Original

The blockchain DAO as an evolution of the North American trust: Legal and philosophical aspects

La blockchain DAO como una evolución del Trust Norteamericano: Aspectos jurídicos y filosóficos

DOI: https://doi.org/10.33324/dicere.v2i1.877

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Recibido: 11-01-2025 **Revisado:** 14-04-2025 **Aceptado:** 15-05-2025 **Publicado:** 30-05-2025

Abstract

This article explores the philosophical foundations of the North American trust and its connection to blockchain technology, proposing that Decentralized Autonomous Organizations (DAOs) represent its direct technological evolution. Rooted in Common Law traditions, the trust derives from an emphasis on negative liberty, where individuals shield their property from state intervention by transferring legal ownership to a trustee. This arrangement maintains autonomy and resists potential shifts in government regulation or policy. DAOs, driven by self-executing smart contracts, retain the trust's fundamental purpose, protecting assets and ensuring independent governance, while eliminating reliance on a single fiduciary. By dispersing administrative power across a decentralized network, DAOs enhance resilience against political and economic unpredictability. However, European jurisdictions, influenced by Rousseau's notion of positive liberty, traditionally subordinate property to the collective interest, thus restricting trusts and, more recently, imposing regulatory measures on blockchain organizations. In Europe, this idea often collides with legal frameworks that prioritize public interests, leading to regulatory scrutiny of blockchain-based systems. Despite these challenges, DAOs continue to refine the trust's core principles in a technologically advanced environment, offering security and autonomy. Ultimately, this evolution reaffirms the enduring tension between individual freedom from governmental authority that underpins the Anglo-Saxon legal tradition.

Resumen

Este artículo analiza los fundamentos filosóficos del fideicomiso norteamericano y su conexión con la tecnología blockchain, planteando que las Organizaciones Autónomas Descentralizadas (DAOs, por sus siglas en inglés) representan su evo-

Cómo citar: Rivero-Silva, S. (2025). The blockchain DAO as an evolution of the North American trust: Legal and philosophical aspects. *DICERE Revista De Derecho Y Estudios Internacionales, 2*(1), 1–19. https://doi.org/10.33324/dicere.v2i1.877

lución tecnológica directa. Basado en las tradiciones del Common Law, el fideicomiso surge del énfasis en la libertad negativa, mediante la cual los individuos protegen sus bienes de la intervención estatal, al transferir la propiedad legal a un fiduciario. Este arreglo preserva su autonomía y resiste posibles cambios en la regulación o política gubernamental. Las DAOs, operadas por contratos inteligentes autoejecutables, conservan el propósito fundamental del fideicomiso: proteger activos y asegurar una gobernanza independiente, al tiempo que eliminan la dependencia de un único fiduciario. Al distribuir el poder administrativo a través de una red descentralizada, las DAOs fortalecen la resistencia frente a la imprevisibilidad política y económica. No obstante, las jurisdicciones europeas, influenciadas por la noción de libertad positiva propuesta por Rousseau, tradicionalmente subordinan la propiedad al interés colectivo, restringiendo así los fideicomisos y, más recientemente, imponiendo medidas regulatorias a las organizaciones basadas en blockchain. En Europa, esta idea frecuentemente choca con marcos legales que privilegian los intereses públicos frente a los privados, lo que genera una vigilancia regulatoria sobre los sistemas basados en blockchain. A pesar de estas dificultades regulatorias, las DAOs continúan desarrollando los principios centrales del fideicomiso en un entorno tecnológicamente avanzado, ofreciendo seguridad y autonomía. Finalmente, esta evolución reafirma la tensión permanente entre la libertad individual frente a la autoridad gubernamental, característica fundamental de la tradición jurídica anglosajona.

Keywords

DAO, Blockchain, Trust, Trustee, Common Law, Civil Law

Palabras clave

DAO, blockchain, fideicomiso, fiduciario, derecho anglosajón, derecho continental.

1 The Philosophical Origin of the North American Trust and Its Connection with Blockchain Technology

Scholarly doctrine unanimously recognizes the significant social role of the North American trust, referred to in English simply as “trust” (Rounds, 1990, p. 165). This legal construct is central to Common Law–based societies and, as we shall see, exists in multiple variations and adaptations. It plays a fundamental role in two main ways: (a) as a counterbalance mechanism in corporate governance, serving as a key tool in the management of property or business belonging to others, an inherent feature of the Common Law legal tradition (Bruner, 2009, p. 600). Moreover, (b) the trust is intrinsically linked to the relationship between North American society and the State, within the context of the “negative liberty” put forth by Isaiah Berlin (1958, p. 169) and subsequently expanded upon by prominent liberal economists such as Hayek (1960) and Mill (1959). Today, this philosophical concept of liberty translates into the social right “to be

left alone" by the State. Thus, the trust provides citizens with a mechanism that allows them to protect their assets autonomously by segregating them from their personal estate. This aligns with the ideal of individual autonomy in the face of external interventions (Hansmann & Mattei, 1998, p. 434) and serves as a safeguard against potential governmental regulatory shifts.

This ideological standpoint underscores both the legal importance of the trust and its influence on social and economic dynamics. From a viewpoint, it thereby becomes an instrument that balances individual autonomy with state structures. Consequently, we are dealing with a perspective that, by its very name, completely diverges from the concept of "positive liberty" formulated by Rousseau (1762) and later developed by Hegel (1991) or Taylor (2015), a viewpoint that has profoundly shaped continental Europe, heir to the Civil Law Roman tradition in contrast to the Anglo-Saxon Common Law. In other words, trusts fit well in societies of Anglo-Saxon origin because they adhere to the notion of individual liberty and the corresponding ability to protect one's own work, particularly against the State. Likewise, collective trusts need not be individual in nature; instead, they can serve a form of voluntary associational framework with the same objective as that of the individual trust: protecting property from third parties (including the State) and administering it according to ethical and sustainability criteria that may conflict with the ideology of the incumbent government. In this regard, scholars have also highlighted that the "associative" character of North American society is inseparable from its legal system (Skocpol, Ganz & Munson, 2000, p. 529).

By contrast, in continental Europe, the concept of the social function of property and the subordination of private property to social interests took root. French scholar Duguit (1912) and the Italian scholar Silvestrini (2010, p. 283) dedicated extensive prose to this philosophy and its legal application. Separately, David, Jauffret-Spinosi, and Goré (2016) noted that this conception in Europe fundamentally stems from a "Rousseauian" mindset. Along the same lines, Emerich (2018) observes that this perception of property and wealth has become one of the hallmarks of European *Civil Law*, itself a product of Roman law and in opposition to the Anglo-Saxon Common Law. This is precisely why the North Americans' trust, which allows for asset protection against the State, has been banned or severely restricted in much of continental Europe (Smith, 2012, p. 157). Similarly, this also helps explain one of the reasons why the European Union is now actively regulating blockchain structures that might produce similar effects to those of a North American trust, for instance, DAOs, as discussed below. Regarding Europe's pervasive regulation in this area, we can refer to measures such as the Markets in Crypto-Assets Regulation (MiCA), MiCA 2, the Transfer of Funds Regulation (TFR), the Anti-Money Laundering Directive 6 (AMLD6), the Digital Operational Resilience Act (DORA), the European Crowdfunding Service Providers Regulation (ECSPR), the European Payment Services Directive 2 (PSD2) and PSD3, the Pilot Regime for Distributed Ledger Technology, and finally, the EU Taxonomy Regulation. Indeed, a specific report by the European Central Bank has already underscored the importance of the European Union having targeted legislation to regulate blockchain Decentralized Autonomous Organizations (DAOs), (Central European Bank, 2023) in order to prevent (a) the provision of unregulated investment services, (b) their use for tax evasion, or (c) the possibility of trustees or beneficiaries (essentially, voting-token holders within the DAO structure) remaining anonymous to EU authorities.

Having identified the controversial political nature of the trust, how can we define it? The most canonical definition this humble author has found to date is that of Langbein (1995, p. 627), which states: *"The trust is*

defined as 'a fiduciary relationship with respect to property,'... The owner, called the settlor, transfers the trust property to an intermediary, the trustee, to hold it for the beneficiaries. We treat the trustee as the new owner for the purpose of managing the property, while the trust deal strips the trustee of the benefits of ownership." This interpretation is articulated in terms of a "legal" or "fiduciary" relationship among (a) the settlor, who creates the trust; (b) the trustee, who receives it solely for administrative purposes; and (c) the beneficiary, who benefits from the trust but does not participate in its management. Other authors, however, understand the trust, arguably in a more realistic manner, as an instrument rather than a strictly defined legal or fiduciary relationship. For instance, Newman (2008, p. 4) offers the following definition: *"Typically, the trust instrument provides that the settlor may revoke the trust at any time, in which case its assets are to be returned to the settlor, and designates beneficiaries to whom the trust assets are to be distributed, or held for the benefit of in one or more now irrevocable trusts, following the settlor's death."*

Hence, in realistic terms, we can identify a dual definition. The first is formal and undeniable: a three-way legal relationship whereby an owner conveys the fiduciary or equitable title of an asset to a third party for management, with the benefits directed toward a specific goal. Secondly, there is the reality familiar to attorneys but often unrecognized in the law: typically, the settlor will set extremely restrictive fiduciary conditions that render the trustee a mere administrator of what "used to be" the settlor's property. The advantage is that the property no longer forms part of the settlor's assets and thus cannot be seized, yet the settlor maintains a certain degree of control via the rules imposed upon the so-called trustee. In the United States, some jurisdictions even allow the segregated asset to acquire, to some extent, the legal status of an entity with its own legal personality, capable of acting independently in court proceedings or entering into contracts with third parties, while the trustee essentially serves as a mere administrator. These kinds of trusts are called "Statutory Trusts," prevalent in Delaware (Del. Code tit. 12, §§ 3801–3862), Nevada (Nevada Legislature, 2011), or South Dakota (South Dakota Codified Laws on Trusts, SDCL tit. 55). Ordinarily, the beneficiary might be the community or the settlors' families (in the case of a collective trust) or, if an individual trust, the settlor's own family or some other relatively opaque legal structure that eventually leads back to the settlor. In other words, the North American trust retains a dual character, one formal and noble, and another more concrete and somewhat less glamorous.

To understand this duality, and particularly the unusual figure of the trustee, Asante (1965) identifies the trust as a legal construct emerging from the distinction between legal and equitable interests in property, a distinction nonexistent in Civil Law jurisdictions. This in turn makes it significantly more difficult for, for instance, European notaries (as is the case in Spain) to apply such structures in their day-to-day practice (Cid, 2017, p. 183). When an asset, for example, a piece of real estate, is segregated from its owner's estate (and is not organized as a Statutory Trust with quasi–legal personality status), two types of ownership emerge:

On the one hand, legal ownership, vested in the fiduciary (the trustee), who has formal and administrative control over the assets. Under Anglo-American law, the trustee is the legal owner of these assets. However, from a European legal perspective grounded in Roman law, the trustee does not possess the minimum ownership attributes the law confers upon the holder of an object. Historically described by famed Roman jurists Gaius and Ulpian, these attributes, *ius utendi* (the right to use), *ius fruendi* (the right to enjoy benefits), and *ius abutendi* (the right to consume or dispose), constitute

absolute control over the item (Földi, 2009, p. 358). The evident reason is that the trustee's legal ownership more closely resembles, to a European jurist, the figure of an "administrator of another's estate" rather than that of a genuine owner. This peculiar type of legal ownership authorizes the trustee to conduct legal transactions, such as routine management, property sales, or mortgages, always within the limits and conditions spelled out in the trust's founding agreement by the settlor. Thus, ownership is neither absolute, nor is it a mere "bare title" in the Roman sense, as codified, for example, in Article 489 of the Spanish Civil Code or Article 981 of the Italian Civil Code.

On the other hand, there is equitable ownership is held by the beneficiaries, who have the right to receive the benefits derived from these assets (e.g., generated income or usage rights). Although they do not directly control the assets, they have legally protected rights to ensure the trustee administers the property on their behalf. Various authors have focused on the nature of these particular rights of the beneficiary vis-à-vis the trustee (Zaccaria, 2019), which largely depend on what the settlor stipulated in the foundational trust agreement. Doctrine (Jaffey, 2015, p. 380) concurs that, regardless of the settlor's specific arrangements, the beneficiary's generic rights against the trustee include the full enforcement of the trust's provisions for the beneficiary's own advantage, which can be summarized as: (a) enforcement, (b) legal challenges to the trustee's actions, (c) distribution of trust benefits, and (d) removal of the trustee itself, raising the pressing question of who then assumes ownership of the trust property, a matter that is highly advisable to anticipate in the founding document.

In this context, certain critical commentators (Knobel, 2017, p. 31) cast a negative light on the trust. Their main critique is its potential for tax evasion and for circumventing enforcement orders. This concern echoes the apprehension voiced by others regarding blockchain structures, particularly DAOs, which we will explore later, and fully offline Cold Wallets, immune to judicial orders (Haryadi et al., 2023, p. 98). It is precisely at this junction that the North American trust and complex blockchain-based structures converge as mechanisms that yield analogous outcomes and attract comparable scrutiny, at least in continental Europe. This is especially pertinent given that statutory trusts are often difficult to seize in some states, such as Nevada (Nevada Revised Statutes, NRS § 163, 2023), Delaware (Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., 2023), or California (California Probate Code §§ 15200–15210, 2023), since the beneficiary frequently remains relatively anonymous, similar to holders of cryptocurrency or NFTs in blockchain technology.

This anonymity and the capacity to evade State action suggest certain parallels between trusts and blockchain structures, parallels that become more evident once one understands the creation process of the latter. Any decentralized blockchain organization, such as a DAO, is initiated by a settlor, who is the party that generates the so-called Smart Contract. This concept (Rivero Silva, 2024, p. 48) is linked to "immutable operating rules" of a dual (technical and legal) nature, which must be adhered to by all who join that particular blockchain ecosystem or community. In other words, just as there are settlors in a trust arrangement, there are also foundational agreements that subsequent participants must respect. Once the established blockchain community begins to function autonomously under the rules of the relevant Smart Contract, this becomes inevitably reminiscent of a statutory trust, which similarly exhibits autonomy. After its deployment, the Smart Contract cannot be altered, ensuring impartial execution, much like the beneficiaries' rights mentioned earlier. In this sense, the blockchain itself and its consensus mechanisms assume a role analogous to that of a fiduciary by guaran-

teeing that the rules are executed as programmed and that no single actor can intervene to modify or manipulate outcomes. In both cases, the immutability of the trust agreement or Smart Contract not only wards off manipulation but also fosters a solid foundation of confidence in the structure's autonomous operation.

Ultimately, both North American statutory trusts and blockchain communities governed by consensus mechanisms such as DAOs constitute self-sustaining, enduring tools that may help circumvent regulatory shifts or facilitate the development of collective initiatives for the benefit of a family or community. All this occurs within a common ideological framework that opposes collectivism, informed by the Rousseauian notion of positive freedom discussed earlier. That is to say, it is founded on the idea that private property cannot, at least not absolutely, be subject to the general interest, as Silvestrini and Duguit have noted in their commentary on continental Europe.

2 The Blockchain DAO and Its Analogous Nature to the Statutory Trust

A DAO is generally defined as a decentralized organizational structure based on blockchain technology (Santos & Kostakis, 2018). It operates autonomously, using Smart Contracts, akin to the organization's "constitution", to execute decisions and actions without direct human intervention. In essence, it is a technological innovation that represents a disruptive shift in how individuals self-organize, manage, and govern the virtual or digital communities they voluntarily join. All of this stands in contrast to the "standard framework" offered by institutions under state control, such as foundations, associations, joint-property communities, or various types of commercial corporations. Liu et al. (2021, p. 205) provide the following concise definition of a DAO: *"an organization built on smart contracts that can execute autonomously."*

DAOs operate according to a doctrinal concept called "logarithmic authority" (DuPont, Gkikaki & Rowan, 2020, p. 105). In other words, what the trustee in an American trust would be is partially or fully automated in a DAO, governed purely by the foundational agreement of the DAO itself, the Smart Contract. Consequently, the authority to carry out the DAO's foundational agreements is relegated to a mere algorithm, which does not heed governmental orders and cannot slow its operations based on external circumstances, barring, cyberattacks or force majeure.

DAOs can be extremely versatile, depending on what has been established at their founding by the equivalent of the settlor. In certain contexts, a degree of "democratic" functionality can be granted to DAO community members, insofar as the original Smart Contract allows for certain modifications and/or adaptations (Rikken, Janssen & Kwee, 2023, p. 11). Therefore, DAOs, conceived as an evolution of traditional trusts, enable an automatic, fluid dialogue among settlors who may also be beneficiaries, generating voting rights and automatic audits, much like what occurs in a trust. In this context, one could argue that the DAO is an organizational structure (we will later examine its legal underpinnings) that provides strong legal certainty, thanks to the general benefits of blockchain technology: total transparency in its operations and the prevention of

fraudulent or malicious conduct within the organization via different voting models and automated functioning under "logarithmic authority" (Santana & Albareda, 2022, p. 182). Ultimately, one could describe it as "a further turn of the screw" in terms of counterbalances and security mechanisms relative to the traditional trust.

Thus, both the trust governed by the settlor's foundational agreement and the DAOs governed by blockchain-based Smart Contracts serve as tools for structuring complex relationships in an environment where significant trust is placed in the trustee or in the blockchain node community acting as trustees. Although they operate in distinct technical spheres and rely on different administrative formulas, both share a common underlying logic: they establish reliable systems through clear rules and self-sustaining mechanisms designed to guarantee compliance. The key difference is that blockchain eliminates the human component of the fiduciary, instead relying on algorithms and distributed consensus as the bedrock of the modern fiduciary relationship.

The legal status that blockchain DAOs deserve remains uncertain. Some authors suggest that DAOs might fit the mold of a private associational structure (Bergström, 2023), that is, a legal entity independent from its members. Indeed, a DAO is essentially a group of individuals who vote and manage an entity (trustees) under rules previously set by what is effectively one or more settlors, all for a specific purpose that may be profit-driven or altruistic. Nevertheless, the question of asset segregation between DAO members and the DAO itself is far from settled. In this regard, the U.S. Commodity Futures Trading Commission (CFTC) held the members of the "Ooki" DAO jointly liable for the organization's actions (McGuire, 2023, p. 1226). That said, the CFTC's standing to pursue claims against the Ooki DAO members rested on the DAO's classification as an "unincorporated association," i.e., an association not duly registered with the relevant legal authority. Moreover, the DAO in question provided certain financial services, which, unsurprisingly, are subject to strict regulations. For this reason, using a DAO-type blockchain structure as an investment platform effectively distorts the DAO's underlying nature and typically requires different treatment from an ordinary DAO established for collective asset management, whereby the settlor contributes some benefit and the trustees hold voting rights.

In short, there is no comprehensive legal framework that can be confidently applied to DAOs to ensure that trustees' assets remain distinct from those of the DAO itself, assuming one can even regard a DAO as having its own legal personality. Consequently, some authors note that any future regulatory scheme for such blockchain structures must promote transparency and designate representatives to interface with government agencies (Furnari & Villani, 2024, p. 19). This development would move DAOs closer to an American-style LLC (limited liability company), which might also undermine the nature of these structures. Typically, a DAO does not aim to develop a business venture or facilitate collective investment structures. It is true that, a DAO can pursue such activities, but at its core it is simply a means of administering a "something" originally contributed by the settlors who created the Smart Contract, with a particular purpose in mind. Thus, it appears better suited to the administration of goods or assets than to the offering of investment services.

Nonetheless, that is precisely the solution adopted by the State of Wyoming in the United States. Under the so-called Wyoming DAO Supplement, DAOs can gain their own legal personality by registering publicly as a sort of state-level LLC (Gässl & Weidinger, 2023, p. 21). This is no trivial matter, as U.S. legal scholarship generally accepts that members of an LLC can, under certain circumstances, be liable to one

another for negligence or private breaches (Golding, 1994). In effect, Wyoming law stipulates that DAO trustees can be held liable among themselves for damages incurred in a "commercialized and registered" DAO classified as an LLC. It also seems unwise to assume that a DAO would necessarily be profit-driven as an LLC typically would be, given that, as we will see, the end goal may be social, cultural, or environmental rather than financial. That is, the DAO's beneficiaries might not be natural or legal persons at all, but rather the protection of a specific environmental ecosystem or the management of certain plots of land or digital assets. Likewise, note Vermont's Limited Liability Company Act, which allows DAOs to register under what it calls a "Blockchain-Based LLC," effectively conferring upon DAOs the status of a traditional LLC (Mienert, 2021, p. 5) while simultaneously enabling decentralized management and, of course, requiring the disclosure of certain information to the State (DAO members, managed assets, Smart Contract details, etc.), all of which remain anonymous in original DAOs.

Malta is the second jurisdiction to enact specific legislation on DAOs, via its 2018 Digital Innovation Authority Act (Hude, Iglicar & Mondoh, 2023). Under this law, DAOs are categorized within the broad field of "innovative technology arrangements." As such, they are accorded their own distinct legal status, separate from the DAO's members, and required to appoint a "technology agent." This intermediary figure ensures compliance, serves as the legal point of contact, and addresses technical or regulatory challenges facing the DAO. Similarly, the legislation prescribes mechanisms for validating and overseeing the DAO's foundational Smart Contracts, ensuring that the DAO's self-executing processes remain transparent and accessible to its members.

Thirdly, Singapore represents another jurisdiction that has promulgated certain regulations regarding DAOs. In Singapore, DAOs can register with state authorities as traditional corporations under the Accounting and Corporate Regulatory Authority (ACRA). This model allows DAOs to function as what Singaporean law terms Private Limited Companies (PLCs), granting them legal personality and limiting their members' personal liability. While this approach facilitate DAOs' integration into the economic system, some authors contend that it may run contrary to the principle of decentralization that defines these blockchain structures (Bodellini & Dalvinder, 2021). Moreover, as in Malta, this regime requires the appointment of a resident "director."

Finally, in Switzerland, rather than adopting an LLC approach, which is typically associated with Anglo-American jurisdictions, the legal framework more closely resembles that of a foundation or an association. This approach is arguably more faithful to the DAO's actual nature (Caviezel, Spychiger & Stallone, 2023, p. 370), since (a) it acknowledges that not every DAO is profit-oriented; (b) it accepts that the initial assets contributed by a benefactor to launch a DAO can be managed autonomously and segregated from their original owner, as occurs with Statutory DAOs; and (c) it positions the "founders" in a manner much more akin to that of trustees. Nonetheless, even though Swiss law allows the formation of such associative entities through DAOs, in my view, any attempt to "nationalize" DAOs essentially undercuts their blockchain nature, originally intended to be anonymous, decentralized, and free from governmental interference.

In my opinion, DAOs do not require a legal structure identical to that of a non-blockchain, conventional entity. Evidently, had the DAO's original settlors wanted to create an American LLC or PLC, they would have done so. Similarly, if they had wanted to establish a foundation using the assets they provided to the community of trustees who manage the DAO, they could have achieved it that

way. Therefore, every effort to "equate" DAOs with other legal structures merely distorts their inherently decentralized, non-state-controlled character. In this same vein, as previously noted, DAOs and Statutory Trusts share essential elements, so if one were to legally analogize DAOs to something already established, I would unhesitatingly opt for the Statutory Trust.

It seems that the main regulatory advances concerning DAOs are designed to undermine their blockchain nature and bring them closer to ordinary, state-controlled structures. If the future in Common Law jurisdictions, or ones especially open to technology, involves subsuming DAOs into business corporations, the outlook is not promising for their adoption in continental Europe, shaped by Roman law and generally viewing decentralized associational forms as a potential threat to its tax revenue. The original DAO is decentralized and operates independently from state intervention. It is taken for granted that DAOs must coexist with national regulatory authorities and, for instance, designate a domicile so that disputes among the trustees responsible for the voting system, or between the original settlor and the lack of financial return for the intended goal, are handled in the appropriate jurisdiction. Beyond these minimal "coexistence" rules, equating DAOs with commercial entities is, in my view, both erroneous and detrimental to their essence.

In the context of the analogy between data trusts (fiduciary arrangements for mere access to certain confidential data) and DAOs, some authors (Nabben, 2021, p. 8) stress the importance of "trust tokens" or "reputation tokens," which refine governance or administrative formulas within the DAO following the original settlor's establishment of the Smart Contract. Thus, among the many variants available for Smart Contract configuration, it is possible from the outset to grant certain voting or qualified veto rights and to define rules for distributing these rights so that the original settlor knows that specific trustees, who enjoy special trust, will safeguard the DAO's best interests. This is yet another clear similarity to the confidence placed by the settlor in a trustee for a traditional trust, regarding how that trustee should administer the trust for the DAO's benefit.

Depending on the type of DAO and its purpose, the creation and distribution of trust tokens can indeed generate internal tensions among DAO participants (Merk, 2024). Nonetheless, they also enhance cohesiveness in digital communities participating in the DAO, given that they provide reputational certainty: the individuals responsible for those tokens (in essence, voting and qualified management rights within the DAO) possess a certain auctoritas initially conferred by the settlor or subsequently earned in the DAO's ongoing administration. In addition, other authors note that issuing such trust tokens leads to increased legal certainty for the DAO, because all members are aware that counterbalance measures exist to ensure the DAO's proper functioning and to prevent various forms of misuse or exploitation by trustees.

3 Land Trusts, IP Trusts, and the Various Purposes of a DAO

When considering a practical application of trusts, the first image that may come to a reader's mind might be that of complex tax-evasion structures or ad hoc methods of administering some type of estate for heirs who are not particularly inclined to reach mutual agreements. In truth, however, the nature of the Anglo-American trust is rooted in associational dynamics, and, beyond the myriad possibilities it offers, its operation can indeed be community-oriented (yet not "communist"), in the sense of being entered into *individually and voluntarily by peers*. All of this is aimed at philanthropic or land-conservation goals under commonly agreed-upon rules, existing largely (though not entirely) outside the typical commercial framework shaped by the State. Within this paradigm, we encounter Community Land Trusts (CLTs) and Conservation Land Trusts.

Community Land Trusts trace their origins to mid-19th-century theories of community development regarding landownership, articulated by Henry George. They focus primarily on providing long-term affordable housing and fostering the development of a specific community (Davis, 2010, p. 10). In other words, various landowners voluntarily decide to transfer their land to a trust for administration under a set of self-imposed rules, benefiting their own families. Thus, the trust retains ownership of the land, while individuals or entities lease it via long-term agreements with the trust's autonomous administration. This arrangement ensures that the land continues to serve as a shared community resource, safeguarded from speculative real-estate markets or particular government policies in that area. CLTs also commonly impose resale restrictions on the properties to maintain their affordability over multiple generations, preventing rapid cost increases that could displace future residents. One might thus see this as a form of resistance to government policy on rental housing or land management, allowing the group to impose its own moral and ideological ideals concerning political outcomes. In this context, other scholars link the rise of CLTs to the need among American farmers and peasants to keep land under communal control, preventing speculation and political shifts, thereby ensuring affordable access for future generations (Daly, 2024).

Conservation Land Trusts, on the other hand, prioritize the preservation of natural, agricultural, or ecological assets, frequently in opposition to State expropriation or lax State regulation (Bernstein & Mitchell, 2005, p. 48), as well as to land-management policies ideologically at odds with the property owners' worldview. In this regard, some authors have noted that these structures emerged from a form of American municipalism, enabling local communities to retain ownership of environmentally valuable resources that State or federal governments aimed to acquire (Brewer, 2003). These trusts typically acquire or manage land to safeguard its environmental value and often make use of conservation easements, historically linked to the private sector but potentially subject to certain agreements with government agencies. These legal instruments restrict development or specific land uses to ensure environmental protection. By 2015, Conservation Land Trusts were managing more than 16.8 million acres via easements, nearly double the 1990 figure (Parker & Thurman, 2019, p. 340). Nevertheless, this legal structure has not been free from criticism, as it has historically been associated with tax benefits for wealthy individuals (Merenlender et al., 2004, p. 69). Unlike Community Land Trusts, Conservation Land Trusts devote less attention to human habitability and focus more on maintaining

the ecological integrity of the land. Consequently, governance tends to be more centralized, guided by scientific criteria and the objective of maximizing ecological benefits. Lastly, various authors have advocated for the development of hybrid structures, targeting both land-access protection and environmental conservation (Michels & Hindin, 2022, p. 49).

DAOs share with Community Land Trusts and Conservation Land Trusts the notion of a community-based form of property, created freely and voluntarily in adherence to long-term sustainability principles and the safeguarding of resources from external forces and political fluctuations. A noteworthy example is CityDAO, which in 2021 acquired 40 acres of land in Wyoming for $8 million via a decentralized, blockchain-based model. This project was made possible by the state legislation we mentioned in the previous section, which permits DAOs to operate as (quasi) independent legal entities. Participants in CityDAO obtain "citizenship NFTs" (essentially trust tokens) that grant voting rights but do not confer direct ownership of the land, thus, participants effectively act as trustees. In November 2021, the community voted to dedicate this parcel, named Parcel 0, to conservation and wildlife, underscoring its commitment to sustainability goals akin to those pursued by Conservation Land Trusts. Furthermore, CityDAO explores decentralized governance through flexible frameworks such as guilds and other specialized projects, though it continues to face questions regarding financial sustainability (Rong & Mao, 2023, p. 4).

For its part, Kolektivo DAO operates in ecosystem regeneration and sustainable development in Curaçao. Since 2018, it has undertaken projects including the restoration of hundreds of hectares of degraded land, funded by a blockchain-based circular economy. In 2022, Kolektivo launched several reforestation and agroforestry initiatives designed to optimize natural resource use and mitigate climate-change impacts. These projects generate carbon and biodiversity credits that function in practice as tradable tokens, and their monetization helps financially sustain the initiatives. Kolektivo also fosters community engagement by involving local residents in strategic planning and execution, thereby boosting the region's economic and environmental resilience (Kolektivo, 2022). Both these cases illustrate how DAOs can adopt principles of community-based ownership and conservation, coupling them with technological innovations that are blockchain-driven and, by nature, decentralized.

Doctrine widely agrees that property rights, including real-estate rights, lend themselves to tokenization. In other words, they can undergo "digital packaging" and become "inseparably associated with an NFT," so they can then be traded on specialized blockchain platforms such as OpenSea (Rivero Silva, 2024, p. 51). In practice, acquiring an NFT could automatically confer a particular property right over real estate. This possibility arises from the principle of contractual freedom enshrined in almost all European civil codes, such as Article 1255 of the Spanish Civil Code, Article 1322 of the Italian Civil Code, and Article 405 of the Portuguese Civil Code.

In essence, parties can freely choose how to market their properties, with only the limits set by law, morality, and public order. Hence, so long as the law does not prohibit tokenizing assets via NFTs, and the technical and legal aspects are clearly defined in Smart Contracts, this remains a viable option. Similarly, under the Roman-law principle of *prior tempore, potior iure*, real-property rights could also be managed through DAOs, just like the Community Land Trusts and Conservation Land Trusts in the United States. Therefore, the growth of DAOs enables the decentralized administration of land, resembling CLTs. This, in turn, constitutes an advancement that could be ex-

ploited by libertarian utopias with aspirations of land management or by groups of citizens who wish to subject their land to an administration with a certain degree of independence and moral or ideological standards, essentially resisting the default state norms that would apply in the absence of a DAO.

In this vein, Land DAO (Landdao.io, 2025) stands out as a global management and governance initiative targeting what its management team calls "Real World Assets" (RWA). More concretely, this entails properties in Africa, Asia, and the United States, for philanthropic goals but without ruling out the possibility of profit through private trading of the DAO's own rights. Admittedly, some authors point out (Manski, 2017, p. 511) that the tokenization of land can produce inequalities for local communities. In that regard, the cooperative movement is encouraged to adopt blockchain solutions to gain an edge over corporations and autocratic governments. Another sector of scholarship cautions about the legal uncertainty of vesting certain rights in a DAO that, by its blockchain nature, is partly vulnerable to what is known as the "51% attack" (i.e., trustee nodes could be hacked, and their owners lose control of voting rights) (Vos, Lemmen & Beentjes, 2017, p. 12). Additionally, one must not overlook that in continental Europe, shaped by Civil Law legal systems, the transfer of title over land or real estate (so-called real property rights) is inextricably linked to (a) notarized validation of the transaction and (b) registration of said transaction in a public registry under a series of strict parameters. Consequently, land management via DAO in a context of minimal regulation could certainly cause friction in jurisdictions far removed from the agile Common Law model.

Within this same context, if the tokenization and subsequent DAO management of assets includes real-property rights, why not intellectual-property assets? DAOs can be crucial for artists whose work is censored in their own country, as well as for intellectuals and entrepreneurs. We argued earlier that subjecting DAOs to the legal framework of a standard business entity is misguided; here is a living example of why that would be an error for domestic legislators. A DAO allows a protest song condemning a repressive government to be transferred into it, thus functioning as a sort of digital trust, where selected trustees manage it for the benefit of the artists, who remain in that dictatorial setting, or for a philanthropic cause. In this way, the patrimonial components of intellectual-property rights (namely copying, reproduction, fixation, public communication, distribution, translation, modification, and subtitling) remain sheltered from a government's repressive actions. The same would hold for censored books or the exploitation of business ideas facilitated by know-how or trade secrets. Ultimately, one should view the DAO as a digital evolution of the trust, featuring myriad possibilities, including resistance to hybrid or dictatorial regimes.

Various authors suggest that administering intellectual-property assets via blockchain-based mechanisms like DAOs might mark a significant advancement in transparency and security (Alqarni, 2024). Overall, the prevailing outlook on this phenomenon is essentially positive. Yet the idea of intellectual-property assets managed by DAOs simply represents an evolution of IP trusts, a setup quite common among internationally renowned artists (Ado, Deconcini & Matson, 2016, p. 107), for instance, in states such as Delaware or Alaska. Essentially, what a DAO aspires to accomplish is what trusts have long pursued with respect to IP: segregating assets (in essence, the IP rights attached to them) and arranging a trust-based administrative framework entrusted to one or more trustees (which in DAOs corresponds to the aforementioned "trust tokens"), all for a social cause or the artist's own family, foresee-

ing the possibility of internal disputes jeopardizing royalty collection. Likewise, it has been customary for so-called splitsheets (legal documents attributing authorship in musical works) to evolve into "copyright trusts," i.e., management strategies in which one or a small group of attorneys (acting as trustees) administer copyright rights quasi-independently for the benefit of the artists themselves (Bell & Parchomovsky, 2014, p. 1020).

In conclusion, beyond the ideological underpinning that explains why both trusts and DAOs have been created in the first place, we find significant points of convergence in how they are managed and operated. Moreover, society has used both mechanisms for similar ends, particularly in the realms of land rights and intellectual property. Collectively, these observations reinforce the notion that the DAO constitutes an evolutionary step from the traditional Anglo-American trust in the blockchain environment.

4 Conclusions

The convergence between the Anglo-American concept of the trust and the contemporary notion of a DAO highlights the tense interplay between individual freedom and state interference, a phenomenon particularly evident in the philosophical contrast between Common Law and Civil Law traditions. From this perspective, DAOs should not be viewed as mere offshoots of the trust but rather as an evolution, or, perhaps, a technological transposition, of fiduciary mechanisms that have historically enabled U.S. society to shield its assets and projects from political vicissitudes. As a legal construct, the trust has long served as a vehicle of "self-governance over one's estate." This autonomy underscores the idea of negative liberty, wherein individuals (or collectives of individuals) assert their sphere of action vis-à-vis state intervention. DAOs, as heirs to this logic, carry autonomy to its limit by theoretically eliminating any reliance on centralized structures. They replace the human trustee with an algorithmic system that dispenses with the need for intermediaries.

This evolution does not occur without political friction. Although Common Law jurisdictions, such as the United States, have tended to accommodate trusts more flexibly and have more readily accepted the concept of decentralized legal personalities (think Wyoming or Delaware), the situation is markedly different in continental Europe. Here, the influence of Rousseauian positive liberty lingers, emphasizing the social function of property and, consequently, the subordination of personal assets to collective interest. Hence, Europe's Roman-canonical tradition endeavors to subsume DAOs within preexisting corporate forms, LLCs, foundations, or associations. This process of "nationalization", that is, the imposition of a legal framework analogous to that of commercial companies, ultimately distorts the founding spirit of a DAO, which hinges on a voluntarily formed, decentralized association wherein property and management are self-regulated, free from the oversight of a higher public authority.

Comparing DAOs with trusts is especially helpful in illustrating the practical and philosophical implications of this push for control. In its original form, the trust facilitated the creation of segregated estates

administered by a third party (the trustee) for the benefit of another person (the beneficiary), yet shielded from direct government interference or outside creditors. This protective feature is rooted in a conception of property as an individual right, not subject to constant state supervision. In similar fashion, DAOs rely on blockchain technology and Smart Contracts as a governance structure to ensure the immutability and autonomy of their that even the State encounters difficulties in intervening, seizing, or altering the organization's internal dynamics. However, while the traditional trust maintains a human fiduciary who is vested with legal ownership of the asset, the DAO disperses that responsibility across nodes or participants who collectively perform administrative functions. This design underscores the extent to which technical automation can fulfill the fiduciary role without conforming to the directives of a conventional legal system, one that, in continental Europe, must identify a specific individual or representative to bear legal responsibility.

The political dimension becomes palpable when one observes that regulatory authorities, particularly in the European Union, have enacted or proposed regulations, such as MiCA, TFR, and AMLDs, aimed at controlling blockchain-based structures. Although these measures are justified as means to combat tax evasion and criminal activity, they end up establishing constraints that clash with the decentralizing and anonymous ethos of DAOs. This scenario is not new, as the trust previously faced similar criticism in continental Europe for allegedly enabling tax opacity. However, the DAO goes even further by often dispensing with human intermediation, and its algorithmic codification renders the State's "mandatory compliance" challenging to enforce.

Although several jurisdictions, including some in Europe, have ventured into DAO legislation, examples include Malta and Switzerland, these normative approaches reveal a fundamental tension: Should the State impose a registration process, designate a responsible party, and, ultimately, subordinate the DAO to the prevailing social structure? The answer is anything but clear. On the one hand, legal certainty and the protection of third parties demand some degree of oversight. On the other hand, such a mandate entails stripping away the very philosophical principle on which DAOs rest, namely, the complete decentralization and autonomy of the community that supports them. Situations like that of Ooki DAO, whose members were pursued by U.S. regulators, illustrate how the absence of clear legal recognition may lead to collective, unpredictable liability.

In broader terms, the parallel between DAOs and trusts becomes salient when we examine the purpose of each. Whether invoked to defend a community-based vision of property (as with Community Land Trusts and Conservation Land Trusts) or to manage resources through a decentralized mechanism, both instruments aim to protect the will of those who contribute the initial assets and set the management criteria. The use of DAOs for environmental or social objectives, exemplified by CityDAO or Kolektivo DAO, epitomizes the potential of these new organizations as digital heirs to traditional fiduciary frameworks. Their ability to accommodate a wide range of interests, cultural, ecological, philanthropic, demonstrates the adaptability of DAOs in contexts where the trust, strictly understood, was limited to Anglo-Saxon regulations.

The real question, then, is whether this "evolution" of the trust will fulfill the aspirations of a global, digital society increasingly yearning for autonomy, or if the State apparatus, particularly within Civil Law systems, will impose such extensive requirements that DAOs eventually become mere replicas of conventional commercial entities. The core challenge lies in balancing legitimate state interests, legal certainty, tax collec-

tion, and third-party protection, against the decentralized, innovative essence of DAOs, which digitally embody the liberal mindset of the ancestral American trust. Thus, it is not merely a question of fad or technology; it is a fundamental debate on individual and collective freedom vis-à-vis the power of the State. In this debate, the comparison with the trust makes it clear that Anglo-Saxon jurisdictions will be more open to adoption, while continental Europe may regard these entities as both a threat and an opportunity to reevaluate the concepts of property and freedom that have shaped its legal tradition for centuries.

Conflict of interest:

The author declares that he has no conflict of interest in this article and has not received funding for its writing.

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