



## LGST 6120

### Responsibility in Business

Fall 2022, Q1

Prof. Christina Parajon Skinner

Office Hours: by appointment

#### **Course Description:**

In this course, we'll consider what 'responsibility in business' means through four blocks that build on each other: first, we'll consider capitalism and its foundations in law and society; second, we'll reflect on the rules that constrain capitalism—and the guardrails around the rules themselves; third, we'll examine the disruption of these paradigms from technology; and fourth, we'll focus on individual choice, and how individual decisionmaking is shaped by incentives that are established through law and cultural norms.

Throughout the course, we'll return to the enduring question of how best to balance markets' freedom with the state's interventions. The class will also give you some grounding in inter-branch dynamics in the United States—between Congress, the Executive, and the Supreme Court—with discussion of how their respective interpretations of business law have shaped economic life in America since the Founding. We will also host several guest speakers to hear their perspectives from practice. Overall, the goal of this class is to sharpen (and deepen) your thinking on the underlying moral logic of the markets—a morality that is informed by enlightenment principles but challenged by contemporary social and economic problems.

The class will be a mix of lecture and discussion, and that balance will vary depending on the session. So, it will be important for you to prepare the readings thoughtfully and in advance. You can expect around 30-40 pages of reading to be assigned to each class, which will anchor our discussion, along with extensions I add during class.

Laptops (and iPad, cell phone equivalent usage) are not permitted. Masks are optional.

#### **Grading:**

Your grade is divided into three parts: 20% reflection papers, 40% class participation and civility, 40% for a group presentation.

*Class participation and civility.* Your class participation grade will primarily be determined by the quality of your comments in class (meaning, how engaged with the reading, how responsive to other

students, and how focused on the discussion questions I set out each week), your attendance, and your punctuality. I will ask you to use the attendance app to check in to each class session.

If personal emergency or interviews mean you'll have to miss class or arrive less prepared, please notify me at least an hour before the beginning of the session. Abuse of this notification system will be noted. See me with any concerns.

*Reflection papers.* Our class will be structured like a public square. I'll encourage open, frank, respectful debate about historical, contemporary, and unsettled issues. To facilitate wide-ranging dialogue, each student is required to submit via Canvas **three 1-2 page** reflection papers throughout the quarter. Students in groups numbered 1-4 will be expected to submit papers for class sessions # 2, 5, and 8; students in groups numbered 5-8 for class sessions # 3, 6, and 9; and students in groups numbered 9-11 for class sessions # 4, 7, and 10. Your group can be found on the 'people' tab on Canvas. I cannot accommodate requests to switch groups/assignment dates.

Your reflection should answer a discuss question (as noted in the syllabus). Grading of these papers will be based on the quality of your engagement; not your position, opinion, or views. These papers must be individual work.

*Final project and presentation.* Your (random) group assignment will also be your group for purposes of the final project and presentation. The presentation should be a 'post-mortem assessment' of a corporate scandal or business dilemma. I will suggest ideas for possible topics. **A 1-2 paragraph written proposal will be due by the end of the third week of classes.** The presentations must be between ten and twelve minutes long (and include a slide deck). Each student should have a speaking role.

### **Course Materials:**

All required reading materials (as listed by session below) will be available through our Canvas page—either in the course reserves page, linked in the syllabus, or in the study.net link.

### **Class Sessions and Assigned Readings:**

#### **Block 1:      **Capitalism and its Discontents****

The first three class sessions will discuss the rationale(s) for a capitalist economy (its benefits and limitations) and capitalism's legal and institutional foundations. We'll also reflect on capitalism and society.

#### **Session 1:      **Capitalism, Democracy, the Rule of Law****

Readings:

- A.      ROBERT J. GORDON, THE RISE AND FALL OF AMERICAN GROWTH (2015) (introduction, stop at top of p. 18)

- B. John Cogan & Kevin Warsh, [Reinvigorating Economic Governance](#), Hoover (2022)
- C. JOHN STEELE GORDON, AN EMPIRE OF WEALTH (2005) (introduction, ch. 11) (optional)

## **Session 2: Profits and Society**

### Readings:

- A. Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, New York Times Magazine (September 13, 1970)
- B. Paul Collier, Diane Coyle, Colin Mayer, Martin Wolf, *Capitalism: What Has Gone Wrong, What Needs to Change, and How it Can be Fixed*, 37 Oxford Rev. of Econ. Policy 637 (2021)
- C. Colin Mayer, *The Future of the Corporation and the Economics of Purpose*, 58 Journal of Management Studies 887 (2021)
- D. ALEX EDMANS, GROW THE PIE (2020) (introduction)

### Discussion Questions:

- A. Is profit maximization compatible with broader social goals? Can you think of examples beyond the readings?
- B. How, as a society, could we operationalize stakeholder capitalism, and what would be the trade-offs?

## **Session 3: ESG and its Critiques**

### Readings:

- A. Kelley E. Currie, Here Comes the Sun: ESG and Dirty Solar Supply Chains (Case Study)
- B. Elizabeth Pollman, *Corporate Social Responsibility, ESG, and Compliance*, in Cambridge Handbook of Compliance (D. Daniel Sokol & Benjamin van Rooij eds. 2021)
- C. The Economist, Special Issue on ESG (July 2022)

### Discussion Questions:

- A. Should we abandon the moniker “ESG” and re-label it with focus on the “E”?
- B. Is ESG a useful investment thesis, rationale, or governance device—or will markets pursue these goals regardless, if consumers and investors demand as much from firms?
- C. Should government mandate ESG is one form or another?

## **Block 2: The “Rules of the Game”**

Milton Friedman famously wrote that capitalism should unfold within the “rules of the game.” What are those rules? And importantly, who makes the rules and what guardrails constrain them from overreach?

#### **Session 4: Economic Regulation: The Supreme Court and the Administrative State**

##### Readings:

- A. *Lochner v. New York*, 198 US 45 (1905) (excerpts)
- B. *Schechter Poultry Corp. v. United States*, 295 US 495 (1935) (excerpts)
- C. *Business Roundtable v. SEC*, 647 US 1144 (2011) (excerpts)
- D. *Seila Law v. CFPB*, 140 S. Ct. 2183 (2020) (excerpts)
- E. *West Virginia v. EPA*, 142 S. Ct. 2587 (2022) (excerpts)

##### Discussion Questions:

- A. Is it legitimate for regulators to substitute their judgment for Congress?
- B. How much can or should Congress allow regulators to decide about the metes and bounds of economic life?

#### **Session 5: Economic Sanctions: The Treasury and National Security**

##### Readings:

- A. JUAN C. ZARATE, *TREASURY'S WAR: THE UNLEASHING OF A NEW ERA OF FINANCIAL WARFARE* (2013) (introduction & chapter 1)
- B. White House, [Fact Sheet](#): Joined by Allies and Partners, the United States Imposes Devastating Costs on Russia (Feb. 24, 2022)

##### Discussion Questions:

- A. What's the difference between restricting business activity in the name of national security than in the interest of other national public policy goals? How do we draw the line?
- B. How do we assess the trade-off between privacy (in financial transactions, for example) and public policy goals (in national security or combatting financial crime, for example). Can you think of other goals?

#### **Session 6: Monopoly Power and Antitrust**

##### Readings:

- A. ROBERT H. BORK, *THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF* (1978) (chapters 2, 21)
- B. Francis Fukuyama, Barak Richman & Ashish Goel, *How to Save Democracy from Technology*, *Foreign Affairs*, January/February 2021

##### Discussion Questions:

- A. Should antitrust policy be guided by principles of consumer welfare or by politically informed views of economic fairness?

- B. Should we break-up big Tech (and why/why not)?

**Block 3: Technology and its Discontents**

Perhaps the biggest catalyst for economic change today comes from tech. Inasmuch as tech stands to revolutionize our economy's efficiency, access, and choices, what are the implications for the established legal order and democratic processes?

**Session 7: Tech I: Digital Money, Payments, and Assets**

Readings:

- A. Coinbase, [Stablecoins](#), July 2022
- B. [White House](#): Executive Order on Ensuring Responsible Development of Digital Assets, Mar. 9, 2022

Discussion Questions:

- A. Digital assets implicate many of the issues we've studied already (monopoly, payments, sanctions, national security)—are they a net positive or negative for society?
- B. How can and should the law keep up with digital asset innovation?

**Session 8: Tech II: Privacy, Free Speech, and (Social) Media**

Readings:

- A. Valeria C. Brannon, *Free Speech and the Regulation of Social Media Content*, Congressional Research Service, Mar. 27, 2019
- B. *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564 (excerpts)
- C. Tim Wu, *Is the First Amendment Obsolete*, Knight First Amendment Institute, Columbia, 2017

**Block 4: People and their Choices**

So far, we've been studying systems and institutions. For the final four class sessions, we'll turn to individuals—their incentives to take risk, the norms to which they respond to, and how organizational culture impacts individual and group behavior. This is also your opportunity to explore a scenario of individual or corporate decisionmaking—with which you disagree—in depth.

## **Session 9: Ethics and the Entrepreneur**

Readings:

- A. Domènec Melé, *The Principle of Subsidiarity in Organizations: A Case Study* (2004)

Discussion Questions:

- A. Can principles of subsidiarity and federalism incentivize more ethical entrepreneurship than an economic system that is regulated heavily at the national level (and why/why not?)
- B. Are today's ethical brands also the ones most likely to be profitable (and why/why not?)

## **Session 10: Individuals, Incentives, Risk-taking**

Readings:

- A. Ron Caruci, *Why Ethical People Make Unethical Choices*, *Harvard Business Review* (Dec. 16, 2016)
- B. EUGENE SOLTES, *WHY THEY DO IT* (2016) (Prologue only)

Discussion Questions:

- A. Are people mostly motivated by incentives or influenced by their firm's culture? Is this a legal question or one better left to firms' internal corporate governance?
- B. Should there be legal rules about executive compensation?

## **Session 11: Corporate Scandals I**

Groups 1-6 will present

## **Session 12: Corporate Scandals II**

Groups 7-11 will present