

Chapter 1 : Toward a unified theory of restorative practices and governance | News from IIRP

the theory of risk. Lenoble and Maesschalck achieve a remarkable synthesis of relevant thought about forms of social organization from Kant and Fichte through Hayek, Rawls, and Habermas to current theory and place it at the service of a new and effective theory of the norm that promises to greatly elucidate the role of law and legal practice.

Selected landmark texts on theories about boards Agency theory History of agency theory Boards of commercial corporations were developed as a result of the industrial revolution, the growing commercial complexity of business and the gradual separation of ownership, and risk, from control. Trading, banking, transport and utility companies led the way before manufacturing in assuming corporate form. The significance of this silent revolution is eloquently outlined by Berle and Means 22 in the preface to their classic text: It is of the essence of revolutions of the more silent sort that they are unrecognized until they are far advanced. The translation of perhaps two-thirds of the industrial wealth of the country [USA] from individual ownership to ownership by the large, publicly financed corporations vitally changes the lives of property owners, the lives of workers, and the methods of property tenure. The divorce of ownership from control consequent on that process almost necessarily involves a new form of economic organization of society.. When these subjects are thought through there will still remain the problem of the relation which the corporation will ultimately bear the state “whether it will dominate the state or be regulated by the state or whether the two will coexist with relatively little connection. In other words, as between a political organization of society and an economic organization of society which will be the dominant form? This is a question which must remain unanswered for a long time to come. Over the past few centuries, the holding of property has moved from being an active to being a passive affair. Evolution of control has been classified by Berle and Means 22 as 1 control through ownership, 2 majority control, 3 control through legal device, 4 minority control and 5 management control p. When ownership is held by a very large number of individuals and bodies with none holding a significant proportion, control is effectively handed over from owners to managers. Germane to the public sector focus of this study, before the industrial revolution, charities and municipal authorities were the earliest examples of corporations. They may not commit treason, nor be outlawed, nor excommunicate, for they have no souls, neither can they appear in person, but by Attorney. A Corporation aggregate of many cannot do fealty, for an invisible body cannot be in person, nor can swear, it is not subject to imbecilities, or death of the natural body, and divers other cases. Coke , cited in Coke and Shepherd 43 Although boards were supposed to represent the interests of absent owners or shareholders the principals , and management became the agents of the board, Adam Smith 44 highlighted what he saw as the hazards of diverting the control of company resources away from the owners: The directors of such companies. The emphasis is on avoiding performance problems stemming from poor management or inappropriate use of managerial discretion. The theory is underpinned by a belief derived from neoclassical economics that, as both principal and agent are utility maximisers, the latter is not likely to always act in the interest of the former. Agency costs are incurred in acting to minimise the gap between the two sets of interests. Jensen and Meckling 45 elaborate on the three sources of agency costs: These authors also emphasise the generality of the agency problem, both at all levels of management and also across different types of organisations, including non-profit organisations NPOs , government corporations and co-operatives. This is derived from a view that most organisations private firms, NPOs, government bodies serve as a nexus for a set of contracting relationships among individuals. This includes large corporations, and also most NPOs and government bodies when there is a degree of complexity or size which means that there is a hierarchy and a diffusion of decision management and when important decision-makers are not exposed to significant risk by the financial effects of their decisions, which is indeed a distinctive characteristic of NPOs and government bodies. Eisenhardt 47 urges the use of agency theory to investigate problems that have a principal-agent structure, for example information asymmetry, outcome uncertainty and risk, offering an empirically testable perspective on the challenges of co-operative effort. Rather than wholesale adoption or rejection, this author advocates its deployment when there are particular contracting problems, goal conflict or lack of clarity, and

in tandem with other organisation theories. Agency theory carries with it certain assumptions about human behaviour and, for public sector bodies, certain assumptions that governments make about human behaviour. Without this, and with the probability of incomplete contracting, other theories emerge naturally. Relating closely as it does to the monitoring and compliance aspect of the board role, which is commonly regarded as a cornerstone of board work, agency theory nevertheless continues to hold sway and dominates the literature about board theories see Figure 2 for a timeline: One possible reason for the continued primacy of agency theory is the development of a modernising behavioural variant. This argues that in some circumstances boards may opt for behaviour-based rather than outcome-based incentive schemes for its executives to achieve alignment and optimal contracting. Stewardship theory Stewardship theory was developed as a challenge to beliefs that managers are always self-interested rational maximisers, first by Donaldson 54 with later development by Davis et al. According to stewardship theory, the goals of board directors and of their managers are aligned, with the latter being intrinsically motivated to act in the best interests of the organisation and to focus on intangible rewards such as opportunities for personal growth and achievement. The theory relates to a very different human relations perspective from the one that underpins agency theory, one in which, in general, people are motivated to do good and to act unselfishly, as long as a number of organisational and cultural preconditions are satisfied. BOX 4 Implications of stewardship theory for an understanding of board governance Managers on the whole direct their efforts to the well-being of the organisation that they are serving The theory was explicated in a large empirical study covering corporate directors in four countries. This partnership role is more in keeping with a model of stewardship rather than an agency model of the board as monitor. Importantly, this co-operative role requires that the board develop closer ties with management. In the view of the authors, this evolution of the board to strategic partner of management, combined with increased investor monitoring, offers the potential to produce a more effective governance regime. Other critiques of stewardship theory also indicate that there is, at best, mixed evidence to support this theory 56 and that its application can lay organisations open to risks of governance failure, strategic drift or inertia. A study of US company directors showed that non-executive directors experienced acute role conflict in having to serve the interests of shareholders while at the same time maintaining camaraderie on the board. Resource dependency theory Resource dependency theory derives from economics and sociology disciplines concerned with the distribution of power in the firm and was developed particularly by Zahra and Pearce 60 and Pfeffer and Salancik 24 Box 5 provides a summary of the implications of resource dependency theory for an understanding of board governance. According to resource-based theory, the organisation is an amalgam of tangible and intangible assets and capabilities. This is also evidenced by multiple board membership known as board interlocks. Four benefits that board directors can bring include advice, access to information, preferential access to resources and legitimacy. Here, a small group of people head or direct all of the large companies and organisations through the exercise of political, social and economic power 66 and imposition of a ruling-class world view. In relation to board governance, this amounts to an inner circle who constitute a distinct recursive semi-autonomous powerful network deeply embedded in community and society. The theory can be criticised for an overfocus on an external locus of control construct. Stakeholder theory Stakeholder theory comes from nineteenth-century developments of alternative forms of organisation and control in the shape of mutuals and co-operatives for a review with specific interest for the health-care sector see Gregory Recent thinking on stakeholder theory has been developed in particular by Blair 71 and Clarke 36 Box 6 provides a summary of the implications of stakeholder theory for an understanding of board governance. There is a view that an exclusive focus on shareholder interests has not held the key to good corporate performance and effective accountability. In an age of vocal consumer groups, employee activism, media monitoring and now social networking, the assumption that only shareholders are capable of effective monitoring looks increasingly flawed. Stakeholders are all those whose participation is critical to the survival of the organisation. Among the myriad of stakeholders, stakeholder theory also argues that boards have to identify the critical stakeholders e. According to stakeholder agency theory, managers are seen as the agents for all of the stakeholders, not just the owners. This third alternative offers a wholly new concept of corporate activity. Neither the claims of ownership nor those of control can stand against the

paramount interests of the community. Blair 71 argues that, if organisations are viewed as institutional arrangements for managing relationships between all of the parties that contribute to the wealth of the enterprise, not just the shareholders, management has to take into account the effect of corporate decisions on all stakeholders. Thus, the control rights should be allocated according to all of the stakeholders who provide the sources of firm value creation and who bear risk. Blair further argues that there developed an accommodation of the classic property conception of the corporation with a newer social entity conception, backed by developments in US law that protected companies which engaged in socially responsible behaviour that might not directly, in the short term, maximise profits for shareholders but that benefited shareholders in the long run, on the premise that the well-being of communities in which companies operate was considered good for business. In practice, given that knowledge is these days the pre-eminent resource and that knowledge is generated by individuals, elements of the stakeholder approach are increasingly utilised. Only by creating great relationships with employees, customers, suppliers, investors and the community will organisations learn and change fast enough. Other arguments against the stakeholder view include diversity of and lack of clarity about stakeholder expectations, complexity of trade-offs if stakeholder interests are to be taken account of and the need for a simple focus of the bottom line for managers. In a study of firms and more than directors, Hillman et al. The theory can be criticised for encouraging risk-averse, inoffensive but bland and lowest common denominator decision-making. It can lead to large and unwieldy boards with people recruited for whom they represent rather than for their board-level skills. Power can be defined as the ability to influence others and, in relation to boards, Huse et al. These are direct power, indirect power, conscience-controlling power and institutional power. Power differentials between members of the board affect both processes and outcomes Box 7 provides a summary of the implications of board power theory for an understanding of board governance. Mace 81 found that the gap between expectations of boards and actual practices could at least in part be explained by power relations. BOX 7 Implications of board power theory for an understanding of board governance The holding and exercise of power on the board changes over time and power distance between members on the board can also vary Models of board behaviour and exercise of power can be related to the main theories about boards: The authors further indicate that both the principal and the agent manager are psychologically predisposed to one or other relationship but do have a choice. They conclude that, if there is an agreed mutual stewardship relationship, the potential performance of the firm is maximised and, if there is an agreed mutual agency relationship, risks and costs are minimised. In his influential piece on the exercise of power by independent directors of the board, Mace 82 argues that, at least at the time of writing, there is a substantial gap between the myths of business literature and the realities of business practice. Directors do give advice, set discipline and provide decision-making in times of crisis but are less likely to exercise influence over strategy or to ask discerning questions or in reality take charge of the CEO selection process. This all suits CEOs who, according to the managerial hegemony frame, do not want the directors too involved in the company. In a more nuanced contribution, Lorsch and MacIver 83 chart the rise and fall and rise again of the potential power vested in the independent director. This has to do with the increase in the proportion of outside directors, and the multiple sources of power, which include legal authority, stakeholder expectations and personal confidence as well as the power of unity of purpose amongst board members. Kosnik 84 argues for merging agency and managerial hegemony theories to clarify the contingencies that might affect board performance in corporate governance. The argument runs that one is not more valid than the other but that the switching rules need to be identified. Finally, in relation to Huse et al. Developing a realist interpretation framework of board theories, contextual assumptions, mechanisms and intended outcomes The terrain is characterised by some complexity in terms of the multiple locations of the evidence across different disciplinary traditions. Drawing together these theories is a daunting task. Within a realist frame, the focus is on offering explanations rather than judgements, and developing principles and guidance rather than making rules. These are summarised in Table 7. TABLE 7 A realist interpretation framework of board theories, contextual assumptions, mechanisms and intended outcomes The theories suggest that boards face choices. If the main intended outcome is for the minimisation of risk e. This may come at the expense of innovation, however, which is predicated on stewardship theory, with a mechanism of

collaborative working on the board. When there is an issue around power e. In the context of long-term service commitment in a health-care system, a multi-stakeholder approach involving collective effort may be indicated, with an outcome of long-term added value. Board practices What do boards actually do, what should they do and how does this relate to theories about boards? There have been calls for frameworks that combine the insights of different theories. Conformance involves two main functions: This conformance dimension matches quite closely with the agency theory perspective on governance. In contrast, the performance dimension is about driving the organisation forward to better achieve its mission and goals. This again consists of two main functions, policy formulation and strategic thinking, to take the organisation forward. The performance dimension is in keeping with stewardship theory of corporate governance. This framework depicted in Table 8 suggests that boards need to be concerned with both the conformance and the performance dimensions of corporate governance. He claims this to be a universally applicable theory of governance that, with the board as servant-leader, and a strict separation of governance from management, is a conceptually coherent paradigm of principles and concepts encompassing ends, executive limitations, governance processes and boardâ€™ownership and boardâ€™staff linkages. The model can be criticised for similar reasons as the weaknesses exposed in agency theory, which it draws from:

Governance and organisational effectiveness: towards a theory of government performance - Volume 33 Issue 2 - Laurence E. Lynn, Robbie Waters Robichau Skip to main content We use cookies to distinguish you from other users and to provide you with a better experience on our websites.

Tweet In this article, first published in the latest European Forum for Restorative Justice EFRJ Newsletter, IIRP Founder Ted Wachtel argues that the strategies and philosophy of restorative practices “as applied in justice and schools, families and communities” can spark and unite a movement toward a more just, democratic and participatory society. Daly concludes that the popularity and diversity of restorative justice has made it difficult to aggregate the definitions, interfering with empirical and theoretical study. However, IIRP contends that restorative practices have a larger purview, including both formal and informal strategies that proactively build relationships and a sense of community that prevent conflict and wrongdoing in all sorts of settings Wachtel, b. Unifying fundamental hypothesis The IIRP has identified a fundamental hypothesis that unifies the wide potential of RP and suggests outcomes worthy of evaluation. Engaging stakeholders in making critical decisions, rather than relying solely on experts or authorities “doing things with people rather than to them or for them” builds social capital and strengthens social bonds Fatic, ; Habermas, Judge Barry Stuart, formerly of the Yukon Territorial Court, recognised the limits of his authority and expertise and saw the critical need to directly involve family and community. Most Canadian judges would have sent the young man to a federal penitentiary but, after engaging with the community in the circle, Stuart gave him a two-year suspended sentence and returned him to his home with a plan for support from others in the circle Duhaime, Collapse of family and community Israeli historian Yuval Noah Harari, in his internationally best-selling book, Sapiens: Yet all of these upheavals are dwarfed by the most momentous social revolution that ever befell humankind: As best we can tell, from the earliest times, more than a million years ago, humans lived in small, intimate communities, most of whose members were kin. They glued together families and communities to create tribes, cities, kingdoms and empires, but families and communities remained the basic building blocks of all human societies. The Industrial Revolution, on the other hand, managed within little more than two centuries to break these building blocks into atoms Harari, The system is modern society with administration, laws, politics, economy, organisations and paid professionals, while the lifeworld is the network of relationships among family and friends who, unlike those in the system, look out for each other not because they are paid, but because they care. Restorative practices bring the lifeworld into the system and help restore the balance between the two Wachtel, Siegers convened 22 interest groups including hospital administration, insurance companies, unions, government, patients, community in a hour marathon negotiation. Technology made it possible for each group to watch the negotiation by video at off-site locations, which were nearby so that the 22 representatives in the negotiation sessions could visit with their respective groups to caucus and then return to the meeting. Critical to its success was the fact that the group process was not advisory but had the authority to conclude a legal agreement on behalf of all interest groups. The negotiation produced a detailed plan, signed by all parties, that reopened the hospital Siegers and Slump, David Van Reybrouck, a Belgian contemporary historian and author of Against elections: Another G summit was held in in Amsfoort in the Netherlands to address more local topics. Each citizen has power for only one minute, once every four years. You give your vote and you outsource your power. Conclusion Restorative justice can be narrowly or broadly defined, depending on the context and purpose. However, by explicitly recognising a beneficial shift in the nature of governance and authority as the common thread in all restorative practices, we may unify a social movement that might otherwise fragment. References A Small Group Restoring and reconciling Cincinnati. Retrieved on 12 September, Democracy, community and problem solving. Vermont Department of Corrections and Real Justice ed. Restorative justice is republican justice. A new vision and strategy. British Journal of Criminology 17 1: What is restorative justice? Fresh answers to a vexed question. The good and the bad: Eigen Kracht Centrale Punishment and restorative crimehandling: The theory of communicative action. Between facts and norms: International Institute for Restorative Practices

Case for a new academic discipline. Submitted as part of graduate school application to Pennsylvania Department of Education. First Nations criminal jurisdiction in Canada: Sentencing circles for aboriginals: Communicating and collaborating across nations, professions and disciplines in restorative justice. Restorative Justice 4 2: Interview with David Van Reybrouck. Newsletter of the European Forum for Restorative Justice 15 2: Dreaming of a new reality: Restorative practices and the lifeworld:

Chapter 3 : Toward Theory Of Governance: The Action of Norms | Wolters Kluwer Legal & Regulatory

10 2 Toward a Theory of Governance In Chapter 1, we defined the key dimensions of governance; articulating collective goals and priorities, ensuring coherence, steering.

Chapter 4 : Toward a Theory of Governance. The Action of Norms - CORE

For more than a century Western democracies have struggled to keep faith with both economic efficiency and social justice. Yet reconciliation of these factors remains as baffling as ever.