Can governance be understood as a force for good? How can good governance lead to improved outcomes for organisations and their stakeholders during challenging economic and social times? Please draw upon examples where possible.

Word count: 2,463

"[T]he report, read as a whole, makes or implies […] several adverse findings about the charity's governance"
(Butler 2022)

"The Charity Commission has issued an Official Warning […], after finding that the trustees failed to manage the charity's resources responsibly"
(The Charity Commission 2022)

"The construction firm's annual accounts were a worthless guide to its financial health and raise major questions about corporate governance"
(BBC News 2018)

1. Introduction

The above quotes demonstrate corporate governance failures hitting the headlines, drawing attention to poor practice and damaging the reputation of organisations.

The first refers to Kids Company, whose administration was (in)famously deemed by the Charity Commission to have been mismanaged (2022). According to Corry, this affair was the result of "weak finances and poor governance" (2016, 15). In the second, Christ Church, Oxford, was found by the Charity Commission to have carried out misconduct in its attempts to remove its former Dean, leading to an independent review of the College's governance (Sherwood 2022). The third refers to Carillion, a company whose "expansion strategy, based on huge debt levels and low-margin, unprofitable projects, was the main reason for its collapse" (Chen 2022, 23).

These quotes demonstrate poor governance leading to poor outcomes, reputational damage, government agency investigations, parliamentary committee scrutiny and compulsory liquidation. They also pinpoint the issue at the heart of corporate governance: "how to drive the organization forward whilst keeping it under prudent control" (Garratt 2010, 4).

However, does the reserve prove true? Does governance only matter when it goes wrong, or can it be a force for good in itself? Implemented and embedded, can it lead to improved outcomes for organisations and stakeholders during challenging economic and social times?

1.1 For whom?

To answer these questions, we must establish “for whom?”. Fundamental to this question is Agency Theory. According to which, there exists a fundamental conflict of interest between the owner of a business, “the principal” and the management “the agent”. According to Eisenhardt, this conflict “occurs when cooperating parties have different goals and vision of labour”” (1989, 58). This tension has complicated corporate governance for centuries, stretching back to the East India Company “the first company to experience the consequences of separate between ownership and control” (Seth 2012).

This essay will therefore take four contrasting theories, each with a distinct answer to “for whom?” and accompanied by case studies. It is not the purpose of this essay to advocate for any particular theory; every Governance Professional will have their own opinion. Rather, it will explore whether or not governance can be a force for good. Using these theoretical frameworks will test this hypothesis.

Three of these theories form a traditional, but non-exhaustive list of corporate governance theories: the Shareholder Primacy, Stakeholder Value and the Real Entity Theories. The fourth comes from another field; a branch of Critical Theory articulated by Ahmed (2007; 2021), which one can use to challenge the idea of governance as a force for good. To note that the choice of case study to theory is only illustrative and some can be applied equally to multiple frameworks. An example of an entity returning value for a particular constituency does not therefore mean that it has not done so for another.

2. For the Shareholder – Shareholder Primacy Theory

According to Shareholder Primacy Theory, “the social responsibility of business is to increase its profits” (Friedman 1970). This doctrine is predicated on the view that “corporations are owned by their shareholders, who ultimately […] control the company. Therefore, employees, directors, and executives […] must produce work in order to maximize shareholder wealth” (Corporate Finance Institute 2023). This framework is often associated with the so-called “Anglo-American Model” of corporate governance, which is itself a contested term (American Enterprise Institute 2007).

2.1 Volkswagen and dieselgate

In 2015, Volkswagen became embroiled in a scandal due to its installation of emissions cheating devices in its vehicles. An extreme case of *greenwashing*, these devices meant that its cars were certified as conforming to EU pollution standards, while really emitting up to 40 times the legally permitted amount of nitrogen dioxide (BBC News 2022). This was not only an environmental scandal but also a corporate one with severe damage to the company’s reputation and profits.

It has been claimed that “Volkswagen’s ‘uniquely awful’ governance [was] at fault in [this] emissions scandal” (CNBC 2015). According to Poier (2020), at the core of this corporate governance scandal was a dominant personality and a severe lack of constructive challenge.

> “As the head of the supervisory board, […], and patriarch of the majority owner family, […], Ferdinand Piëch was able to establish a working environment that would not tolerate contradiction or failure. […] Piëch had no serious opposition among the supervisory board, and management board was appointed by them” (Poier 2020, 37-38).

Given Piëch’s dominance, his resignation from the Board (Poier 2020) and that of the CEO (Cremer and Prodhan 2015), and the appointment of their replacements, will have undoubtedly created an environment that encouraged significantly more constructive challenge than the Piëch years. Two years after the scandal, stock was up 10% and outperformed both BMW and Daimler (McGee 2018). According to Matthias Müller, the company’s then new CEO, “[t]he crisis, of course, was a huge problem and it was also rather costly, but it actually worked as a kind of accelerator to address issues that, before, were unable to be addressed” (*ibid*).

In improving its corporate governance, Volkswagen was able to improve its performance and profit, “doing good” according to the Shareholder Primacy Theory. While Müller accepted the job as CEO on the provision of being given a *carte blanche* to reform the company, this case study also cautions us that corporate governance is an evolutionary, iterative process, with Müller’s successor, Herbert Diess, left the organisation after what Winton called “flawed governance” (Winton 2022).

3. For Stakeholders - Stakeholder Value Theory

In contrast to Shareholder Primacy Theory, “[s]takeholder theorists argue that the company has obligations not just to shareholders but to the other groups that are affected by its conduct, and that companies should accordingly be managed in a way that maximises outcomes for all stakeholders” (Baumfield 2016, 187).

3.1 Patagonia

The core values of the clothing company, Patagonia, have long established it as an advocate, and indeed case study, of Stakeholder Value Theory: quality, integrity, environmentalism, justice and not bound by convention (Patagonia 2023).

This approach has led to the company striving to “protect migrant workers, ensuring good working conditions in its factories, and choose suppliers who have reduced their environmental impact. It also offers a range of Fair Trade Certified items” (Wingard 2019).

In addition to bringing value to stakeholders, this approach has proven profitable, with CEO Rose Marcario stating “[d]oing good work for the planet creates new markets and makes [us] more money” (Beer 2018). In 2016, the company gave away all of its Black Friday sales to grassroots environmental organisations, signing up 24,000 new customers that day while raising $10 million (*ibid*). In fact, according to Wingard, “[m]any believe Patagonia’s commitment to corporate social impact has helped it become a retail behemoth that generated $1 billion in revenue in 2017” (Wingard 2019).

The setting a company’s strategy, values and objectives are the domain of the Board of Directors and a product of corporate governance. Through its decision-making, Patagonia has brought value to its shareholders, including workers in its supply chains, and contributed towards environmental and justice campaigns. In return, it has earned respect as a corporate social responsibility leader during challenging social times, become and continued to be a “behemoth” (Wingard 2019) during times of “environmental crisis and economic sea change” (Stanley 2013).

4. For the Company - Real Entity Theory

According to this theory, “the company is a legal entity allowing an organization to act autonomously in law and company law establishes procedures facilitating autonomous organizational decision-making” (Micheler 2021, 1). Within this model, “managers of the unit are fiduciaries for it and not merely for its individual members” (Dodd 1932). Within this theoretical framework, given that companies are separate legal entities, value must be primarily brought to the companies themselves, rather than simply to its shareholders.

4.1 Oxfam and the Sexual Misconduct affair

In 2018, it was revealed that Oxfam aid workers had been involved in sexual misconduct in Haiti following the 2010 earthquake in Haiti. The “[s]alacious details […] were made worse when it emerged that the charity had been aware of the misconduct by 2022 but failed to acknowledge it publicly, allowing the country director responsible, Roland van Hauwermeiren, to resign and go on to work for other charities” (Gordon 2019).

Part of the solution in dealing with this issue lay in good corporate governance. The charity established an Independent Commission to investigate these matters and present findings to the Executive Director, who was to share the report with the Executive Board and Board of Supervisors (Oxfam 2018). The Independent Commission was informed by the lived experience of survivors through its Survivor Reference Group (Oxfam Independent Commission 2018).

The Report noted that “[i]ncongruent systems and governance challenges hamper Oxfam’s ability to comprehensively address the safeguarding and organizational culture challenges it faces” (Independent Commission 2019). In response to the Commission’s report, in 2022, Oxfam “commenced a fundamental review of [its] governance structures and accountability mechanisms, and [it] will bring the Commission’s emerging recommendations on governance into this process” (Oxfam 2019, 3).

The NGO’s finance struggled following this affair (Radojev 2018), including with it “agree[ing] to demand from [UK Government] development department to stop bidding for grants until ‘high standards’ met” (Slawson 2018). Its governance reforms contributed to improved standards, subsequently leading to the “government lift[ing] Oxfam’s funding ban” in 2022 (Civil Society 2022). These reforms therefore helped to improve the NGO’s outcomes during incredibly challenging economic and social times. Time will tell the extent to which these arrangements will bring value to its stakeholders and justice for survivors.

5. To Protect the Company from the Stakeholder - “Doing the document, rather than doing the doing” (Ahmed 2007)

With its reliance on documentation and formal written procedures, it could be argued that corporate governance, in its desire to promote good policies and procedures “can block action, insofar as the document then gets taken up as evidence that we have ‘done it’” (Ahmed 2007). In other words, “you end up doing the document, rather than doing the doing” (*ibid*).

Are complaints policies and procedures part of corporate governance? Polices are fundamental to both the strategy and operations of an organisation. After all, “[p]olicy is the highest level of organizational thought and action to achieve the fundamental purpose of the enterprise” (Garratt 2010, 7) and the “bedrock on which everything else in the organization is built” (8).

In addition to the risk that focus on the process averts attention from the quality of its outcomes, such procedural infrastructure can lead to exhaustion as a management technique, in which “strategic inefficiency” and “nonperformative speech” are utilised to obfuscate mechanisms of addressing complaints (Ahmed 2021). Navigating these systems can sometimes require “an extra workload which is equivalent to having another part-time job” (Hannam-Swain 2018, 5).

In so doing, entities can protect their shareholders and themselves as separate legal entities while arguably doing harm to stakeholders. Could such an arrangement be considered a force for good?

5.1 Complaints Systems in the NHS

On her YouTube channel, Abigail Thorn posted a video in which she states that she had emailed the NHS 133 times in order to get a doctor’s appointment (2022). In this video, Thorn explained that the delays she experienced in seeking transgender treatment contravened the NHS’ statutory commitment to treatment within 18 weeks of referral (NHS England 2023), including transgender health services (NHS 2023).

In order to complain, Thorn was compelled to navigate an intricate web of processes, involving liaising with her NHS Trust’s Head of Compliance, the head of the Gender Identity Clinic in question, the Parliamentary Health Service Ombudsman, the Head of Specialised Commissioning of NHS England, the CEO of NHS England, the Royal College of General Practitioners, the British Medical Association and others.

Throughout the ordeal, Thorn was presented with processes, reports and policies, none of which appeared to explain how to have her complaint resolved adequately, redolent of Ahmed’s idea of “doing the document, rather than doing the doing” (2007). She felt that engagement from officials was not a means of genuinely dealing with her complaint, but rather to “get rid of her” (Thorn, 2022), using “strategic inefficiency” and “nonperformative speech” (Ahmed, 2021).

Clear examples of *poor* governance, these processes contradict the Nolan Principles of integrity, accountability and honesty (Committee on Standards in Public Life

1995). They were onerous and complicated, whether by accident or design, reducing satisfactory outcomes for complainant while protecting the entity from the ramifications of undesired resolutions.

6. Conclusion

Case studies of poor corporate governance leading to negative outcomes are abundant not only in academic literature and regulators' reports, but in the media and society more largely. Through our case studies, we have seen how the implementation of good corporate governance could be seen as a force for good for shareholders, stakeholders and legal entities themselves, as well as improving outcomes for organisations and their stakeholders during challenging economic times.

Improved outcomes for Volkswagen's shareholders were arguably achieved following the *dieselgate* scandal following reform of the company's corporate governance. Oxfam was faced with challenging financial and social times after news broke of its sexual misconduct scandal, yet damage following this was reduced by accepting wrongdoing, commissioning an Independent Commission and acting on its findings. This, in turn, lead to improved outcomes for the NGO (see Section 4.1). Patagonia's commitment to bringing value to stakeholders has not only brought such value, but has also provided it with a unique selling point, helping it to navigate challenging economic climate, as well as being seen as a good social actor.

However, we have also seen through the NHS complaints case study that governance can be used to protect an entity to the detriment of its stakeholders, blurring accountability with convoluted processes. While arguably an example of poor governance processes, the question at hand is if governance can be understood as a force for good, rather than "good governance", as the two are not entirely synonymous.

To conclude, governance is "a system that provides a framework for managing organisations" (CGI UK & Ireland 2023). It is therefore an amoral concept, neither good nor bad in itself, which can be used for either purpose. It is a tool wielded by Company Secretaries, Governance Professionals, Directors and others in order to manage their organisations. This is why the training of professionals, bound by Codes of Conduct and adhering to best practice codes, are so vital in ensuring that it is used as a force for good.

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