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**GOVERNANCE THEORY AND PRACTICE**

**1.0 Introduction**

Governance has been defined to refer to the structures and processes that are designed to ensure accountability, transparency, responsiveness, rule of law, stability, equity, and inclusiveness, empowerment, and broad-based participation. Governance also represents the norms, values, and rules of the game through which public affairs are managed in a manner that is transparent, participatory, inclusive, and responsive.

In spite of the importance of governance to nations and people, its study was seen to be so vague and unprecise, until the last two decades where it has moved from the status of a lost word of the English language to a fashionable and challenging concept in a range of disciplines and research programmes. Governance studies and theories are no vague, but been tailored to offer cross-disciplinary focus in order to generate, ultimately, a multi-disciplinary synthesis. Key of such disciplines are; politics, economics, development studies, international politics, socio-legal studies, corporate governance, participatory engagement, and environmental management.

The twin forces that mark out this era of change on governance theory and studies over the last few decades, we suggest, are globalisation and democratisation. These are the implications of our growing interdependence in a context where the expectations of citizens to influence the decisions that affect them have increased the pressure on established systems of collective decision-making, and brought forth demands for new forms of governance. Governance has become a focus of academic and practical discourse because traditional literatures and ways of explaining were inadequate to the task. The world has changed and the rise of governance seeks to an attempt to understand the implications of these changes, and how they might best be managed.

For the purposes of this study, discussions have been made below on; Governance in Development, Corporate Governance, and Governance in Socio-Legal Studies.

**2.0 Governance in Development Studies**

The idea of ‘governance’ has for some time now been considered a fundamental concept when people think about development. This occurrence closely mirrors evolution of a dominantly pro-market perspective in main stream development policy to one that recognizes the significance of the state and the nature of politics more generally in impacting on development process and outcomes. Global development champions like the World Bank considers the importance of governance to development studies.

To confirm such level of high importance, one World Bank President Barber Conable said, ‘If we are to achieve development, we must aim for growth that cannot be easily reversed through the political process of imperfect governance’ (Conable, 1992; cited in Doornboos 2001). The crisis of governance then, as described by the WB, referred to a crisis in areas that were not officially within its domain.

Amidst considerable uncertainty regarding the extent to which the governance idea could be cast in political terms, the notion of ‘good’ governance emerged as a necessary instrument enabling the launch of a new generation of political conditionalities. The use of the ‘good governance’ theme to drive political and institutional reforms of a particular sort through aid, marked a watershed in the character of international development. It has been closely related to strategies of institutional globalisation, and provides a handle for the formulation of political conditionalities by external actors, which previously did not dispose of “politically oriented” instruments for intervention and direction.

**2.1 Good Governance**

‘Good’ governance proposes that, states must become ‘credible partners’ in a country’s development, and wherein they lack the capacity to do so, such capacity can be reinvigorated. The rise of good governance has been understood as marking a departure from the theoretical principles of the New Political Economy (NPE) that dominated in the 1980s, with their rather negative views of the state as ‘predatory’ and corrupt and correspondingly laudatory views of the market as efficient and conducive to individual freedom (see Colclough and Manor, 1991; Nonneman, 1996).

The WB’s position on governance was first outlined fully in a definitive statement in a report titled Governance and Development in 1992, where it defined good governance as ‘synonymous with sound development management’ (World Bank, 1992:1). This policy document focuses on four main areas of public administration in general and public sector management in particular, which it considers to be within its mandate: Accountability; Legal framework for development; Information; and Transparency.

**2.2 Major tensions within ‘good’ governance**

The impressive show of support for good governance by a vast array of international development organisations and western governments might lend the impression of consensus. There is hardly any doubt that the concept of good governance has been extremely influential and pervasive for all the reasons discussed so far. But at the same time, it is equally true that no matter how coherent development discourse appears to be around good governance, there are major tensions that continue to splinter support for it. Each of these tensions arises from the very political nature of the concerns that constitute governance (indeed, problems arising from the exclusion of these concerns were what had led to the focus on governance to begin with).

**2.3 Governance and democratization**

The concept of good governance has historically shared a strong association not just with western models of government and administration, but more fundamentally with western liberal democratic politics. The subsequent use of good governance based on political conditionality to forge similar or identical democratic politics in countries around the world has been criticised as highly suspicious. Western donors largely interpret democratisation as multi party politics, and there is wide scepticism whether this is either adequate or even appropriate to the needs of the host countries.

Donors project their interest in democratisation as necessary ‘to ensure that repressed popular energies and misappropriated aid monies are both released for development’ (Barya, 1993), but this is not necessarily the perception of African governments for that matter. African governments can be divided into two broad groups in this regard: those who favour democracy but argue that it must not be imposed and its definition must be left to the African people and those who are opposed outright to democracy although they pay lip service to the concept.

There are therefore six ‘institutional arenas’ to understand and investigate the functional dimensions of governance of dvelopment: civil society, political society, government, bureaucracy, economic society and the judicial system (Hyden et al., (2004). The results of their empirical research lead the authors to conclude that ‘development stagnation and obstacles to democratisation stem from a failure to undertake the necessary steps to establishing a system of rules that legitimate political choices and political behaviour’ (Hyden et al., 2004).

**2.4 Governance and the state**

The rise of good governance in international development is usually associated with marking a clear break with the dominant neoliberal paradigm of the 1980s. The State in a Changing World supposedly contained a more ‘balanced approach between the state-managed and market-managed models’ (Martinussen, 1998). Drawing from the work of other authors like Chalmers Johnson (1982) and Robert Wade (1990), Leftwich (1994) makes the case that growth in East Asian societies has been masterminded by ‘developmental states’, that possessed the requisite autonomy to shape and pursue nationally-determined development objectives. He also argues that developmental states could be both democratic and non-democratic, a point which contradicts the ostensible consensus regarding the significance of democratisation for development by the proponents of good governance. Obsession with the liberal democratic state thus leads to a patent disregard for the varying social and cultural contexts that differently structure state-society relationships.

**2.5 Governance and Power**

The critical element within development studies is underpinned by a view of governance as a western construct that attempts to mask the power relationships between the developed and developing world. Good governance is epitomised by predictable, open and enlightened policy making (that is a transparent process); a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; a strong civil society participating in public affairs; and all behaving under rule of law.

The first level, i.e., creation of a “neutral” state stems from the recurrent theme of separating technical from political issues within the World Bank’s formal discourse. It follows therefore, that the principles of ‘good’ governance promoted by the World Bank stem from a prior conception of the good.

The second level, i.e., creation of a ‘liberal public sphere’ or ‘civil society’ is among the most innovative of the Bank’s recent positions with respect to governance and development. Indeed, there is a widespread consensus around the need for enlightened participation by civil society in public decision-making. It is therefore to be said that, the understanding of power relationships in governance that defines the divide between mainstream development agencies and critical interpreters of development.

In conclusion, there is a sharp divide in the literature between those who advocate good governance and development and those who question it. To its proponents, good governance is a benign and universally applicable notion, worthy of pursuit, but to its opponents, it is yet another instrument of power that the developed minority continues to wield over the vast developing regions of the world. Governance (good) is very important in the implementation of any form of development (democratization, state, and power). Thus, with proper governance systems, improved development can be assured irrespective of the economic state of a country or its people.

**3.0 Corporate Governance**

A classic narrow definition of corporate governance refers to ‘the ways suppliers of finance to corporations assure themselves of getting return on their investment’ (Shleifer and Vishny, 1997). Researchers for so many years have focused primarily on the control of executive self-interest and the protection of shareholder interests in settings where organizational ownership and control are separated (Daily et al, 2003). Emphasis of such governance research has been on the efficacy of the various mechanisms available to protect shareholders from the self-interested executives.

Corporate governance is increasingly concerned with the role of stakeholders, and its impact on the collective welfare of society. It first covers the manner in which shareholders; managers, employees, creditors, customers, and other stakeholders interact with one another in shaping corporate strategies; and secondly, it relates to public policy, and an adequate legal regulatory framework, which are essential for the development of good systems of governance. Defined as such, corporate governance is viewed as a key element in improving the microeconomic efficiency of a firm, affecting the functioning of capital markets and influencing resource allocation.

Because of the separation of ownership and control, and the lack of monitoring, there is a danger that the managers of a public company will pursue their own goals at the expense of those of shareholders or owners. Among other things, managers may overpay themselves and give themselves extravagant perks; they may carry out unprofitable, but power-enhancing investments; they may seek to entrench themselves. In addition, managers may have goals that are more benign but that are still inconsistent with value maximisation. They may be reluctant to lay off workers that are no longer productive.

The aforementioned challenges associated with public corporate organisations has given rise to corporate governance. These challenges take the form of agency problem, or conflict of interest, involving members of the organisation – these might be owners, managers, workers or consumers. Second, transaction costs are such that this agency problem cannot be dealt with through a contract.

**3.1 Agency Theory**

Agency theory examines the relationship between two parties, a principal and an agent, where the agent makes decisions on behalf of the principal. One of the consequences of the separation of ownership and control is that owners as ‘principal’ must delegate a degree of control to management as ‘agents’. Under the ‘zero-cost’ neoclassical framework, the owners could instruct the management to maximise profits, as there is no disagreement on the objectives of the firm.

Agency theory departs from the neoclassical assumption that the agent’s costs and decisions are fully observable. Instead, it argues that owners as risk bearers are primarily concerned with profit maximisation and enhancing shareholder value. Managers on the other hand neither incur costs nor benefit to any large degree from their actions. Managers may have other interests such as salaries, non-monetary benefits, job protection, market share, and particular projects.

**3.2 Transaction Cost Theory (TCT)**

While principal-agent theory is ultimately a normative exercise about how the principal can achieve her interests, transaction costs theories (TCT) are more driven by a desire to understand the role of institutions in economic exchanges. Actors are assumed to be boundedly rational but opportunistic and faced with problems of uncertainly. A firm could ask a supplier to provide a key component or element to its product but how can it guarantee that the supplier will deliver what is required, when asked.

Coming to an agreement with another has transaction costs. There are search and information costs, bargaining costs, monitoring and enforcement costs in any agreement and costs involved in, for example, protecting trade secrets (Karagiannis, 2007). While principal-agent theory concentrates on what bargain to strike, TCT theories warn that even when the bargain is struck, elements in any relationship can go wrong.

The main implication for governance is that a principal needs to lock in key players with control over key assets into the operation and decision-making of the principal. In this sense corporate governance structures are relevant for reducing transaction costs, when decisions need to be made which are not or cannot be included in a contract, effectively allowing the firm to internalise costs.

**3.3 Resource-based explanation of corporate governance**

This is one of the most prominent alternative ways of looking at issues of corporate governance that challenge agency/ transaction cost theories that have come to dominate economics-based conceptions by arguing that corporations are not simply sources of market-based monitoring, but also rely on their boards or directors to fulfil resource, service and strategy roles as much as oversight functions. Resource dependency theory suggests that boards function as a resource for organisations and focuses on the role of providing access to resources needed by the firm.

It states that, directors play an important role in providing or securing essential resources to an organization through their linkages to the external environment. This provision of resources enhances organisational functioning, firm’s performance, and its survival.

**3.4 The legal explanation**

The legal perspective argues that for the firm, legal systems matter, as in order to attract external finance it must be able to credibly commit to controlling opportunistic behaviour by insiders. The severity of agency costs may be limited by the quality of a country’s legal institutions. The legal approach suggests that in order for this to occur, ‘there must be an effective legal system that deters violations and that can enforce compensation for infractions’ (Dermirguc & Maksimovic, 1998).

**3.5 The political explanation**

The increasing application of the legal explanation has been accompanied by the emergence of other ‘political’-based theories, which suggest that legal institutions in themselves do not explain the entire governance picture. Becker (1983) observed that a more general analysis of the influenceof interest groups, politicians, and bureaucrats may be necessary to explain how political decisions that affect governance are arrived at.

In conclusion, corporate governance has become a matter of global importance in the past two decades. It serves as a monitoring process, where executives are guided by a board appointed by owners of the organistion ensure in all decisions they take. In addition, corporate governance ensures the existence of accountability and transparency in all dealings of the organisations to ensure that requests of all stakeholders are met adequately.

**4.0 Governance in Socio-Legal Studies**

Socio-legal studies evolved out of a tradition of empirical research conducted by anthropologists and sociologists that questioned the relationships between laws, as understood within the legal discipline, and wider social processes. The law is widely regarded, represented and taught as a ‘conscious “attempt” by society to be rational and fair, orderly and just, and a bulwark against anarchy’ (Moore, 1978). At the heart of this ideology are three key propositions: one the law epitomizes man-made, intentional action and constitutes the means by which a rational and considered attempt to direct society can be undertaken; two, social behaviour that departs from the law is ‘deviant’ from that which is widely accepted as legal and correct; and three, the state and its legal institutions are central to the process of law-making and enforcement, and thus, stand at the core of all social discipline.

**4.1 Intellectual domain of socio-legal inquiry**

**What is the law?**

Destabilising a deductive view of the law as an institution central to social order is the defining characteristic of the socio-legal inquiry. Instead, socio-legal studies have attempted to develop a more sophisticated view of the relationships between law and social behaviour. Such studies consistently reject ‘legal centralism’, an ideology that the state and the system of lawyers, courts and prisons is the only form of social ordering (Griffiths, 1986). Instead, drawing from a tradition of legal anthropology, a notion of ‘legal pluralism’, that acknowledges the coexistence of multiple legal systems pertaining to the same domain of social life, has gathered strength (Griffiths, 1986; Merry, 1988; Spiertz, 2000). Within this perspective, ‘lawyers’ law should be seen as forming only one part of a multiplicity of institutional arrangements and normative repertoires of society’ and ‘other officially non-legal institutions and normative lexicons generated and maintained in social life’ should be included in any conceptual framework of socio-legal analysis (Spiertz, 2000).

**4.2 The Location of Law**

Studies in the socio-legal tradition are vitally interested in the sociological nature of the official law, but even more importantly, are concerned with the nature and dynamics of other rules, norms and regulations that perform the same function attributed to the law, i.e., governing social behaviour. They reveal that the governance of social behaviour is mediated by plural normative repertoires that are integrally and inextricably a part of social life. In this approach, what also

emerges is a new positioning of the individual, which is quite different from that within the conventional legal discipline. The individual is not perceived as passive and his behaviour is not understood in terms of compliance versus deviation alone. Instead, the analytical focus is centred on the individual who stands at the intersection of many different legal domains (or spheres) (Spiertz, 2000). This viewpoint allows both for finely grained analyses of domination and resistance in relation to the law, and also for a greater insight into the use of law as a resource by those perceived as powerless.

**4.3 The Chronological Emergence of Law**

Legal scholars have a definitive view of how the law, as we know it, came about. In fact, this view constitutes a core aspect of the larger conceptualisation of the law as a rational attempt by society to counter anarchy and create order. A dichotomy between ‘law’ and ‘custom’ is central to this understanding. To put it simply, scholars of historical jurisprudence treated custom as the ‘precursor of law’, as its evolutionary source (Moore, 1978). Early work in classical legal pluralism has also referred to a distinction between law and custom. Diamond described these ‘dichotomous’ relations in the following manner:

‘Custom – spontaneous, traditional, personal, commonly known, corporate, relatively unchanging – is the modality of society; law is the instrument of civilisation, of political society sanctioned by organized force, presumably above society at large, and buttressing a new set of social interests. This view rejected the notion that ‘custom is a form of primitive law that will gradually develop into state law’, and he argued instead that ‘the advance of law contradicts and extinguishes custom’ (Merry, 1988:875).

In legal studies, ‘customary law’ was conceptualised as ‘an intuitive law based on traditionally supportive consensus’ (Podgorecki, 1991). It was believed that the law ‘does function differently on various levels of technical and civilisational change’ and ‘underdeveloped’ societies are characterized by the prevalence of intuitive law (Podgorecki, 1991). A contrast was thus drawn between ‘tradition and culture’ that shape the law of ‘primitive societies’ and ‘intellect and intention’ that shape the law of ‘modern societies’ (Moore, 1978).

So ‘the more complex the society, the more the layers of rule-systems; the more adjacent they are, and the more numerous and diverse the separate “jurisdictions” or autonomous fields; the more intricate the questions of domination/autonomy, hierarchy/equivalence, proliferation/reduction, amalgamation/division, replication/diversification in the relations within and amongst the constitutive units and levels’ (Moore, 1978).

**4.3 The socio-legal response to ‘good governance’**

This overwhelmingly empirical orientation of the socio-legal approach to governance is at odds with the normative tone of the World Bank led ‘good governance’ agenda. It has been argued that a particular notion of the ‘legal’ is at the core of the discourse of good governance and central to its epistemological evolution, and that this notion is a ‘normative fairyland’ which disregards the social realities it is presumed to regulate (Benda-Beckmann, 1994). For example, ‘good governance’ outcomes are all too frequently associated with legal prescriptions that are enshrined in law or management policy which may be drastically different from the ‘informal rules’ governing access to resources or services. The law as conceptualised within the good governance agenda, we consider, has received relatively little analytical attention beyond the acceptance of the ‘rule of law’ as an essential pre-requisite.

**4.4 Law and power**

The issue of power occupies an important part within the socio-legal explanation regarding the nature of the law. Socio-legal studies oppose the hegemonic conceptualisation of the law as a coherent institution endowed with the power to direct and change social behaviour. They also examine limits both to the ideological and actual power of the state and thus the law, as an instrument of state power. Socio-legal studies are critical of the way in which ‘law is usually subsumed under the categories of culture, governance/politics, ideology or economics’ within analyses, on the grounds that these categories are not mutually exclusive and it is therefore problematic to include law within any of them (Benda-Beckmann, et al., 2005:2).

Moreover, it is argued that reducing the legal dimension to the economic or political (as the good governance discourse does) would ‘negate’ the important legitimising function of law in social, economic and political organisations. It would also disregard the fact that the law (both official and unofficial) is a ‘powerful form of cultural expression’ that operates as a potential force of socio-economic and political power, constraining and enabling social practices with both intended as well as unintended outcomes.

**4.5 Foucault’s key propositions on ‘governance’, power and the law**

A significant contribution to socio-legal studies comes from within the Foucauldian tradition of analysis. Foucault’s approach to governance, power and particularly the law is relevant to socio-legal thinking primarily because it departs from the ‘traditional’ framework of analysis for governance. Such a framework is orientated towards the formulation and maintenance of laws, regulations and rules by a state apparatus that develops its means in accordance with this ‘internal end’ (Beresford, 2003). Foucault and his followers on the other hand direct attention to the ‘strategic and tactical moves, micro-power techniques and the various movements of power below the radar of sovereignty and the law’ (Foucault, 1991), thus rejecting a notion of cohesive state power exerted through the execution of the law, within which individuals are merely passive spectators. Thus, Foucault’s form of governance synchronises means in accordance with an ‘external end’, the perfection and intensification of the processes which it directs through ‘the instrument of multiform tactics’ rather than uniform, universalistic laws (Foucault, 1991).

**4.6 Analytical tools for governance**

The socio-legal tradition is a dissident one that goes against a state-centric, top-down view of governance, with the law as a key tool for the enforcement of social order, as ingrained within traditional political science and legal analyses. To this end, there is a unified understanding of the idea of governance within the socio-legal tradition. Scholars agree that the official state law is only one amongst plural normative repertoires in society that govern social conduct. This is captured in the move away from legal ‘centralism’ to legal ‘pluralism’ to acknowledge the plurality of ‘laws’, official and unofficial, visible and invisible, that impact upon social ordering and behaviour.