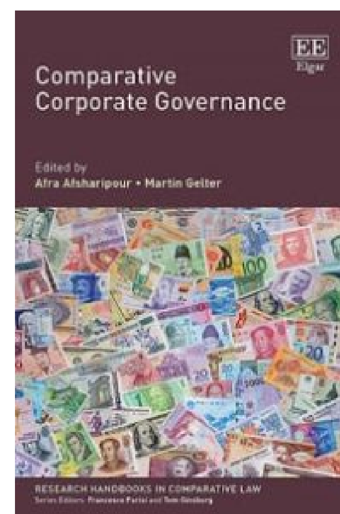
Book Review: Comparative Corporate Governance edited by Afra Afsharipour and Martin Gelter

In **Comparative Corporate Governance***, editors* **Afra Afsharipour** *and* **Martin Gelter** *offer a handbook on corporate governance, covering a wide range of topics including corporate purpose, corporate social responsibility and corporate law enforcement. As long-term perspectives are becoming increasingly central to corporate decision-making, this book will be an excellent guide for academics and practitioners in corporate law and finance, writes* **Irina Bevza***.*

***Comparative Corporate Governance*. Afra Afsharipour and Martin Gelter (eds). Edward Elgar Publishing. 2021.**



There is no single predominant definition of company corporate governance. In broad terms, corporate governance can be defined as a framework in which a company is managed and overseen. Good corporate governance can improve the overall performance and promote trust among company directors, shareholders and other stakeholders such as employees and customers. A company's corporate governance relates to the legal system in which the company is incorporated; therefore, corporate governance can vary globally.

Both internationally and within individual countries, corporate governance research studies the relationship between board members, managers, shareholders and other stakeholders in publicly traded companies. *Comparative Corporate Governance* is a handbook that attempts to take a broad perspective on corporate governance, covering different topics including perennial debates in the field like corporate purpose, corporate social responsibility (CSR) as well as corporate law enforcement across various jurisdictions.

Cynthia Williams's chapter, 'Comparative and Transnational Developments in Corporate Social Responsibility', highlights two conflicting ongoing trends in corporate governance. On one hand, multiple institutions, organisations and institutional investors have become increasingly aware of the urgent need to respond to global social and environmental challenges such as climate change and increasing economic inequality. Institutional investors globally have begun to recognise the significance of companies' social responsibilities, which has translated into a requirement that corporate directors and managers take a long-term perspective and adopt what is known as a 'stakeholder' orientation to corporate management. A stakeholder orientation assumes that company managers make business decisions and act in the interests of a variety of stakeholders, including customers and employees as well as shareholders.

On the other hand, activist shareholders have been putting pressure on companies to prioritise short-term strategies that lead to an increase in share prices and distribution of funds to shareholders. Naturally, this trend could lead to companies divesting from strategies that could prioritise longer-term shareholders' or stakeholders' over shorter-term shareholders' interests. For example, longer-term shareholders could be passive institutional investors that cannot divest from investment due to the nature of their investment strategy: as they are tracking a market index, they cannot exit the investment as long as it is a constituent of that index. Such shareholders' interests could be different from and even conflict with investors searching for quick share price appreciation. Moreover, these passive institutional investors have adapted a stakeholder orientation in their engagement with investee companies.

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The collision of these two trends has resulted in debates on corporate purpose becoming more central across many jurisdictions. In particular, the US and UK, where shareholder primacy has long been prioritised, have changed their rhetoric towards stakeholder wealth. Many institutions and large institutional investors have promoted CSR to resist short-termism pressures.

CSR refers to a business model where company practices account for the impact of the company's business on economic, social and environmental aspects of society. The CSR field is shaped by law 'through its structuring of domestic social welfare provisions and rights; through its effects on corporate governance; through capital market regulation; and, in some instances, through direct regulation' (103). This list demonstrates that various areas of CSR are subject to domestic regulation and, by extension, the abilities of local governments and local legal systems to support CSR.

In addition, very few countries have enacted specific legislation explicitly directed toward CSR. The difference between voluntary versus mandatory bases for CSR legislation could result in transnational gaps in corporate responsibility across countries, such as human rights infringement in extractive industries or unsafe conditions and slavery-like problems across others. For instance, there is more progress in Europe where the legal system reinforces strong norms of corporate responsibility compared to other regions such as the US.

In the meantime, the 'long-termism' trend outlined earlier has encouraged many individual companies globally to volunteer to address critical global problems. Williams, however, concludes that depending on voluntary CSR initiatives by institutional investors is a weak basis for addressing pressing global issues:

> CSR may be a useful, even important development in a world where globalizing corporate power is transforming patterns of production, and where the world's population is exploding. It is hardly sufficient to address the inter-connected social and environmental challenges those transformations are producing (114).

Therefore, it is natural to conclude that CSR initiatives should be used in conjunction with a legal system that reinforces corporate responsibility to challenge short-termist practices by investors.

The extent to which shareholders can impact management decisions is determined by corporate governance codes and enforcement mechanisms provided by local legislators. Corporate governance codes typically represent standards for good practice for corporate boards in protecting shareholder investments. Enforcement is the key to effective corporate governance as, without an effective enforcement mechanism, a corporate governance code is just a list of procedures.

Pierre-Henri Conac's chapter, 'Public versus Private Enforcement in Corporate Governance', discusses private and public forms of enforcement. Private enforcement relates to enforcement action by a private party, including shareholders' voting, private litigation and stock exchanges or established specialised bodies releasing their corporate governance code. Reference to a corporate governance code is now compulsory in most jurisdictions, although compliance with the code provisions can depend on their nature. For example, some corporate governance codes are subject to the 'comply or explain' principle, which can sometimes be tricky to enforce. In the case of a deviation from the code, management might provide vague explanations and unconvincing reasoning, making it difficult for shareholders to force management to implement the 'explain' principle. As a result, the value of such corporate governance codes would be low.

Public enforcement relates to enforcement action by a public authority such as a securities supervisor. In practice, in many jurisdictions, a public authority monitors the application of the code without trying to enforce it. In contrast, public authorities might try to enforce the codes in fewer jurisdictions with a more state interventionist approach. Conac argues that private enforcement should be the primary legal technique for enforcement 'because corporate governance is a private matter and listed companies are private entities' (429). However, public enforcement is also justified where private enforcement is restrained: for example, in countries with concentrated ownership and little private litigation.

Comparative Corporate Governance is an excellent 'go-to' guidebook for both academics and practitioners in corporate law and finance. Understanding the critical corporate governance debates and good company practices is essential knowledge for practitioners in an environment where the long-term perspective is becoming central to the majority of corporate decisions.

- *This review first appeared at LSE Review of Books.*

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