

RECONFIGURING THE FUTURE-FIT
FIDUCIARY USING *COLLECTIVE*
PHRONESIS AND *TECHNÉ*

Helen Mussell
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PHRONESIS AND TECHNÉ***

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Helen Mussell
mussellh@cardiff.ac.uk

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Abstract

This paper argues that a reconfiguration of the practice of the fiduciary – widely cited as a barrier to pursuing sustainability investments and initiatives - presents the opportunity for a promising connection between practical wisdom and business ethics practice. The paper introduces three tensions arising from current fiduciary practice which constrain sustainability. A proposed reconfiguration of fiduciary practice to resolve the tensions is then outlined. This reconfiguration pivots on two premises. Firstly, that fiduciary practice should be disaggregated into two ontologically distinct stages – processual and outcome – and secondly, that different types of wisdom and knowledge are required for each stage – namely *collective phronesis* for the first *processual* stage and *techné* for the second *outcome* stage. This differentiation creates new divisions of labour for trustees *and* beneficiaries, with the first stage facilitating joint consultation. The extent this *inclusive* future-fit fiduciary has for positively impacting sustainability and ethical business practice is highlighted.

Key words: Fiduciary duty; collective phronesis, techné; Shareholder activism; collective imagination; sustainability. Selected referencing/citation style: Academy of Management Journal style.

JEL Codes:

A12 Relation of Economics to Other Disciplines

D02 Institutions: Design, Formation, Operations, and Impact

G11 Portfolio Choice • Investment Decisions

G30 Corporate Governance & Finance

G32 Financing Policy • Financial Risk and Risk Management • Capital and Ownership Structure • Value of Firms • Goodwill

K12 Contract Law

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Introduction

This paper argues that a reconfiguration of the practice of the fiduciary duty – which is often cited as a major barrier to pursuing sustainability investments and initiatives (Bower & Paine, 2017; Edmans et al, 2024) - presents the opportunity for a promising connection between wisdom and sustainability within the context of business ethics practice. The proposed reconfiguration pivots on two central premises. Firstly, the argument is advanced for disaggregating fiduciary practice into two distinct stages, and secondly, the different types of wisdom and knowledge required for each stage are theorised – namely that of *phronesis* for the first stage and *techné* for the second. The former stage is specifically conceptualised as *collective phronesis* (Kristjánsson, 2022). *Collective phronesis* is used to theorise a future-fit fiduciary which is *collectively imagined* and reconfigured around an *inclusive and consultative* relationship between trustees and beneficiaries. The impetus behind this inclusive approach is to address recognised escalating tensions surrounding fiduciary practice in business and finance contexts. One of these tensions - shareholder activism (including social shareholder engagement (SSE) relating to sustainability issues) - has been shown to be prompted by the status quo of non-consultation embedded in the current fiduciary configuration and practice (Mussell, 2021). By showing that fiduciary practice consists of both *phronesis* and *techné* – and how this differentiation can helpfully guide divisions of labour for trustees and beneficiaries – a reconfigured fiduciary is shown to be both possible and necessary, offering a way towards a more *inclusive and consultative* fiduciary relationship and offering a resolution to this and two other identified tensions. The paper shows that due to the wide-spread influence of the fiduciary - including the breadth and depth of its use in business and finance organizations - this proposed two-part reconfiguration has the potential to deliver deep and far-reaching impact for business sustainability and ethics.

The paper is structured as follows. Firstly, the legal concept of the fiduciary is introduced, including an overview of its conceptual evolution, its current relationship configuration and associated asymmetrical power dynamic, and the extent of its embeddedness in business and finance organizations is highlighted. Related to this final point, the scene is set for how the deeply entrenched fiduciary is perfectly positioned to widely transform business ethics once it has been reconfigured, with the selected context in which the reconfiguration is developed here being that of investment management.

The second section outlines three identified tensions raised by current fiduciary practice (Getzler, 2014; Lydenberg, 2014, 2014a; Mussell, 2021, 2023; Richardson, 2011; Sandberg, 2013), noting how they signal a challenge to the status quo, including how interpretations of the fiduciary restricts sustainable business and financial practice. This outline of recognised tensions and arising problems lays the groundwork for the third section, which constitutes the paper’s central proposition – namely, that the fiduciary can be successfully reconfigured to address the three recognised tensions and subsequently transform business ethics in practice. The argument is outlined in this section for why the fiduciary should be theorised as having *two ontologically distinct constitutive parts or stages*. The first stage is shown to be *processual*, involves reasonable (including ethical) deliberation, and can be theorised as requiring practical wisdom or (collective) *phronesis*. The second stage is shown to be *outcome* focussed, calling for specialist financial expertise and competence, and is best theorised as requiring practical knowledge or *techné*. It is subsequently shown that by theorising this ontological differentiation of the two stages, a space is created for recognising a new division of labour within fiduciary practice, one that facilitates increased beneficiary inclusivity and consultation at stage one. This addresses the recognised concerns of beneficiary (shareholder) exclusion signalled by shareholder activism. It is shown that this new development of a collective consultation between beneficiaries and trustees requires an understanding of reconceptualized collective wisdom, or *collective phronesis* (Kristjánsson, 2022), particularly because this first stage of fiduciary practice focuses on reasonable and ethical deliberation (Lydenberg, 2014). The pivotal role that collective imagination plays in conjuring up uncertain futures (Beckert and Bronk, 2018; Bronk, 2009) as part of the reasoning process of *collective phronesis* is recognised, including how it contributes to ideas of that which constitutes transformative wisdom. The second stage – involving just trustees and their practical knowledge or craft of financial management – requires the use of *techné*. Full details of the two ontologically differentiated stages are outlined to substantiate the theorisations of the need for phronesis and techné at each respective stage, including clarifying the role of deliberation in the first stage which renders it as requiring the meta-virtue of *collective phronesis*. This third section also summarises how the proposed reconfiguration resolves each of the three tensions arising from fiduciary practice.

The fourth and final section of the paper substantiates why the reconfiguration delivers a future-fit fiduciary, one that removes a major barrier to pursuing sustainability investments and initiatives. A more phronetic and collective fiduciary, it will be argued, has the potential to facilitate and realize a more reasonable, responsible, and ethical fiduciary practice in business and financial contexts, whilst

also holding transformative potential for both agents and utilised concepts. In addition, and with the sharp increase in the use of artificial intelligence (AI) expected in the financial sector to replace purely transactional advice, a focus on contextual reasoning and human collaboration will be crucial, and this final section addresses such issues, including final thoughts on the sort of ‘fiduciary character’ required to deliver the proposed reconfiguration. In conclusion, it is shown that a more phronetic and collective fiduciary can be the promising nexus that connects wisdom and sustainability in both business ethics theory and practice.

SECTION 1: INTRODUCING THE FIDUCIARY

Conceptual Evolution.

The fiduciary is a legal concept embedded in all business and finance contexts. Etymologically, the word fiduciary derives from the Latin *fidūcia* meaning trust. It is often referred to as a fiduciary duty and/or fiduciary relationship. It is a legal safeguarding mechanism put in place to ensure that *a* fiduciary (in its noun form) or trustee acts in the best interests of a beneficiary when they have been appointed to do so, either directly by the beneficiary, or by a third party. Illustrative examples in finance and business contexts of fiduciary relationships, and to whom or what duties are owed, include pension/investment fund managers and pension holders/investors (the specific context being explored here), or company directors and corporations (with the latter example often misrepresented as directors having a duty towards shareholders, following Jensen & Meckling’s principal-agent theory in their 1976 paper the *Theory of the firm*) (see Bower & Paine, 2017) .

The legal genealogy of the fiduciary is contested, and numerous theories abound. Scholars note it may have evolved from Roman fideicommissum honour law (Avini, 1995; Graziadei, 2014), from the waqf in Islamic law (Avini, 1995), or from the Germanic Salmannus (Avini, 1995). Whichever its precise provenance, all three possible origins entail a legal mechanism whereby property is placed under the administration of *a* fiduciary, by a grantor, for the eventual benefit of a beneficiary. In English common (familial) law, it was formulated as a way of transferring the legal title of estate/property into the trust of a fiduciary (in this context known as a trustee), for the benefit of a beneficiary, whilst not conferring ownership per se of the property to the fiduciary (trustee). This was required in historical contexts such as fighting in the Crusades and facilitated placing property into Trust while the rightful (then male) owner of the property was absent, thereby positioning beneficiaries as women and children, who were allocated passive and subordinated roles, both in the fiduciary relationship and wider society. As the lawyer Benjamin

Richardson writes, “trusts arose in England primarily to protect family wealth and to provide for the wife and children, who were socially constructed as passive and dependent. Modern investment law transplanted these arrangements for the private trust into a very different context.” (Richardson, 2011: 6). Importantly, and as will become clear, the transfer of this interpersonal power arrangement into modern investment law, and subsequently into business and financial management, configures the fiduciary as a fundamentally asymmetrical power relationship, one which, and as will be shown with the three tensions outlined in section two, is becoming increasingly challenged and contested in contemporary contexts.

Current (Asymmetrical Power) Configuration.

The legal arrangement outlined above delivers a pronounced power asymmetry between the trustee and the beneficiary, with the former allocated decision-making power within the relationship. But there is another dimension of power asymmetry, for whilst the trustee is entrusted to act and make decisions in the best interests of the beneficiary, they are *not obliged to consult* with the beneficiary regarding those decisions made on their behalf. In addition, nor are they required to confer with beneficiaries regarding their best interests – which, in the context of business and finance, are predominantly deemed to be economic. This leaves trustees’ understandings (and arguably presuppositions) of beneficiaries’ best interests open to interpretation through the lens of *selected* economic theory, which tends to predominantly be that of mainstream neoclassical economic theories and associated ideologies, manifesting in the context of investment management as the widespread use of Modern Portfolio Theory (Lydenberg, 2014 – more on which will follow). This resultant multi-layered interpersonal power asymmetry and the relationship configuration it delivers has been shown to simultaneously both exclude and silence the beneficiary, resulting in epistemic injustice (Fricker, 2009; Mussell, 2021), whilst such accumulative exclusion has been also shown to result in shareholder apathy (Fairfax, 2019). It is these arising issues and the tensions they create that to we will return to in section two.

Fiduciary’s Extensive Embeddedness and Related Potential to Widely Transform Business Ethics (and Deliver Sustainability).

What makes the fiduciary so crucial to draw attention to, and so pivotal as a context in which an extended understanding of phronesis can take hold and transform business ethics practice, is the sheer extent of its use and deep entrenchment in business and finance organisations. Generally speaking, whenever property/monies have been invested - or in the specific case of charities donated - and the individual

managing the property/monies is not the owner, the fiduciary arrangement is present. Indeed, the use of this legal device is arguably ubiquitous to the point of resulting in near invisibility, so much so that whilst we may be positioned as beneficiaries - say by paying into a pension fund scheme at work – we are not necessarily familiar with what the fiduciary arrangement is, even though we are personally positioned in a legal relationship, the terms of which it dictates. We (beneficiaries) will be aware that we have an investment/pension fund manager (trustee/fiduciary), but the legal terms of our relationship with them will not be so familiar. And importantly, the extent to which we can consult with them regarding the investment of our monies will be restricted, even if we sought to do so. Likewise, the extent to which they can incorporate such beneficiaries’ concerns in their decision making - even if they sought to do so - is similarly restricted, with this status quo situation resulting in a tension outlined in the following section. Simply put, the power nexus the fiduciary arrangement facilitates is all-pervasive, yet so implicit, it evades our attention. In addition, when taken alongside the significant increase in the amount of monies invested in institutional investment funds such as pension schemes - which, since 1997 in the context of the US has seen such funds now own more corporate equity than all the individuals in the US combined - then the sheer extent of accumulated decision making power handed to such fund managers, or ‘fiduciary capitalists’ (Hawley & Williams, 2000), becomes apparent. Consequentially, what should also become clear, is that any changes to the fiduciary arrangement – both in terms of legislation (including jurisdiction) and trustee interpretation (which can differ due to the opacity of fiduciary definition – resulting in understandable caution by trustees anxious to avoid litigation – see Mussell, 2024) - carries the possibility of significant implications and transformative impact. It is because the fiduciary is such a pivotal legal concept which has - as indicated above - delivered such a contemporary concentration of power (and wealth), that it has become, particularly in the US, a political battleground. And relatedly – but not surprisingly – it is because of this concentration of power in trustees’ hands that any changes to the process whereby trustees could consult with and act upon beneficiaries’ concerns regarding sustainability related issues is subject to enormous scrutiny – in legal, political, economic, and ethical terms. The following proposal, then, specifically the changes outlined in section three, poses a significant challenge to the status quo, and argues, on philosophical grounds – ontological, epistemological, and ethical – that the current consultative framework of the fiduciary requires a reconfiguration. But before outlining such a reconfiguration, the motivation for doing so – premised on three recognised tensions emerging from the current fiduciary configuration – will be outlined.

SECTION 2: OUTLINING THREE OF THE FIDUCIARY'S RECOGNISED TENSIONS

Having introduced and defined the fiduciary – in terms of its theoretical evolution, resultant organizational structure and ensuing agential power asymmetry, and its widespread practice in multiple organizational contexts – the focus now turns to outlining three recognised tensions and concerns that current fiduciary practice gives rise to. In essence, it is these three tensions that the following proposed reconfiguration of the fiduciary seeks to remedy and resolve, in order to transform business ethics in practice and deliver increased sustainability.

Tension 1. Shareholder Activism: Challenging the Passive Beneficiary Narrative.

There are distinct types of shareholder activism that can be identified by their different motivational agendas, i.e., either being concerned with influencing economic outcomes - as is the case with activist investors such as hedge fund engagement - or with highlighting social and environmental issues, widely referred to as social shareholder engagement (SSE) (see Cundill, Smart, and Wilson 2018; Goodman and Arenas 2015; McLaren, 2004). Irrespective of their motivations, recent increases in shareholder activism (Coskun et al, 2018, ShareAction, 2025) sends a signal of discontent and evidences a tension. And regardless of whether the activist is an institutional investor acting on the behalf of client beneficiaries, an organised campaigning group, or an individual directly campaigning alone (McRitchie, 2016) their activism is signalling a desire to *engage*. It is to break with the narrative that beneficiaries are purely passive, to one of them being proactive. As we have already seen in the conceptual evolution of the fiduciary, this marks a distinct challenge to the fiduciary's original configuration of non-consultation, where beneficiaries were allocated submissive and subordinate roles. It seemingly contests that the trustee knows best when serving the best interests of their beneficiaries, who are instead – albeit sometimes through another party - now exercising active agency as opposed to presupposed subservience. Added to this is the contemporary context noted above regarding the rise of institutional investors or fiduciary capitalists – essentially trustees investing on the behalf of their beneficiaries, who, by doing so, themselves become beneficiaries by proxy (Mussell, 2021), resulting in, for example, the power to vote on resolutions proposed at Annual General Meetings in the organisations within which they have selected to invest. This development has resulted in the contemporary situation whereby fiduciary-empowered trustees (fiduciary capitalists) simultaneously assume the role of the disempowered beneficiary – leading to recognised tensions and resultant activism. But what is such activism seeking to achieve? Is it to simply contest and challenge

the impact and implications of specific decisions? Or is the goal a broader and more fundamental one – either to make the investment decisions themselves (thereby entirely removing the need for the trustee), *or* to challenge the status quo of engagement and to instead become *involved in the process* that precedes and contributes towards investment decision making? The answer, it increasingly appears - with perhaps the exception of investor activists in the context of corporate management who seek to install themselves onto Boards, thereby assuming roles which place them in positions of decision-making power - is the latter. The goal is not to ease a tension by usurping the trustee, but instead to be heard by them. The objective of the majority of shareholder activism is arguably to influence and exert power in the decision-making *process*, as opposed to assuming responsibility for the end *outcome* of the decision making itself. It is to redress and reconfigure the pronounced power asymmetry in the fiduciary arrangement, and to instead seek inclusion in the *process*. This is an important ontological distinction to make, and one which will be returned to in greater length when outlining the third tension, and in section three when outlining the proposed fiduciary reconfiguration.

Tension 2. Rebalancing the Reasonable and the Rational: Developing the Capabilities of Wisdom, Prudence and Judgement for a Future-fit Fiduciary.

A second recognised tension arising in fiduciary practice concerns the result of applying economic theory - specifically neoclassical economic theory - to contemporary interpretative practice in both business and finance. As previously noted, the practice of the fiduciary in these contexts assumes an economic focus, in contrast, say, to the use of the fiduciary in medical situations overseeing the relationship between doctor and patient. In the business and finance practitioner interpretation, it is widely accepted that serving the best interests of the beneficiary pivots on delivering financial returns on investments, with the trustee or fiduciary prohibited from seeking personal gain from the actions and decisions they take. However, the parameters regarding how financial returns are achieved - including investment timeframes, the extent to which information regarding issues such as investment risk are considered in decision making, and the preferences of the beneficiary regarding avoidance of profiting from certain business ventures – are unstated in the general fiduciary arrangement and open to interpretation. For this, investor judgement is required, and to assist with such judgement, guidance from economic and financial theory is utilised, which arguably also influences legislation on such matters. In the contemporary context, the dominant use of neoclassical economic theory - and, specifically in the context of investment management, the related use of modern portfolio theory (MPT) emanating from such theory – results in the uptake of neoclassical economic ideology, including presuppositions

regarding economic agency as personified in the concept of *Homo economicus* - into fiduciary practice. This conception of economic agency pivots on the premise of highly rationalized self-interested utility maximization, presupposing that agents consistently seek the highest financial returns over the shortest timeframe. Whilst MPT is more concerned with agents' choices in relation to risk – namely that a portfolio with associated higher risk will deliver higher returns on investment, so returns achieved are subject to degrees of risk aversion, along with the assumption that most investors are risk averse – the central characteristics of *Homo economicus* as consistently rational self-interested individuals still holds. This conception of economic agency is applied to everyone – both the trustee/fiduciary/investment manager and the investor/beneficiary. In the case of the former, the rationalised trustee is directed – via contemporary MPT – to act in a way that supplants what Steve Lydenberg in his paper Reason, Rationality and Fiduciary Duty (2014), calls a reasonable approach to investing, one that preceded MPT and instead guided trustees to take a wider view of their investment decisions; “Reasonableness here is defined in terms of the interests of oneself in relationship to society’s interests and the interests of others and supposes that individuals use “judgment” in order to understand what is required to protect the interests of one and of all.” (Lydenberg, 2014: 366). That this reasonableness has been usurped by the investment theory of MPT and an over reliance on the mathematical modelling tools it advocates to deliver the rationalised approach, has led not only to a bias in investment strategy, objectives, and outcomes (Hawley et al, 2011), but has also resulted in a subsequent deficiency of trustees’ capabilities and skills to navigate such judgements. As Lydenberg writes: “This approach has deemphasized a previous interpretation of fiduciary duty that *drew on a conception of prudence characterized by wisdom, discretion and intelligence* - one that accounted to a greater degree for the relationship between one's investments and their effects on others in the world. As an increasing number of institutional investors have adopted the self-interested, rational approach, its limitations and inadequacies have become increasingly apparent. In particular, the rational investor *lacks those capabilities of reason to assess the objective well-being of beneficiaries, to recognize fundamental sources of investment reward in the economy, and to fulfil the fiduciary obligation to allocate benefits impartially between current and future generations.*” (*Ibid*: 365 – emphasis added). Under this account, a move away from the hyper-rationalised investment strategy of MPT and instead towards a fiduciary premised on a more reasonable approach to investment decision making requires the opportunity to develop specific cognitive skills and capabilities to resolve this recognised tension in contemporary fiduciary practice. And with the sharp increase in the use of artificial intelligence (AI) expected in the financial sector to replace purely transactional advice (of the kind delivered by the rational approach outlined above), a focus on the contextual

reasoning called for by Lydenberg, along with the human collaboration and connection achieved by the proposed reconfiguration to fiduciary practice outlined in section three, will be crucial. This is arguably where the need to develop and practice practical wisdom and deliberation comes to the fore, for as Kristjánsson et al note; ‘Aristotle defines *phronesis* as excellence in practical deliberation, that is, deliberation about what to do. (Kristjánsson et al, 2020: 12). In short, the hard economic rationality imposed by MPT’s strict guardrails for decision making has over-simplified and removed the practice of reasoning – of practical wisdom, of *phronesis*. This is a situation that requires remedy in fiduciary practice and one which a reconfiguration of the fiduciary of the kind proposed here can address.

Tension 3. Ontological Drift and Processual Realignment.

The third tension resulting from current fiduciary practice aligns with that of the first, whereby the need to focus on the fiduciary’s processual ontology is a central concern. The tension here arises from an ongoing debate in legal theory regarding whether the fiduciary can be reduced to a legal contract, i.e., fully captured in contractual terms (Bruner, 2013) or whether there is something particular about the nature of the fiduciary – specifically referring to an ethical component and/or feature of the fiduciary relationship – that renders it unable and unsuitable to be reduced to said contractual terms (Velasco, 2015). As with the second tension outlined above regarding the hyper rationalisation of the fiduciary through the application of neoclassical economic theory via MPT into financial portfolio management, so the same underlying issues are evident here. The uptake of neoclassical economic ideology in other disciplines such as law – which includes a commitment to render economics ‘values free’ whilst simultaneously embedding *Homo economicus* and rational choice theory into its theoretical premises – has resulted in a programme of rationalising certain areas of legal theory with a contractarian approach, and removing any suspected normative content (see Mussell, 2023 – and for commentary on the politicization of this agenda Mussell, 2024). Fiduciary law has been no exception, and as Joshua Getzler notes, there has been “a shift in the intellectual commitments of the legal caste, which came to see classical fiduciary law as an archaic hangover.” (Getzler, 2014: 201). Attempts to isolate supposedly normative content and neutralise it are evident in claims that the fiduciary’s duty of care (note that the fiduciary is widely recognised to consist of the twin duties of loyalty and care, with the former represented in the Trustee directive to ‘act in the best interest of the beneficiary’) is extraneous once the terms of the fiduciary relationship have been contractually captured. The duty of care – which requires Trustees to perform their duties with skill, diligence, prudence, and, unsurprisingly, care – is relegated as superfluous when the terms of the *fiduciary relationship* are deemed rationalizable

to contractual terms. This rationalisation (and standardization) process assumes – of course – that all parties are *Homo economici*, embodying the same economic motivations and demanding the same *outcomes*. This latter point is important, because the contractarian approach is premised on *outcomes* and specificity. That the fiduciary is also a relationship, *an ongoing process* taking place between two human parties – and one that the duty of care provides the guardrails or relational guidelines for – sits at odds with a ‘standard’ contract approach. For, as Macneil notes regarding attempts by scholars to develop contract *relations* theory, “Experience has shown that the very idea of contract as relations in which exchange occurs—rather than as specific transactions, specific agreements, specific promises, specific exchanges, and the like is extremely difficult for many people to grasp.” (Macneil, 2000: 878).

Here, then, we have another recognised tension inherent in fiduciary practice, which pivots on the fiduciary’s present configuration, which, to recall, excludes consultation with the beneficiary (the source of the shareholder activism outlined in tension one above). This exclusion, in effect, establishes the tone of the human relationship as remote. It removes the opportunity for the beneficiary to engage with and challenge the trustee on their presuppositions regarding investment motivation and interpretation of their best interests. And, relatedly, this silencing of the beneficiary also plays well for the claim that all beneficiaries are *Homo economici* only focussed on the outcome of the fiduciary arrangement, and not on the manner in which their appointed trustee behaves. Attempts to reduce the fiduciary to contractual terms, resulting in a refutation of the need to retain the fiduciary’s duty of care, not only attempts to remove any perceived normative content, but also requires an ontological shift towards the fiduciary being a *specified end outcome*, and not a *processual relationship* to be practiced and developed with care. This attempted shift towards a contracted specified outcome, and the subsequent move away from the fiduciary as a relationship or process, also ontologically precludes the possibility of beneficiary input and engagement with the fiduciary process, further enflaming the tension behind shareholder activism. In addition, the focus on the rationalised end outcome also moves further away from the deliberative opportunity in which to develop the reasonable judgement called for by Lydenberg. Here, then, we can see how the three tensions are interconnected. All three signpost the requirement for a reconfiguration of the status quo. All three signpost the need for a more inclusive fiduciary arrangement, one which recognises demands for the fiduciary to be an *inclusive process* facilitating *beneficiary engagement*, alongside providing the essential opportunity for trustees to develop and practice wisdom and judgement. But this reconfiguration must also crucially recognise the *need to reach an end outcome* as a result of the deliberative process. A decision, after all, must be

made (Which stocks to buy, and how many?), and a conclusion reached. To negotiate this difficult terrain, a disaggregation of fiduciary practice is proposed, along ontological lines aligned with Aristotle’s distinctions of different accounts of knowledge – *phronesis* and *techné*. As Kristjánsson nicely summarises; “Although Aristotle likes to compare *phronesis* to a skill, such as playing the flute, he remains clear on the distinctions between the two. The key difference is that the excellence of *techné* lies in the product or outcome of the activity, but the excellence of *phronesis* lies in the process of thinking and acting (although beneficial outcomes will also follow if all goes well).” (Kristjánsson, 2022: 42, emphasis added). With this in mind, the following third section will unpack and further elaborate the proposed reconfiguration solution.

SECTION 3: THE RECONFIGURED TWO-STAGE FIDUCIARY

As the previous section indicates, current practice and interpretations of the fiduciary are proving to be highly contentious, resulting in challenges on numerous fronts. To propose, then, as this paper does, that the fiduciary has considerable potential to act as an important nexus drawing together wisdom and sustainability in business ethics practice, will require these recognised tensions to be addressed and resolved, for such potential to be reached. To this end, a reconfiguration is proposed, one that pivots on the disaggregation of the fiduciary into two discernibly different ontological stages, each of which has a different knowledge output, and which require different agents input and engagement. Table one presents these differentiated stages, which are then described in detail in the following sections.

Table 1: The reconfigured Two-Stage fiduciary.

Fiduciary practice disaggregated – advanced ontological differentiation	
Stage One →	Stage Two
Ontology: Processual	Ontology: Outcome
Aristotelian term: Phronesis (collective) – <i>practical wisdom</i> (via intersubjective knowledge production, as per Nonaka et al, 2008) using imagination as transformative wisdom	Aristotelian term: Techné (technical) – <i>practical knowledge</i>
Knowledge output: Deliberation, wisdom, and (ethical) judgement (as per Lydenberg, 2014)	Knowledge output: The final investment decision
Agent(s): Collective (Beneficiaries & trustees)	Agent(s): Solo (Trustee only)

Stage One

The first stage of the reconfigured fiduciary explicitly pivots on the inclusion of beneficiaries and trustees working *together* in a *process of collective phronetic agency* (Kristjánsson, 2022). This collective endeavour includes imagining possible scenarios and conjuring up uncertain futures (Beckert and Bronk, 2018) to consider and reason across options, and to help develop and form reasonable judgment (Lydenberg, 2014). What then is phronesis, and by extension, collective phronesis? And how does the explicit inclusion of collective imaginings of uncertain futures extend our understanding of phronesis in transformative ways?

Phronesis – and Collective Phronesis.

Firstly, to phronesis itself, the existence of which in business organizations has been extensively noted by scholars (Ames et al, 2020; Kristjánsson, 2022; Nonaka, 2008; Querioz, 2015). According to Kristjánsson et al, ‘Aristotle defines *phronesis* as excellence in practical deliberation, that is, deliberation about what to do’ (Kristjánsson et al, 2020: 12) noting elsewhere that, “The key difference is that the excellence of *techné* lies in the product or outcome of the activity, but the excellence of phronesis lies in the process of thinking and acting.” (Kristjánsson, 2022: 42). Phronesis – also known as practical wisdom - is a helpful concept to be deployed in the first stage of the reconfigured fiduciary because it focusses on the process of moral deliberation and the thinking through of possibilities – of using experience,

knowledge, and the exercise of reasoning ability to weigh up possible options. As we have seen earlier in tension one, shareholder activism seeks to redress the asymmetrical power and non-consultative status quo that exists in the current fiduciary arrangement. Inclusive engagement and contribution is sought in the decision-making process, but not necessarily in the act of making the decision itself. The inclusion of Stage One in the fiduciary reconfiguration seeks to remedy this situation. By placing a focus on the use and development of phronesis as central to the collective activity, a non-technical and inclusive contribution is sought from beneficiaries working with trustees. The objective in stage one of the reconfigured fiduciary is to draw on developed conceptions of collective phronesis (Kristjánsson, 2022). Kristjánsson notes that Aristotle did not form a concept of collective phronesis in his own works, so developments in this area follow later, with numerous conventions emerging. A key distinction in the developed positions concerns whether collective phronesis is “(a) truly joint phronetic decision-making and (b) individual phronetic decision-making, assisted by—or executed in collaboration with—a close friend or a mentor.” (Kristjánsson, 2022: 45). Following this distinction, and in light of the fact that the end outcome – the decision – is made in Stage Two of the reconfigured fiduciary, this paper aligns with (b). This, as we will come to see, is because there is technical knowledge required in Stage Two that beneficiaries may well be unfamiliar with. However, aligning with (b) does not preclude the potential for collective phronesis to result in the collaborative knowledge creation (Nonaka et al, 2008) which will ultimately contribute to the final decision made in Stage Two. Indeed, the proposal advanced here for a reconfigured fiduciary aligns with Nonaka et al’s call for companies to create opportunities for collective-phronesis forums in which knowledge can be developed, and whilst Kristjánsson adds a tone of scepticism about such possibilities, he does add that “if a collective-phronesis forum, such as the one suggested by Nonaka, really produces results in terms of knowledge creation that benefits firms, perhaps such forums will one day become standard business practice.” (Kristjánsson, 2022: 54). To this, it can also be added, that if such opportunities for collective phronesis in the context of a reconfigured fiduciary remedies and reduces shareholder activism, then initial scepticism levelled at the proposal may subside. We will return to calls for such forums at the end of this section, which indicate the need has been identified.

Phronesis - Imaginatively Transformative.

Phronesis is concerned with the ability to form good moral judgement, to have the capability to consider a range of options, and to deliberate between possible scenarios. With this in mind - and considering the fiduciary context phronesis is being applied to here, where beneficiaries’ future best interests are being deliberated

- we must acknowledge that such futures are unknown and uncertain. There is a need, then, to use imagination to conjure up these uncertain futures and scenarios, which will then form a crucial part of the reasoning exercise and phronetic process. Indeed, that reason and consideration of future scenarios are interdependent is noted by Lydenberg when writing on the topic of intergenerational equity and future generations - "Reason can help in this task because it is naturally disposed to considerations of the future." (Lydenberg 2014a: 296). The reasoning required in the *collective phronetic effort* of Stage One in the fiduciary's reconfiguration therefore requires the collective to engage in *imaginings of uncertain futures* (Beckert and Bronk, 2018), which will also involve engagement with moral imagination (Cohen, 1998; Werhane, 1999, 2002). This recognition that collective phronesis or practical wisdom requires involvement of collective imagination can arguably contribute to theories of transformative wisdom and push us to recognise where imagination, reason, and rationality intersect.

How then to imagine such uncertain (economic) futures? How to engage the collective imagination of beneficiaries and trustees in this task as a crucial part of phronesis? For suggestions for how to go about this we can turn to the work of Richard Bronk, who in *The Romantic Economist: Imagination in Economics* advocates the use of metaphorical reasoning to move beyond the narrow confines of economic rationalistic reasoning, which, of course, has been noted as being increasingly deployed in contemporary fiduciary practice by Lydenberg. This metaphorical approach – which uses literature (fiction) to unlock imaginative potential and looks to break down the post-political economy disciplinary boundaries of economics as science versus the humanities, or rationalism vs romanticism, echoes Nonaka et al's suggestions for organising collective-phronesis forums at which corporate executives could engage with scholars of the arts and humanities, to encourage the development of wisdom and judgement. Of course, the suggestion of deploying imagination in business contexts has been visited before, with the role of imagination featuring in the business ethics literature as moral imagination (Cohen, 1998; Werhane, 1999, 2002), whereby management decision making includes perceiving the complex norms and relationships which may be entwined in any context. However, what has not been advanced before is the central role that imagination must play in the context of collective phronesis as part of a reconfigured fiduciary arrangement, and how this may contribute to facilitating beneficiary engagement, calls for which have come via shareholder activism and scholars alike.

Designing a Deliberative Democratic Beneficiary Forum.

The focus in the first stage of the fiduciary configuration is on recognising the need to establish an opportunity for beneficiaries to engage with trustees and collectively deliberate available options, alongside articulating preferences. The recognition that shareholder activism challenges the lack of such engagement warrants the creation of such a forum, as does the acknowledgement by numerous scholars that even in the context of investment management focussing on socially responsible investment funds (SRI), the inclusion of beneficiary preferences and input is limited: “[i]n contrast to the democratic ethical deliberation that we might assume would underpin the development of an SRI policy, mutual funds, even SRI-focused ones, generally do not involve investors in their decisions.” (Richardson, 2013: 6). As Goodman and Arenas note “This implies the need for fund managers to establish communicative fora for their beneficiaries in order to deliberate and reach a reasoned agreement on the relative importance of different values and financial return.” (Goodman & Arenas, 2015: 173-174)’. Ryan concurs with the need for such beneficiary inclusion, noting that; “As an extension of addressing the plurality of demands, investment funds which represent numerous individual beneficiaries, such as pension funds or mutual funds, should also consider the multiple perspectives which exist among their own beneficiaries.” (Ryan, 2000). What none of these scholars do, however, is advance a solution for how such an inclusive fora can be achieved in the all-important context of the fiduciary arrangement to which trustees are legally held, and which is so widely embedded in business and finance organisations. They do not consider how the process of deliberation constitutes the practice of collective phronesis contributing to the development of reasonable judgement. Nor do they ontologically differentiate between the two stages of deliberation as a process and the final decision as an end outcome requiring technical skill. To some extent, Stage One of the collective phronesis proposal advanced here could be seen to be aligned with the work carried out by financial advisors – i.e., individuals who are not actual trustees managing funds but who do engage with clients about various financial products they may wish to choose from. The advisory process in this situation is collaborative. Indeed, and as already noted, increasing concerns about the impact of the use of AI on such careers has led to some financial advisors sharply differentiating their ‘context and reason’ skill sets from those AI is capable of, with one such advisor noting that “AI is an incredibly powerful tool, yet it does not replicate the contextual awareness or human reasoning that powers modern financial advice – the collaborative, co-creative process that equips clients to make highly informed and contextual decisions about their own financial future today as they navigate forward.” (Rieman, 2025). As we have seen before, this contextual and reasonable approach is similar to that advocated for by Lydenberg, so the fact that

such a *co-creative process* already exists within the financial sector in an advisory context could provide a blueprint for beneficiary engagement in the fiduciary context also.

Stage Two

Trustee Techné.

Our attention now turns to elaborating the second stage of the reconfigured fiduciary. This stage is ontologically differentiated as being *outcome* focussed and follows the *deliberation process* focus of Stage One. As the output is different, so is the skill set required to achieve it. Whilst *collective phronesis* – or practical deliberative wisdom – is utilised and practised in Stage One to develop reasoned judgement, Stage Two employs what Aristotle referred to as *techné* or practical knowledge, using this to make a final decision drawing on technical knowledge (i.e., expertise in financial systems and investment). For this reason, only trustees are involved in Stage Two of the reconfigured fiduciary, as they have the technical capabilities and have learnt the ‘financial craft’ (Millo & Schinckus, 2016). As Haug and Taleb note, “For us practitioners, theories about practices should arise from practice or at least avoid conflict with it [...] Options hedging, pricing and trading are neither philosophy nor mathematics, but an extremely rich craft rich with heuristics with traders learning from traders [...] It is a *techné*, not *episteme*.” Haug and Taleb 2011: 97). So, whilst Stage One of the reconfigured fiduciary is a collective effort, involving both beneficiaries and trustees, Stage Two features trustees only. Ontologically speaking, this second stage of the reconfigured fiduciary is highly differentiated from the first, aligning with the recognised differences between the Aristotelian distinctions. Recalling Kristjánsson, “The key difference is that the excellence of *techné* lies in the product or outcome of the activity, but the excellence of *phronesis* lies in the process of thinking and acting.” (Kristjánsson, 2022: 42 – emphasis added). *Techné*, then, is oriented toward production, and Aristotle’s original concept has residue today in terms such as technique, technical, and technology. *Techné* is also driven by a practical instrumental rationality governed by a conscious goal, and as such, it clearly encapsulates the dominant rationality approach in current fiduciary practice that Lydenberg calls to be corrected and rebalanced with a reasonable approach. *Techné* is focussed on the specified end outcome or product, and, as Kristjánsson et al note, “*Phronesis* is also distinct from other intellectual virtues, including technical expertise (*techné*), which is excellence in a skill. Skill is concerned with making, rather than doing, and hence with the product, as opposed to the process whereby the product comes about. Excellence in a skill is thus traceable to the quality of the product regardless of the productive process.” (Kristjánsson et al, 2020: 11). In the

context of the fiduciary, and when considered alongside Lydenberg’s work, this observation about how the assessment for excellence is *separated* from the phronetic productive process triggers caution. It offers an intriguing explanation for why the hyper-rationalised focus on the outcome or product (*techné*) is prioritised and rewarded over the deliberative process (*phronesis*), leading to the subsequent loss of skills in the latter – i.e., incentivization tends to drive interest. It appears, then, that the application of Aristotle’s distinctions between phronesis and techné can not only provide a helpful map for a future fiduciary reconfiguration, but can also offer a retrospective explanation for why the two have become so separated in certain contexts, particularly where outcomes have become prioritised (and rewarded).

Resolving Recognised Tensions Arising from Current Fiduciary Practice

It is important to recall that the motivation for the above outlined two-stage reconfiguration of the fiduciary was to resolve and remedy three recognised tensions arising from current fiduciary practice. Table two below summarises the main point of each tension and indicates how this was resolved by the reconfiguration. These resolutions are then described in detail.

Table 2: Resolving the three fiduciary tensions via reconfiguration.

Fiduciary practice disaggregated - Tension resolutions	
Stage One	Stage Two
Tension One – Beneficiary inclusivity/engagement	
Collective phronesis = Beneficiary engagement achieved	Techné = Decision making responsibility retained by Trustee
Tension Two – rebalancing reasonable/rational fiduciary	
Deliberation and reasonableness in fiduciary restored (Lydenberg’s call achieved)	Practical instrumental rationality governed by a conscious goal (but tempered by the reasonable)
Tension Three – fiduciary ontology	
Processual ontology retained	Outcome ontology retained

Tension One.

To recall, the central issue outlined in tension one concerned beneficiary pushback against the asymmetrical power arrangement in the fiduciary, whereby the trustee is not obliged to consult with the beneficiary regarding decisions and actions taken in their best interests. Taking shareholder activism as an example of such beneficiary

pushback, the focus of the activism was shown to be concerned with beneficiaries (or their agents) calling for involvement in or engagement with the decision-making *process*, but not necessarily demanding to control or make the end decision/outcome itself. It was also noted that the proponents of such activism are often professional trustees or fiduciaries themselves, looking to take an active involvement in the investments they have selected on behalf of clients. This has been termed as fiduciary activism (Hawley & Williams, 2000). The motivation for such activism may be economic (seeking to increase financial value) or driven by social shareholder engagement (SSE) (seeking to increase an organisations involvement with an environmental, social and/or ethical agenda). Irrespective of motivation, the observation remains the same – that such activism is focussed on demanding engagement between beneficiaries and trustees or fiduciaries. Stage One of the proposed reconfigured fiduciary delivers this.

Tension Two.

Underpinning the second identified tension arising from the fiduciary is a distinction between a rationalised and a reasonable approach to investment, with the former having come to dominate fiduciary practice due to the widespread use of MPT. The result of this dominance has been a focus on short-term financial gains and outcomes, with the subsequent loss of wider (or reasonable) consideration regarding the implications and impact of investments on society and future generations. This rational behaviour has crowded out reason and common sense – practical wisdom and *phronesis* – and importantly also diminished the opportunities available for *phronesis to be practiced*. The proposed disaggregation of the fiduciary into two discernible stages seeks to redress this situation. The objective is to outline a sequence of recognised stages in fiduciary practice which present an opportunity for *collective phronesis* to be developed. Stage One – by involving both beneficiaries and fiduciaries – ensures the process of considering investment options pursues a reasonable deliberative approach. It not only focuses on a strategy to shift fiduciaries towards reasonableness, but also on ensuring beneficiaries are engaged in understanding the impacts of their own investments. In doing so, it addresses accountability issues whilst also reducing shareholder apathy, an issue recognised as a result of long-term beneficiary exclusion and non-engagement (Fairfax, 2019; Mussell, 2021). The justified concern that some beneficiaries (here excluding beneficiary agents who are investment professionals acting in positions of fiduciary themselves) are not equipped with financial technical knowledge and therefore ill-equipped to be involved in investment decision making, is circumvented by Stage One focussing on deliberation of wider investment issues such as impact. As we have seen, Stage Two focusses on the outcome and retains technical decision

making, with Stage One concerned with the deliberative process. Discussing and reasoning options at a broader level is possible – this is, after all, and as we have seen, similar to the financial advisor role already present in financial services. It also offers the important opportunity to put the theory of *Homo economicus* to the challenge, to push at the presupposition that economic agents are bound by the homogeneous motivation of consistent rationalized utility maximization, or in fact broader and more sophisticated in their economic agency. A final comment on how the proposed fiduciary reconfiguration can remedy this second tension suitably comes from Lydenberg himself, who writes that, “In order to see the reasonable reinstated to its rightful position, reassessments by government, academics, and the legal and financial professions of what constitutes the proper role of fiduciaries will be necessary. These reassessments will require careful thought and concerted effort, but this effort can produce ample long-term financial, economic, societal, and environmental rewards.” (Lydenberg, 2014: 379). The hope is that this reassessment and proposed fiduciary reconfiguration can be one such effort and move towards resolving this recognised tension in current fiduciary practice.

Tension Three.

To a large extent, the third tension is a fall-out from the issues highlighted in the second and could be summarised as a problem of ontological shift (Thompson, 2011), or more acutely, a deliberate attempt at an ontological reorientation of the fiduciary. Following the dominance of the rationalized approach - in disciplines broader than just economics but also including, amongst others, legal theory - the importance of the *process that precedes the outcome* has become sidelined and disparaged, with the fiduciary being a case in point. In the fiduciary’s case, however, this results in the erosion of the ethical aspect of the fiduciary, which is *located in the in the process* of doing the job well – with diligence, prudence, and care. To reduce (or rationalize) the fiduciary to defined or specified contractarian terms is to shift ontologically towards the outcome. It is to remove the focus on the fiduciary as a relationship between a beneficiary and trustee, relations which are processual and need to be practiced with diligence and care, and to shift instead towards the specified outcome. Stage One of the fiduciary reconfiguration proposed here directly challenges the reorientation away from the processual and relational. It squarely emphasises and forefronts the beneficiary-trustee relationship by insisting on the development of *collective phronesis*, of the two parties working together, to reason and deliberate together. It contests the disconnect in fiduciary relations and challenges the trustee to act as financial advisors have been doing – to collaborate and co-create. However, that an outcome – or final decision - is required, is not overlooked in the proposed reconfiguration. Fiduciary practice cannot be purely

processual – an investment choice must be made – as per Stage Two, *but* its importance and success must also be gauged on the process preceding it – Stage One - which under the reconfigured fiduciary will include beneficiary engagement and input. The proposed reconfigured fiduciary recognises the need to retain clear ontological distinctions at each stage, to avoid fallacious drift. There is no need for or attempt at domination as the *outcome emanates from the process of engagement*. The manner in which that engagement is practiced, and the processual beneficiary-trustee relationship managed, will become key to the success of future-fit fiduciary practice.

SECTION 4: A RECONFIGURED FIDUCIARY TO TRANSFORM BUSINESS ETHICS IN PRACTICE

Having outlined three recognised tensions arising from fiduciary practice and the proposed reconfiguration which can resolve these issues, this final section will underscore how designing a future-fit fiduciary provides the crucial connection that can draw together transformative phronesis with sustainability, and in doing so transform business ethics practice.

As previously outlined, the sheer embeddedness and reach of the fiduciary in the architecture of global finance and business operations indicates its enormous potential to transform business ethics practice. Put simply, it is practiced at scale, and so any transformation brought on by the sort of reconfiguration proposed here would also deliver at scale. That said, it must be acknowledged that fiduciary practice differs across jurisdictions – with, for example, the US differing from the UK and the European Union – where, in the case of the former, fiduciary practice has been highly politicized (see Mussell, 2024). Relatedly, if we add to this the fact that interpretations of the fiduciary – which are numerous at best due to its ambiguous definition (see above regarding varied practices in different legal systems) - are frequently cited as a reason why fiduciaries do not pursue sustainability initiatives and investments for fear of litigation and not delivering in the beneficiaries best interests, then we can see how changes to fiduciary practice which *include beneficiary engagement* hold transformative potential in their own right. But there are other possibilities for transformative potential baked into the reconfiguration proposed here, possibilities which can transform both economic agents and the concept of phronesis. The following elaborates these points.

Agential Transformation: Inclusion, Participation, Imagination.

At the heart of the proposal for a reconfigured fiduciary practice is the inclusion of beneficiary voice in the process. Such inclusivity confronts head-on the power asymmetry on which the fiduciary is premised *and* seeks redress of the recognised impact of beneficiary exclusion on individual agency, including that of pre-emptive testimonial injustice (Mussell, 2021) and learnt apathy from cumulative exclusion (Fairfax, 2019). When a beneficiary is consistently excluded, and their opinion or testimony unsought, this situation of disconnect contributes to a loss of agency and confidence, consequently leading to the additional loss of responsibility and accountability. They are rendered passive and powerless, which is, of course, what the original formulation of the fiduciary sought to do, to place power in the hands of the trustee. But this status quo is, as we have seen, outmoded and contested. Enforced passivity is at best overly infantilising and condescending, and at worst provocative. The one-sided relationship simultaneously creates a beneficiary void into which presuppositions and ideology regarding beneficiaries' economic agency can be poured. By correcting this asymmetry, Stage One of the reconfigured fiduciary will not only transform the power nexus at the core of the trustee-beneficiary relationship, but also initiate *active* agency by the beneficiary, by handing them credence to be included and contribute. This path to inclusivity will be facilitated by the focus on developing *collective phronesis* – on promoting collective practical wisdom, including and involving the use of collective imagination – thereby moving away from discussions relating to 'technical financial decisions' and instead encouraging deliberation and developing reasonable judgement around issues such as impact of investment options and investment preferences. This approach, then, will be transformative for beneficiaries in multiple ways.

Conceptual Transformation: Collective Phronesis, Collective Imagination.

The concept of phronesis on which the proposed reconfiguration pivots is specifically one of *collective phronesis*. As already noted, when outlining Stage One, the development of the concept of *collective phronesis* is a recent effort and not one that Aristotle himself formulated. This collective focus extends and arguably transforms our understanding of how practical wisdom, including collective judgement, is formed, and how forums for collective deliberation can successfully deliver. Work around how knowledge-based firms can deploy collective phronesis has already been developed (Nonaka et al, 2008), but it has not been applied in the context of the knowledge-based approaches to investment in the context of the fiduciary. This would be a transformative application, particularly in the reconfiguration proposed here. In addition, the range of methods by which to engage

in collective phronetic agency would include the use of *collective imagination* to conjure up uncertain futures and scenarios. The latter is a proven method (Beckert & Bronk, 2018) to assist in dealing with radical uncertainty and in scoping out possible scenarios. This collective imaginative context pushes at traditional knowledge-based approaches to phronesis. Whilst Nonaka et al note the role the imagination – or *phantasia* – plays in phronesis and narrative construction (Boyd, 2009), a development of collective imagination as a method for facilitating collective phronesis is not advanced. The suggestion in this proposed reconfiguration of the fiduciary is that collective imagination can be used as a core exercise in Stage One around which to develop collective phronesis. The precise design of the exercise(s) is not the goal here, but the co-creation of narratives regarding uncertain futures using collective imagination could provide the focus of Stage One, with the articulated preferences for future scenarios guiding the techné decision-making outcome in Stage Two. In both of these contexts – the focus on the collective and on the use of imagination – the concept of phronesis is extended in transformative and creative ways.

A Future-fit Fiduciary for a Future with AI.

As the title of this paper clearly states, the direction of vision here is to reconfigure a *future-fit* fiduciary. Alongside issues of considering sustainable business and finance practices with regards to the natural environment and future generations, the (imagined) future for which the fiduciary will be reconfigured must also include the use of AI (Blackman, 2023; McCausland, 2023) and specifically the implications of its use in the context of fiduciary practice. Some of these issues have been touched on throughout the paper, particularly in relation to the extent to which the use of AI will be limited by its inability to be contextually aware, or to have the ability for nuance and adaptability present in human reasoning – the sort of reasoning the collective phronesis in Stage One will (re)incorporate into fiduciary practice, to correct the recognised rationalistic turn. Another related point worth noting here in the context of AI and the proposed reconfigured fiduciary is recent work in the area of *artificial phronesis* (Sullins, 2021). This concerns debates regarding the possibility of AI being successfully and sufficiently programmed to make phronetic judgements, when, as it is noted, such judgements are always highly contextualized, so preconfigured answers will fall short and not suffice. As Sullins notes, citing Ess “There is no general rule/procedure/algorithm for discerning which values, principles, norms, approaches apply; rather these must be discerned and judged to be relevant in the first place, before we can proceed to any inferences/conclusions about what to do.” (Ess, 2009: 25) (Sullins, 2021; 140). With such clear difficulties facing AI programmers and system designers, the possibility of avoiding

programming AI with moral reasoning ability is debated, but considering the intended widespread use of AI in human impact contexts, this option is recognised as highly problematic and unviable. As it currently sits, then, the possibility of achieving artificial phronesis in AI is some way off, and as Sullins notes, “It is an ultimate goal, but real systems will fall far short of this objective for the foreseeable future.” (Sullins, 2012, 142). This observation regarding AI’s current capability – which will hold for the “foreseeable future’ – emphasises that the collective phronesis in the future-fit fiduciary will remain in the realm of human reasoning for some time to come. This further strengthens the need to reconfigure the fiduciary and ensure that the opportunity for the development of judgement and reasoning is ‘built back’ into the process, alongside questioning the use of overly rationalistic finance theory (MPT) that undermines and weakens the development of such reasoning capabilities.

A Final Note on the Future-fit Fiduciary Character.

In light of the preceding proposal, and the changes the reconfiguration entails, some final thought needs to be given to the capabilities and characters of the fiduciaries who will be entrusted with the tasks involved. To do this, reflection on the currently recognised character requirements of fiduciaries would be helpful, to ascertain where adjustments may be required. Bearing in mind and recalling Richardson’s earlier observation that “Modern investment law transplanted these [fiduciary] arrangements for the private trust into a very different context.” (Richardson, 2011: 6), whilst also reflecting on the numerous issues raised regarding how modern investment law (think the application of neoclassical economic ideology and hyper-rationalism) has impacted the fiduciary, and subsequently the fiduciary character, we would do well to consider what the desirable fiduciary character was *before* such transplantation took place. Indeed, considering the return to reasonableness which Lydenberg calls for – and which Stage One of the reconfigured fiduciary requires – *a retrospective look at the fiduciary character may be more beneficial when reflecting on a future-fit prototype.*

The work of Goldstone et al (2013, 2016) – specifically *The moral core of trusteeship: How to develop fiduciary character* (2013) - is a particularly useful resource for this purpose, particularly as they start by highlighting how the transplantation noted above has generated roles which have increasingly diverged away from ‘the moral core’. They write (in the context of the US) that, “...trustee-like roles, such as directors, members, trust protectors and trust advisors have emerged, which, in combination with diverse state laws allowing delegation of responsibilities, have obscured the nature of trusteeship and left many people confused as to what, if anything, a trustee does.” (Goldstone et al, 2013: 49). In

addition to identifying the importance of the roles of principles in fiduciary practice, the authors central message is to convey that trusteeship is not achieved by adhering to a set of rules, but is instead rooted in expectations regarding the personhood or character of the fiduciary. They write that “The trust relationship has been expressed not just in rules governing the behavior of the recipient of property for another (the trustee), but also in expectations for the character of that person as manifest by conduct. This is a crucial distinction: rules versus persons. As a result, attention to the person of the trustee and the quality of her discretion appears again and again in decisions construing the trustee’s duties.” (Goldstone et al, 2013: 50), adding later that “...we conclude that what’s crucial to good trusteeship isn’t primarily a set of rules, but rather the development of a type of character, which we call “the fiduciary character.” (*Ibid.*). This is a particularly interesting insight when we consider the rationalised mathematical rule following approach to the fiduciary that has usurped the reasonable approach. It is also interesting when we consider the recognised limitations of AI in the context of the fiduciary, which, as we have seen, is programmed to follow a rule-approach coded into an algorithm.

One of the central fallouts from these observations regarding the importance of fiduciary character – which, the authors underscore must develop a settled habit of choosing well and caring well – is how it can be developed. For this end objective the authors suggest that such character developmental work “involves shaping the vision of the good through attention to particular examples. We call this work exercising “moral imagination.” (Goldstone et al, 2013: 51). They emphasise that character development is an exercise, a work in progress, a process, highlighting that “Aristotle defines character (*ēthos*) as a type of habit (*ethos*) that’s been shaped by choice into an active condition (*hexis*) of choosing well.” (*Ibid.*). It is the practice of choice, as it is the practice of *phronesis*, that develops the character. For a future-fit fiduciary, then, it is the practice of and participation in collective *phronesis* and collective imagination in Stage One that contributes to future-fit fiduciary character development, and it is also the act of choosing well in the craft and skill of *techné* in Stage Two. Indeed, it is telling that the importance of the consistent practice of both that is underscored by scholars exercising caution of the use of AI when they note that “...we have to be very careful about how we introduce social robotics into our lives over the next few decades, since these machines might produce an environment in which the development of human character is reduced.” (Sullins, 2021: 145). The fiduciary character can only then be achieved through the active human exercise of both *phronesis* (Tsai & Ku, 2024) and *techné* – as laid out in the proposed reconfigured fiduciary - in order for the moral core of the future-fit fiduciary character to be developed.

To conclude, “It is time for fiduciaries to return reason, with its insistence on the outward-looking acknowledgment of one's duty to others and the importance of the sustainability of future generations, to its rightful place alongside self-interested rationality.” (Lydenberg, 2014: 378) – to which I would add that this route to return must include both future-fit fiduciaries and beneficiaries alike, in a reconfigured fiduciary practice which balances collective phronetic agency with the skill of techné at its core.

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