ARTIFICIAL INTELLIGENCE

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Corporate governance and AI: time for a rethink?

Worldwide, artificial intelligence (AI) presents opportunities in a whole variety of sectors: healthcare, education, financial services, marketing, retail, agriculture, energy conservation, government, smart or connected cities, and indeed regulatory technology itself. Allied with biotechnology and data analytics, it can be used to tackle a huge number of worldwide problems, where the predictive, analytical, and problem-solving nature of AI can make a huge difference in improving performance, research outcomes, productivity, and customer experience. AI is already having a major impact on our lives, and many countries are setting comprehensive strategies to take advantage of it.

The House of Lords Select Committee on AI that I chaired took an optimistic view of the UK's potential, but¹ we also said that for successful development, we need to mitigate the risks such as the loss of public or stakeholder trust if AI is not seen to operate on ethical principles such

¹ <https://publications.parliament.uk/pa/ld201719/ldselect/ldai/100/100.pdf>.

as intelligibility, openness, fairness, and lack of bias, especially as there is a strongly polarised narrative around AI: “the worst or best thing for humanity,” according to the late Professor Stephen Hawking.²

Concerns in the USA over bias displayed in predictive policing and criminal justice algorithms such as COMPAS,³ and the more recent debate over the grade standardisation algorithm deployed in the UK’s secondary education system are classic examples of how to lose public trust in AI.⁴

We have an abundance of international ethical codes such as those promulgated by the Organization for Economic Cooperation and Development (OECD), the Council of Europe, the European Union (EU), the G20, and others⁵ which provide the basis for a common set of international standards, and business is increasingly expected to comply. But as Brent Mittelstadt’s paper published in the journal *Nature* puts it, “Principles alone cannot guarantee ethical AI.”⁶

The question is not now about how we adopt an international ethical AI framework, but how we bridge the gap between the “what” of responsible AI and the “how” in terms of corporate behaviour, AI design, and regulatory intervention. It is clear that AI even in its narrow form will and should have a profound impact on implications for corporate governance generally. Global organisations such as the Partnership on AI recognise that corporate responsibility and governance on AI is increasingly important,⁷ likewise, the World Economic Forum, which has developed a number of corporate governance tools.⁸

2 www.theguardian.com/science/2016/oct/19/stephen-hawking-ai-best-or-worst-thing-for-humanity-cambridge#:~:text=Professor%20Stephen%20Hawking%20has%20warned,future%20of%20our%20civilisation%20and.

3 www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm.

4 www.telegraph.co.uk/news/2020/08/15/pupils-can-now-use-predicted-grades-appeal-a-level-gcse-results/.

5 www.oecd.org/going-digital/ai/principles/#:~:text=The%20OECD%20Principles%20on%20Artificial,Council%20Recommendation%20on%20Artificial%20Intelligence.

<https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai>.

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www.g20-insights.org/wp-content/uploads/2019/07/G20-Japan-AI-Principles.pdf.

6 www.nature.com/articles/s42256-019-0114-4.

7 www.partnershiponai.org/new-partners-to-strengthen-global-community-of-practice/.

8 www.weforum.org/projects/ai-board-leadership-toolkit.

Detailed guidance is available too on a country-by-country basis. Singapore has issued its Model AI Governance Framework.⁹ In the UK, well-respected organisations such as the Institute for Business Ethics, whose report *Corporate Ethics in a Digital Age* have issued a masterly briefing for boards.¹⁰ Investors in the USA and UK such as Analytics Ventures, Fidelity, and Hermes are now imposing their own governance expectations too.

Poor data governance is often at the heart of public mistrust, but there are a wide range of actions boards need to take beyond complying with data protection legislation such as the EU's General Data Protection Regulation (GDPR)¹¹ and data protection and privacy legislation applicable in other jurisdictions.

Boards must have the right skill sets to understand what technology is being used in their company and how it is being used and managed, in order to fulfil their oversight role. Do board members understand whether and how AI is being used and managed, for instance, by their human resources department in recruitment and assessment or in keeping track of employee movements?

Understanding the different aspects of business context in which AI can impact is crucial. How many boards appreciate the full range of applications of AI which are potentially available?

Boards need to ensure they are informed about the implications of the automation of many tasks before deployment of AI solutions takes place. Will the introduction of an AI solution augment a role or substitute for it?

Companies need to be transparent about the impact of AI solutions on their workforces and on decision-making. They need to accept that they are fully accountable where the introduction of new technology makes a significant impact on employees and customers.

Whatever the scale of introduction of AI, there will be major disruption in the workplace, and concerted retraining to meet demand for new skills will become a major and continual necessity.

Conformity with ethical principles and standards of course has to be central to the introduction of new technology. If boards are going to retain

9 www.pdpc.gov.sg/-/media/files/pdpc/pdf-files/resource-for-organisation/ai/smodelaigovframework2.pdf.

10 www.ibe.org.uk/resource/corporate-ethics-in-a-digital-age.html.

11 <https://gdpr.eu/>.

stakeholder trust, they need to adopt an overarching ethics framework which ensures that certain principles on the deployment of AI solutions are followed; such as beneficial purpose, personal privacy, transparency of use, that algorithmic decision-making is explainable and that data being used for training, testing, or operational inputting does not exhibit bias.

So, in sum, boards need to be aware of the questions they should ask and the advice they need, and from whom, when considering the adoption of AI solutions.

- Does the board have the right skills and knowledge to consider the risks and issues?
- Does it understand how data, algorithms, and other technologies are being used in the business, especially to make key decisions or prediction?
- How is ethics around technology included in board governance? How often is ethics and technology discussed by the board?
- Does the business mainstream oversight of compliance with ethics into its audit and risk committee or set up a separate ethics advisory board?
- How is the board communicating the importance of an ethical approach to AI adoption? How are new staff taught about the ethical values of the business?
- Has it received assurance that any ethical risks around the adoption of new technology are being managed? Is ethics considered when reviewing or signing off new AI projects or use cases?
- Furthermore, if AI solutions are externally sourced, are these ethical requirements engrained in procurement processes?
- Are appropriate accountabilities in place? How does accountability between the business leadership and technology specialists fit together? Who is accountable at board level for these issues?
- What tools does the business have available in exercising oversight in terms of AI risk assessment and ethical audit mechanisms? Has the board, in seeking assurance on the standards for training testing and operation of AI solutions, considered other relevant tools such as: algorithmic impact assessment, AI risk assessment, ethical audit mechanisms, consumer assurance through Kitemarking, standards for ethically aligned design.

- Risk management is central to the introduction of new technology such as AI. What is the risk appetite of the business for the adoption of new technologies? How is risk assessed?
- To what extent are “unexplainable” models relied on in decision-making? Developers and those applying AI solutions cannot and must not shelter behind “black box” excuses.
- Where there is automated decision-making, to what extent have controls been reviewed to ensure that there is a “human in the loop”?
- To what extent should individual AI system designers and engineers within the business be explicitly required to declare their adherence to a set of ethical standards? This is particularly relevant to AI developers.
- Importantly, is the board satisfied that they have the necessary diversity and inclusion in the AI workforce with different perspectives when developing technology which enables them to spot problems of bias in training data and decision-making?
- Are there mechanisms for employees to raise concerns about ethical questions, such as whistle-blowing processes?
- Is the business open and engaged with key stakeholders around ethics and technology? To what extent has the business published its ethical approach and engaged customers and others in discussions and feedback?
- Where the business is regulated, to what extent is it engaged in discussions with regulators about any changing requirements? Is there recognition of the potential for role for regulatory sandboxing as a number of regulators such as the UK’s Financial Conduct Authority and the Information Commissioner’s Office in particular have recognised and promoted?¹² This permits the testing of a new technology without the threat of regulatory enforcement but with strict overview and guidance, and can speed up innovation and scaling up of adoption of AI projects.

At the end of the day there are even broader issues to be addressed. The rise of AI marks a real opportunity for radical changes in corporate governance on a global basis.

¹² <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2020/03/combining-privacy-and-innovation-ico-sandbox-six-months-on/>.
www.fca.org.uk/firms/innovation/regulatory-sandbox-prepare-application.

Many of the above questions raise the issue of what the core ethical values of the business are. How do these values fit with a current business model and strategy?

In my view AI can and should contribute positively to a purposeful form of capitalism which is not simply the pursuit of profit but where companies deploy AI in an ethical way for a purpose to achieve greater sustainability.

With all the potential opportunities and disruption involved with AI, boards across a variety of jurisdictions and business contexts need to adopt a strong underlying set of corporate values so that the impact and distribution of benefit to employees and society at large are fully considered for a purpose not exclusively driven by returns to shareholders.

In this context, Sir Ronald Cohen, chairman of the Global Steering Group for Impact Investment, at CogX2020 in London spoke about the need for a “universal impact accounting system.”¹³

The World Economic Forum has recently published “Integrated Corporate Governance: A Practical Guide to Stakeholder Capitalism for Boards of Directors,”¹⁴ which emphasises that

the COVID-19 pandemic and resulting humanitarian and economic crisis have reminded us that firms are themselves stakeholders in the sense that they have an intrinsic interest in and shared responsibility for the resilience and vitality of the economic, social and environmental systems in which they operate.

The Big Innovation Centre – now an international think tank – has played a leading role in the debate with their “Purposeful Company Project,”¹⁵ which was launched back in 2015 with an ethos that

the role of business is to fulfil human wants and needs and to pursue a purpose that has a clear benefit to society. It is through the fulfilment of their chosen purpose that value is created.

Since then, several important reports have been produced on the need for an integrated regulatory approach to stewardship and intrinsic purpose

13 www.youtube.com/watch?v=0HHgZDeMVEs.

14 www3.weforum.org/docs/WEF_Integrated_Corporate_Governance_2020.pdf.

15 www.biginnovationcentre-purposeful-company.com/.

definition, and on the changes that should be made to the Finance Reporting Council's UK Stewardship Code.¹⁶

In the USA, the B Corp movement¹⁷ has been a leader in this strongly growing community of interest, determined to raise standards of corporate governance.

To finally insert a cautionary note, however, corporate governance, however sound, is not always going to be sufficient. Brad Smith, president of Microsoft, in his recent book *Tools and Weapons*,¹⁸ warns us:

Many business leaders are absolutely aware of the need for good corporate behaviour but the end of the day ethical principles and good corporate responsibility guidelines however may not be enough.

That takes us on to when and where, in terms of AI applications and business sectors, we assess the associated risks as requiring that we should go further and adopting legislation and regulation, but that discussion is for another occasion.

16 www.biginnovationcentre-purposeful-company.com/intrinsic-purpose/.
www.biginnovationcentre-purposeful-company.com/the-need-for-an-integrated-regulatory-approach-to-stewardship/.
www.biginnovationcentre-purposeful-company.com/review-of-the-uk-stewardship-code-thoughts-for-change/.

17 <https://bcorporation.net/>

18 Brad Smith *Tools and Weapons: The Promise and the Peril of the Digital Age* Hodder & Stoughton (2019).