By examining the global dimensions of corporate governance, students will be able to interrogate corporate responsibility with an eye on the most urgent challenges of our time.

Required Texts

Courseware & LEARN: All assigned readings are available via the Bookstore in Courseware format. Seminar Leader news items will be posted on LEARN 48 hours in advance.

Waterloo LEARN

LS 431 Section 001 has an online home that is accessible via learn.uwaterloo.ca. Students should visit this page for the latest course announcements and detailed instructions. Make it your first stop if you have any questions about the course.

Email and Electronic Device Policies

Students must adhere to the Email Policy, posted on the course's LEARN site. Electronic devices may be used for note-taking or other professor-sanctioned scholarly activities. All misuses of electronic devices are noted, and will result in grade reductions for participation. If a student's misuse causes distraction, fair warning will be given to stop; if misuse continues, the student will be excused from that class.

Course Evaluation

Requirement	Description	Value	Schedule
Seminar Leader(s)	48 hours prior to the class in question, all Seminar Leaders must post to LEARN: - 1 news item related to topic (<u>1 yr old max</u>) - questions to help students prepare	15%	Schedule to be decided on first day of class.
Participation	Regular participation and active listening <i>Deductions for off-task use of technology</i>	20%	Weekly
Essay 1	Instructions will be on LEARN - 7 pages min, 9 pages max	30%	Due: <i>FRI FEB 1</i> - submit by 11:59pm - electronic submission via DropBox on LEARN
Essay 2	Instructions will be on LEARN - 10 pages min, 12 pages max	35%	Due: <i>SAT APR 6</i> - submit by 11:59pm - electronic submission via DropBox on LEARN

Submission and Grading of Course Requirements

Submit electronic copies of essays via the designated LEARN DropBox. Your essays will be automatically time-stamped to indicate on-time submission. Essays will be graded within two weeks of the date of submission; essay comments and grades will be posted on LEARN.

Late Course Requirements and Missed Classes

In every circumstance, accommodations will only be considered if:

- (a) you are ill and submit a *University of Waterloo Verification of Illness Form* to the course instructor as soon as possible;
- (b) there was a death of a family member, which you can prove through official documentation (travel receipts will not suffice) submitted to the course instructor;
- (c) due dates conflict with important dates on your religious calendar, and you have informed the course instructor of this fact;
- (d) you are registered with AccessAbility Services and can provide the course instructor with the relevant documentation.

Do familiarize yourself with the University of Waterloo's policies on what your responsibilities are in the event of a late or missed course requirement: https://uwaterloo.ca/registrar/final-examinations/examination-regulations-and-related-matters#acc_illness

Keep in mind the following regulations:

Students in on-campus courses who are ill and unable to meet assignment due dates or write a term test or final examination should seek medical treatment and provide confirmation of the illness to the instructor(s) within 48 hours by submitting a completed *University of Waterloo Verification of Illness Form* to support requests for accommodation due to illness.

The *University of Waterloo Verification of Illness Form* is normally the only acceptable medical documentation and is available on line at uwaterloo.ca/health-services/student-medical-clinic/services/verification-illness. Students who consult their physician or use the services of an off-campus walk-in clinic must provide this form to the attending physician for completion; doctors' notes and forms created by the physician or clinic are normally not acceptable.

Late Essays

If the essay is submitted after the date and time that it is due, it will be subjected to a 5% per day late penalty. For example, if you submit a paper that is assessed at 85%, it will fall to 80% if you submit it late by one day, 75% for two days, and 70% for three (and so on). Only official documentation related to (a) death of a family member; (b) illness; (c) AccessAbility; and (d) UW-recognized religious holidays will be considered. There are no exceptions – even for technical mishaps or conflicting work schedules.

Missed Classes

For missed classes, only official documentation related to (a) death of a family member; (b) illness; (c) AccessAbility; and (d) UW-recognized religious holidays will be considered. If no official documentation is received, the student can expect a deduction of 5% per missed class from the participation grade. There are no exceptions – even for car troubles or conflicting appointments/work schedules.

Class Schedule

Seminar Leaders should locate one additional news item (not older than 1 year), and post this to the relevant LEARN discussion group at least 48 hours prior to the class in question. This content must illuminate some aspect of their assigned subject area and help focus the discussion for that session. The additional news item can be from a newspaper, blog, or magazine; focus on finding timely sources that speak to a current event.

UNIT I: EARLY CAPITALISM AND THEORIES OF CORPORATE GOVERNANCE	
January 9 WEEK 1	<p>Topic: Introduction</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Offer an overview of the themes of the course. - Clarify expectations. - Introduce foundational concepts.
<p>• Frederick D. Lipman & Keith Lipman (2006) Ch 1, 'Why is Corporate Governance Important?', pp. 3-8</p>	

<p>January 16 WEEK 2</p>	<p>Topic: A History of Capitalism</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Establish historical context for a critical understanding of capitalism. - Identify historical moments relevant to the emergence of capitalism. - Understand the difference between Smith's and Marx's approaches.
<ul style="list-style-type: none"> • Adam Smith (1776) <i>The Wealth of Nations</i> Vol 1, Book IV, Ch II, 'Of Restraints Upon the Importation from Foreign Countries', pp. 418-436 • Karl Marx (1867), <i>Capital</i> Vol 1, Ch 31, 'Genesis of the Industrial Capitalist', pp. 914-926 Ch 32, 'The Historical Tendency of Capitalist Accumulation', pp. 927-930 	
<p>January 23 WEEK 3</p>	<p>Topic: A History of Credit and Stocks</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Expand on our understanding of capitalism specifically as it relates to the role of credit and stocks. - Clarify the reasons for early apprehension regarding credit and stocks. - Identify the core thesis for the course.
<ul style="list-style-type: none"> • Adam Smith (1776) <i>The Wealth of Nations</i> Vol 2, Book V, Ch I, Part III, 'Of the Public Works and Institutions for Facilitating the Commerce of Society', pp. 223-235 • Karl Marx (1894), <i>Capital</i> Vol 3, Ch 27, 'The Role of Credit in Capitalist Production', pp. 566-573 	
<p>January 30 WEEK 4</p>	<p>Topic: The Firm</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Explore the emergence of the twentieth century firm in the US. - Develop an understanding of early commentaries on corporate power. - Bring Smith and Marx to bear on these commentaries.
<ul style="list-style-type: none"> • Adolf A. Berle Jr. (1931) 'Corporate Powers as Powers in Trust', <i>Harvard Law Review</i>, pp. 1049-1074 • Ronald H. Coase (1937) 'The Nature of the Firm', <i>Economica</i>, pp. 386-405 	
<p>February 6 WEEK 5</p>	<p>Topic: Agency Theory</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Familiarize ourselves with a key corporate governance theory. - Trace its continuity from early theories of the firm. - Comment on the connection to Smith's ideas.
<ul style="list-style-type: none"> • Michael C. Jensen and William H. Meckling (1976) 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure', <i>Journal of Financial Economics</i>, pp. 305-313 • Alfred D. Chandler Jr. (1977) <i>The Visible Hand</i>, 'Conclusion: The Managerial Revolution in American Business', pp. 484-498 	
<p>February 13 WEEK 6</p>	<p>Topic: Stewardship Theory and Shareholder Primacy</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Explore the evolution of corporate responsibility in the late twentieth century. - Understand the legal and economic landscape for these developments. - Clarify how it differs and/or expands on Agency Theory.

<ul style="list-style-type: none"> • James H. Davis, F. David Schoorman and Lex Donaldson (1997) 'Toward a Stewardship Theory of Management', <i>The Academy of Management Review</i>, pp. 20-47 • William Lazonick and Mary O'Sullivan (2000) 'Maximizing Shareholder Value: A New Ideology for Corporate Governance', <i>Economy and Society</i>, pp. 13-35 	
February 27 WEEK 7	<p>Topic: Stakeholder Theory — Pre- & Post-Enron</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Trace the ongoing evolution of corporate governance into the early twenty-first century. - Clarify the causes and effects of recent corporate governance crises. - Develop an understanding of how the legal landscape changes (Sarbanes-Oxley Act and the Cadbury Report) and why.
<ul style="list-style-type: none"> • William Thomas Donaldson and Lee E. Preston (1995) 'The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications', <i>The Academy of Management Review</i>, pp. 65-88 • Joseph Heath and Wayne Norman (2004) 'Stakeholder Theory, Corporate Governance and Public Management: What Can the History of State-Run Enterprises Teach Us in the Post-Enron Era?', <i>Journal of Business Ethics</i>, pp. 247-263 	
UNIT II: RETHINKING CAPITALISM AND CORPORATE GOVERNANCE IN A GLOBAL CONTEXT	
March 6 WEEK 8	<p>Topic: Re-thinking Capitalism</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Expand on our understanding of Marx and Smith from the opening weeks. - Comment on the historical evolution of capitalism. - Clarify the value of re-thinking our understanding of capitalism given recent and ongoing transformations.
<ul style="list-style-type: none"> • Paddy Ireland (2009) 'Financialization and Corporate Governance', <i>Northern Ireland Legal Quarterly</i>, pp. 1-34 • Alexander Styhre (2017) 'The Making of the Shareholder Primacy Governance Model: Price Theory, the Law and Economics School, and Corporate Law Retrenchment Advocacy', <i>Accounting, Economics, and Law: A Convivium</i>, pp. 1-25 	
March 13 WEEK 9	<p>Topic: Re-thinking Corporate Governance</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Connect our re-thinking of capitalism to a re-thinking of the principles of corporate governance. - Clarify how core debates have evolved and why. - Develop an understanding of ongoing and new challenges in the legal and economic landscape.
<ul style="list-style-type: none"> • Colin Mayer (2013) 'How to Avoid Implementing Today's Wrong Policies to Solve Yesterday's Corporate Governance Problems', <i>University of Pennsylvania Law Review</i>, pp. pp. 1989-2002 • Paddy Ireland (2018) 'From Lonrho to BHS: The Changing Character of Corporate Governance in Contemporary Capitalism', <i>King's Law Journal</i>, pp. 3-35 	

<p>March 20 WEEK 10</p>	<p>Topic: State Sovereignty</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Understand the power and limits of state sovereignty. - Re-think early theories of the firm with respect to international law. - Explore the role of the state in a global corporate governance context.
<ul style="list-style-type: none"> • Shu Shang and Wei Shen (2018) 'When the State Sovereign Immunity Rule Meets Sovereign Wealth Funds in the Post Financial Crisis Era: Is There Still a Black Hole in International Law?', <i>Leiden Journal of International Law</i>, pp. 915-938 • C. Richard Baker and Bertrand Quéré (2014) 'The Role of the State in Corporate Governance' <i>Accounting History</i>, pp. 291-304 	
<p>March 27 WEEK 11</p>	<p>Topic: Cultural Considerations</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Expand on our discussion of state sovereignty by looking at cultural factors. - Assess how cultural considerations challenge the Anglo-American dimensions of corporate governance. - Examine the paradoxes of democratic and corporate governance.
<ul style="list-style-type: none"> • Pankaj Kumar Gupta; Singh Shallu (2014) 'Evolving Legal Framework of Corporate Governance in India - Issues and Challenges Studies and Comments', <i>Juridical Tribune</i>, pp. 239-250 • Qingxiu Bu (2015) 'Will Chinese Legal Culture Constrain its Corporate Governance-Related Laws?', <i>Journal of Corporate Law Studies</i>, pp. 103-125 • Naomi R. Lamoreaux (2016) 'Corporate Governance and the Expansion of the Democratic Franchise: Beyond Cross-Country Regressions', <i>Scandinavian Economic History Review</i>, pp. 103-118 	
<p>April 3 WEEK 12</p>	<p>Topic: Labour and the Environment</p> <p>Objectives:</p> <ul style="list-style-type: none"> - Focus on the intersection of corporate governance and major challenges, namely workers' rights and environmental degradation. - Clarify the limits of corporate governance in view of our re-thinking of capitalism and its related challenges. - Look at the latest challenges and debates.
<ul style="list-style-type: none"> • Isabelle Martin (2018) 'The Use of Transnational Labour Law in Steering Socially Responsible Corporate Governance towards Increased Worker Protection', <i>Canadian Journal of Law and Society</i>, pp. 159-176 • Carl Kock and Byung Min (2016) 'Legal Origins, Corporate Governance, and Environmental Outcomes', <i>Journal of Business Ethics</i>, pp. 507-522 • Barnali Choudhury and Martin Petrin (2018) 'Corporate Governance that "Works for Everyone": Promoting Public Policies Through Corporate Governance Mechanisms' <i>Journal of Corporate Law Studies</i>, pp. 381-415 	

IMPORTANT INFORMATION

Academic Integrity: To maintain a culture of academic integrity, members of the University of Waterloo and its Affiliated and Federated Institutions of Waterloo (AFIW) are expected to promote honesty, trust, fairness, respect, and responsibility. See the [UWaterloo Academic Integrity webpage](#) and the [Arts Academic Integrity webpage](#) for more information.

Discipline: A student is expected to know what constitutes academic integrity, to avoid committing academic offences, and to take responsibility for their actions. A student who is unsure whether an action constitutes an offence, or who needs help in learning how to avoid offences (e.g., plagiarism, cheating) or about “rules” for group work/collaboration should seek guidance from the course professor, academic advisor, or the Associate Dean. When misconduct has been found to have occurred, disciplinary penalties will be imposed under the [St. Jerome’s University Policy on Student Discipline](#). For information on categories of offenses and types of penalties, students should refer to [University of Waterloo Policy 71 - Student Discipline](#). For typical penalties check [Guidelines for the Assessment of Penalties](#).

Grievance: A student who believes that a decision affecting some aspect of their university life has been unfair or unreasonable may have grounds for initiating a grievance. Read the [St. Jerome’s University Policy on Student Petitions and Grievances](#).

Appeals: A decision made or penalty imposed under the St. Jerome’s University Policy on Student Petitions and Grievances (other than a petition) or the St. Jerome’s University Policy on Student Discipline may be appealed if there is a ground. A student who believes they have a ground for an appeal should refer to the [St. Jerome's University Policy on Student Appeals](#).

Note for Students with Disabilities: The [AccessAbility Services](#) office, located on the first floor of the Needles Hall extension (1401), collaborates with all academic departments to arrange appropriate accommodations for students with disabilities without compromising the academic integrity of the curriculum. If you require academic accommodations to lessen the impact of your disability, please register with the AS office at the beginning of each academic term.