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THE GHOST DIRECTOR PROBLEM: FINDING ACCOUNTABILITY IN THE AGE OF BLOCKCHAIN GOVERNANCE

By Sakshi Pandey

The history of corporate law is, in many respects, the history of a search.

Whenever money is lost, rights are violated, or power is abused, the law begins its inquiry with a remarkably persistent instinct: it looks for the person responsible. Behind every company, it seeks a director. Behind every decision, a decision-maker. Behind every exercise of power, a mind capable of being held to account.

This instinct has survived centuries of commercial evolution. The emergence of joint-stock companies, multinational corporations, complex ownership structures, and global financial networks has altered the scale of economic activity, but it has not displaced a foundational legal assumption[1]—that power and responsibility must ultimately meet in the same place.

The architecture of modern corporate law is built upon that belief[2]. Fiduciary duties, corporate attribution, shadow directorship, beneficial ownership, and veil-piercing doctrines are all, in their own ways, attempts to answer the same question: *who was truly in charge?* Even where control is concealed behind layers of formality, the law remains optimistic that it can eventually locate the individual exercising it. The names may change. The structures may evolve. Yet somewhere, the law assumes, there is always a hand on the wheel.

The emergence of Decentralized Autonomous Organizations (DAOs) invites an unsettling possibility. What if the law's search no longer ends with a person?

Not because responsibility has been deliberately concealed, nor because corporate structures have become more sophisticated, but because governance itself has been reorganized into something that resists the categories through which law has traditionally understood power. Decisions are proposed by one actor, amplified by another, approved by thousands, and executed automatically by code. Influence is dispersed. Authority is fragmented. Control appears everywhere and nowhere at once. .

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1. *The Concept of Law (3d ed. 2012).*
2. *Salomon v A Salomon & Co Ltd [1897] AC 22 (HL).*

The challenge posed by DAOs is therefore not merely technological. It is jurisprudential. They force corporate law to confront a question it has rarely needed to ask:

Can an organization exercise meaningful power without possessing a legally identifiable centre of authority?

At first glance, the answer appears obvious. Law has encountered evasive structures before. Courts have long looked beyond formal designations to identify those exercising real control. The doctrines of shadow directorship and corporate attribution were developed precisely because power does not always announce itself openly. Yet these doctrines share a common assumption: that somewhere beneath the complexity lies a controlling mind waiting to be discovered.

DAOs test the limits of that assumption. Their significance lies not in the fact that they lack directors, but in the possibility that they may not need them. Governance persists, assets are managed, policies are adopted, and economic consequences follow, yet responsibility becomes increasingly difficult to locate within familiar legal categories. The problem is not the absence of power. The problem is the absence of a place where power can be said to reside.

This article describes that phenomenon as the **Ghost Director Problem**. It argues that decentralized governance exposes a deeper vulnerability within contemporary corporate law: its continued reliance upon a model of accountability that presumes power must be concentrated before it can be regulated. DAOs reveal the possibility of something different—a form of governance in which influence is distributed across networks rather than embodied in offices, titles, or identifiable individuals.

The question that follows is both simple and unsettling. If the law can no longer find the person behind the decision, what becomes of accountability itself?

The Traditional Corporate Bargain

To understand why DAOs present such a challenge, one must first appreciate the bargain at the heart of modern corporate law.

The doctrine of *separate corporate personality* established that a company is distinct from its shareholders. This legal fiction transformed commerce[3]. It enabled enterprises to own property, incur liabilities, enter contracts, and continue beyond the lives of their founders. Equally significant was the principle of limited liability, which encouraged investment by insulating shareholders from personal responsibility for corporate debts.[4]

Yet these privileges were never unconditional.

Corporate law developed an extensive network of accountability mechanisms intended to prevent the misuse of organizational power within which Directors were entrusted with management but were simultaneously burdened with fiduciary obligations. Disclosure requirements promoted transparency. Shareholder remedies protected minority interests. Courts retained the authority to look beyond formal structures when corporate forms were abused.[5]

The underlying logic was remarkably simple that is Power and responsibility must travel together.

When individuals exercise significant control over corporate affairs, the law expects them to answer for their conduct.. The doctrines of shadow directorship, beneficial ownership, agency, and veil piercing all reflect the same principle: legal responsibility should follow actual influence rather than formal designation.

The modern corporation, therefore, is not merely an economic institution. It is an accountability framework. Every privilege granted by corporate law; separate personality, perpetual succession, limited liability; rests upon a deeper promise that someone, somewhere, can ultimately be called to account.

For centuries, that promise has held. The names have changed, the structures have evolved, and ownership has become increasingly complex, yet the law has remained confident that responsibility could eventually be traced to a human source. DAOs do not immediately break that promise.They merely make us wonder how much of it depended upon assumptions we never realized we were making.

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3. *Salomon v A Salomon & Co Ltd [1897] AC 22 (HL).*
4. *Companies Act, 2013 §§ 2(20), 9.*
5. *Companies Act, 2013 § 166.*

<u>The Promise of Decentralization</u>

Before examining what DAOs have become, it is worth recalling what they were meant to solve.

Much of blockchain governance emerged not from a desire to escape accountability, but from a growing dissatisfaction with the institutions that claimed to provide it. The appeal of decentralization was not born in a vacuum. It arose from a belief that traditional organizational structures had concentrated too much authority in too few hands, creating systems in which decisions affecting many were often made by a select few.[6]

The critique was hardly new. Corporate governance has long wrestled with questions of managerial dominance, information asymmetry, and the separation of ownership from control. Boards deliberate behind closed doors. Executives acquire influence beyond formal mandates. Shareholders, despite being described as owners, frequently remain distant spectators to decisions made in their name. The history of modern corporations is, in many ways, a history of recurring attempts to reconcile authority with participation.

Blockchain appeared to offer a different answer.

Where corporate governance relied upon trusted intermediaries, blockchain promised verification. Where traditional organizations depended upon hierarchies, decentralization promised participation. Where power was concentrated within offices and titles, DAOs envisioned governance distributed across networks of participants.[7]

The vision was as radical as it was elegant. Instead of directors, there would be token holders. Instead of board resolutions, governance proposals.Instead of managerial discretion, self-executing code.

Trust, perhaps the most enduring currency of organizational life, could be replaced by transparent rules operating upon a public ledger.

For many, this was not merely a technological innovation. It was a governance revolution.

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6. *Vitalik Buterin, DAOs, DACs, DAs and More: An Incomplete Terminology Guide (May 6, 2014).*
7. *Primavera De Filippi & Aaron Wright,* Blockchain and the Law: The Rule of Code *33–62 (2018).*

The promise of decentralization was ultimately a promise about power. It suggested that authority could be dispersed without sacrificing coordination, that collective decision-making could occur without centralized management, and that organizations could function without relying upon the traditional architecture of corporate control.

At first glance, the proposition appears almost irresistible. If excessive concentration of authority creates risks of abuse, opacity, and inefficiency, then dispersing authority would seem to offer an obvious remedy.

Yet legal history encourages caution whenever a solution appears too perfect.

Power has always proven remarkably adaptable. It migrates. It evolves. It abandons old institutions only to reappear within new ones. From monarchies to corporations, from individuals to bureaucracies, from paper systems to digital platforms, authority has repeatedly changed form while preserving its essential character.

Law has generally managed to adapt because power remained visible even when it moved.

What if power has not simply changed shape?

What if it has become fragmented across networks, dispersed among participants, embedded within code, and distributed in ways that resist the categories through which law has traditionally recognized authority?

The question marks an important shift in the discussion.

The challenge is no longer whether governance exists. Governance clearly persists .The challenge is whether law can still identify where power resides once it ceases to occupy the places where law has historically expected to find it.

For it is at precisely this moment that the promise of decentralization begins to transform into a problem of accountability.

The Search for the Missing Director

Imagine a protocol controlling assets worth hundreds of millions of dollars. A governance proposal is introduced and gradually gains momentum. Community members advocate for its adoption. Influential delegates endorse it. Large token holders support it. Thousands participate in a vote. The proposal passes. A smart contract executes the decision automatically.

Weeks later, the consequences emerge.

The treasury suffers substantial losses. Users demand answers. Regulators begin inquiries. Lawyers prepare claims.

What follows is a scene that corporate law has witnessed countless times before. Whenever power produces harm, the law begins its inquiry in the same manner. It searches for the decision-maker.

Who approved the proposal? Who should bear responsibility?

In short, who made the decision?

The intuitive response appears straightforward. *Everyone*.

And yet legal systems have rarely been comfortable with collective abstractions. Responsibility has traditionally required identification. Liability generally attaches to persons rather than processes. Courts may recognize institutions, but they ultimately seek actors capable of answering for institutional conduct.

It is here that the Ghost Director Problem begins to emerge.

Unlike traditional corporations, DAOs frequently distribute governance authority across a network of participants whose individual influence may be significant yet insufficient, in isolation, to resemble conventional management. A proposal may be drafted by one participant, amplified by another, supported by several influential token holders, approved by thousands of voters, and ultimately executed by code.[8]

No single actor appears to control the outcome.

Yet governance unmistakably occurs..

Indeed, one of the more curious features of decentralized governance is that many of the functions historically associated with directors continue to exist even when directors themselves appear absent. Decisions are made regarding the allocation of assets, the modification of governance rules, the strategic direction of the protocol, and the management of collective interests. The substance of governance survives, even as its traditional architecture begins to dissolve.[9]

This creates a peculiar form of legal invisibility.

Corporate law has historically excelled at identifying concentrated authority. Its doctrines evolved within organizational structures where power flowed through identifiable channels and could ultimately be traced to specific individuals occupying recognized positions. Directors, officers, promoters, controlling shareholders, and agents all served as visible points through which responsibility could be assigned.

Distributed governance complicates that search.

Challenge being that the authority has become fragmented, fluid, and continuously shifting between actors who may collectively exercise substantial influence without individually possessing enough control to satisfy traditional legal categories.

The result is an uncomfortable paradox.

Directors appear absent, even while governance remains very much alive.

And it is precisely this paradox that forces a reconsideration of one of corporate law's oldest assumptions*: that wherever power exists, there must always be a person standing close enough to it for the law to find.*

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8. *Aaron Wright & Primavera De Filippi, Decentralized Blockchain Technology and the Rise of Lex Cryptographia, SSRN Electronic Journal (2015).*
9. *David Yermack, Corporate Governance and Blockchains, 21 Rev. Fin. 7 (2017).*

<u>The Persistence of Power</u>

At this stage, an understandable objection begins to emerge. Corporate law, after all, is no stranger to hidden influence. Courts have long looked beyond formal titles and organizational charts to identify those exercising real control. Shadow directors may attract obligations despite lacking official appointments. Beneficial owners may face scrutiny despite operating through layers of legal structure. The law has never been particularly willing to accept form over substance when responsibility is at stake.

Why, then, should decentralized governance present a fundamentally different challenge?

The answer lies not in concealment, but in distribution.

Most traditional doctrines share an important assumption. However complex an organization may appear, meaningful authority can ultimately be traced to identifiable individuals. Control may be disguised, fragmented, or exercised indirectly, yet it remains sufficiently concentrated for the law to locate its source[10]

DAO governance unsettles that expectation.

A protocol founder may continue to command informal authority long after relinquishing formal control. Developers shape the architecture within which governance operates . The difficulty is not that authority has vanished from the system. It is that authority no longer resides in a single place.[11]

Indeed, one of the more persistent misconceptions surrounding DAOs is that they eliminate management altogether. A closer examination suggests something rather different. Governance functions continue to exist. Strategic direction is established. Rules are modified. Institutional priorities are determined. The work historically performed by directors survives, even when the office itself appears to disappear.

Far from abolishing hierarchy, many decentralized systems reconstruct it through new mechanisms. Influence flows through reputation, technical expertise, token ownership, governance participation, and community trust rather than through formally recognised corporate positions. Power remains remarkably present. What changes is its visibility.

This creates an unusual tension between governance reality and legal recognition. Traditional directors attract fiduciary obligations precisely because the law can identify them as occupying positions of authority. Yet when influence migrates into informal networks, technologically mediated structures, and distributed decision-making processes, accountability does not always migrate alongside it.

Corporate law has spent generations learning how to uncover kings behind curtains. What it encounters in decentralized governance is something more unfamiliar: a crowd collectively performing royal functions.[12]

The issue, therefore, is not that power is hidden.

It is that power has become sufficiently dispersed that the law's traditional methods of locating responsibility begin to lose their precision.

Power survives.The challenge is determining whether accountability can still find it.

10. Re Hydrodam (Corby) Ltd., [1994] B.C.C. 161.
11. Secretary of State for Trade & Industry v. Deverell, [2001] Ch. 340.
12. Stephen M. Bainbridge, Corporate Law *145–52 (4th ed. 2020).*

Exceeding the Code

Few phrases capture the spirit of blockchain governance more effectively than the assertion that *"Code is Law."* The slogan carries an undeniable appeal. It promises a world in which organizational rules are transparent, execution is automatic, and discretion is constrained by publicly verifiable systems. Where traditional institutions rely upon trust, blockchain seeks to replace trust with certainty.[13]

At first glance, the proposition appears liberating. Rules encoded into software seem immune to many of the imperfections associated with human governance. Smart contracts execute without hesitation.

Yet the elegance of the idea conceals a deeper reality.

Code does not emerge spontaneously. Governance parameters do not design themselves. Voting mechanisms do not materialize without authors. Every supposedly autonomous system reflects a series of human choices regarding what should be permitted, prohibited, prioritized, or ignored. Long before a smart contract executes a decision, someone has already decided what kinds of decisions can be executed.[14]

Human judgment, in other words, has not disappeared.

It has merely moved further upstream.

The danger of the *"Code is Law"* narrative is therefore not that it exaggerates the power of software. It is that it encourages attention to settle upon the code itself while overlooking the individuals and communities shaping the environment within which that code operates. The language of automation can create the impression that governance has become impersonal, when in reality it has become more difficult to observe.

For centuries, corporate law has organized responsibility around a relatively straightforward assumption. Whenever an organization acts, there must exist some identifiable source of intention behind that action. Whether located in directors, officers, agents, promoters, or controlling shareholders, legal systems have generally searched for a decision-maker capable of representing the organization's will. Liability, fiduciary duties, and attribution doctrines all rest upon variations of this idea.

The search has proven remarkably successful because traditional organizations were built around recognizable centres of authority. Even where influence was concealed, fragmented, or exercised indirectly, courts remained confident that a controlling mind could ultimately be located.[15]

Decentralized governance introduces a more difficult possibility.

What if authority is not hidden behind the structure, but distributed throughout it?

What if organizational decisions emerge not from a hierarchy, but from a network?

These questions expose the limits of a framework that has long relied upon locating responsibility within identifiable individuals. The challenge posed by DAOs is therefore not merely technological. It is conceptual. They force corporate law to confront the possibility that power may continue to exist even when it no longer gathers around a single centre of authority.[16]

The law remains accustomed to asking a familiar question:

Who was in charge?

Distributed governance responds with an answer that is at once plausible and deeply unsatisfying: *No one, and everyone.*

Between those two responses lies the space in which the Ghost Director Problem truly emerges. For the issue is no longer whether power exists. By now, its existence is undeniable. The issue is whether legal systems built upon the search for identifiable decision-makers can continue to allocate responsibility once governance begins to operate without them.[17]

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13. *Lawrence Lessig,* Code and Other Laws of Cyberspace *6–8 (1999).*
14. *Lawrence Lessig,* Code and Other Laws of Cyberspace *6–8 (1999).*
15. *Primavera De Filippi & Aaron Wright,* Blockchain and the Law: The Rule of Code *177–205 (2018).*
16. *Tesco Supermarkets Ltd. v. Nattrass, [1972] AC 153 (HL).*
17. *Meridian Global Funds Mgmt. Asia Ltd. v. Sec. Comm'n, [1995] 2 AC 500 (PC).*

Beyond the Invisible Boardroom

The Ghost Director Problem does not require abandoning corporate law. Instead, it reminds us of one of its oldest principles: power and accountability must remain connected. The difficulty is that decentralized governance challenges the ways in which that connection has traditionally been maintained.

The temptation is to view DAOs as a problem of legal personality. Yet granting legal status alone does not solve the accountability gap. The real question is not what a DAO is, but how responsibility should be assigned when governance is spread across networks rather than concentrated in identifiable offices.[18]

This calls for a shift in focus. Corporate law has traditionally searched for controllers—directors, officers, or other clear centres of authority. Distributed governance may require a different inquiry: not who formally controlled the organization, but who meaningfully influenced its decisions. Not who held the title of director, but who performed the role.

The significance of DAOs extends beyond blockchain. They expose the limits of legal frameworks built on the assumption that authority must always have a single, identifiable source. For centuries, the law has searched for the individual behind organizational power. Decentralized governance suggests that power may continue to exist even when no such individual can be easily found.[19]

The Ghost Director Problem is therefore more than a regulatory challenge. It is a glimpse into the future of governance itself.[20] The future of corporate accountability may depend not on finding new directors, but on learning how to recognize authority when it no longer resembles one.

The invisible boardroom is not empty.

The law has simply not yet learned how to see it.

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18. *Angela Walch, In Code(rs) We Trust: Software Developers as Fiduciaries in Public Blockchains, in* Regulating Blockchain *101 (2019).*
19. *Carla L. Reyes, Moving Beyond Bitcoin to an Endogenous Theory of Decentralized Ledger Technology Regulation, 61 Vill. L. Rev. 191 (2016).*
20. *Kevin Werbach, Trust, But Verify: Why the Blockchain Needs the Law, 33 Berkeley Tech. L.J. 487 (2018).*

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3. Junjie Ma et al., "Demystifying the DAO Governance Process" (2024).
4. Lu Liu et al., "From Technology to Society: An Overview of Blockchain-Based Decentralized Autonomous Organizations" (2020).

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Academic and Legal Resources

1. Stanford Journal of Blockchain Law & Policy https://stanford-jblp.pubpub.org
2. Oxford Academic – Regulating Blockchain https://academic.oup.com
3. Harvard Law School Forum on Corporate Governance https://corpgov.law.harvard.edu
4. Oxford Business Law Blog https://www.law.ox.ac.uk/business-law-blog
5. Berkeley Center for Law and Technology https://www.law.berkeley.edu/research/bclt

DAO Governance Platforms

1. Snapshot Governance Platform https://snapshot.box
2. Tally Governance Dashboard https://www.tally.xyz
3. DeepDAO Analytics Platform https://deepdao.io

Blockchain and Governance Research

1. Ethereum Research Forum https://ethresear.ch
2. Ethereum Foundation Research https://ethereum.org/en/research
3. Coin Center Research https://www.coincenter.org
4. World Economic Forum – Blockchain Reports https://www.weforum.org/topics/blockchain
5. MIT Digital Currency Initiative https://dci.mit.edu

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