

Distinguished Visiting Professor Lecture: AI Corporate Governance and Ben & Jerry's Risk

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Abstract

Prominent AI startups OpenAI and Anthropic were each created with a highly unusual corporate governance feature: “social-mission” directors who are at least partially unaccountable to the owners of the firm. The directors are tasked with ensuring that the firm’s AI benefits humanity, even if their actions harm investors. The only other firm that has adopted a similar arrangement is Ben & Jerry’s, which Unilever acquired in 2000. Its directors –completely unaccountable to Unilever–were tasked with preserving the social mission and brand integrity of the ice cream maker, even at Unilever’s expense.

The social-mission directors of OpenAI, like those of Ben & Jerry’s, are completely unaccountable to the firm’s owners. And at both firms, these directors ended up doing double damage –they acted in ways that harmed investors and achieved the opposite of their mission (as they saw themselves saw it to be). By contrast, Anthropic– created after OpenAI and Ben & Jerry’s– has avoided a similar fate, perhaps because its social-mission directors are only partially unaccountable: they can be removed by, and are thus ultimately accountable to, a super-majority of investors. Given the fiascos at Ben & Jerry’s and OpenAI, the only two firms with completely unaccountable social-mission directors, we would be surprised if future firms incorporate such a feature into their governance arrangements.

Biography

Jesse M. Fried is the William Nelson Cromwell Professor of Law at Harvard Law School. From 2014-2024, he was the Dane Professor of Law. Before joining the Harvard faculty in 2009, Fried was a Professor of Law and Faculty Co-Director of the Berkeley Center for Law, Business and the Economy (BCLBE) at the University of California Berkeley. Fried has also been a visiting professor at Columbia University Law School, Duisenberg School of Finance, Hebrew University, Tel Aviv University, and Reichman University. He holds an A.B. and A.M in Economics from Harvard University, and a J.D. magna cum laude from Harvard Law School. His well-known book *Pay without Performance: the Unfulfilled Promise of Executive Compensation*, co-authored with Lucian Bebchuk, has been widely acclaimed by both academics and practitioners and translated into Arabic, Chinese, Japanese, and Italian. Fried has served as a consultant and expert witness in litigation involving executive compensation and corporate governance issues.



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Interdisciplinary Multi-
function Room (AE-
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Exchange Building,
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Online via Zoom



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