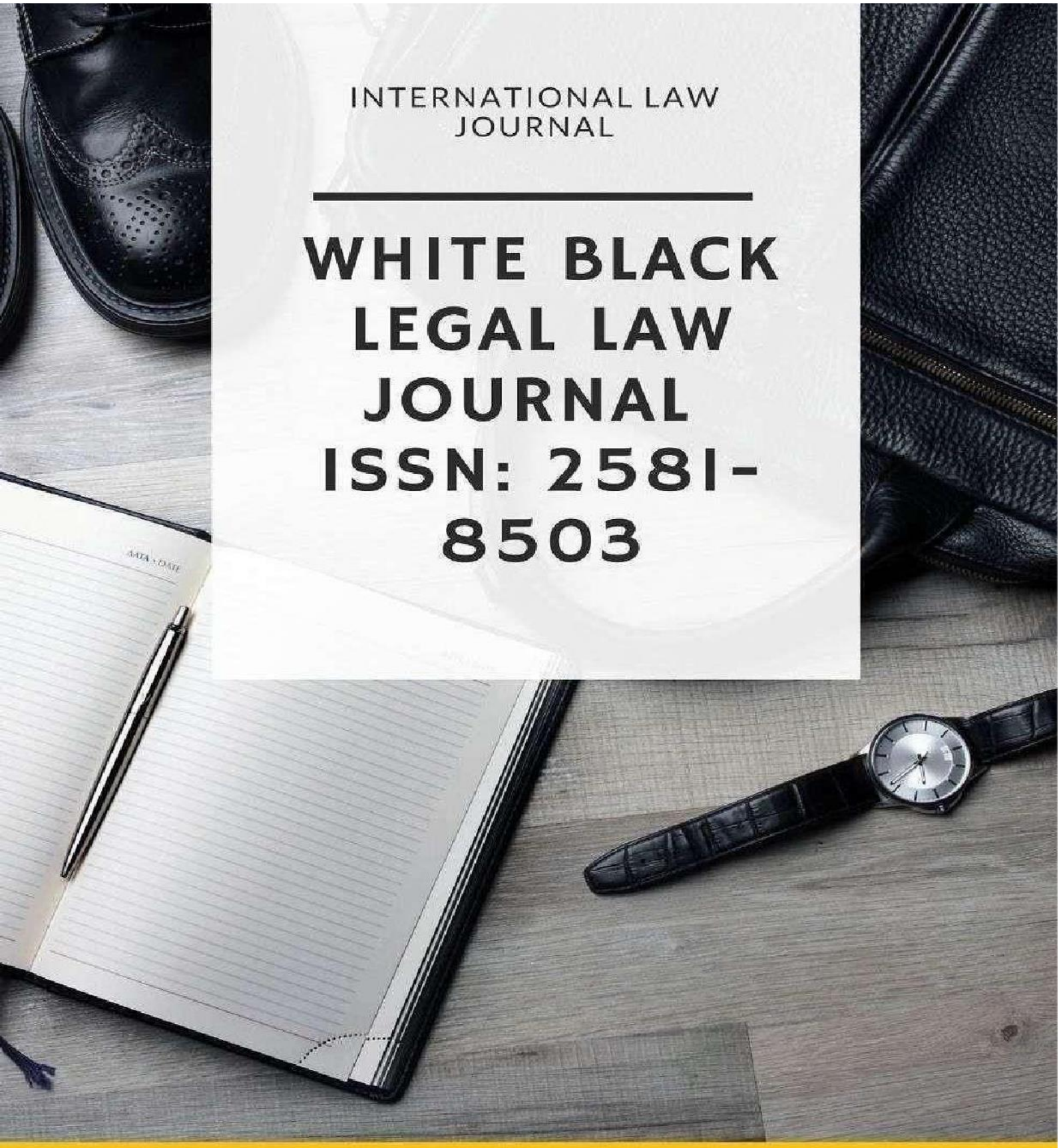

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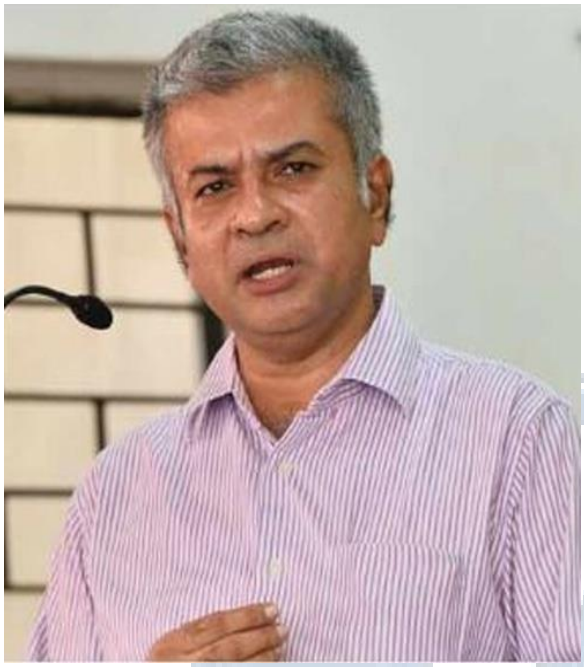

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

AI AND FIDUCIARY ACCOUNTABILITY IN CORPORATE GOVERNANCE UNDER THE EU AI ACT: TOWARDS A TRANSNATIONAL OVERSIGHT MODEL

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ABSTRACT

The rise of AI as a decision-making tool in corporate governance is at once a technological revolution and a doctrinal crisis. As firms increasingly delegate core managerial and compliance functions to algorithmic systems, the traditional building blocks of fiduciary responsibility-care, loyalty, and good faith-are upset by the absence of human judgment and intent. This paper assesses the EU Artificial Intelligence Act (EU AI Act) as an incomplete but first preliminary answer to these accountability gaps. As such, it submits that while the Act's risk-based approach offers significant advances in procedural oversight, it falls short of establishing substantive fiduciary responsibility for algorithmic decision-making. The article develops the concept of the AI Oversight Officer (AIOO) as a novel hybrid legal and institutional device to rebuild fiduciary integrity in AI-mediated corporate governance. Beyond the frontiers of the EU, the article positions the AIOO model within the broader topography of transnational corporate regulation by grounding it in the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights. By way of doctrinal, comparative, and normative analysis, it argues that a transnational fiduciary model underpinned by transparency, human oversight, and ethical accountability is essential to maintaining corporate legitimacy in the algorithmic era.

1. INTRODUCTION

From being a peripheral system that supported corporate operations, AI has now reached the very core of governance. The use of AI ranges from automated compliance systems to algorithmic decision-support tools in finance, logistics, and human resources-all with a view to enhancing efficiency and reducing error. However, this same efficiency exposes a

foundational tension in corporate law[1]: the delegation of decision-making authority to non-human systems that cannot possess the intent, prudence, or moral reasoning expected of fiduciaries.

Traditional corporate governance rests on the human actor-the director, the officer, the manager-whose decisions are guided by fiduciary duties of care, loyalty, and good faith[2]. These duties, sculpted through centuries of corporate jurisprudence, are deeply anthropocentric. They presuppose conscious deliberation, discretion, and accountability. The insertion of AI into boardrooms disrupts this structure, challenging the normative assumptions that underpin corporate law.

The European Union has tried to respond to this transformation with the pioneering instrument known as the Artificial Intelligence Act of 2024, meant to regulate AI based on risks it creates to safety, rights, and democratic values. While the emphasis on transparency, human oversight, and accountability offers an auspicious beginning for the Act, its basic feature is essentially procedural. It regulates AI as a product, not as an actor in governance. As such, it leaves unaddressed the fiduciary vacuum that results when algorithmic systems displace or inform human decision-makers.

This article argues that corporate governance now faces a fiduciary gap-a structural deficiency in attributing responsibility for AI-generated decisions. Bridging the gap requires rethinking fiduciary duties as transnational obligations, integrating principles of accountability and oversight that transcend jurisdictional boundaries. The paper thereby advocates for an institutional innovation-the AIOO, a human agent to be designated within corporate structures with the special task of overseeing AI operations, ensuring explainability, and preserving the fiduciary integrity of such entities.

The paper unfolds as follows. Section 2 outlines the theoretical and legal underpinnings of fiduciary accountability and its disruption due to algorithmic governance. Section 3 discusses the fiduciary dilemma inherent in the integration of AI, Section 4 focuses on the risk-based

[1] John Armour and Jeffrey Gordon, 'The Governance of AI' (2023) 43 Oxford Journal of Legal Studies https://doi.org/10.1093/ojls/gqad001

[2] Paul B Miller, 'The Fiduciary Relationship' (2011) 31 Oxford Journal of Legal Studies 99 https://doi.org/10.1093/ojls/gqr006

regulation approach adopted by the EU AI Act, while Section 5 explains AIOO as a governance mechanism for embedding accountability through human oversight. Section 6 compares the European model with various approaches put forth in both the United States and Asia, highlighting the emergence of a transnational standard. Section 7 lays out a normative framework for reform on fiduciary grounds, and Section 8 concludes by outlining the implications of this model for global corporate legitimacy.

2. RESEARCH PROBLEM

This paper addresses a problem that has emerged from the growing disconnect between traditional fiduciary doctrines—grounded in human judgment, intention, and accountability—and the growing implementation of autonomous AI systems in corporate governance. While the EU AI Act provides a series of procedural safeguards for high-risk AI, it does not solve the doctrinal and practical question of who bears fiduciary responsibility when algorithmic systems heavily affect corporate decision-making. This research therefore investigates how fiduciary accountability can be preserved in AI-mediated governance and assesses whether an institutional mechanism—such as an AI Oversight Officer—can restore legally meaningful human responsibility in corporate structures.

3. THEORETICAL AND LEGAL FOUNDATIONS

3.1 THE FIDUCIARY ARCHITECTURE OF CORPORATE GOVERNANCE

Corporate governance rests on a legal and moral framework that serves as the foundation for aligning managerial discretion with what is in the best interests of the corporation. The fiduciary duties of care and loyalty are more than technical requirements but rather the ethical underpinning for modern capitalism. The duty of care requires directors to act with due diligence and skill, using informed judgment with reasonable foresight. The duty of loyalty requires decision-makers to act in good faith by avoiding self-interest and putting the interests of the company and its stakeholders first.

Legal theorists such as Easterbrook and Fischel argue that these duties act like a replacement for incomplete contracts in corporate relationships and that they impose a moralised boundary on economic rationality. The fiduciary relationship, therefore, relies on an assumption about human intentionality-that the decision-maker can balance competing interests, foresee consequences, and bear moral responsibility. Artificial systems, whatever their degree of

sophistication, do not meet this anthropocentric precondition. AI operates by probabilistic logic, data optimisation, and pattern recognition rather than deliberative moral judgment.

3.2 AUTOMATION AND THE COLLAPSE OF INTENT

AI's growing role in governance lays bare a conceptual fault line in fiduciary theory[3]. If intent, prudence, and ethical reasoning are preconditions for fiduciary conduct, then algorithmic systems-lacking in consciousness-cannot themselves be fiduciaries. Their "decisions" are functions of data quality, model architecture, and programming assumptions. This mechanical rationality generates a liability gap: when AI systems generate faulty recommendations, the chain of accountability becomes murky[4]. The traditional corporate veil, already criticized for shielding management against moral liability, now stretches to cover non-human actors that cannot be punished or morally blamed.

One way forward is provided by Gunther Teubner's idea of reflexive law. Instead of attempts at extending legal personhood to AI, reflexive law would suggest embedding self-corrective procedures into organizational structures. In corporate governance, this means building institutional mechanisms which force human actors to interpret and continuously monitor technological outputs. The law, in turn, evolves by fostering systems of structural accountability rather than ascribing liability to non-sentient entities.

3.3 LEGAL PERSONHOOD AND ITS LIMITS

Some scholars have speculated that AI might one day acquire some kind of "electronic personhood." The European Parliament briefly entertained this idea in 2017 but wisely rejected it, realizing that legal personhood presupposes a capacity for moral agency and intentionality. Even corporations—arguably artificial persons—are humanly animated; they act through natural agents whose intentions and duties can be scrutinized. Granting comparable status to AI would erode the moral coherence of legal responsibility. The challenge, then, is not to anthropomorphize AI but to reembed human judgment within algorithmic governance systems.

[3] Karen Yeung, 'Algorithmic Regulation' (2018) 12 Regulation & Governance 505 https://doi.org/10.1111/rego.12158

[4] Andrew Keay, 'Tackling the Issue of the Corporate Objective' (2007) 47 Balance Sheet 35 https://doi.org/10.2139/ssrn.957447

4. THE FIDUCIARY DILEMMA IN AI GOVERNANCE

4.1 THE RESPONSIBILITY GAP

Determining fault becomes a doctrinal maze when an AI-driven compliance system fails to detect a regulatory breach or when an algorithmic investment tool misjudges risk exposure. At one level, programmers argue that the algorithm worked as specified; at another, executives argue that they acted in good faith reliance on expert systems; and at yet another, boards argue that they have discharged due diligence. The layers diffuse responsibility and produce what philosophers of technology call the responsibility gap[5]. This gap is not merely practical but ontological: the actor responsible for the decision does not exist in the conventional sense.

The result is a new species of corporate moral hazard. Executives can blame poor outcomes on "algorithmic error" and insulate themselves from liability while still retaining many automation benefits. In the absence of an attribution mechanism, fiduciary law risks deteriorating into a kind of procedural formalism bereft of ethical force.

4.2 EXPLAINABILITY AND THE BLACK-BOX PROBLEM

The opacity of AI systems compounds this problem. Many machine-learning models are "black boxes," producing outputs that even their designers cannot fully explain. The EU's emerging doctrine of algorithmic transparency seeks to mitigate this by requiring explainability and documentation. Yet, as scholars like Mireille Hildebrandt emphasize, transparency is not synonymous with comprehension. Making an algorithm technically legible does not mean its moral or fiduciary implications are understood[6].

Thus, an explainability-based fiduciary system has to integrate technical auditability with ethical interpretability, which for instance means the ability of human overseers to translate algorithmic outputs into decisions that are consistent with corporate and societal values. The latter constitutes the entry point for institutionalized oversight roles at the corporate level.

4.3 THE EROSION OF STAKEHOLDER TRUST

Fiduciary duties are not only legal constructs but also trust mechanisms: they ensure that the

[5] Andreas Matthias, 'The Responsibility Gap' (2004) 6 Ethics and Information Technology 175 https://doi.org/10.1007/s10676-004-3422-6

[6] Josh Cowls and Luciano Floridi, 'A Unified Framework of Five Principles for AI Ethics' (2020) 26 Harvard Data Science Review 1 https://doi.org/10.1162/99608f92.5a8f6208

exercise of corporate power will be responsible and that it will be exercised for the benefit of shareholders, employees, and the public. The delegation of discretion to an opaque AI threatens this social compact. If decisions affecting employment, investment, or environmental impact are made by inscrutable algorithms, stakeholder confidence collapses. Restoring trust therefore demands a governance model that visibly reconnects accountability to identifiable human actors.

5. THE EU ARTIFICIAL INTELLIGENCE ACT: REGULATORY AND DOCTRINAL IMPLICATIONS

5.1 ARCHITECTURE OF THE EU AI ACT

The EU Artificial Intelligence Act (2024) is the first-ever holistic legislative effort to regulate AI for all industries. It categorizes AI systems into prohibited, high-risk, and limited-risk categories. Generally, corporate governance tools, such as automated compliance, credit assessment, or HR analytics, fall into the high-risk category[7]. These have to comply with demanding requirements: risk management, data-quality standards, documentation, human oversight, and post-marketing monitoring.

The Act marks a point of change from ex-post liability to ex-ante precaution[8]. In that sense, it operationalizes the commitment of the EU to human-centric technology by mandating oversight before any actual harm occurs[9]. However, while the Act enacts procedural safeguards, it has nothing to say on the substantive distribution of fiduciary responsibility within companies deploying AI.

5.2 PROCEDURAL ACCOUNTABILITY VERSUS SUBSTANTIVE FIDUCIARY DUTY

The oversight provisions of the Act ensure accountability but do not address the question of who should be held responsible if AI-driven decisions lead to harm. The distinction becomes important between procedural accountability-carefully following due process-and substantive fiduciary duty-ensuring loyalty and prudence. The former can be discharged through

[7] European Union, Regulation (EU) 2024/1689 (Artificial Intelligence Act) OJ L 350/1 https://doi.org/10.2838/90223

[8] Mireille Hildebrandt, 'Law for Computer Scientists' (2020) 36 Computer Law & Security Review 105388 https://doi.org/10.1016/j.clsr.2019.105388

[9] Martin Ebers, 'Standardising AI Risk Management in the EU' (2024) 15 European Journal of Risk Regulation 321 https://doi.org/10.1017/err.2024.12

documentation and audits; the latter calls for judgment, discretion, and moral engagement-precisely those qualities no algorithm can exercise on its own.

Hence, while groundbreaking, the EU AI Act leaves unresolved the deeper normative question about how to maintain fiduciary responsibility in systems where humans no longer make the final call. This lacuna calls for institutional innovation capable of embedding human oversight within algorithmic governance.

5.3 THE DOCTRINAL OPPORTUNITY

The approach taken in the EU nonetheless frames a route for doctrinal evolution. In identifying "human oversight" as a necessary feature of high-risk AI, the Act creates a legal foothold for developing a new fiduciary role within corporations: the AI Oversight Officer (AIOO). This latter figure converts what may otherwise have been a compliance function of oversight into a fiduciary function: one that ensures algorithmic decision-making remains susceptible to human review consistent with the corporation's ethical and legal responsibilities.

6. AI OVERSIGHT OFFICER MODEL

6.1 CONCEPT AND RATIONALE

The AIOO model transforms "human oversight" from a procedural checkbox into a substantive fiduciary institution. The AIOO is not an engineer or compliance clerk but a legally required corporate officer charged with ensuring that AI-driven decision-making upholds the duties of care, loyalty, and accountability. The position creates an identifiable nexus between autonomous technology and human responsibility[10].

The rationale is based on three premises:

1. Continuity of fiduciary integrity: Corporate law needs to maintain an accountable human intermediary even when machines assume analytical functions.
2. Ethical interpretability: algorithmic outputs need to be translated into normative judgments before they can become binding corporate acts.
3. Governance transparency: Stakeholders need to know who, ultimately, can be questioned or sanctioned for an AI-mediated decision.

[10] Brent Mittelstadt, 'Principles Alone Cannot Guarantee Ethical AI' (2019) 26 Nature Machine Intelligence 1 https://doi.org/10.1038/s42256-019-0114-4

6.2 CORE RESPONSIBILITIES

An AIOO would:

- Supervise the design, deployment, and continuous audit of AI systems.
- Maintain explainability documentation and algorithmic impact assessments.
- Coordinate between technical teams, compliance officers, and the board.
- Certify that AI-generated recommendations accord with corporate policy, human-rights norms, and the fiduciary principle.
- Report directly to the audit or ethics committee to ensure independence from operational management.

By institutionalizing this function, companies would ex ante be able to show that human judgment remains embedded in chains of automated governance: a fundamental evidentiary safeguard under both domestic company law and the EU's AI Act.

6.3 ACCOUNTABILITY MECHANISM

The AIOO should be recognized in company law as a fiduciary officer, bearing personal responsibility for failures of oversight. It would be similar in approach to the liability of compliance or risk officers under financial-sector regulation. This is not punitive action for good-faith errors of prediction but rather a duty of reasonable vigilance: to make sure AI systems are properly validated, interpretable, and aligned with the corporation's legal obligations.

Through this approach, Teubner's reflexive law is combined with Floridi's notion of "distributed moral responsibility": it means accountability in common but not diluted. Each actor-developers, executives, and the AIOO-maintains a defined ethical perimeter.

7. COMPARATIVE AND TRANSNATIONAL DIMENSIONS

7.1 UNITED STATES

The United States has no overall AI statute; rather, it relies on sector-specific regulation and tort liability. Corporate fiduciary duties remain judge-made, and boards enjoy broad deference under the business judgment rule[11]. Algorithmic errors thus tend to be treated as ordinary negligence, rather than fiduciary breaches. Scholars like Ruhl and Vermeule have expressed concern that this laissez-faire model risks systemic opacity: it incentivizes innovation without

[11] Ryan Calo, 'Artificial Intelligence Policy: A Primer and Roadmap' (2021) 51 UC Davis Law Review 399 https://doi.org/10.2139/ssrn.3015350

embedding ethical guardrails. Flexibility might mean that its greatest value could be complementary to any transatlantic standard that would emerge when fiduciary oversight becomes a recognized corporate norm.

7.2 ASIA

Asian jurisdictions are more heterogeneous. Japan and Singapore focus on "soft-law" ethics codes that promote transparency and human control, whereas China relies on a command-and-control approach based on data sovereignty. Despite their very different philosophies, all three systems share the common premise that human supervisors should remain legally responsible for AI outputs. The AIOO model might, for this reason, provide a harmonizing framework capable of accommodating both liberal and state-directed governance models[12].

7.3 EMERGENCE OF TRANSNATIONAL SOFT LAW

Beyond national borders, the OECD, UN, and the World Economic Forum have published principles for AI governance that underline fairness, accountability, and human oversight[13]. Such instruments—while non-binding in nature—do, nonetheless form part of transnational soft law[14] with potential implications for shaping corporate conduct worldwide. The AIOO model, integrated within these frameworks, would transform fiduciary accountability from a pure domestic obligation into a cross-jurisdictional norm, making multinational enterprises attuned to responsible innovation.

8. NORMATIVE PROPOSALS AND FUTURE DIRECTIONS

8.1 EMBEDDING OVERSIGHT IN CORPORATE CODES

Codes of corporate governance, like the UK Corporate Governance Code or the German Corporate Governance Code, already require risk and ethics committees; these would be extended to cover AIOO functions: algorithmic audit schedules, explainability certifications, and bias-mitigation reviews. Embedding such duties into codes rather than statutes allows gradual, reflexive adaptation without legislative paralysis.

[12] Finale Doshi-Velez and Been Kim, 'Towards A Rigorous Science of Interpretable Machine Learning' (2017) arXiv preprint https://doi.org/10.48550/arXiv.1702.08608
[13] Deirdre Mulligan and Kenneth Bamberger, 'Saving Governance-by-Design' (2018) 66 UCLA Law Review 1 https://doi.org/10.2139/ssrn.3018655
[14] OECD, 'OECD Principles on Artificial Intelligence' (2019) https://doi.org/10.1787/eaadba04-en

8.2 VICARIOUS LIABILITY SCHEME

A transnational shared-liability framework should distribute responsibility among developers and corporate officers and boards. Liability would turn on considerations of control and foreseeability: developers for design defects, AIOOs for negligent supervision, and directors for systemic governance failures. This tiered model is analogous to environmental and financial-compliance regimes, providing predictability while retaining deterrence.

8.3 ETHICAL CONVERGENCE

Ethics need to be juridically operationalized. Floridi's idea of "infospheric stewardship" implies that the person in control of informational ecosystems has quasi-fiduciary duties of care with respect to maintaining their integrity. In terms of corporate law, this might involve treating data-driven decisioning systems as fiduciary contexts rather than simple technology. The AIOO would then become a guarantor of integrity in the corporate infosphere and ensure technological development kept pace with human values.

8.4 GLOBAL COORDINATION

Long-term legitimacy requires coordination among regulators. The EU's risk-based template, combined with mutual-recognition mechanisms through the OECD or WTO, might achieve the outcomes of a Global AI Governance Compact. It would harmonize metrics for compliance and facilitate accountability audits across borders. Such a development is an indispensable evolution in light of the transnational nature of corporate data flows.

9. CONCLUSION

Artificial Intelligence is changing not just how companies work, but also what it means for them to act responsibly. Legal doctrines of fiduciary duty, designed for human judgment, face the fact of non-human agency. The EU AI Act has made an excellent start by institutionalizing precaution and human oversight, but it remains above all procedural. This article contends that maintaining fiduciary integrity in the algorithmic economy demands a structural innovation-the AI Oversight Officer.

The AIOO model balances technological autonomy with moral responsibility by creating a permanent human link between algorithmic processes and corporate accountability. In conjunction with emergent transnational norms—UN GPs, OECD Guidelines, and soft-law

principles—it forms the basis for a transnational fiduciary regime where corporate power will again become accountable to human conscience.

The future of corporate governance will not depend upon removing AI from decision-making processes but ensuring that flesh-and-blood humans remain meaningfully accountable for what their machines decide. Consequently, fiduciary law must evolve from rules of conduct into architectures of oversight, capable of turning automation into a vehicle for ethical responsibility and not its abdication.

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