

BUSINESS ETHICS IN A GLOBAL ECONOMY

EP&E 311 / GLBL 205

Yale University

Spring 2019

Instructor: Elizabeth Acorn

Class Time: Tuesdays 9:25 a.m. – 11:15 a.m.

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Class Location: 31 Hillhouse Ave, Room 108

Office: 31 Hillhouse Ave, Room 202

Office hours: Tuesdays 11:20 a.m. – 1:20 p.m.
or by appointment

I. COURSE DESCRIPTION

The purpose of this course is to provide students with an introduction to and overview of business ethics in a global economy, with a particular focus on transnational corporations (“TNCs”) and the ethical and governance challenges that these cross-border actors can present. The course introduces students to common theories on the role of business in society and how business should be governed. The course examines these theories in the context of TNCs, engaging pressing contemporary global issues, including corruption, corporate responsibility for human rights violations, and international investor protection.

II. LEARNING GOALS & OBJECTIVES

Students will gain broad knowledge of the evolution, operation and governance of TNCs. Students will be able to articulate the strategic, legal and ethical demands on TNCs and evaluate possible reforms to improve their governance. Students will become familiar with simulation-based learning, including business case analysis and the analysis of legal cases.

More specifically, students will learn to:

- Distinguish TNCs from domestic firms, historical transnational businesses and other forms of cross-border exchange
- Describe the strategic motivations for businesses to transnationalize and the political and economic conditions that encourage it
- Conduct research and analyze company information for a TNC
- Describe current governance frameworks for corporations, including corporate governance, business ethics and international law
- Analyze the regulatory and accountability challenges that TNCs present
- Evaluate mechanism to improve the governance of TNCs
- Apply their knowledge of business and governance to real-world examples

III. COURSE MATERIALS, REQUIREMENTS & ASSESSMENT

Most of the readings for the course are available on Canvas. Students are required to purchase a small coursepack of the business case studies, which will be available electronically.

There are three main requirements for this class: active participation, close reading and engagement of texts in advance of class (including reading responses), and three writing assignments.

Class Participation: This course is intended to create an active intellectual atmosphere that promotes participatory learning. While some meetings of the class will involve short lectures, much of the course is devoted to discussion, including several classes with case studies where students analyze a particular business problem or legal dispute. For all classes, students are expected to have engaged with the readings in advance and participate by making comments, asking questions and sharing ideas. Students are always required to interact respectfully with each other. Further guidance on effective class participation is included in Section VIII below.

Reading Responses: students are required to submit **6** reading responses over the semester that reflect on the readings assigned for class that week (the schedule below lists 8 reading responses and students can select which 6 of these to submit). The reading responses should each be a maximum of 2 pages double-spaced. In the reading responses, students should do three things: (1) summarize what they see as the main argument or contribution of each piece; (2) engage critically with the readings (for instance by analyzing the main arguments in light of other readings, case studies, or class discussions, evaluating the arguments, or identifying areas that invite further consideration); (3) present at least one question or issue for class discussion.

As the schedule below sets out, some weeks include a case study. In these weeks, students can choose to focus their reading response on the case study (note that for the week of April 9 the entire class is devoted to a case study and readings responses submitted for this week must address the case study). Such reading responses should provide a brief summary of the pertinent facts and issue at hand, as well as a reasoned assessment and recommendation. Each of the case studies will be presented with a question or questions that should guide these reading responses and the recommendation. These questions will be clearly identified in class the week prior to the case study.

Writing Assignments: over the course of the semester, students are required to write three papers. The first two papers should be approximately 1,000 words in length. In the first paper, students will research and write a profile of a TNC. In the second paper, students will compare and analyze theories on the governance of corporations. The third paper, which should be approximately 2,500 words, requires students to describe and analyze a particular governance challenge in transnational business, identify and compare proposals for reform, and make a recommendation that can best strengthen governance. The last day of class will be devoted to brief student presentations of the third papers. More detailed information on the writing assignments will be provided over the semester.

Assessment and Due Dates: the course requirements are weighted as follows:

- Class participation: 20%
- Reading Responses: 30%
- Writing Assignments: 50%. This is further broken down as follows:
 - *Paper 1*: Profile of a TNC: 10%
 - Due: February 12
 - *Paper 2*: Analysis of governance theories: 10%
 - Due: March 5
 - *Paper 3*: Governance analysis and recommendation: 30% (Note: 25% is based on the paper and 5% is based on the class presentation)
 - Paper due April 29 by 5 p.m.; Class presentation April 23

IV. COURSE POLICIES

Attendance: I expect you to attend every class on time, prepared and ready to participate. Absences or lateness will negatively affect your participation grade. Absences can be excused for illness, religious holidays, family emergencies and other extenuating circumstances, but must be approved in advance of class by the instructor via email.

Submitting Assignments:

- Reading responses must be submitted via email by 8 a.m. on the due date
- Papers 1 and 2 must be submitted either via email prior to the start of class or in hard copy at the start of class on the due date
- Paper 3 must be submitted via email before April 29 at 5 p.m.

Late Assignments: I expect all assignments to be submitted on time. Any assignment submitted after it is due is subject to a late penalty of one-third letter grade per day.

Electronics: You may use laptops or tablets in this class only to consult readings. Research has shown that handwriting of notes is a more effective learning strategy than typing notes. (See, for example, <https://www.washingtonpost.com/news/national/wp/2014/08/26/ditch-the-laptop-and-pick-up-a-pen-class-researchers-say-its-better-for-note-taking/>). Cell phones are prohibited during class. Improper use of laptops or tablets or use of cell phones interferes with the learning environment and will negatively affect your participation grade. If the use of laptops or tablets during class becomes a problem, I will revise this policy and exclude all electronics from class.

Communication, Email and Office Hours: Email is the best way to contact me and I will generally respond within 24 hours. I can often respond within a few hours if you send your message during the business day. My office hours are on Tuesdays from 11:20 a.m. – 1:20 p.m. While you are welcome to drop by during this time, I encourage you to reserve a timeslot on Canvas. If you cannot make office hours and would like to meet, please send me an email and include several proposed meeting times.

V. ACADEMIC INTEGRITY

The work that you submit in this course must be your own. All source material that you use must be appropriately acknowledged and documented. Plagiarism is taken very seriously at Yale and can result in a failing grade or expulsion. If you have questions on how or what to cite, don't hesitate to ask.

Be sure to review Yale College's Undergraduate Regulations on academic integrity: <http://catalog.yale.edu/undergraduate-regulations/policies/definitions-plagiarism-cheating/>.

The Poorvu Center for Teaching and Learning has a helpful guide on working with sources: <https://poorvucenter.yale.edu/writing/using-sources>.

VI. STUDENT WELL-BEING & ACCOMMODATIONS

An inclusive learning environment is critical to the goals and objectives of this course and it is of great importance to me that students from all backgrounds and experiences feel welcome, participate actively and have the opportunity to excel in this course. Your reflections or suggestions on how to ensure an inclusive learning environment for you individually or for other students are always welcome.

There are many resources available on campus to support you during the semester. The **Poorvu Center for Teaching and Learning** can help with writing (drop-in writing partners and writing study halls) and more general academic strategies (academic mentoring and various workshops). The skills (and habits) you form now will follow you into graduate and professional school and your careers—take advantage of these resources to develop learning styles and strategies that work for you!

If you have an established accommodation with the **Resources Office on Disabilities**, please let me know as soon as possible so that we can work together in planning for a successful semester. If anything during the semester should change, please be aware that the Resource Office on Disabilities is always available to consult on a range of accommodations, including physical or mental health problems.

Being a college student can be a stressful and challenging time. Take care of yourself and reach out if you could use more support. **Yale Health** provides mental health counseling and can direct you to further resources: <https://yalehealth.yale.edu/directory/departments/mental-health-counseling>.

VII. READINGS AND SCHEDULE

Part 1: Introduction & Overview

January 15: Welcome and Introduction

- “When Did Companies Become People? Excavating the Legal Evolution.” NPR (2014), available at: <http://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution>.
- “Underreported: The Chiquita Papers.” The Leonard Lopate Show (2011), available at: <https://www.wnyc.org/story/124035-underreported-chiquita-papers/>.

January 22: Overview of TNCs and Governance Challenges

- Roach, Brian. “A Primer on Multinational Corporations.” In *Leviathans*, edited by Alfred D. Chandler and Bruce Mazlish, 19–44. Cambridge: Cambridge University Press, 2005.
- Cohen, Stephen D. “Defining the Subject.” In *Multinational Corporations and Foreign Direct Investment: Avoiding Simplicity, Embracing Complexity*, 27–40. Oxford: Oxford University Press, 2007.
- Simons, Penelope, and Audrey Macklin. “Introduction.” In *The Governance Gap: Extractive Industries, Human Rights, and the Home State Advantage*, 1–21. London: Routledge, 2014.

Part 2: Understanding TNCs

January 29: TNCs Today and their Precursors

- **Reading Response 1 Due**
- **Please bring laptops to class today**
- Wilkins, Mira. “Multinational Enterprise to 1930: Discontinuities and Continuities.” In *Leviathans*, edited by Alfred D. Chandler and Bruce Mazlish, 45–80. Cambridge: Cambridge University Press, 2005.
- Jones, Geoffrey. “Multinationals from the 1930s to the 1980s.” In *Leviathans*, edited by Alfred D. Chandler and Bruce Mazlish, 81–104. Cambridge: Cambridge University Press, 2005.
- **Library research session** with Erin Wachowicz, Librarian for Business and Management (second half of class)

February 5: Why and When Do Businesses Cross the Border?

- **Reading Response 2 Due**
- Cohen, Stephen D. “Why Companies Invest Overseas.” In *Multinational Corporations and Foreign Direct Investment: Avoiding Simplicity, Embracing Complexity*, 117–46. Oxford: Oxford University Press, 2007.
- Cohen, Stephen D. “Where Multinational Corporations Invest and Don’t Invest and Why.” In *Multinational Corporations and Foreign Direct Investment: Avoiding Simplicity, Embracing Complexity*, 148–77. Oxford: Oxford University Press, 2007.
- UNCTAD, “Current FDI Trends,” *World Investment Report* (2018) (pp. 2-13).

February 12: A Product of their Time? Globalization and TNCs

- **Paper 1 Due**
- Cohn, Theodore H. "Multinational Corporations and Global Production." In *Global Political Economy: Theory and Practice*, 293–336. Routledge, 2016.
- Jones, Geoffrey. "Globalization." In *The Oxford Handbook of Business History*, edited by Jonathan Zeitlin and Geoffrey Jones, 1–32. Oxford University Press, 2008.
- Levy, David, and Florence Palpacuer. "Global Production Networks and the Changing Corporation." In *The Corporation*, edited by Grietje Baars and Andre Spicer, 336–45. Cambridge: Cambridge University Press, 2017.

Part 3: Theories and Approaches to the Governance of Corporations

February 19: Corporate Governance and Corporate Social Responsibility

- **Reading Response 3 Due**
- Deakin, Simon. "The Corporation in Legal Studies." In *The Corporation*, edited by Grietje Baars and Andre Spicer, 47–63. Cambridge: Cambridge University Press, 2017.
- Stout, Lynn. "Part I: Debunking the Shareholder Value Myth," in *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations, and the Public*. Barrett-Koehlen Publishers, 2012 (pp. 1-12 and 47-59 are required).
- Karnani, Aneel. "The Case Against Corporate Social Responsibility." *The Wall Street Journal* (August 23, 2010).
- **Case study:** Christopher A. Bartlett. *Unilever's New Global Strategy: Competing through Sustainability* (2016), HBS Case No. 9-916-414.

February 26: Business Ethics and Normative Theory

- **Reading Response 4 Due**
- Crane, Andrew, and Dirk Matten. "Framing Business Ethics." In *Business Ethics: Managing Corporate Citizenship and Sustainability in the Age of Globalization*, 44–84. Oxford: Oxford University Press, 2016.
- Heath, Joseph, Jeffrey Moriarty, and Wayne Norman. "Business Ethics and (or as) Political Philosophy." *Business Ethics Quarterly* 20, no. 03 (2010): 427–52.
- Arnold, Denis G. "Transnational Corporations and the Duty to Respect Basic Human Rights." *Business Ethics Quarterly* 20, no. 03 (2010): 371–99.
- **Case study:** John A. Quelch and Margaret L. Rodriguez. *Rana Plaza: Workplace Safety in Bangladesh* (2015), HBS Case 9-514-034.

Part 4: The Governance Challenge of TNCs

March 5: Introducing the Governance Gap

- **Paper 2 Due**
- Joseph, Sarah. "Taming the Leviathans: Multinational Enterprises and Human Rights." *Netherlands International Law Review* 46, no. 02 (1999): 171-203.

- Koenig-Archibugi, Mathias. “Transnational Corporations and Public Accountability.” *Government and Opposition* 39, no. 2 (2004): 234–59.
- Hearson, Martin. “The Challenges for Developing Countries in International Tax Justice.” *The Journal of Development Studies* (2017): 1–7.
- “Racing to the Bottom: Countries Skimp Enforcement of Decent Working Conditions to Get FDI.” *The Economist* (November 27, 2013).
- Review from Week of January 29: Simons, Penelope, and Audrey Macklin. *The Governance Gap: Extractive Industries, Human Rights, and the Home State Advantage*. London: Routledge, 2014.

March 26: The Asymmetries of International Law

- **Reading Response 5 Due**
- Sauvant, Karl P. “The Negotiations of the United Nations Code of Conduct on Transnational Corporations: Experience and Lessons Learned.” *The Journal of World Investment & Trade* 16, no. 1 (2015): 11-87 (pages 11–27 are required).
- Kaleck, W. and M. Saage-Maass. “Corporate Accountability for Human Rights Violations Amounting to International Crimes: The Status Quo and Its Challenges.” *Journal of International Criminal Justice* 8, no. 3 (2010): 699-724.
- Organization for Economic Cooperation and Development. “‘Indirect Expropriation’ and the ‘Right to Regulate’ in International Investment Law.” *OECD Working Papers on International Investment* (2004): 1-24.
- Provost, Claire and Matt Kennard. “The Obscure Legal System That Lets Corporations Sue Countries.” *The Guardian* (June 10, 2015).
- **Case study:** Case Brief, *Tecmed v. Mexico*, ICSID Case No. ARB (AF)/00/2, Award, 43 I.L.M. 133 (2004) (Case summary, 8 pages).

April 2: What about the Home State? Anti-Corruption and Anti-Slavery Initiatives

- **Reading Response 6 Due**
- Davis, Kevin E. “Does the Globalization of Anti Corruption Help Developing Countries.” In *International Economic Law, Globalization and Developing Countries*, edited by Julio Faundez and Celine Tan, 283–306. Northampton: Edward Elgar, 2010.
- Haufler, Virginia. “Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in the Developing World.” *Global Environmental Politics* 10, no. 3 (2010): 53–73.
- LeBaron, Genevieve and Andreas Rühmkorf. “Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance.” *Global Policy* 8 (2017): 15–28.
- **Case study:** British Aerospace in Saudi Arabia
 - Frontline’s *Black Money*, available at: <http://www.pbs.org/video/frontline-black-money/>.
 - Williams, Sope. “The BAE/Saudi Al-Yamamah Contracts: Implications in Law and Public Procurement.” *International and Comparative Law Quarterly* 57, no. 1 (2008): 200–209.

Part 5: More Governance Mechanisms

April 9: National Courts and International Wrongs: the Alien Tort Claims Act

- **Reading Response 7 Due**
- **Case study: Royal Dutch Shell in the Nigeria**
 - Lynn S. Paine and Mihnea C. Moldoveanu. *Royal Dutch Shell in Nigeria (A)* (1999), HBS Case 399-126.
 - Jad Mouawad. "Shell to Pay \$15.5 Million to Settle Nigerian Case." *New York Times* (June 8, 2009).
 - *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013) (Syllabus and opinion of Chief Justice Roberts, p. 1-6).
 - *Kiobel v. Royal Dutch Petroleum Co.*, 2d. Cir. 06-4800-cv, 06-4876-cv (September 17, 2010) (Majority opinion p. 1-8 and Concurrence, p. 1-8).
 - Cleveland, Sarah H. "After Kiobel." *Journal of International Criminal Justice* 12 (2014): 551-577.
 - Amnesty International. *Shell Complicit in the Arbitrary Executions of Ogoni Nine as Writ Served in Dutch Court* (2017).

April 16: Private Actors, Soft Law and a Return to International Law?

- **Reading Response 8 Due**
- Muchlinski, Peter. "Implementing the New UN Corporate Human Rights Framework: Implications for Corporate Law, Governance, and Regulation." *Business Ethics Quarterly* 22, no. 01 (January 2012): 145–77.
- Haufler, Virginia. "The Kimberley Process Certification Scheme: An Innovation in Global Governance and Conflict Prevention." *The Journal of Business Ethics* 89, no. 4 (2009): 403–16.
- Vitell, Scott J. "A Case for Consumer Social Responsibility: Including a Selected Review of Consumer Ethics/Social Responsibility Research." *Journal of Business Ethics* 130, no. 4 (2015): 767–74.
- Bilchitz, David. "Introduction: Putting Flesh on the Bone." In *Building a Treaty on Business and Human Rights: Context and Contours*, edited by Surya Deva and David Bilchitz, 1–24. Cambridge: Cambridge University Press, 2017.

April 23: Class Presentations of Paper 3

- **Paper 3 due via email by April 29 at 5pm**

VIII. GUIDELINES FOR CLASS PARTICIPATION¹

	Exemplary	Adequate	Minimal	Unacceptable
Substantive	Weighs multiple perspectives on an issue and considers the public good; uses relevant knowledge to analyze an issue; employs a higher-order discussion strategy, such as argument by analogy, stipulation, or resolution of a value conflict	Demonstrates knowledge of important ideas related to the issue; explicitly states an issue for the group to consider; presents more than one viewpoint; supports a position with reasons or evidence	Makes statements about the issue that express only personal attitudes; mentions a potentially important idea but does not pursue it in a way that advances the group's understanding or engagement	Remains silent; contributes no thoughts of his or her own; makes only irrelevant comments
Procedural	Engages in more than one sustained interchange, or summarizes and assesses the progress of the discussion; makes no comments that inhibit others' contributions and intervenes if others do this	Engages in an extended interchange with at least one other person, or paraphrases important statements as a transition or summary, or asks another person for an explanation or clarification germane to the discussion; does not inhibit other's contributions	Invites contributions implicitly or explicitly, or responds constructively to ideas expressed by at least one other person; tends not to make negative statements	Makes no comments that facilitate dialogue, or makes statements that are primarily negative in character
Relational	Commits to learning everyone's names, and uses them consistently. Attends every class; Uses eye contact to attend to speaker; Follows electronic devices policy; Never asks someone to be the representative of an identity; Thoroughly prepares for the intellectual work of the class and often extends inquiry to other materials and/or sources	Commits to learning everyone's names, and uses them correctly almost all of the time. Attends almost every class; Uses eye contact to attend to speaker; Follows electronic devices policy; Never asks someone to be the representative of an identity; Prepared for intellectual work of the class	Learns names and uses them mostly correctly; Attends almost every class; Attempts to use eye contact to attend to speaker; Follows electronic devices policy but needs reminding; Never asks someone to be the representative of an identity; Needs reminding about appropriate class preparation	Does not learn people's names, is not attentive to speakers; must be reminded to put away electronic devices; speaks without consideration of class members' feelings; misses or comes late to class; ill-prepared for class discussion

¹ This rubric is based on a model developed by Yale's Poorvu Center for Teaching and Learning.