

# Ownership and Trust –

A corporate law framework for  
board decision-making in the age of AI

What are the paper's core claims?

1. A board does not abdicate its authority if it integrates an AI (even of the black-box variant) in shaping its decision-making.
2. U.S. Delaware and German corporation law on board decision-making include components of *ownership* and of *trust*.

- § 76 German Corporation Law
- § 141(a) Delaware General Corporation Law



### *„Ownership“*

Principals accept that agents evaluate unknowns and employ external help. Still, they require agents to ultimately take full ownership of their decisions.

- § 93 German Corporation Law
- Delaware: Business judgment rule (judicially created doctrine)



### *„Trust“*

Principals trust agents to make decisions in the interest of the company. Trust levels vary according to the type of decision (e.g. strategic business judgment, risk management, compliance).

## What are the paper's core claims?

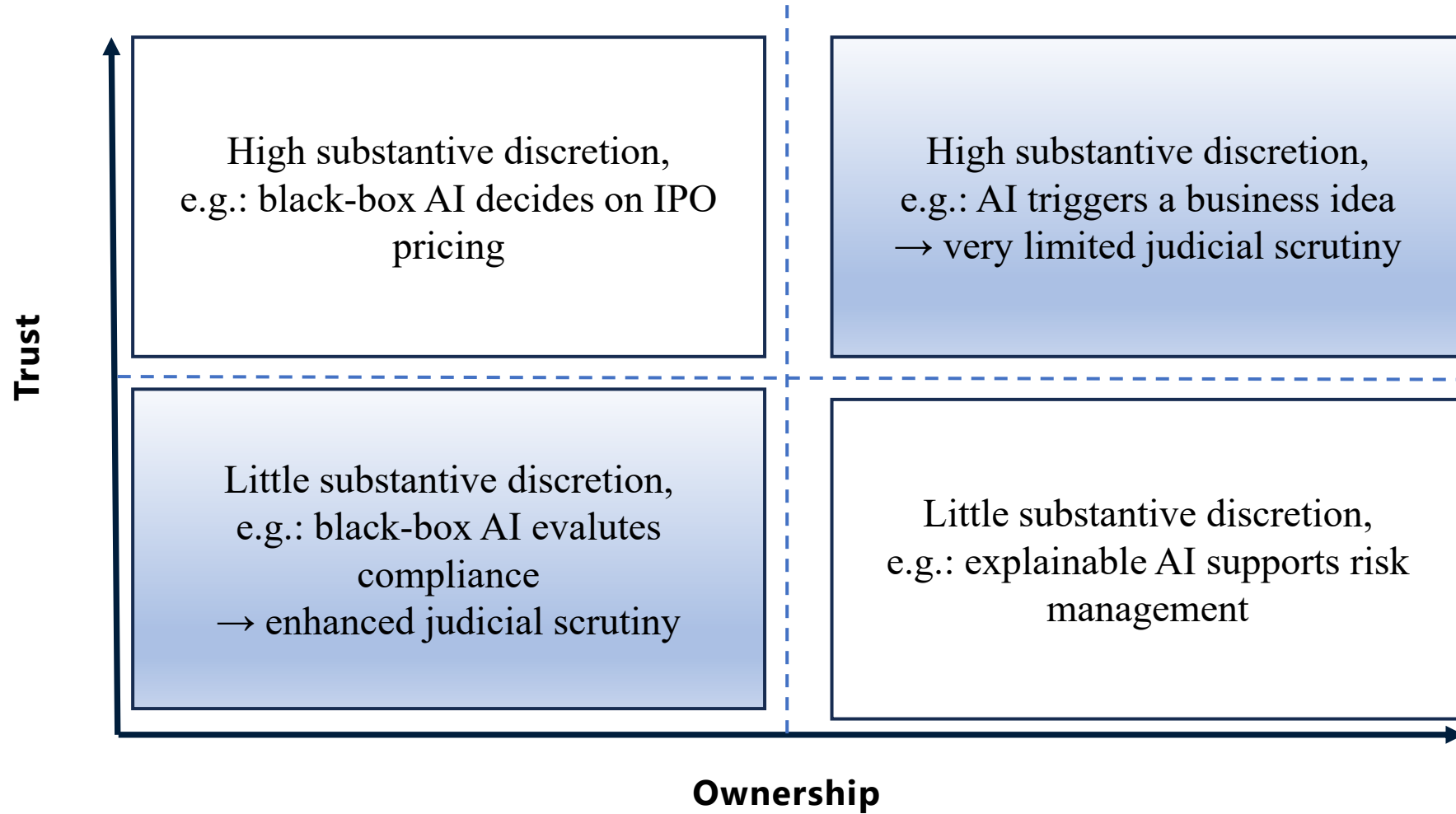
1. A board does not abdicate its authority if it integrates an AI (even of the black-box variant) in shaping its decision-making.
2. U.S. Delaware and German corporation law on board decision-making include components of *ownership* and of *trust*.
3. U.S. Delaware and German corporation law rely on implicit assumptions on how boards make decisions. These change when integrating an AI.

- Implicit assumptions in § 141(e)DGCL and § 93 German CL are, for instance:
  - Board members can cognitively follow or ask for an explanation if they consult an expert
  - Critical discussion between board members and human experts is possible
  - Meaningful “plausibility checks” are possible
  - Board members are educated about classic heuristics and biases

- These implicit assumptions do not cover integrating an AI. Consider:
  - (No) conversation with an LLM
  - Hard to estimate AI-errors (both, model and data)
  - No traditional explanation to be had from a black-box
  - No traditional causal reasoning to be had from an AI (reasoning from first principles *v* inductive inferences)
  - Challenges of encoding knowledge (retrieval augmented generation)
  - Challenges of heuristics and biases (*trad*: base rate neglect, conjunction fallacy, etc; *new*: automation bias)

## What are the paper's core claims?

1. A board does not abdicate its authority if it integrates an AI (even of the black-box variant) in shaping its decision-making.
2. U.S. Delaware and German corporation law on board decision-making include components of *ownership* and of *trust*.
3. U.S. Delaware and German corporation law rely on implicit assumptions on how boards make decisions. These change when integrating an AI.
4. We need to re-conceptualize cognitive cooperation between humans and AI along the *ownership* and *trust* framework.



High substantive discretion,  
e.g.: black-box AI decides on IPO  
pricing

High substantive discretion,  
e.g.: AI triggers a business idea  
→ very limited judicial scrutiny

Little substantive discretion,  
e.g.: black-box AI evalutes  
compliance  
→ enhanced judicial scrutiny

Little substantive discretion,  
e.g.: explainable AI supports risk  
management



- What is a useful way to conceptualize cognitive cooperation?
  - Define the type of decision (*trust* axis)
  - Embed the decision in decision-making processes (*ownership* axis)
    - Quality checks (model, foundation data, proprietary data)
    - Evaluate the risk of known unknowns, unknown unknowns and unknown knowns