

Chapter 2

Good Governance Contested: Exploring Human Rights and Sustainability as Normative Goals

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Abstract The governance of a society should ideally lead to its sustainability. This chapter sets out to shed light on the notions of good governance and sustainability that are, though often described as problematically vague, generally accepted goals of development. Good governance, by definition, proposes to be a guide towards the better execution and exercise of authority, power and rule making. Through an analysis of the most prominent uses of good governance in international development, an argument is given for the appreciation of the normative dimension of good governance: of what the good is. An assessment of critique levelled against the concept of good governance establishes that it suffers from vagueness and contestation. It will be argued that these problems are, at least minimally, due to the lack of normative foundation and overly economic outlook. A normative dimension should provide fundamental values that governance should adhere to for it to be called good. Furthermore, the argument is put forward that the concept of good governance is best grounded in the fundamental values underlying international legal human rights and the concept of social sustainability. The convergence of the values of status-egalitarianism, well-being and futurity establish the normative goal of good governance: to respect, protect and further status-egalitarianism and well-being into the indefinite future.

Keywords Good governance • Human rights • Social sustainability • Status-egalitarianism

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1 Introduction

The governance of a society should ideally lead to its sustainability. While many types of governance exist, this chapter will deal with only one of them: the public governance of a country. Governance is thus understood as the manner in which power is exercised in the management of public affairs and a country's social and economic resources. It is unclear, however, what manner of exercise or execution of power will contribute to a sustainable society. Moreover, it is unclear what precisely constitutes a sustainable society itself. This is at least partly due to the vagueness surrounding the concepts of governance and sustainability. This chapter will attempt to shed light on the concept of good governance towards a sustainable society. It focuses on the notion of good governance used in the international discourse on the social, political and economic development of countries. Good governance proposes to be a guide towards the better exercise or execution of power. Starting by assessing the widely used World Bank's governance indicators, an argument is given for the appreciation of the normative dimension of good governance: of what the good is.

To establish a firmer link between governance and a sustainable society, the central question this chapter sets out to answer is what fundamental values should be adhered to for governance to be evaluated as good. Answering this question can guide policy-makers and international organizations in evaluating policies on a more fundamental normative level through assessing their contribution to social sustainability. The chapter is divided into five sections. The first section will introduce the concepts of governance and good governance diachronically, i.e. based on their historical emergence and current literature. The second section analyses two strains of critique levelled against the practice of governance measurement through, primarily the World Bank's, governance indicators. These critiques establish the problems of vagueness and contestation concerning the concept of good governance. It will be argued that these problems can, at least minimally, be attributed to a lack of normative foundation and focus on outcomes. The third and fourth sections will deliver a positive argument in favour of informing the concept of good governance with the fundamental values underlying international legal human rights and the concept of social sustainability. Furthermore, it will show how these fundamental values can contribute to turning the practice of measuring governance towards a more consistent and normatively justified tool of policy prescriptions and evaluations. Finally, the fifth section offers a retort to the two strains of critique identified in the second section. The framework proposed is thus delineated along two lines. First, it concerns the normative grounding of good governance rather than its practical implementation. This theoretical argument concerns what the good in good governance is; this is assumed to be fundamental in contributing to the practical side of good governance in evaluating and proposing policy measures and in balancing trade-offs. Second, though the following will be critical in the current discourse and practice of good governance, the proposed

framework is to be read as supplementing rather than replacing the current practice of good governance in international development.

2 Governance, Good Governance and Development

The notion of good governance plays a pivotal role in the international discourse on the social, political and economic development of countries after the Cold War's demise (hereafter: development discourse). The end of the Cold War brought with it the institutional¹ realization that the structural adjustment programmes (SAPs) issued by the Bretton Woods Institutions in the 1980s were failing. The SAPs effectively led to a race to the bottom in developing countries.² The SAPs comprised loans to developing nations conditioned by large-scale economic reforms. These reforms primarily consisted of large-scale privatization, a downscaling of government bureaucracies, opening the economy and promoting the influx of private and foreign capital into the economy. Despite assuming that such reforms would foster rapid growth,³ the consequences of these reforms amounted to a downward spiral starting with capital-flight followed by increased borrowing by, often authoritarian, governments, increasing the indebtedness of societies leading to economic stagnation and recession.⁴

Recognizing the failure of the SAPs in the late 1980s led to a re-appreciation of the larger role that the government should play in shaping the right conditions for economic development. This explains the divergence between the most common concepts of governance and good governance, as it is used within the development discourse and institutional global governance. The first concepts of governance shift focus away from pure government-centred and hierarchical action towards the broader and expanding context in which rules and policies are drafted, implemented and adhered to in this globalizing world with the involvement of private actors, both in the form of public- and private-governance, (e.g. public–private partnerships) and through purely private governance. Typical examples of such private modes of governance are codes of conduct, certification and the sharing of best practices. As such, governance is best depicted as a move away from the state.⁵ The second notion, good governance, has, at least within the development

¹Critique voiced from various sources did exist long before.

²For an overview of the contents and a critique of the SAPs see Greenaway and Morrissey (1993, 241–261) and Schatz (1994, 679–692).

³As was the experience in the West in those years.

⁴This is commonly referred to as the unjustifiable borrowing privilege of authoritarian leaders. See Pogge (2008).

⁵Conception of governance along these lines are found in the academic fields of constitutional economics, social sciences, political science. For an overview and interpretations of these concepts in constitutional economics see Williamson (1979, 1985). Within social sciences see De Alcántara (1998) and within political science Bevir (2010, 2011) and Rhodes (1997).

discourse, a much stronger tie to government performance. Due to the re-appreciation of the role governments, especially in developing countries, play in shaping the right conditions for development and in setting the rules, good governance is used as a tool to assess government policies and effectiveness. This chapter concerns the second concept only. However, this does not imply that the argument presented here only applies to governance by government for two reasons. First, the core of the argument presented here can be transferred to analyse issues related to governance in the wider sense. Second, both conceptions of governance are essentially outcome based.⁶ Conceptions differ in their descriptions of the place and manner in which these outcomes are, and ought to be, produced but are all concerned with the quality of ends. Good governance, however, ought to be an evaluative concept of both the outcome of governance and the means through which it is achieved and is, therefore, not necessarily limited to the evaluation of means and ends produced by a single actor, government in the present case. Hence, though not presented here as such, given the theme of the book, the framework in which to interpret good governance presented here can be transferred to private and public–private modes of governance.

Diachronically good governance can be seen as the successor of SAPs in conditioning aid to developing countries. Whereas the SAPs had a strong focus on economic liberalization, their lack of success put greater emphasis on the steering role that the governments can and should play. The World Bank was pivotal in establishing the concept of good governance and employing it to assess government rule and condition developmental aid accordingly. Subsequently, a wide variety of actors (supranational institutions, national governments and non-governmental organizations (NGOs)) have used notions of good governance in their own assessment of developing countries' governments and economies, and in conditioning aid and foreign investments. There is, however, lack of uniformity between the notions of good governance employed by different actors. This section will introduce the most prominent notions and works towards a consistent depiction of their content.

According to the World Bank, *governance* refers to the “process through which power is exercised to manage the collective affairs” and economic and social recourses of a country, nation, community or economy (World Bank 1994; Gisselquist 2012, 4).⁷ Good governance, in turn, refers to the propriety of the manner in which this process is executed. Leading in the assessment of this execution are the World Bank's governance indicators⁸ which played, and still play, a major

⁶Within political sciences concerning the wider notion of governance, this is often depicted with reference to the notion of output-legitimacy.

⁷The World Bank, UN, IMF (<http://www.imf.org/external/np/exr/facts/gov.htm> and <http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>) and European Union (for the most elaborate statement by the EU see the White Paper on Governance: http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/110109_en.htm) all work with similar definitions of good governance.

⁸See www.govindicators.org.

role in depicting six areas to assess the ‘goodness’ of a country’s governance. These areas are: (1) voice and accountability, (2) political stability and absence of violence, (3) government effectiveness, (4) regulatory quality, (5) rule of law and (6) control of corruption. Many other institutions have added further indicators or areas of assessment of their own. For instance, the United Nations Development Programme (UNDP) has a more prominent role for democracy. Moreover, many states, especially in Europe, add respect for human rights into the content of good governance (Gisselquist 2012, 23–27).⁹

This disparity between areas in which to assess the goodness of governance has led Gisselquist (2012) to incorporate the different definitions of good governance into seven core components: (1) democracy and representation, (2) human rights, (3) rule of law, (4) efficient and effective public management and (5) transparency and accountability. These five components are furthermore said to foster (6) developmental objectives through the prescription of a varying range of (7) social and economic policies such as returning elections and secure private property arrangements. The first and second components of Gisselquist’s definition require some further explanation. Democracy and representation are mentioned as such mainly by political organizations (e.g. national governments, the European Union, UN and NGOs). In contrast, the first component of the World Bank definition, voice and accountability, is a formulation frequented within financial institutions, like the World Bank and IMF, in order to refrain from interfering with political processes. However, these notions can generally be taken to refer the democratic institutions. In the definitions by, mainly, European governments, human rights are an explicit component of good governance while they are much less appealed to within supranational institutions.¹⁰

These definitions of good governance intend to provide the framework through which development can be evaluated and fostered. In practice, the World Bank’s indicators are the leading tool to assess the quality of a country’s governance. However, over the years and parallel to the successful spreading of the use of the concept of good governance, the amount of criticism towards this concept has been growing. Two strains of interrelated critique can be distilled and will be discussed in the next section. The first strain is related to the practice of the concept: its definitional vagueness, the validity of assumptions and what these imply for institutional proponents of good governance. The second strain concerns the economic outlook of good governance, constituting a more theoretical challenge to the economic consequentialism embedded in the evaluation of the ends that good governance ought to produce. The prominent position of international financial institutions creates an outlook primarily concerned with outcomes measurable

⁹To a great extent, this can be explained by the area in which the Bretton Woods institutions can issue prescriptions. These cannot be political, and thus the governance indicators can be seen as an attempt to depoliticize a political concept. See also: Doornbos (2001, 95).

¹⁰For an excellent overview of definitions and the role Human Rights play in definitions compare Table 2 and Table 3 of Gisselquist (2012, 23–27).

in economic terms. Consequently, the goal of development is framed in terms of economic growth. The first strain intends to undermine the practical relationship between good governance and development in the economic sense. The second strain directly argues against this economic focus on the aim of development. The next section is devoted to their analysis.

3 Criticism Against the Concept of Good Governance; Good Governance Versus Economic Growth

Two practical issues comprise the first strain of critique raised towards the concept of good governance while the second strain is of a more theoretical nature. Since the second strain clarifies the roots of the practical critique, it will be discussed first. The theoretical critique revolves around the development that good governance is meant to foster (Doornbos 2001; Grindle 2004, 2007; Kurtz and Schrank 2007; Gisselquist 2012). Due to being rooted in international financial institutions the ends of good governance are frequently depicted and evaluated in economic terms. Extending the reach of markets is, for instance, still at the core of the World Bank's vision and good governance should enable building institutions for markets as to foster growth (World Bank 2002). Consequently, the measurement of good governance is often depicted in terms of economic growth in developing countries. The critique against this is obvious and often heard from both academia and other supranational institutions. For instance, the UN high commissioner on human rights stated that good governance involves building institutions that respect human rights.¹¹ Furthermore, the UN more broadly defines development in terms of human well-being rather than in purely economic terms.

The critics' point is clear: good governance concerns more than achieving economic ends. However, supranational institutions like the UN fail to deliver a workable alternative definition of what constitutes good governance. For instance, improving human well-being might well be a defensible end of development, but what constitutes well-being? Is it meeting subsistence, constituting social respect, institutional respect for and protection of human rights, or a democratic constitution? Moreover, if one of these interpretations or all together, what is the justification? These are questions left unanswered causing more practical criticisms of the concept that will be briefly discussed.

The practical strain of critique can be divided into two. First, critics have pointed to the vagueness and conceptual brevity of good governance itself and especially the indicators that are used to measure it. Second, the causal relationships between the economic vision on development and individual components

¹¹See: www.ohchr.org/en/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx (last visited on 22-9-2014).

of good governance are contested. The problem of conceptual brevity is forcefully brought forward by Gisselquist (2012, 14), who argues that even though conceptual brevity is not necessarily problematic, “it is so in this case because of the clearly contested nature of good governance and the complexity of its components”. For instance, the World Bank’s governance indicators, to date the most extensively used and developed tools in governance evaluation, are open to many different interpretations due to their lack of substance. What *government effectiveness* entails is not clear-cut but somehow it is still measured. There is a lack of parsimony concerning good governance and its components; their meaning is endless. As Langbein and Knack (2010) show, the different indicators are so interrelated that their measurement says little about actual performance. According to these researchers, the governance indicators list six separate components that due to their vagueness could be joined together to form just one or be eliminated entirely.

Kaufmann et al. (2007, 23–24), the authors of the governance indicators, have responded to these critics by arguing that their objections are “definitional nit-picking, furthering intellectual satisfaction” rather than achieving the end of development. Even though there is truth in the statement that the intellectual endeavour of constructing consistent concepts should not necessarily precede practical action, in this case the lack of parsimony and coherence is troublesome. It has led to cases in which a commitment to good governance can justify a wide range of outcomes that often oppose each other. A good example is the involvement of the UK Department for International Development (DFID) in Rwanda and the critique of Human Rights Watch (HRW) of their policies. The DFID claimed to be committed to good governance while HRW heavily criticized its policy because of the lack of improvement made on human rights observance and the transparency and responsiveness of governance (Human Rights Watch 2011, 6; Gisselquist 2012, 14). The DFID could rebut by pointing to the economic advances and institutional strengthening in Rwanda through its policies. One cause of such a situation where opposing views can both consistently refer to good governance as justifying the opposing policies is, at least partly, the vagueness and lack of parsimony of the end to be achieved and the means employed.

The problem of causal relations is brought forward by authors such as Andrews (2008), Langbein and Knack (2010), Grindle (2004, 2007) and Gisselquist (2012), who argue that institutions like the World Bank do not abide by their own terms in promoting and evaluating good governance. The consequentialism enclosed in the concept is shaky. Good governance is an evaluative concept regarding the outcomes of development. These outcomes are, within the most prominent conception, depicted in economic terms thereby constituting a prescription for policies fostering economic development. In other words, the components of good governance are not good in itself but, at least partly, instrumentally good. However, if good governance is supposed to foster economic growth, why are indicators such as voice and accountability included in the evaluation? It is not clear that democratic governance enhances economic development and the cases that run counter are afloat. For instance, Vietnam has seen many years of economic growth without any increase in democratic governance. This argument also holds in the opposite

direction; if good governance means, promoting democratic institutions, amongst others, why do countries like the United Arab Emirates and Bahrein, lacking democratic institutions, score so high on the over-all governance indicators? (see Footnote 5).

These lines of critique cause confusion. As Andrews (2008, 380) stated, good governance implies so many things it is like “telling developing countries that the best way to develop is to become developed”. The inclusion of a whole range of policies, values and institutions implies that the outcome of good governance strives to include more than economic evaluation of ends but, moreover, the normative evaluation of both the end and the means employed towards its achievement. For instance, human rights protection and democratization are often included whether they contribute to economic growth or not. On balance, if, good governance refers to all these aspects, such as economic growth, human rights and democratization simultaneously, it is next to impossible to translate it into policies and measurements. The challenge is to integrate these normative conceptions into the evaluation of both means and ends rather than with sole regard to outcomes. For example, decentralization might improve effectiveness, local democracy and accountability, as commonly assumed, but can decrease growth; more transparency might foster accountability but it could also increase inefficiency due to the amount of information that needs to be processed through bureaucracies. As such, the idea of good governance as a prescription for policy is comparable to Finkelstein’s (1995, 398) spaghetti bowl in the sense that no one can possibly know what is connected to what. The next section intends to untangle this concept and focus on its normative aspect in order to reconstruct it in such a manner that the concept is no longer open to the mentioned strains of critique.

4 The Good of Governance: Towards a New Framework

The previous section urges a more fundamental concern regarding the *good* that good governance evaluates and the development it depicts. Due to its lack of concreteness, the link between good governance and development, as presented by different institutions, is nothing more than a belief because it is far from clear what type of development good governance aims for. Furthermore, from the literature critical on the institutional use of good governance rises a concern with the flexibility of the concept in appealing to diverse interests, goals and policies. The good governance discourse opens itself to the above critique due to its lack of normative goal setting; there is no clear understanding of its aim and why that aim and the means towards it are normatively good. Consequently, good governance appears to be failing as instrument evaluating policy because it lacks a consistent conception of what is meant by the good of governance. This section will explore this normative caveat.

A leading institution like the World Bank depicts development primarily in terms of enabling economic growth. However, the policies prescribed through

good governance do not necessarily lead to economic growth, or at least not in the most efficient and effective manner (Kurtz and Schrank 2007; Gisselquist 2012). Other institutions equate good governance with democratic governance but if this is the case, the good should be found in the intrinsic worth of democratic governance, which can be done, and not just as a means to achieve development. Neither justification is consistently put forward.¹² In its simplest form within the concept of good governance, there appears to be a mismatch between the means, such as democratic institutions, and the end, such as economic prosperity, of development. It provides little guidance in evaluating the ends set and the means employed towards its achievement. The concept lacks a normative basis that has intrinsic rather than solely instrumental worth, whether the derivative policies are the most effective or fastest way to development or not, in order to evaluate both means and ends. Such normative goal-setting requires a different mode of reasoning than the prescription and instrumental evaluation of policies does. First, it needs to form a conception of what sort of development good governance should strive for in isolation of existing policies and institutional arrangements of developing countries. Second, it needs to justify this conception with reference to moral conceptions in a consistent manner. Third, such a goal can only be legitimately set, which implies that the morals it appeals to and the type of development it furthers must be theoretically legitimized to anyone (Universalist) or those affected by it (all-affected).

The previous places limits on the scope of the argument forwarded in the remainder of this chapter. The argument functions on an abstract, normative level rather than the level of practice in order to inform the evaluative concept of good governance with context-independent values in assessing the exercise and execution of power. Thereby it intends to reconstruct the evaluative concept of good governance by incorporating a normative component that supplements its instrumental focus on ends and, ultimately, enables a more consistent and critical policy evaluation. Despite its elasticity and lack of consensus as to its meaning, good governance is a powerful concept in the international development discourse in general and more specifically in donor-country relations. Looking at it from a purely semantic standpoint, good governance is a normative statement on the manner in which power is exercised or executed. *Good* refers to a statement not only about the quality of exercise or execution from a practical standpoint: is it effective, efficient, accountable and so forth, but also on why these aims and the means to its achievement are normatively good in relation to the exercise or execution of power.

Without such a normative basis, the concept of good governance is of great use in “persuasion, political debate and all form of rhetoric” (Simon 1946, 53), but less helpful in evaluating governance as normatively good in a legitimate and

¹²For instance, the UNDP (2002, 3) uses an intriguingly circular argument stating that human rights and democracy promote development because “enjoying political freedom and participating in the decisions that shape one’s life are fundamental human rights”. In this statement, there is no argument explaining either why these are fundamental rights or how democratic governance promotes development.

justifiable manner. In the following, it will be argued that two concepts already present in the international development discourse can be used in formulating normative bases for good governance: social sustainability and human rights. Social sustainability depicts the end of governance as sustainable development and human rights, the legitimate values that constitute a threshold on both the employed means and the end of sustainable development. With such a normative basis, the two above-described strains of criticism can be fruitfully countered.

4.1 Sustainability and International Legal Human Rights¹³

To search for the normative grounds of good governance in places as contested as good governance itself appears puzzling. Sustainability and international legal human rights, however, can perform this function through a relatively uncontroversial interpretation of the values expressed by those concepts. Sustainability and human rights are often included in conceptions of development. An investigation and new interpretation of those concepts is, therefore, appropriate when considering the normativity of good governance. However, both sustainability and human rights exist in multiple conceptions and it matters whether it is economic or social sustainability or human rights in a moral or legal context that is discussed. This section clarifies the interpretations of sustainability and human rights in this chapter and the relation between them before moving to the substantive normative argument on the good of good governance in the next.

The idea of sustainability has a strong dual focus on natural limits of growth and futurity. Furthermore, a sustainable society or sustainable development is a widely accepted goal of international development. Since the Brundtland commission published its influential report *Our Common Future* (WCED 1987) and coined the term “sustainable development,” the notion of futurity has been central in developmental concerns. Futurity exemplifies the notion that development is not solely concerned with short-term improvements in economic growth, but also with improvements that are lasting and cater the needs of everyone in which priority should be given to the worst off in societies (WCED 1987, 41). According to the commission’s highly influential definition, “sustainable development is development that meets the needs of the present without compromising the ability of

¹³The term *international legal human rights* is borrowed from Allen Buchanan (2013). In his work, it functions as an argument against the mirroring view of human rights which sees codified human rights as the legal mirror of an antecedent moral right. Differentiating between moral and legal human rights in this paper enables circumventing the discussion regarding the moral foundations of human rights because a mirroring view is neither a sufficient nor necessary conditions for the practice of international legal human rights to exist and continue to exist. Though I am sympathetic to Buchanan’s argument regarding the status of theories which seek to justify human rights through reference to underlying moral rights the argument presented here is fully compatible with a mirroring view. See Footnote 12.

future generations to meet theirs” (WCED 1987, 41). Similarly, to good governance, there is no clear and uncontested meaning of sustainability and neither will there be argued for one within this chapter. Alternatively, advantage will be taken from the general acceptance of the value of futurity. As such, sustainable development can inform and supplement the evaluative concept of good governance with both a clearer depiction and a stronger focus on long-term development, i.e. sustainable development. Moreover, it places two intuitive limits on how to achieve it, within environmental limits and without compromising the ability of individuals to meet their needs.

The use of international legal human rights requires explanation in discussions of normative grounding since human rights in their philosophical understanding of moral rights (hereafter: moral human rights) seem intuitively better equipped to perform the task of normative goal-setting. Moral human rights refer to natural rights individuals have in virtue of their humanity that exists outside of any institutional arrangement.¹⁴ Furthermore, moral human rights are those rights that assign duties on specific others to take the actions necessary for others to enjoy the content of the mentioned right. These duties can entail both positive and negative tasks. International legal human rights, on the other hand, are human rights that individuals have through the various national or international sources of human rights such as declarations, treaties and charters and through the judicial interpretations of these documents. They are distinct from moral rights in the sense that a legal human right does not need a corresponding natural human right for it to exist.¹⁵ Furthermore, legal human rights have institutional legitimacy where moral human rights have to be legitimized by bottom-up moral reasoning.

Favouring legal human rights over moral human rights in providing good governance with a normative basis has two great benefits. First, the legal discourse has the significant advantage that it enables appeals to normative considerations from an accepted institutional position. Claims about substantive moral norms are tied to foundational controversies that are nearly unresolvable. An appeal to international legal human rights thus enables one to make appeals to values and moral norms from an institutionally accepted position without stirring up foundational controversies. Furthermore, the institutional embedding of legal human rights, besides circumventing foundational moral contestation, has the advantage of catering to pluralist concerns. Unlike moral human rights, legal human rights can be justified from many different ethical perspectives and there is no need to

¹⁴For a prominent advocate of this view see: Griffin (2008) in which he argues that only moral human rights can ground legal human rights.

¹⁵This does not necessarily say anything about their legitimacy since the factual situation that something is never settles the question whether it ought to be. Here I will, however, remain silent regarding the question whether corresponding moral rights are required to legitimize the existing legal rights since it is beyond the scope of this chapter. Thus the view that ‘legal human rights’ simply acknowledge the ‘moral human rights’ we have in virtue of our humanity is still wholly plausible within the argument put forward in this chapter.

further discuss the ‘best’ moral justification for any right since many can exist, and in these multiple justifications, the values expressed by legal human rights remain valid. Relying on a plural justification, legal human rights are better equipped against charges of parochialism and can provide normative grounds to good governance without having to engage in foundational debates while being able to appeal to universally justifiable values. These advantages of the legal human rights framework will be discussed further in the next section.

The social aspects of sustainability, nurturing human development and advancing it into the future, is, at minimum, best captured with respect to legal human rights for two reasons. First, legal rights have longevity to them that both public and private policies do not possess. They must be respected, protected and provided for by the relevant actors for as long the rights exist, and it is very improbable that the legal sources of human rights will cease to exist. Therefore, the futurity captured by the idea of sustainability is best transposed to practice through a legal framework. Second, one striking feature of the idea of sustainability is that due to its vagueness, it is relatively benign for a multitude of actors, public but especially private, to commit to. The openness of the concept “represent[s] an important political opportunity” (Robinson 2004, 374) has also given rise to cosmetic and superficial sustainability measures. Interpreting the goal of social sustainability through the different duties legal human rights create brings with it a more substantive commitment to, at minimum, protect the rights of individuals. This is not to say that the idea of sustainability only represents human rights protection; the concept is broader and assigns duties to a wider range of actors than human rights do.¹⁶ However, at minimum, a non-legal commitment not to interfere with the fundamental rights of individuals by all actors is a necessary component of a sustainable society. This does not imply that all actors are under perfect positive human right duties but rather that a lack of respect from human rights by all actors infringes upon the sustainability of a society. It seems counterintuitive, for instance, to conceive of any society worth of the adjective sustainable, if it leaves basic rights severely under-protected and infringed upon a regular basis.

4.2 Good Governance, Status-Egalitarianism and Well-Being

This section will argue that in order to give the concept of good governance more substantive and consistent meaning outside of economic instrumentalism, it needs to refer to certain normative values that can inform the practical side of the

¹⁶Within international legal human rights states are specified as duty-bearer. Moreover, the duties specified by legal human rights are perfect duties, otherwise no right exists. The concept of sustainability, on the other hand, functions well with imperfect duties that apply to a much broader range of actors than the perfect human rights duties falling on states alone.

concept with context-independent worth. Such context-independent worth appeals to values not tied to any particular context or practicality. It thereby supplements the concept of good governance with a strong normative dimension beyond its instrumental goal-oriented evaluations. This will benefit the idea of good governance by informing it with normative values from an independent standpoint, making it less prone to critique aimed at the consequentialist economic reasoning behind many good governance measures. Moreover, it will also alter the shape of good governance, moving it away from economic concerns to a more human-centred conception of growth and development.¹⁷

Asking the question what aim of good governance after its consequentialist sequence of economic growth has run out is as necessary as it is dangerous. On the one hand, it is necessary because it is of fundamental concern to people living in developing countries whose lives are shaped by the enforcement of good governance measures; it needs to be clarified and justified. On the other hand, it is dangerous because it can lead into the terrain of essentially contested utopias, which often have certain illiberal tendencies. In order to avoid entering this terrain, the notion of sustainability and international legal human rights were already introduced. These are institutionally accepted values that can both confer legitimacy, in the case of legal human rights, and provide a goal, both sustainability and legal human rights, to the concept of good governance. The chief function of international legal human rights is to curb the sovereignty of states by posing universal constraints on their conduct as primary coercive institution. The other functions, as recently argued for by Buchanan (2013, 68), of international legal human rights are to “constrain sovereignty for the purposes of affirming and promoting the equal basic status of all people and helping to ensure that all have the opportunity to lead a minimally good or decent life by providing protections and resources that are generally needed for such a life”.

The system of international legal human rights thus protects two fundamental values for individuals as social beings:¹⁸ (1) their equal status and a (2) minimum of equal well-being. These two functions, the status-egalitarian and well-being function, are reflected in the system of international legal human rights. Through a brief elaboration of the content of the status-egalitarian and the well-being function, this section will show how these values can provide the normative ground for good governance. Ultimately, it will be argued that these values must be considered in evaluating the exercise or execution of power and in promoting both the end of development and the proposed means to achieve it, thereby placing a limit on what constitutes good governance.

Status-egalitarianism implies the equal standing of individuals before institutions. It refers to the function that human rights play in affirming such basic equal

¹⁷The present argument is thus not one replacing the ‘old’ framework for a ‘new’ one but argues for supplementing the current framework with a normative dimension.

¹⁸Here Buchanan’s (2013) interpretation of the functions of our system of international legal human rights is followed.

standing of all reflected in the universality of human rights: everyone has these rights regardless of sex, race, contribution, belief, etc. Furthermore, these rights have the same content and weight for everyone. Consequently, states have the duty to ensure that all citizens enjoy the content of these rights by guaranteeing, among other possible measures, equality before the law and adopting strong rights against discrimination. Separate from this status-egalitarian function is the well-being function of legal human rights. From the Universal Declaration (United Nations 1948) onwards, the system of international legal human rights has required states to perform positive duties to promote the well-being of its citizens. These include rights to social security, rest and leisure, an adequate standard of living including food, shelter and education. As Buchanan (2013, 32–36) notes, it is important to distinguish these two functions of legal human rights because, as is often done, a focus on the well-being function alone can justify very discriminatory practices. Thus, proponents of a very minimal interpretation of human rights as subsistence rights must also affirm the status-egalitarian function, and include the corresponding rights into their conception.¹⁹ Otherwise, the content and/or weight of the welfare rights can differ amongst individuals. Despite the fundamental importance of these values in limiting the sovereignty of states, its relation with the concept of good governance might not be clear from the onset.

Status-egalitarianism and well-being, as values underlying the system of international legal human rights, are appropriate and needed norms in formulating the aim and welfare of governance for two reasons. They are appropriate because they converge with existing notions of good governance and needed in providing the normative grounds necessary to make its measures consistent and justifiable. The core components of good governance, as the World Bank formulates them, are (1) voice and accountability, (2) political stability and absence of violence, (3) government effectiveness, (4) regulatory quality, (5) Rule of law and (6) control of corruption. Other diverging concepts of good governance include human rights. Focussing on the World Bank's conception is justified due to its dominant role in the discourse. Moreover, a focus on the World Bank's conception shows how the argument put forward does not simply equate good governance with human rights protection, but recognizes both as instruments capable of promoting the same values. Status-egalitarianism can be viewed as representing and grounding a number of good governance components. Status-egalitarianism is promoted through equal democratic politics (Voice and Accountability), equal treatment for the law (Rule of Law) and the equal treatment by government officials (Control of Corruption). The well-being function can be furthermore seen as grounding and being enforced by political stability and the absence of violence; a precondition to a minimally good life. The same is true of government effectiveness and regulatory quality; without these, the values of status-egalitarianism and well-being cannot be brought to fruition. This convergence shows that the values underlying the system of

¹⁹Two prominent examples of such minimal well-being approaches are: Shue (1980) and Nickel (1987).

international legal human rights are appropriately reflected by the measures, even though minimally, depicted in the discourse of good governance.

The previous established the convergence between the values underlying international legal human rights and the components of good governance. However, now the question arises concerning what these values provide content-wise or practically in evaluating governance. One might object this merely constitutes the legalization of good governance by presenting it as part of the system of international legal human rights. To this, the reply must be a strong negative one. There is a fundamental difference between the discourse of international development in which good governance plays an important role and the legal discourse of international human rights. The latter is a *legal* framework and the former a *development* framework. In other words, good governance is not reduced to a human rights enforcement tool but can be interpreted in such a way that it represents and is grounded by the same normative values and performing the function of protecting, respecting and furthering these values. Governance is, furthermore, a broader notion than legal human rights. Good governance concerns all policies that a government enacts (see Footnote 2), fostering economic growth, minimize unemployment, etc. and not just human rights. Moreover, most of these are not human rights concerns, (i.e. there is no²⁰ human right to economic growth or an increasing share of GDP) and fare well under the current framework. However, the converging normative values of legal human rights and good governance put important constraints upon the policies governments enact, i.e. on their governance.

In this sense, it is helpful to think of status-egalitarianism and the well-being function as the evaluative threshold of good governance requiring evaluating its components (ends) and the path towards it from a normative standpoint besides the dominant instrumental line of reasoning. The rough contours that these values sketch protect rights of individuals as social beings into the future, catering the need for sustainable development. As such, it constitutes the type of development aimed for; to respect, protect and further the values of status-egalitarianism and well-being into the indefinite future.²¹ Consequently, policies and practices undermining these values cannot be deemed 'good' within this amended framework. Therefore, rather than the equation of good governance with human rights protection, as done by the Human Rights Council of Australia (1995) and the office of the High Commissioner on human rights,²² good governance works towards respect of the same underlying values. Practically, this will mean that it leads to more robust protection of human rights among a wide-range of outcomes since the development discourse is not one concerned solely with human rights protection.

²⁰Moral nor legal.

²¹It is conceded that an instrumental evaluation in terms of economic prosperity is an essential component since economic growth is crucial to development.

²²See: www.ohchr.org/en/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx.

With regard to the economic consequentialism in current measurements of governance, the values of status-egalitarianism and well-being build the foundation on which it can be normatively grounded. As stated, much of the indicators are used as instrumental to the greater good of economic development. Grounded in the values underlying international (legal) human rights the instrumentality of the concept is reduced since appeals must be made to both normative values and economic consequences. Thus, democratic institution building, for instance, is included and justified for its ability to establish equal standing rather than because of its presumed economic beneficial consequences. Moreover, economically beneficial measures must be justified in reference to the normative foundation thus; for instance, a call for privatization must evaluate consequences with respect to the values of status-egalitarianism and well-being. Content-wise grounding the concept of good governance in the content-independent normative values underlying international legal human rights places more emphasis on human development as opposed to economic or institutional development. It promises to be a powerful tool to assess governments with respect to these values. Furthermore, if any proposed policy interferes with human rights, it can be seen as indication of ‘bad’ governance since it fails to respect, protect and further the underlying values. Moreover, the concept of good governance leads to more consistent measures due to the exclusion of policies undermining either one of the values or legal human rights in general.

With regard to the legitimacy of this normative basis, international (legal) human rights can, and must, play a double role. Just as states increase their own internal legitimacy through signing and ratifying human rights treaties, international developmental policies grounded in the same values as international (legal) human rights confers legitimacy to these policies directly.²³ In the next section, I will briefly discuss this practical impact and what room for political debate concerning policies there is left.

5 Good Governance: Policy Evaluation

Good governance, as sketched within the reconstructed framework, is an anthropocentric rather than economic conception of development. The governance of a country’s social and economic resources is to further the well-being of its citizens and to establish their legal and cultural equality. Good governance places restrictions upon governance and pressures rule-makers to sufficiently justify their policies and international organizations to explain and justify their policy prescriptions and evaluations. For instance, in the currently dominant conceptions of good governance, decentralization is often taken as an example of good governance

²³For a more elaborate statement on this legitimizing function of human rights see Buchanan (2013, 263–267).

because it brings rule-making closer to the people, thereby increasing voice and accountability as well as effectiveness. However, these measures often lack justification beyond an appeal to assumptions concerning the effects of decentralization. Normative foundations can function as a safeguard against such beliefs. Both the means towards and the end of decentralization might improve effectiveness in certain situation but can undermine respecting status-egalitarianism and protecting well-being when local courts and parliaments are given more power. Some of these local communities might not have the legal infrastructure to guarantee access to justice for all, or a country might well undermine the well-being of people due to the local inabilities to guarantee basic health care when its government decentralizes its already minimal and inadequate healthcare in order to improve its services. Grounding good governance puts limits on the consequentialist means-end reasoning by subjecting both means and ends to normative evaluation.

Besides more clearly defining the outcome of good governance envisages, the proposed framework provides better tools to NGOs to perform their power of oversight. Grounded in the values underlying international (legal) human rights, the proposed framework better equips them to subject government practice to evaluation and criticism. For instance, a country like Rwanda has limited state capacity, a very small number of human rights are respected, and minimal individual well-being. After receiving aid conditioned by good governance prescriptions, it is more than likely that human rights will remain under-protected for the simple reason that a whole state apparatus, including a minimal welfare-state, has to be in place to respect and protect human rights. While NGOs often criticize states and donors for failing to respect human rights, within this framework, these NGOs can more carefully assess whether the good promoted through these donor-relationships respects, protects and further status-egalitarianism and well-being. As such, the framework enables NGOs, besides the much needed naming and shaming, to deliver more constructive critiques in assessing whether the governance promoted through international institutions and implemented by governments of developing countries is worthy of the adjective 'good'.

In this framework, however, one might claim that there is no room for politics, i.e. for substantial choices to be made concerning the policies a government intends to implement because the aim of policy is imposed top-down. However, by making explicit that the values of status-egalitarianism and well-being can be respected, protected and furthered through a wide-range of policies, there is ample room for political bargaining. A strong (neo-) liberal approach to development, i.e. the prescription of large-scale privatization, decentralization and strong reliance on development through market mechanisms, is often said to undermine the well-being of the worst off in society. Although it is true that such measures tend to increase inequality, it can be argued that these measures also promote the well-being of all because the worst are often left better off than their original position. While this vision on development is not necessarily in conflict with the values of status-egalitarianism and well-being, it is true that increasing inequality tends to disrupt societies and increase the likelihood of instability.

The opposite also holds; a more left-wing approach to development can go a long way without undermining status-egalitarianism and is often better equipped to promote equal minimal well-being in the form of a modest welfare-state. However, such approaches are also prone to undermine status-egalitarianism when large amounts of welfare are redistributed fostering social unrest. As such, good governance grounded by status-egalitarianism and well-being can be implemented through a wide-range of policies and those are up to political bargaining and compromise through democratic politics. The contribution of the reconstructed framework is the need to evaluate and justify policies on a moral as well as economic consequential basis. It thereby constitutes a fuller understanding of what good governance is.

6 Conclusions

This chapter set out to uncover the fundamental values governance should adhere to in order for it to be called good. In conclusion, we can return to the two strains of critique levelled against good governance: (1) the practical side of the concept, especially its definitional vagueness and (2) on the economic consequentialism of good governance and lack of aim besides economic growth. These critiques challenged defining economic growth as good in itself. This chapter has been sympathetic to both these strains but added a more constructive argument to the discussion. With the reconstructed framework, the two strains of critique can be responded to in a constructive manner.

The first strain of criticism can be fruitfully addressed through the proposed framework for two reasons. First, the concept of good governance is grounded in normative values and thereby defines a common fundamental denominator. Though not proposing a fixed content of the concept, such an endeavour would be impossible and undesirable,²⁴ the framework lessens the burden of vagueness by grounding good governance in normative values constitutive of the good, thereby enabling a better measurement of it. Second, the strong focus, through legal human rights and a concern with sustainability, supplies good governance with an egalitarian human centred core. Thus, despite any remaining definitional vagueness, the aims are defined more clearly and the outcome of economic growth is no longer sufficient to count as good governance. Moreover, the inclusion of non-economic indicators, such as voice and accountability, are justified by appeal to normative values rather than assumed economic outcomes. In general, the proposed normative basis is concerned with human well-being and such a basis reduces the space in which definitions can be proposed since they must refer to these values or argue for new ones.

²⁴This is impossible because of the wide-range of actors that have to agree upon such a definition and undesirable due to closing the opportunity to appeal to a wide-range of actors.

The root of the second strain of critique, the economic consequentialism, lies in the mandate of the World Bank and the IMF which are obliged to refrain from interfering with political processes and focus solely on economic matters. The interpretation of this mandate has grown wider over the years in response to increasing awareness of the role the state plays in fostering economic growth and prosperity. However, the concept of good governance prescribes policies to areas conducive to more than economic growth. Therefore, the reconstructed framework justifies the challenges against the economic outlook because it interferes with social policies directed at other aims than economic growth. The framework, with its grounding in legal human rights and sustainability through rights protection, exchanges this economic goal for a normative one. The good that governance aims to achieve is no longer exhausted by economic prosperity but by respecting, protecting and furthering values of status-egalitarianism and well-being into the indefinite future. These fundamental values function as a verification on policy prescription directed at economic improvement and the measurement of the good no longer has to rely on economic consequentialism but on a broader human understanding of development.

The framework, however, leaves a number of questions unanswered and opens up paths of further research. First, the limits of the normative additions to the framework must be restated. The theoretical distance to practice of the reconstructed framework is concerned in the first place with clarifying the concept of good governance rather than its practice though it intends to inform this practice and substantially reform it. Second, the governance of a country and policy implementation is always a balancing act in which trade-offs have to be made. The proposed additions put a threshold on good governance measures as a whole, rather than providing a clear tool in balancing interests. The practical implication of this reconstruction must, therefore, be assessed critically in future research.

In conclusion, the proposed novel interpretation of sustainability and the normative values underlying our system of international legal human rights has the ability to overcome the critique against both the concept and practice of good governance. The argument put forward is that the aim of good governance goes beyond the often criticized economic outlook supplementing it with enabling respect, protection and furthering status-egalitarianism and well-being into the indefinite future. This normative goal provides good governance with a more consistent and less economical consequentialist practice and successfully counters the main sources of criticism directed against the institutional practice of good governance, thereby constituting the good that governance should aim for, adhere to and evaluate from.

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