

POLI 470: Philosophy, Economy, and Society
Corporations

Winter 2021, McGill University
Wednesdays and Fridays, 4:05-5:25 pm EST
Officially scheduled to meet in Leacock 14 but not really

Professor Jacob T. Levy
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Officially has an office in Ferrier 416 but not really
office hours Thursday 1:45-2:45 pm, with variable additional hours.

1. Aims and learning objectives: This course aims to be a capstone course for students of political theory, political philosophy, and/or economic thought, though enrollment isn't limited to students concentrating on one of those areas. It will bring multiple disciplines and methodologies to bear on an in-depth study of the emergence, development, and transformation of the *corporation* as a legal, social, and (eventually) economic actor; it will draw on law and history as well as on political theory, philosophy, and economics. It will introduce debates about the meaning and status of corporations' legal personhood, their political status, and their economic function. With all of that as a foundation, the course will conclude with contemporary normative debates about corporations, prominently including questions about workplace democracy.

2. Prerequisites:

At least one and preferably two courses from among the following:

300 level or higher courses in political theory (POLI 333, 334, 348, 362, 364, 365, 367, 433, 434, 561)

300 level or higher courses in political or legal philosophy (PHIL 344, 348, 445, 446)

300 level or higher courses in economic thought (ECON 334, 460, 461)

This is advisory, not mandatory, but it's good advice. The course is not recommended for students who have taken *none* of the 300-or-higher level courses listed above.

4. Class format and grading

Friday classes will be lectures delivered via Zoom. I may experiment with delivering them live; if so, they will still be recorded and able to be viewed later as your schedules allow. Otherwise they will be prerecorded.

Wednesday classes will be held at the fixed class hour on Zoom. They will be recorded. They will be a mix of lecture, Q&A, and discussion. Please do all the reading for the week before each Wednesday class.

Every three weeks starting January 20, and more often as the term goes on, we will divide the class in two, each having a 35-minute discussion without lecture in the Wednesday timeslot (one group 4:05-4:40, one 4:45-5:20). If health conditions and regulations permit, we will have those discussions in person each of the final four Wednesdays of the course: March 17, 24, 31, and

April 7. Students whose schedules will not allow them to consistently take part in those sessions should choose grading option 2B, below.

If course enrollment falls to 25 or below, we will not divide the class but rather will have a single 50-minute group discussion in those sessions.

I anticipate using the whole 80 minutes of class time on Wednesdays. I reserve the right to do so on Fridays but expect it to be more like 50 minutes most of the time.

Grading:

All students will write

1. Final: a 5500-6500 word final paper worth 45% of the grade, due on April 13, preceded by a 500 word proposal worth 5% of the grade, due March 22.

The other components of the class include choices:

2. Ongoing: 10% of the grade

Option A. discussion (in both the regular Wednesday classes and the discussion classes).

Option B: short reply essays to posted questions. There will be 10 weeks of posted questions; those choosing this option should write 5 response essays of 1000 words \pm 10%.

People are free to take part in the discussions on an ungraded basis and to choose option 2B for grade purposes. People who cannot regularly take part in discussions synchronously should choose option 2B.

Three RGCS events are listed as recommended on the syllabus. Attending all three will be worth extra credit toward either version of the participation component of the grade.

3. Midterm: 40% of the grade

Option A. A paper of 5000-6000 words due on February 24

Option B. An open-book essay exam March 9-10

This will be a three-hour exam. Once you open it, it will be available to you for 7.5 hours, in accordance with Universal Design for Learning (UDL) principles. UDL takes into account diverse learners and aims to give all students equal opportunities to succeed. In practice, this means that for timed assignments, students will have a 48-hour window in which to access the assignment, and all students are granted 2½ time to complete the assignment. This additional time should mitigate barriers to learning as well as unexpected occurrences, such as technical difficulties or interruptions. Because of these modifications, time- based accommodations for students registered with OSD will not usually apply. There may be exceptional circumstances in which other disability-related accommodations may still be needed. If this may be the case for you, please reach out to OSD. They will assess the situation and coordinate with me if necessary

You must receive a passing grade for each component of the course that is worth at least 20% (that is, both 1 and 3 above) in order to pass the course. Any documented plagiarism will lead to failing that portion of the class, and accordingly the class as a whole; by remaining in the class, you agree to this condition

5. McGill Statement on Academic Integrity: McGill University values academic integrity. Therefore all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures (see <https://www.mcgill.ca/deanofstudents/plagiarism> for more information).

L'université McGill attache une haute importance à l'honnêteté académique. Il incombe par conséquent à tous les étudiants de comprendre ce que l'on entend par tricherie, plagiat et autres infractions académiques, ainsi que les conséquences que peuvent avoir de telles actions, selon le Code de conduite de l'étudiant et des procédures disciplinaires (pour de plus amples renseignements, veuillez consulter le site <https://www.mcgill.ca/deanofstudents/plagiarism>).

I use a variety of techniques to monitor academic dishonesty and plagiarism. Your assignments may be submitted to text-matching or other appropriate software. Obviously, downloading or purchasing whole papers is plagiarism, but you can be guilty of plagiarism for much less than that. *Any time you copy someone else's words and paste them into your paper without quotation marks, a full citation, and due credit, you have committed academic dishonesty; one sentence from Wikipedia is enough to count.* Other people's ideas usually warrant a footnote, other people's words *always demand* quotation marks and a full citation.

Suspected cases of plagiarism will be vigorously pursued.

6. In accord with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded.

Conformément à la Charte des droits de l'étudiant de l'Université McGill, chaque étudiant a le droit de soumettre en français ou en anglais tout travail écrit devant être noté (sauf dans le cas des cours dont l'un des objets est la maîtrise d'une langue).

7. In the event of extraordinary circumstances beyond the University's control, the content and/or evaluation scheme in this course is subject to change.

8. Miscellany

a. While I am bureaucratically required to put item 7 on the syllabus, I am not bureaucratically forbidden to make fun of it. As we have all learned by now: if a disease epidemic breaks out, stuff changes. This was the worry that first prompted the addition of that language to syllabi, and the fact that it needs to be repeated on every syllabus demonstrates how foolishly bureaucratized and legalistic the interpretation of the *Handbook on Student Rights and Responsibilities*, ch. 1, Articles 10-11 has become over the years thanks to challenges to any change made in the syllabus after the second week. It should also be noted that if the End of Days arrives before the end of the semester, it is possible that final grades will be delayed.

b. Instructor-generated course materials (e.g., handouts, notes, summaries, exam questions) are protected by law and may not be copied or distributed in any form or in any medium without explicit permission of the instructor. All slides, video recordings, lecture notes, etc. remain the instructor's intellectual property. As such, you may use these only for your own learning (and research, with proper referencing/citation) ends. You are not permitted to disseminate or share these materials; doing so may violate the instructor's intellectual property rights. Note that infringements of copyright can be subject to follow up by the University under the Code of Student Conduct and Disciplinary Procedures.

c. By enrolling in a remote course, you accept that fixed sessions will be recorded. You must consent to being recorded if you are attending a lecture or participating in a component of a course that is being recorded. You will be notified through a "pop-up" box in Zoom if a lecture or portion of a class is being recorded. If you are not comfortable being in a class that is recorded, you may decide to not take part by logging off Zoom. Students who log off will be able to later watch the video recording in MyCourses.

For pedagogical reasons and for the enrichment of the experience of all students, attendance may be monitored and/or active participation may be expected or required during fixed (synchronous) class time. As such, you may be asked to turn on your camera and audio. **If you do not have the necessary resources (e.g., adequate Internet bandwidth or equipment) to do so, inform your instructor at the beginning of term so that appropriate accommodations can be made.**

In addition to the recording of your image and voice, your name (or preferred name) may be displayed on screen, and your instructor may call your name during the lecture. As such, this personal information will be disclosed to classmates, whether during the lecture or in viewing the recording. By remaining in classes that are being recorded, you accept that personal information of this kind may be disclosed to others, whether during the lecture or in viewing the recording.

d. The questions and comments from other students that are recorded on Zoom video sessions must not be copied or reproduced elsewhere or circulated outside the class.

e. The University recognizes the importance of maintaining teaching spaces that are respectful and inclusive for all involved. To this end, offensive, violent, or harmful language arising in contexts such as the following may be cause for disciplinary action:

1. Username (use only your legal or preferred name)
2. Visual backgrounds
3. "Chat" boxes

You should follow instructors' directions about the use of the "chat" function on remote learning platforms.

9. Academic freedom

Academic freedom in a university differs from freedom of speech in the wider society; it is not the right to say just anything. It guarantees scholars— including both faculty and students— protection for their scholarly inquiry regardless of the conclusions that it reaches, while demanding respect for scholarly methods.

One aspect of that is that scholars will not be sanctioned within the classroom for what happens outside of it. The other aspect is that scholars will be evaluated on the basis of their use of scholarly methods, not on the basis of the conclusions that they reach. What this means in a class like this is: your grade will not be affected by your speech in nonacademic settings, and it will not be affected by such things as whether the political conclusion you argue for is popular among fellow students, is shared by the TA, or is shared by the professor. We are studying controversial and complicated questions, and you will be evaluated on the basis of considerations such as quality of argument, quality of writing, and the careful use of sources, not on the basis of the political orientation of your conclusions.

10. Acknowledgement of land

McGill University is on land which has long served as a site of meeting and exchange amongst Indigenous peoples, including the Haudenosaunee and Anishinabeg nations. We acknowledge and thank the diverse Indigenous people whose footsteps have marked this territory on which peoples of the world now gather.

L'Université McGill est sur un emplacement qui a longtemps servi de lieu de rencontre et d'échange entre les peuples autochtones, y compris les nations Haudenosaunee et Anishinabeg. Nous reconnaissons et remercions les divers peuples autochtones dont les pas ont marqué ce territoire sur lequel les peuples du monde entier se réunissent maintenant.

SYLLABUS OF READINGS AND CLASSES

There are a lot of long readings in the class. Mostly these should *not* be read with the kind of thorough care that you take in reading primary texts in political theory. The longer readings are mostly history, and they're mostly there for the big picture, not for detail. There are also some economics articles. None of them are too difficult or technical, and the point in all of them is to understand the big ideas, not to be able to reproduce the technical arguments.

As this is a 400-level capstone class, *you have considerable responsibility for deciding for yourself how to approach the reading*. You should pay attention to the question "what interests me enough to want to write a paper on it?" That reading you should do thoroughly; you should read more of the book than the assigned excerpts; you should start to follow up footnotes and do additional reading. Other reading, you should do enough to get a basic sense of things, but *not* try to do with the same care. This is not a class in which I'm going to quiz you or cold-call on you to find out whether you've learned fine details. It's a course in which I'm going to open lots of doors into different literatures on how to approach some big questions, and you'll have to make decisions about how far to go into the various rooms.

January 8: No class. Please use this time to get started on the readings.

Weeks 1-2: origins of the corporate form

Week 1, January 13 and 15:

Harold Berman, *Law and Revolution*, pp. 120-133, 149-51, 215-221, 238-240, 357-64, 390-8 and footnotes at 606-608 <https://hdl.handle.net/2027/mdp.39015020751478> **recommended: read more widely in this book**

Peter Stein, *Roman Law in European History*, pp. 33-54

<https://ebookcentral.proquest.com/lib/mcgill/detail.action?docID=4949591>

Antony Black, *Guilds and Civil Society*, pp. 3-66

<https://hdl.handle.net/2027/inu.30000007264280> **recommended: read this book**

Institutes of Justinian, chapter 47 section 22 (pp. 306-307) <https://tinyurl.com/tq83eew>

Week 2, January 20 and 22:

F.W. Maitland, introduction to Gierke, *Political Theory of the Middle Ages*, available on MyCourses; and "Moral Personality and Legal Personality,"

at <https://ebookcentral.proquest.com/lib/mcgill/reader.action?docID=218260> . If you find the full introduction too hard to get through, there's an excerpt available at that link.

Hobbes, *Leviathan*, any edition, ch. 16 and 22; this is fine if you don't have a copy

<https://www.gutenberg.org/files/3207/3207-h/3207-h.htm>

J.N. Figgis, *Churches in the Modern State*, ch. 1-2

<https://hdl.handle.net/2027/mdp.39015005895696>

Montesquieu, *The Spirit of the Laws*, 1.1.4 (pp 17-19), 1.2.7 (p. 27), 1.5.9 (pp. 55-56), 1.8.6 (pp. 116-117)

Recommended: Students who feel up to the challenge of a few pages of Hegel should also read

The Philosophy of Right sections 250-256, pp. 270-274.

And also:

January 21, 4:30-6 pm: not required but very strongly recommended for students in this class, RGCS Lecture, Michael Munger (Duke), "Is capitalism sustainable?" Please register by e-mailing lincentre@mcgill.ca

Weeks 3-4

The financial revolution, the joint stock corporation, imperialism, and mercantilism

Week 3-4

January 27 and 29:

Adam Smith, *The Wealth of Nations*, V.1.e, pp. 731-758, and then (this is reversing the order from the book) IV,7.a-c, pp. 556-641

February 3

Oscar Gelderblom and Joost Jonker, "Completing a Financial Revolution: The Finance of the Dutch East India Trade and the Rise of the Amsterdam Capital Market, 1595-1612," *The Journal of Economic History* Vol. 64, No. 3 (Sep., 2004), pp. 641-672

<https://www.jstor.org/stable/3874815>

Oscar Gelderblom, Abe de Jong and Joost Jonker, "The Formative Years of the Modern Corporation: The Dutch East India Company VOC, 1602–1623" *The Journal of Economic History* Vol. 73, No. 4, pp. 1050-1076 <https://www.jstor.org/stable/24551011>

Week 4-5: General incorporation

February 5, 10, 12

Douglas North, John Wallis, and Barry Weingast, *Violence and Social Orders* pp. 17-25, 211-240. **Recommended: read this book.**

Herbert Hovenkamp, *Enterprise and American Law*, pp. 11-64

Gordon S. Wood, *The Radicalism of the American Revolution*, pp. 315-322

Naomi Lamoreaux and John Wallis, Introduction, *Organizations, Civil Society, and the Roots of Development* <https://www.nber.org/system/files/chapters/c13503/c13503.pdf>

Morton Horwitz, *The Transformation of American Law, 1780-1860*, pp. 109-139

Dartmouth College vs. Woodward <https://supreme.justia.com/cases/federal/us/17/518/#tab-opinion-1918147>

Week 6: Legal realism and concession theory

February 17, 19

Felix Cohen, "Transcendental nonsense and the functional approach"

<http://moglen.law.columbia.edu/LCS/cohen-transcendental.pdf>

John Dewey, "The historic background of corporate legal personality"

<https://www.jstor.org/stable/788782>

Max Radin, "The Endless Problem of Corporate Personality," *Columbia Law Review*

Vol. 32, No. 4 (Apr., 1932), pp. 643-667 <https://www.jstor.org/stable/1114707>

February 24: First paper due, for those writing it

Week 7. 19th-20th centuries, managerial control

February 24, 26

long but skimmable readings

Albert Chandler, *The Visible Hand*: Introduction, parts IV and V, and conclusion

Adolf Berle and Gardiner Means, *The Modern Corporation and Private Property*, Book 1, pp. 3-116

<https://doi.org/10.4324/9781315133188>

Read more carefully

Joseph Schumpeter, *Capitalism, Socialism, and Democracy*, ch. 6-8, 12

And also:

February 25: not required but very strongly recommended for students in this class, RGCS Lecture, Anthony Appiah (NYU), "What about the workers?" 4:30-6 pm online, Please register by e-mailing lincentre@mcgill.ca

Weeks 8-9 Economic and institutional perspectives

March 10: no class; midterm exam for those taking it

March 12, 17, 19

Ronald Coase, "The Nature of the Firm" <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1468-0335.1937.tb00002.x>

Michael Jensen and William Meckling, "Theory of the firm: Managerial behavior, agency costs and ownership structure" *Journal of Financial Economics* 3(4) October 1976, Pages 305-360 [https://doi.org/10.1016/0304-405X\(76\)90026-X](https://doi.org/10.1016/0304-405X(76)90026-X)

Frank Easterbrook and Daniel Fischel, *The Economic Structure of Corporate Law*, ch 1: The corporate contract

Oliver Williamson, "The Theory of the Firm as Governance Structure: From Choice to Contract." *Journal of Economic Perspectives*, 16 (3): 171-195, 2002

March 22: final paper proposals due

Weeks 10-11: Democratic governance?

March 24, 26, 31, April 2

Carole Pateman, *Participation and Democratic Theory*, ch. 2-4 <https://doi-org.proxy3.library.mcgill.ca/10.1017/CBO9780511720444>

Abraham Singer, *The Form of the Firm*, complete

<https://oxford-universitypressscholarship-com.proxy3.library.mcgill.ca/view/10.1093/oso/9780190698348.001.0001/oso-9780190698348>

Elizabeth Anderson, *Private Government*, pp. 1-72
<https://muse-jhu-edu.proxy3.library.mcgill.ca/book/64596>

And also: March 25:

not required but very strongly recommended for students in this class, RGCS Debate: Richard Garnett and Chiara Cordelli, "Must Churches Be Democratic?" 4:30-6 pm online, please register by e-mailing lincentre@mcgill.ca .

Week 12: Corporations and states
April 7, 9

Daniel Lee, Private Law Models for Public Law Concepts: The Roman Law Theory of Dominion in the Monarchomach Doctrine of Popular Sovereignty *The Review of Politics* 70(03):370 - 399, 2008
DOI: [10.1017/S0034670508000557](https://doi.org/10.1017/S0034670508000557)

David Ciepley, "Beyond Public and Private: Toward a Political Theory of the Corporation," *American Political Science Review* , 107(1), pp. 139 - 158, 2013
DOI: <https://doi.org/10.1017/S0003055412000536>

David Ciepley, "Is the U.S. Government a Corporation? The Corporate Origins of Modern Constitutionalism." *American Political Science Review*, 111(2), 418-435. 2017.
doi:[10.1017/S0003055417000041](https://doi.org/10.1017/S0003055417000041)

Week 13: TBA
April 14, 16

Probably for catching up and getting a chance to do more reading in-depth as appropriate to your final paper, but maybe for pursuing one more question: corporate power in democratic politics; multinationals; or corporate social responsibility vs. shareholder value.