Center for Management Science Research
ISSN: 3006-5291 3006-5283 Volume 4, Issue 2, 2026

# BALANCING REGULATION AND AUTONOMY: A CRITICAL ANALYSIS OF CORPORATE LEGAL GOVERNANCE IN PAKISTAN AND THE UNITED STATES

**Nadia Saleem[*1], Saif Urehman[2], Muhammad Tahir Saleem[3], Akhtar Ali Ansari[4], Dr. Fatimah Qadir[5]**

[*1]*LLM Corporate Law Nottingham Trent University, UK*
[2]*LL.M Scholar, Shanxi University, China*
[3]*MBA, University of Central Punjab, Lahore, Pakistan*
[4]*LL.M University of Lahore (UOL)*
[5]*PhD Management Assistant Professor (Adjunct Faculty) University of Chakwal, Punjab, Pakistan*

[*1]adv.nadia.saleem@gmail.com, [2]saifurehman515@gmail.com, [3]tahrsaleem007@gmail.com, [4]akhtaraliansariadv@gmail.com, [5]fatimah19.qadir@gmail.com

DOI: https://doi.org/10.5281/zenodo.23394200

**Keywords**
*corporate governance; agency theory; managerial autonomy; regulation; SECP; Sarbanes–Oxley Act; Companies Act 2017; comparative corporate law*

**Article History**
*Received: 01 January 2026*
*Accepted: 11 February 2026*
*Published: 28 February 2026*

**Copyright** @Author
**Corresponding Author: ***
**Nadia Saleem**

**Abstract**

*Corporate governance law presents a dilemma based on two mutually exclusive demands: the need to restrict managerial opportunism through external control and the need to maintain discretion that allows managers to perform value-generating activities. The article examines how two different countries, the US and Pakistan, try to find a compromise between these two opposing forces. The US relies on federal securities laws, state-level fiduciary laws, and a judiciary that both accepts and limits managerial discretion in favor of shareholders. In contrast, Pakistan enacts laws such as the Companies Act, 2017, and regulations of the Securities and Exchange Commission of Pakistan, but governance in Pakistan is affected by family- and state-owned businesses and an often subordinate judiciary. The article suggests that when it comes to corporate governance, the US and Pakistan encounter different risks: while the US may find itself in a situation where its corporate law innovations will be the result of reactionary adjustments to scandals and will reflect an excessive loyalty to shareholders, Pakistan may experience only superficial reforms that do not address the fundamental issues of power relations between different stakeholders. The article concludes by offering recommendations to Pakistani lawmakers concerned about the ability of the US-style governance laws to engender the desired changes in Pakistani corporate governance. The US corporate governance laws are the result of a specific institutional development in which elements of control and discretion were introduced in a responsible manner through negotiations and compromises between various stakeholders. To truly emulate these laws, Pakistani lawmakers should consider this institutional context and evaluate which areas of US corporate governance require detailed attention. In particular, it is advisable to avoid adopting uniform standards since they may fail to consider the nuances of different business relations in Pakistan.*

## INTRODUCTION

Corporate governance concerns the system of rules, institutions, and practices through which enterprises are directed and controlled, and through which directors of those enterprises are accountable to those whose resources they deploy (Cadbury Committee, 1992; Tricker, 2019). Its legal aspect is of particular importance since law is what determines who can control the corporation and what duties it owes, who can enforce those duties, and what are the remedies for their breach. The laws governing the organization thus affect investors' confidence, cost of capital and finally an economy's ability to raise private capital for productive use (La Porta et al., 1998; Shleifer & Vishny, 1997).

A major challenge associated with the design of corporate governance architecture is the tension between regulation and managerial autonomy. Regulation, whether imposed by statute, issued by the regulator, or by judicial review, limits the freedom of the agents who control corporate assets and the opportunities for self-dealing and negligence. Too much or ill-conceived regulatory constraints, however, could give rise to compliance costs, overly cautious decision-making, and the displacement of managerial discretion, the very source of value creation in corporations (Bainbridge, 2008; Romano, 2005). The policy problem is not whether to regulate, but how to tailor the extent, form, and location of regulation so as to promote accountability while not undermining discretion.

There are three reasons that a comparison of Pakistan with the United States is instructive: first, both countries have common law foundations and a board-centered model for the company, which makes it possible to make meaningful comparisons of the particular legal mechanisms that hold the basic structure constant; second, the two countries represent different positions on the spectrum of institutional capacity and ownership structure; the United States is characterized by dispersed ownership in large public companies, deep capital markets, and an active litigation culture, while Pakistan is characterized by concentrated family, group, and state control and a comparatively thin market for corporate control (La Porta et al., 1999; Papanek, 1967). Third, Pakistan's governance reforms since 2002, culminating in the Companies Act, 2017, have drawn heavily on Anglo-American and international models, making the question of what can and cannot be transplanted both timely and contested.

Existing scholarship tends to either describe United States governance as a paradigm to be emulated or examine Pakistani governance through empirical studies of firm performance, with limited analysis of the legal design problem itself. This article addresses a gap by pursuing three objectives: (a) to outline a conceptual framework for analyzing the regulation–autonomy trade-off; (b) to examine how each jurisdiction's legal institutions allocate power among the regulators, courts, shareholders, and managers; and (c) to derive policy implications for Pakistan that take account of local institutional conditions. Therefore, the article asks: (RQ1) How do the United States and Pakistan differ in the legal mechanisms they use to constrain and empower corporate managers? (RQ2) To what extent do differences in enforcement capacity and ownership structure, as opposed to formal law, explain divergent governance outcomes? (RQ3) What reforms would best balance regulation and autonomy in Pakistan?

The methodology is doctrinal and comparative. It analyzes the primary legal materials (statutes, regulations, and judicial decisions) in conjunction with the peer-reviewed scholarly literature, employing a functional approach that compares legal institutions in terms of the problems they solve rather than the labels used to identify them (Kraakman et al., 2017).

## 2. Conceptual Framework

Definitions of corporate governance range from a narrow, finance-oriented perspective to a more comprehensive, stakeholder-oriented perspective. In the narrow view, corporate governance is what financiers do to extract a return on their money

(Shleifer & Vishny, 1997). The more comprehensive view, captured in the G20/OECD Principles, defines governance as the relationships among management, the board, shareholders, and stakeholders that constitute the framework within which the company sets objectives and monitors performance (OECD, 2023). The present article adopts the more comprehensive view, but with a twist: governance is defined as the corpus of legal norms and enforcing institutions that define decision-making competences and responsibilities within the corporate entity and between the corporate entity and the state.

Agency theory: The dominant theoretical approach views the firm as a nexus of contracts whereby the owners (principals) delegate decision-making authority to managers (agents) who have conflicting interests. Jensen and Meckling (1976) argued that such a separation of ownership and control results in agency costs in terms of monitoring expenditures, bonding costs, and residual loss. Berle and Means (1932) were the first to demonstrate how dispersed ownership of large American corporations had led to managerial control. Agency theory provides the canonical argument for regulation: if markets or contracts fail to constrain managers, regulation in the form of mandatory rules and disclosure requirements, and fiduciary duties will be necessary. The limitation of the theory is its restrictive assumptions about human nature: it has little to say about the advantages of discretion and underestimates the costs of monitoring (Eisenhardt, 1989).

Agency problems are not the same across different ownership structures. In dispersed-ownership systems, the conflict is between shareholders and managers. In concentrated-ownership systems, the conflict is between controlling and minority shareholders (La Porta et al., 1999; Shleifer & Vishny, 1997). This difference is crucial for the comparison to be explored in this article, because it suggests that a particular legal tool may be appropriate in one system and inappropriate in the other.

Stewardship and team production perspectives: Stewardship theory challenges the orthodoxy of the agency approach by postulating that managers may be intrinsically motivated to advance the interests of the organization and that monitoring may be counterproductive (Davis et al., 1997). Similarly, the team production theory of Blair and Stout (1999) views the board as a mediating hierarchy that balances the claims of various contributors to the firm, thus providing a theoretical foundation for judicial deference to board decisions.

Stakeholder theory: According to Freeman (1984), managers have to consider the interests of all groups that are affected by the firm, and, according to Donaldson and Preston (1995), there are three variants of stakeholder theory: descriptive, instrumental, and normative. Stakeholder theories go beyond shareholder wealth but face a well-known accountability problem: managers answerable to all may be answerable to none, thus increasing discretion rather than reducing it (Bainbridge, 2008).

Regulatory compliance models: Regulatory theory adopts a complementary approach. Command-and-control regulation prescribes specific conduct and imposes sanctions on those who do not comply, whereas responsive regulation employs a pyramid of escalating sanctions ranging from persuasion to deterrence depending on the willingness of the defendant to comply (Ayres & Braithwaite, 1992). Comparative governance research has also made a distinction between mandatory and enabling rules and between comply-or-explain codes, the latter being a hybrid that was pioneered in the UK by the Cadbury Report and that has been adopted in governance codes around the world (Cadbury Committee, 1992; Mallin, 2019).

### 2.3 Autonomy versus regulation as a design problem

The above theories are concerned not with a binary choice but a design choice. Autonomy has benefits (speed, specialized judgment, risk-taking, and firm-specific adaptation) but also costs (opportunism, entrenchment, and negligence), and regulation has benefits (investor protection and market integrity) but also costs (compliance burdens, rigidity, and regulatory capture). Which

is preferable is a matter of context-including ownership concentration, the quality of enforcement institutions, market discipline, and the availability of private enforcement. Regulation without capacity for enforcement creates the appearance of constraint without its reality, and autonomy without credible accountability is susceptible to abuse. This observation motivates our analysis that follows.

**3. Corporate Governance in the United States**

Corporate governance in the United States is the product of successive crises and reform periods in the twentieth century. Corporate law was historically a state matter in the United States, and Delaware has long been the favored incorporation state for large publicly traded corporations. Following the 1929 crash, the Securities Act of 1933 and the Securities Exchange Act of 1934 were both passed by Congress, the latter of which established the Securities and Exchange Commission (SEC) and embodied a federal philosophy of disclosure-based investor protection. Berle and Means's (1932) seminal analysis of the separation of ownership and control provided the theoretical backdrop.

The years following saw the rise of managerial capitalism, a hostile takeover wave in the 1980s, and the gradual increase of the role of independent directors (Gordon, 2007). Judicial cases regarding takeover defenses such as Unocal Corp. v. Mesa Petroleum Co. (1985) and Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc. (1986) spelled out more exacting standards for takeovers. The corporate scandals of 2001-2002 epitomized by Enron and WorldCom led to the most pervasive federal intervention in a firm's internal affairs since the 1930s (Coffee, 2005, 2006). The 2008 financial crisis led to another round of reform.

**3.1. Principal regulatory institutions and statutes**

The SEC and federal securities law: The SEC is responsible for overseeing a mandatory disclosure regime, regulating exchanges and market intermediaries, and enforcing antifraud rules. The federal securities laws traditionally left the allocation of corporate governance responsibility to state law.

The Sarbanes-Oxley Act of 2002 (SOX): SOX represented a significant federal foray into that domain. It created the Public Company Accounting Oversight Board (PCAOB), mandated independent director audit committees, CEO and CFO certification of financial statements, and management assessment of internal controls, and enhanced criminal penalties (Sarbanes-Oxley Act, 2002). Critics of SOX, most notably Romano (2005), contended that the Act represented 'quack' governance: reforms implemented in haste, without foundation in empirical research, and with costs imposed on all issuers in response to the misdeeds of a few. Others have found evidence of mixed economic effects of the Act, including benefits to reporting quality but considerable compliance costs (Zhang, 2007). The constitutionality of the PCAOB's structure was also challenged in Free Enterprise Fund v. Public Company Accounting Oversight Board (2010), which upheld the Board but modified the removal protections of its members.

The Dodd-Frank Act of 2010: In response to the financial crisis, Dodd-Frank introduced advisory shareholder votes on executive compensation ('say on pay'), enhanced compensation-committee independence requirements, and mandated clawback of erroneously awarded incentive compensation, the latter of which was implemented through SEC rules adopted in 2022 (Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010). These measures reflected a legislative preference for enhancing shareholder voice as a check on managerial discretion, a position defended by Bebchuk (2005) and challenged by Bainbridge (2008).

**3.3 The judiciary and state fiduciary law**

The more consequential constraints on managerial conduct are arguably judge-made. Delaware law gives the business and affairs of the corporation to the board (Delaware General Corporation Law, § 141(a)) and imposes fiduciary duties of care and loyalty on the

directors. The business judgment rule is a presumption that directors acted on an informed basis, in good faith, and in the honest belief that their action was for the benefit of the company, an abstention doctrine that prevents the courts from reviewing the substance of business decisions unless the directors were disloyal, acted in bad faith, or were grossly negligent (Aronson v. Lewis, 1984; Bainbridge, 2003).

The limits of the rule under consideration may be demonstrated by the case of Smith v. Van Gorkom (1985). In this case, the Delaware Supreme Court held that the directors of the company were grossly negligent for approving the cash-out merger on the basis of a short conversation during a brief meeting and without obtaining the necessary information. This ruling created a significant uproar in the director community. As a result, the Delaware legislature passed § 102(b)(7), which allows companies to exculpate directors for monetary breaches of the duty of care. Thus, we can see how the interference of the judiciary and the protection of managerial autonomy provided by the legislature balance each other.

The duty of oversight has been gradually narrowed. Although In re Caremark International Inc. Derivative Litigation (1996) established that directors could be held liable for their role in not establishing any reporting system, and although Stone v. Ritter (2006) linked that duty to a general fiduciary obligation of good faith, for years Caremark claims saw few successes. Marchand v. Barnhill (2019), a case concerning a listeria outbreak at an ice-cream manufacturer, signaled a new rigor by finding that the directors of a company that derives its entire business from the production of a single regulated product must make a good-faith effort to set up a system at the level of the board for monitoring mission-critical compliance risks. At the same time, In re Walt Disney Co. Derivative Litigation (2006) determined that a flawed procedure for approving a generous severance package for executives was not indicative of bad faith.

### 3.4 Managerial autonomy in practice

The United States gives public company managers significant autonomy. Shareowners cannot generally take fundamental corporate actions, and the board's authority over the company's affairs is strong. The state of Delaware permits staggered boards and dual-class share structures, which bolster the power of the controlling shareholder, and the Delaware Supreme Court's endorsement of the Tesla board's conduct in the SolarCity transaction (In re Tesla Motors, Inc. Stockholder Litigation, 2023) confirms that process can protect a deal backed by a powerful incumbent.

A counterforce has been building, however, in the form of institutional shareholder activism and hedge-fund campaigns, which Gilson and Gordon (2013) view as generating new "agency costs of agency capitalism" because the actors promoting proxy contests have incentive problems of their own. Rock (2013) similarly portrays a "shareholder-centric" world in which the board is subject to a market's disciplining eye. The United States' law-bound debates about whether the corporate purpose should be construed as maximizing shareholder value or something else entirely, from Dodge v. Ford Motor Co. (1919) to the Business Roundtable's (2019) statement that a corporation should "consider the interests of all of our stakeholders," remain unresolved in doctrine, and skeptics rightly note that stakeholder capitalism is not always accompanied by real duties.

The United States model of governance can thus be viewed as one of "regulated autonomy": extensive managerial discretion coupled with deference to decisions by judges, so long as there is adequate disclosure, independent directors, and a credible threat of litigation and federal enforcement. The system's weaknesses are the unpredictability of federal response to identified problems and the risks that litigation will be both numerous and expensive.

## 4. Corporate Governance in Pakistan

Pakistan inherited the Indian Companies Act of 1913, which was replaced by the Companies Ordinance, 1984. Economic policy switched

wildly; early industrialization was dominated by a few private business families, a phenomenon famously dubbed the "twenty-two families" critique (Papanek, 1967), then nationalization of major industries in the 1970s, and then privatization and liberalization from the 1990s. The legacy is an economy in which family-controlled business groups, state-owned enterprises, and multinational subsidiaries predominate, and in which ownership concentration remains strong (La Porta et al., 1999).

The SECP was established by the Securities and Exchange Commission of Pakistan Act, 1997, succeeding the Corporate Law Authority. Modern governance reforms started with the first Code of Corporate Governance, issued in 2002, superseded in 2012, and replaced by the Listed Companies (Code of Corporate Governance) Regulations, 2019. The Pakistan Institute of Corporate Governance, set up in the early 2000s, has promoted board education and best practice. The Companies Act, 2017 repealed the 1984 Ordinance, consolidating a modern corporate law regime.

**4.2 The SECP and the Companies Act, 2017**

The SECP serves as both company registry and capital-market regulator, wielding powers of inspection, investigation, and enforcement. The Companies Act, 2017 enshrined directors' duties, including the duty to act in good faith in the interest of the company, its employees, shareholders, the community, and the environment (Companies Act, 2017, s. 204), thus institutionalizing an enlightened-shareholder or pluralist formulation; it also reduced friction in the incorporation process, introduced categories to reduce the compliance burden of small and unlisted companies, and bolstered disclosure and rights provisions for shareholders. The 2019 Regulations require, inter alia, a minimum proportion of independent directors, female representation on boards, directors' training, and the separation of the chairperson and chief executive roles for listed companies and operate on a comply-or-explain basis in some respects and on mandatory terms in others (SECP, 2019).

With respect to design, the Pakistani framework mainly follows the Anglo-American and international trends (OECD, 2023). Indeed, the explicit formulation of stakeholder-regarding duties is ambiguous in terms of enforceability: while embodying a diversified outlook, the law does not specify who is entitled to enforce the duties directors owe to non-shareholder constituents, which reflects the accountability issue raised by the proponents of stakeholder theory (Bainbridge, 2008).

**4.3 Judicial and regulatory challenges**

Three types of challenges are recurrent in the literature and practice. Firstly, enforcement capacity is limited; a modern code is not necessarily a guarantee of its implementation. Empirical work on listed companies suggests that governance attributes such as board composition have an ambiguous and context-specific relationship to firm performance (Yasser et al., 2011), consistent with formal compliance being decoupled from substantive accountability. Secondly, civil enforcement by private parties is comparatively weak; delays in civil adjudication, litigation costs, and the nascent state of derivative actions reduce the deterrent force of fiduciary duties relative to the United States, where the plaintiffs' bar and the Court of Chancery's specialization lend credibility to private enforcement. Thirdly, the regulatory perimeter is complicated by the SECP's multiple roles and overlapping oversight with the State Bank of Pakistan for banks and with sectoral regulators for utilities and state-owned enterprises.

The judiciary has also played a distinctive role, and arguably ventured beyond its proper sphere. In Watan Party v Federation of Pakistan (2006), the Supreme Court of Pakistan cancelled the privatization of Pakistan Steel Mills, on both procedural and substantive grounds. While one may applaud the intervention as a corrective to mismanagement of public assets, this is a clear instance of the kind of judicial intervention in commercial matters that is anathema to U.S. jurisprudence, due to the business judgment rule. Such interventions, while perhaps beneficial in terms of enhanced accountability to the public

interest, carry the undesired effect of making commercial law less predictable, by allowing reopening of decisions years after their execution.
External factors have also influenced the regulatory priorities. The inclusion of Pakistan in the Financial Action Task Force's list of jurisdictions subject to increased monitoring from 2018 until October 2022 prompted reforms to beneficial ownership transparency and control over the corporate registry (Financial Action Task Force, 2022). Thus, it can be seen how international standards can promote corporate-law reforms in a country; however, often they do not fit into a larger system of governance.

### 4.4 Managerial autonomy in Pakistani corporations

In practice, managerial autonomy in Pakistan depends on who owns the company. In family-controlled groups, the controlling family usually selects the board and manager, which reduces the board's monitoring role; the main problem being the risk of expropriation of minority shareholders through related-party transactions, pyramidal structures, or tunneling (La Porta et al., 1999; Shleifer & Vishny, 1997). Political influence over appointments and public-law accountability mechanisms such as audit and judicial review reduce autonomy in state-owned enterprises. In multinational subsidiaries, group governance systems and home-country laws like the US anti-bribery and securities rules often demand higher standards than local laws.
The Pakistani position may therefore be described as one of limited but unaccountable autonomy: while formal board structures are in place, power resides with the controlling shareholders or the state, whose legal levers to constrain them, particularly minority remedies and independent-director scrutiny, are subject to an evolving enforcement environment.

## 5. Comparative Analysis: Pakistan and the United States

### 5.1 Similarities in regulatory frameworks

At the level of formal design, the two systems are remarkably convergent. Indeed, both are common law jurisdictions which possess the unitary board structure, statutory and fiduciary duties of directors, mandatory financial disclosure requirements, audit commitment and independent director requirements, and a securities regulator with investigatory powers. Both have implemented minority shareholder protections such as a right to information, to vote on fundamental transactions, and to obtain judicial remedies for oppression or unfair prejudice, which represents convergence of the sort advocated by Hansmann and Kraakman (2001) who argue that the pressures of global competition will impel jurisdictions toward a shared shareholder-oriented standard model. However, Coffee (1999) warns that convergence of form often precedes and may be a substitute for convergence of function.

### 5.2 Differences in enforcement and institutional capacity

The more significant differences are related to the aspects of enforcement. While the founding fathers emphasized the role of legal origin and investor protection laws, later researchers highlighted the importance of the quality of enforcement mechanisms for financial development. There are three significant enforcement-related differences between the legal systems in the U.S. and Pakistan. First, there is a difference in the sources of enforcement. The U.S. has both public (SEC, Department of Justice, PCAOB) and private (class action) and derivative (derivative suits) enforcement resources, while Pakistan only has public enforcement mechanisms with few private resources. Second, a difference is related to the speed and predictability of adjudication. For example, the existence of the Delaware Court of Chancery and well-established case law regarding takeovers allows managers and investors to confidently predict the outcomes of disputes. At the same time, in Pakistan, the unpredictability of commercial court proceedings detriments deterrence power and certainty of outcomes. Finally, the third difference is the difference in regulators' reflexive capacity. The function of gatekeepers (auditors, analysts, institutional investors, business press) in the U.S. allows the

flow of information to investors, which is not the case in Pakistan (Coffee, 2006).

### 5.3 Autonomy of corporate managers

The two systems protect managerial autonomy in different ways from different threats. In the United States, it is protected through judicial deference and statutory exculpation, threatened by the rise of shareholder power and of federal prescription. In Pakistan, autonomy of professional managers is often constrained by controlling shareholders and, in the public sector, by political authorities. A reform that increases regulatory intensity may therefore have opposite implications in each context. In the United States, it may entail the risk of marginal over-regulation, whereas in Pakistan it may be nullified by control structures, unless coupled with empowerment mechanisms for minority shareholders and independent directors. This is the core analytic issue in the comparison: the optimal regulation-autonomy balance is conditional on ownership structure and enforcement capacity, and cannot be inferred from statutory text alone.

### 5.4 Globalization and foreign investment

Globalization is creating converging pressure from institutional investors, cross-listing, multinational supply chains, and international standard-setters such as the OECD and the FATF (Aguilera & Jackson, 2003; OECD, 2023). Pakistan's need to attract foreign direct investment and to meet the expectations of international assessors has been a major impetus for reform. However, legal transplants literature and studies on cross-national diversity warn that the importation of governance systems is problematic because they are embedded in complementary institutions, making their interaction unpredictable (Aguilera & Jackson, 2003; Coffee, 1999). Pakistan's adoption of independent-director and board-diversity requirements for instance, assumes that there is a ready supply of independent directors and a market that will punish those who fail in their stewardship responsibilities, which is only partly the case.

## 6. Challenges and Emerging Trends

### 6.1 Regulatory overreach versus managerial discretion

In both jurisdictions, there is an issue of regulatory overreach. In the US, the Enron reforms are indicative of the problem highlighted by Romano (2005) of legislation crafted in response to a crisis applied uniformly to diverse business types on the basis of policy considerations that lack a strong empirical basis. The danger is that managers will adopt a defensive, box-ticking approach rather than enhancing decision-making, a concern reinforced by the observation that no single governance attribute reliably predicts performance and governance indices explain only part of the story (Bebchuk et al., 2009). In Pakistan, the danger is different because of the potential for grandiose legislation that is enforced ineffectively, imposing costs on conforming businesses (especially small and medium-sized companies) and offering little protection against determined controlling shareholders. The solution in both cases is to take a proportionate approach, differentiating between businesses on the basis of size, ownership and compliance history in the spirit of responsive regulation (Ayres & Braithwaite, 1992) rather than adopting a one-size-fits-all approach.

### 6.2 Scandals and accountability mechanisms

Coffee (2005) argues that scandals are not the result of random events, but rather they are recurrent products of market booms in which the incentives of gatekeepers are weakened, and the managers' equity-based compensation encourages earnings manipulation. The United States response has been to reinforce gatekeepers, enhance disclosure and extend personal responsibility, for example through officer certification and clawbacks. However, these remedies are largely reactive. Bebchuk and Fried (2004) add that executive compensation arrangements can themselves be the result of agency problems, as when boards are not sufficiently independent of management, they may approve compensation arrangements that are unrelated to performance.

The cross-border element is illustrated by the collapse of the Bank of Credit and Commerce International (BCCI), a bank created by a Pakistani financier and operating in a number of jurisdictions, whose collapse was investigated by a United States Senate committee. The Senate report revealed how lack of supervision, complex ownership and poor coordination between national regulators allowed large-scale fraud to flourish (Kerry & Brown, 1992). The case is of interest to both systems as it shows that accountability mechanisms confined within national borders are vulnerable to regulatory arbitrage.

**6.3 Digital transformation, artificial intelligence, and algorithmic governance**

Digital technologies are transforming both the content and governance of corporate risk. Artificial intelligence (AI) is increasingly deployed in compliance monitoring, risk analytics, and potentially board decision support. While Hilb (2020) discusses the ways in which AI can be leveraged to improve and potentially replace some of the functions performed by directors, Möslein (2018) focuses on the theoretical challenges that arise when attempting to impose corporate law norms concerning fiduciary duties on algorithms. Enriques and Zetzsche (2020), in turn, address the so-called 'tech Nirvana fallacy', arguing that technology-driven solutions to governance issues fail to account for new risks and sources of bias, as well as the ways in which such solutions may disrupt existing compensation and motivation frameworks.

These trends create further complications for the governance paradox. While a board that acts in good faith in reliance on expert systems is protected by the business judgment rule, the duty of oversight as interpreted in Marchand v. Barnhill, 2019 requires boards to understand and regulate mission-critical technologies. In Pakistan, the duty of care and diligence of the directors can also be viewed as incorporating responsibility for technology oversight. However, neither the Companies Act, 2017 nor the 2019 Regulations make any mention of algorithm risk, data governance, and cybersecurity oversight at the level of the board. The same challenge is likely to be faced in other jurisdictions where the institutional capacity to regulate technology oversight may be underdeveloped.

**6.4 Cross-border governance issues**

Cross-border issues take many forms. Extraterritorial enforcement (through the anti-bribery and the securities anti-fraud provisions) by United States authorities may impose American standards on foreign firms and their affiliates, although the Supreme Court in Morrison v. National Australia Bank Ltd. (2010) narrowed the extraterritorial reach of the anti-fraud provisions of the Securities Exchange Act to transactions in securities listed on United States exchanges and domestic transactions in other securities. The consequence for Pakistani companies with foreign listings, foreign investors, or foreign parent companies is double compliance, which may improve governance quality at the expense of being costly for small companies. Inversely, the shifting of corporate charters between competing US jurisdictions and the controversies surrounding reincorporation away from Delaware suggest that regulatory competition is a dynamic force in the regulation-autonomy balance.

**7. Policy Recommendations**

The analysis suggests reform should be guided by the principle that governance rules are likely to be the most effective if they are adapted to the institutional context in which they operate. The recommendations that follow are directed primarily to Pakistan, but have implications for both systems.

**7.1 Strengthening institutional capacity in Pakistan**

Specialized and efficient adjudication. Pakistan should consider creating or improving specialized commercial benches with enforceable standards, qualified judges, and published and reasoned decisions. A growing number of predictable, reasoned precedents on directors' duties and minority remedies would inspire greater confidence among investors than more statutes

would. The experience of Delaware demonstrates the value of judicial specialization in generating doctrine that guides ex ante behavior (Bainbridge, 2008).

Regulatory capability and independence. The SECP's investigative and analytical capabilities, including forensic accountancy and data analytics, should be strengthened, and its enforcement decisions made more transparent and justiciable on reasoned grounds. Responsive and effective enforcement is a more critical priority than the promulgation of additional regulations.

Gatekeeper development. The professional credibility of company secretaries and independent directors needs to be nurtured through constant investment since they amplify regulatory effectiveness, especially where state capacity is constrained (Coffee, 2006).

### 7.2 Lessons from United States practice

Pakistan can learn several lessons from the experience of the United States that would be useful for its own development so long as they are appropriately modified. First, the architecture of the business judgment rule plus vigorous loyalty enforcement is significant: autonomy should be conditioned on process and good faith, and the doctrine articulated so that managers know the terms of their protection. Second, private enforcement tools, like the well-drafted derivative action plus procedural safeguards against abuse, can be a useful complement to regulators in cases where public enforcement is limited. Third, the Delaware oversight jurisprudence provides a ready model for the development of a duty to monitor compliance risk that can be adapted to Pakistani regulatory priorities such as anti-money laundering and beneficial ownership disclosure.

By contrast, Pakistan should be wary of adopting United States features ill-suited to its ownership norms. Measures that presume dispersed ownership, such as the use of say-on-pay votes or activist interventions, are largely ineffective in a setting where a single controlling shareholder can dictate outcomes (Shleifer & Vishny, 1997). Provisions that target the specific problems of controlling shareholders, such as requiring higher approval thresholds for related-party dealings by votes of disinterested shareholders and independent committees, are more appropriately tailored to the Pakistani context. The American cautionary tale of hurried reform legislation (Romano, 2005) is equally applicable.

### 7.3 Balancing regulation and autonomy for sustainable growth

A balanced framework would include (a) mandatory core requirements on loyalty, disclosure and related-party transactions, where the risks of opportunism are most acute; (b) comply-or-explain standards on issues of board structure and practice, where firm heterogeneity justifies a flexible approach; and (c) a risk-based differentiated supervisory approach, whereby intensive supervision is reserved for high-risk firms. Such a framework would leave managerial discretion in the running of the firm untouched while directing regulatory efforts where agency costs are most severe. Pakistan should also clarify the law on enforcement of stakeholder-regarding duties in the Companies Act, 2017, perhaps by spelling out what remedies (if any) will be available for their breach, to prevent the pluralist formulation from becoming a source of unaccountable discretion.

### 7.4 Harmonization with international best practice

Conformity with G20/OECD Principles (OECD, 2023) would serve as a suitable benchmark, particularly in terms of shareholders' rights, board responsibilities, disclosure rules, and related-party dealing treatments. However, harmonization practices should be selective and gradual. Aguilera and Jackson (2003) remark that governance practices are embedded within national institutional complementarities; hence, Pakistan should adopt a selective approach when importing norms and consider local circumstances while gradually introducing requirements as its enforcement capabilities evolve. Regulators should conduct regular post-implementation reviews as part of the governance reform process as a means of assessing whether

reform objectives are being attained, thus compensating for the evidential deficit identified by Romano (2005) in the American context.

## 8. Conclusion

This article's thesis was that the core issue in corporate legal governance is not the degree of regulation to be supplied by a particular jurisprudence but rather the question of fit between the regulatory design and the problem to be solved by it and the institutional resources for its enforcement. The U.S., as a jurisdiction that typically encounters dispersed ownership in its large public companies, has a system of deferential judicial review, mandatory disclosure, independence, and enforcement by private actors, regulated autonomy, which has the liabilities of delayed federal response and of costs to compliance. Pakistan, having substantially converged with international norms on its statutes and regulations, nevertheless exhibits a concentrated ownership structure, limited enforcement capacity, and episodic judicial intervention in commercial matters, so that formal compliance may have only limited purchase on substantive accountability. In answer to RQ1, the two systems are differentiated not so much by the substance of their norms as by the mechanisms, agencies, and institutions deployed to their enforcement. In answer to RQ2, ownership structure and enforcement capacity appear to be as important as formal legal rules in explaining governance outcomes. And in answer to RQ3, the most promising reforms build adjudicative and regulatory capacity, zero in on controlling-shareholder conflicts, and favor proportional, risk-based supervision over further uniform prescriptions.The article advances the debate on comparative corporate governance by shifting the Pakistan–United States comparison from legal quality to institutional fit, and by identifying the ways in which the identical legal tool can be both empowering and debilitating. The limitations of the study are linked to the methods used. In particular, the article does not contribute any significant data on the practice of enforcement. The statements on the state of practice relate to the results of secondary studies and examples. Thus, future studies should focus on: (a) evaluating the prevalence and results of derivative, minority oppression proceedings, and enforcement practice in Pakistan; (b) examining the impact of the Companies Act, 2017 and Regulations 2019 on related-party transaction practices and the effectiveness of boards of directors; (c) investigating the impact of controlling shareholder structures on the effectiveness of independent directors; and (d) analyzing the implications of AI and data governance for the responsibilities of directors in emerging markets.

## REFERENCES

Aguilera, R. V., & Jackson, G. (2003). The cross-national diversity of corporate governance: Dimensions and determinants. *Academy of Management Review, 28*(3), 447–465. https://doi.org/10.5465/amr.2003.10196772

Aronson v. Lewis, 473 A.2d 805 (Del. 1984).

Ayres, I., & Braithwaite, J. (1992). *Responsive regulation: Transcending the deregulation debate*. Oxford University Press.

Bainbridge, S. M. (2003). The business judgment rule as abstention doctrine. *Vanderbilt Law Review, 57*(1), 83–130.

Bainbridge, S. M. (2008). *The new corporate governance in theory and practice*. Oxford University Press.

Bebchuk, L. A. (2005). The case for increasing shareholder power. *Harvard Law Review, 118*(3), 833–914.

Bebchuk, L., Cohen, A., & Ferrell, A. (2009). What matters in corporate governance? *Review of Financial Studies, 22*(2), 783–827. https://doi.org/10.1093/rfs/hhn099

Bebchuk, L. A., & Fried, J. M. (2004). *Pay without performance: The unfulfilled promise of executive compensation*. Harvard University Press.

Berle, A. A., & Means, G. C. (1932). *The modern corporation and private property*. Macmillan.

Blair, M. M., & Stout, L. A. (1999). A team production theory of corporate law. *Virginia Law Review, 85*(2), 247–328.

Business Roundtable. (2019, August 19). *Business Roundtable redefines the purpose of a corporation to promote "an economy that serves all Americans"*. https://www.businessroundtable.org

Cadbury Committee. (1992). *Report of the Committee on the Financial Aspects of Corporate Governance*. Gee.

Coffee, J. C., Jr. (1999). The future as history: The prospects for global convergence in corporate governance and its implications. *Northwestern University Law Review, 93*(3), 641–708.

Coffee, J. C., Jr. (2005). A theory of corporate scandals: Why the USA and Europe differ. *Oxford Review of Economic Policy, 21*(2), 198–211. https://doi.org/10.1093/oxrep/gri012

Coffee, J. C., Jr. (2006). *Gatekeepers: The professions and corporate governance*. Oxford University Press.

Companies Act, 2017 (Act No. XIX of 2017) (Pakistan).

Davis, J. H., Schoorman, F. D., & Donaldson, L. (1997). Toward a stewardship theory of management. *Academy of Management Review, 22*(1), 20–47. https://doi.org/10.5465/amr.1997.9707180258

Delaware General Corporation Law, Del. Code Ann. tit. 8 (2024).

Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

Dodge v. Ford Motor Co., 170 N.W. 668 (Mich. 1919).

Donaldson, T., & Preston, L. E. (1995). The stakeholder theory of the corporation: Concepts, evidence, and implications. *Academy of Management Review, 20*(1), 65–91. https://doi.org/10.5465/amr.1995.9503271992

Eisenhardt, K. M. (1989). Agency theory: An assessment and review. *Academy of Management Review, 14*(1), 57–74. https://doi.org/10.5465/amr.1989.4279003

Enriques, L., & Zetzsche, D. A. (2020). Corporate technologies and the tech nirvana fallacy. *Hastings Law Journal, 72*(1), 55–98.

Financial Action Task Force. (2022, October). *Outcomes FATF plenary, 19–21 October 2022*. https://www.fatf-gafi.org

Free Enterprise Fund v. Public Company Accounting Oversight Board, 561 U.S. 477 (2010).

Freeman, R. E. (1984). *Strategic management: A stakeholder approach*. Pitman.

Gilson, R. J., & Gordon, J. N. (2013). The agency costs of agency capitalism: Activist investors and the revaluation of governance rights. *Columbia Law Review, 113*(4), 863–927.

Gordon, J. N. (2007). The rise of independent directors in the United States, 1950–2005: Of shareholder value and stock market prices. *Stanford Law Review, 59*(6), 1465–1568.

Hansmann, H., & Kraakman, R. (2001). The end of history for corporate law. *Georgetown Law Journal, 89*(2), 439–468.

Hilb, M. (2020). Toward artificial governance? The role of artificial intelligence in shaping the future of corporate governance. *Journal of Management and Governance, 24*(4), 851–870. https://doi.org/10.1007/s10997-020-09519-9

In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (Del. Ch. 1996).

In re Tesla Motors, Inc. Stockholder Litigation, 298 A.3d 667 (Del. 2023).

In re Walt Disney Co. Derivative Litigation, 906 A.2d 27 (Del. 2006).

Jensen, M. C., & Meckling, W. H. (1976). Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of Financial Economics, 3*(4), 305–360. https://doi.org/10.1016/0304-405X(76)90026-X

Kerry, J., & Brown, H. (1992). *The BCCI affair: A report to the Committee on Foreign Relations, United States Senate* (S. Prt. 102-140). U.S. Government Printing Office.

Kraakman, R., Armour, J., Davies, P., Enriques, L., Hansmann, H., Hertig, G., Hopt, K., Kanda, H., Pargendler, M., Ringe, W.-G., & Rock, E. (2017). *The anatomy of corporate law: A comparative and functional approach* (3rd ed.). Oxford University Press.

La Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (1999). Corporate ownership around the world. *The Journal of Finance, 54*(2), 471–517. https://doi.org/10.1111/0022-1082.00115

La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. W. (1998). Law and finance. *Journal of Political Economy, 106*(6), 1113–1155. https://doi.org/10.1086/250042

Mallin, C. A. (2019). *Corporate governance* (6th ed.). Oxford University Press.

Marchand v. Barnhill, 212 A.3d 805 (Del. 2019).

Möslein, F. (2018). Robots in the boardroom: Artificial intelligence and corporate law. In W. Barfield & U. Pagallo (Eds.), *Research handbook on the law of artificial intelligence* (pp. 649–670). Edward Elgar.

Morrison v. National Australia Bank Ltd., 561 U.S. 247 (2010).

OECD. (2023). *G20/OECD principles of corporate governance 2023*. OECD Publishing. https://doi.org/10.1787/ed750b30-en

Papanek, G. F. (1967). *Pakistan's development: Social goals and private incentives*. Harvard University Press.

Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. 1986).

Rock, E. B. (2013). Adapting to the new shareholder-centric reality. *University of Pennsylvania Law Review, 161*(7), 1907–1988.

Romano, R. (2005). The Sarbanes–Oxley Act and the making of quack corporate governance. *Yale Law Journal, 114*(7), 1521–1612.

Sarbanes–Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745.

Securities and Exchange Commission of Pakistan. (2019). *Listed Companies (Code of Corporate Governance) Regulations, 2019*. https://www.secp.gov.pk

Securities and Exchange Commission of Pakistan Act, 1997 (Pakistan).

Shleifer, A., & Vishny, R. W. (1997). A survey of corporate governance. *The Journal of Finance, 52*(2), 737–783. https://doi.org/10.1111/j.1540-6261.1997.tb04820.x

Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985).

Stone v. Ritter, 911 A.2d 362 (Del. 2006).

Tricker, B. (2019). *Corporate governance: Principles, policies, and practices* (4th ed.). Oxford University Press.

Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946 (Del. 1985).

Watan Party v. Federation of Pakistan, PLD 2006 SC 697 (Pakistan).

Yasser, Q. R., Entebang, H., & Mansor, S. A. (2011). Corporate governance and firm performance in Pakistan: The case of Karachi Stock Exchange (KSE)-30. *Journal of Economics and International Finance, 3*(8), 482–491.

IEER
Institute for Excellence in Education & Research