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Accepted Manuscript Version

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Publisher: Cogent OA

Journal: *Cogent Business Management*

DOI: <http://doi.org/10.1080/23311975.2018.1423787>



Designed By Law: Purpose, Accountability, and Transparency at Benefit Corporations

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ABSTRACT

The article explores the realization of major goals of the Benefit Corporations (BC) law, which is a corporation form designed for social enterprises in the United States in 2010. BCs have a dual mission of generating both profit and social value and hence they might have the potential to transform society. This paper attempts to observe the first movers established as BCs during the period of 2010-12. By adopting an institutional theory, the study examines the realization of the BC law's three major goals: purpose, accountability, and transparency. The paper utilizes the regulatory legitimacy concept to measure the discrepancy between design and implementation of law. The observations point out some of the challenges of establishing new innovative organizations through an institutional intervention of a law. Conclusions consist of implications of the study as well as suggestions for further studies.

Keywords: social enterprises, benefit corporations, hybrid organizations, institutional theory, regulatory legitimacy

1. INTRODUCTION

Social enterprises aim to build a hybrid organization that generates both profit and social value. In most countries, there are only two options: being a for-profit organization or a non-profit organization (Battilana et al., 2012). Benefit Corporation (BC) status, enacted as a new corporate law in 2010 in the United States (US), is one of the rare legal forms designed by legislators for social enterprises in the world (Birkinshaw et al., 2014). Since this is an experiment at the society level, our goal in this paper is to observe the very practice of BCs by using the institutionalization theory.

BC is a for-profit but socially obligated corporate form of business that shows traditional corporate characteristics such as making profit, but at the same time holds societal responsibilities. They are social enterprises since they target 'doing good' and 'doing well' by not only achieving financial return but also generating positive outcomes for society (Emerson, 2003; Zimmermann, Gomez, Probst, & Raisch, 2014). By doing so, BCs might reintegrate business and society in capitalist economies (Hollensbe et al., 2014; Rawhouser, 2015; Sabeti, 2011).

Despite high expectations from BCs (Gilbert, 2013; Haigh et al., 2015), there are few academic works on BCs in management literature (André, 2012; Everett, 2012; Hemphill & Cullari, 2014; Hiller, 2013). On the one hand, some recent papers (Stecker, 2016; Wilburn and Wilburn, 2014) are highly optimistic that the law will generate successful social enterprises. On the other hand, the majority of the current body of work comes to pessimistic conclusions (Munch, 2012; Murray, 2012; Reiser, 2011). However, these studies, mostly, do not present any empirical findings pointing towards optimism or pessimism. In addition, these

studies lack institutional perspectives, and therefore they can neither identify potential problems arising from such an institutional intervention nor offer solutions to them.

According to institutional economic and sociological theories, both formal institutions such as laws and informal institutions such as culture and social norms shape organizational behaviors (Giddens, 1984; North, 1990; Scott, 1995). Further, institutional theory points out that laws, regulations, rules and standards help to build regulative legitimacy (Zimmerman and Zeitz, 2002). Gaining legitimacy is particularly necessary for new ventures, as they need to mobilize resources from external stakeholders in their emergence (Aldrich and Fiol, 1994). Thus, the BC law offers a mechanism to gain regulative legitimacy for social enterprises in the US. When social enterprises choose to become a BC, they expect becoming credible in the eyes of their stakeholders during their early and growth stages (Suchman, 1995).

This study aims to study BCs through an empirical work. To our knowledge, there are a few studies tackling social enterprises at the empirical level (Lee and Battilana, 2013; Nichols, 2009). This will be our first contribution to the institution theory, presenting an empirical analysis of BCs, which represent a group of social enterprises in the US designed by a distinct corporate legal form. Since institutional structuring takes place in the early years of companies (Lee & Battaliana, 2013), we attempt to observe BCs in the years that follow their acquisition of a BC status. Our study collected data from the articles of incorporation and annual benefit reports of BCs established during the 2010-12 period.

Our empirical investigation of BCs aims to observe the degree of realization of the ideals of the BC law. Our second contribution to theory is the implementation of the regulative legitimacy concept in explaining the discrepancy between the goals of the BC law and their

realization by social enterprises. Having a BC title does not automatically bring any regulative legitimacy to a social enterprise as long as it actually complies with the goals of the BC law. Any failure in doing so by individual social enterprises might harm the law, since a loss of legitimacy can have detrimental effects for BCs that struggle to survive as a new organization form.

The paper has five sections. After this short introduction, section two will summarize the theoretical background along with the institutional theory and give a detailed account of BCs. Section three will explain the data and method applied, followed by the analysis in section four. The concluding section will offer a summary of the findings, the implications of the study, key limitations and some suggestions for further studies.

2. IDEALS OF THE BC LAW: PURPOSE, ACCOUNTABILITY, AND TRANSPARENCY

2.1. The Institutional Theory

Organizations are instruments designed to achieve specified goals; however, at the same time, they are adaptive systems and they change through institutional pressures imposed by their environment (Scott, 2004; Thornton, Ocasio, & Lounsbury, 2012). These institutional pressures are experienced through either soft (such as standards) or hard law (such as legal regulations) that constitute rules of the game serving to define social practices, assign roles and guide interactions with stakeholders (Rache, 2010).

Institutional logics refer to the patterned goals considered legitimate within a given sector of activity, as well as the means by which they may be appropriately pursued (Friedland &

Alford, 1991; Thornton, Ocasio, & Lounsbury, 2012). New organizational forms arise when organizations try to adopt multiple institutional logics (DiMaggio & Powell, 1983). These multiple institutional logics generate hybrid organizations that exist in different industries such as biotechnology firms incorporating science and market logics (Cooney, 2006). Recent studies point out the existence of a hybrid organization as being a more permanent phenomenon (Besharov & Smith, 2014; Mair, Mayer, & Lutz, 2015).

Nevertheless, not all literature is optimistic about hybrid organizations. Some scholars suggest that hybrid organizations are a temporary and/or unstable phenomenon (Reay & Hinings, 2009; Santos, Pache, & Birkholz, 2015). In fact, hybridity might generate problems due to contradictory prescriptions for action that are driven from multiple logics (Besharov & Smith, 2014). Organization studies have highlighted the risk for organizations and their workforces of losing sight of their purpose and values (Selznick, 1949; Skelcher & Smith, 2015). Considering the role of legitimation in organizational survival and success (Albert & Whetten, 1985; Ebrahim et al., 2014), it is further argued that hybrid organizations might fail when they lose their organizational identity or when they experience a change in their *raison d'être* due to a "mission drift" (Cetindamar and Ozkazanc-Pan, 2017).

Social enterprises are an example of hybrid organizations that tackle social problems by generating profit and social value (Santos, Pache, & Birkholz, 2015). Depending on the country they are operating in, these organizations take different organizational forms, ranging from non-profit associations to for-profit corporate forms. This is because each country has different institutions, and hence the body of laws and regulations related to these organizations show considerable variations across countries. Thus, examining social

enterprises within their national institutional setting could enrich our understanding of the factors contributing their survival.

2.2. The BCs Law and the Pillars of Regulative Legitimacy

Around the world, a few legal structures have already emerged for social enterprises (Mair & Marti, 2006). In the UK, for example, a Community Interest Company (CIC) provides tax benefits to hybrids (Battalana, Lee, Walker, & Dorsey, 2012). In the US, BC has become the new form of corporation, a legitimate legal form for social enterprises since 2010.¹ A number of recent papers explain in detail how political forces have influenced the evolution of BC law across the US states (Haigh et al., 2015; Brown, 2016).

A BC is designed for for-profit entities that wish to consider society and the environment in addition to profit in their decision making process. These firms are motivated to do good by virtue of articulating and pledging commitments to social benefit in their corporate articles; and the governmental regulation from the states authorize and validate these social enterprises as BC. It is important to note that these firms voluntarily choose to adopt the BC law. While there are few financial benefits such as tax benefits or incentives of becoming a BC in some individual states, there are many costs associated with it, such as higher administrative and legal costs, legal uncertainty, and greater exposure to lawsuits (Stecker, 2016).

The BC law represents an institutional change targeting to induce social logic into the DNA of a firm by allowing the existence of dual missions at the firm level (Ebrahim, Battilana, & Mair, 2014). By doing so, the BC law facilitates new social ventures to benefit from regulative legitimacy (Zimmerman and Zeitz, 2002). Regulatory legitimacy refers the

compliance to formal rules, laws and regulations (Markard, Wirth, and Truffer, 2016). Together with other types of legitimacy, regulative legitimacy is vital for radically new ventures in their search for resources and building their organizational identity (Aldrich and Fiol, 1994; Yang and Wu, 2016). However, institutional misalignment undermines legitimacy. That is why, observing the ideals of the BC law and its implementation could shed some light on the limits of institutional settings and the challenges of building social enterprises through institutional design enforced through laws.

BC provides an interesting setting for studying hybrids. A legal status might be a part of a broader legitimation process for hybrid organizations (Bitektine & Haack, 2015). According to some studies, the BC law has a potential in transforming Capitalism for the benefit of the society (Hollensbe et al., 2014; Gilbert, 2013). Even though corporate social responsibility activities of firms target to achieve social values along with profit values, establishing a firm with a BC status targets to embed social logic into its mission and its activities at higher priority (Sabeti, 2011). That is why, the literature expects that this new institutional form could balance profit with social returns to workers, community and the environment (Murray, 2012; Patrick, 2014; Sabeti, 2011; Surowiecki, 2014; Kruschwitz, 2012).

Some studies (Stecker, 2016) suggest that the law has enough safeguards against any wrongdoing on the part of BCs; however, there are also some critics of the BC law (André, 2015; Munch, 2012; Reiser, 2012). Similar to the critiques of the corporate social responsibility movement, there is a fear that the law does not prevent businesses attempting to make profit from social benefit (Lawler III & Worley, 2012).. A study, in particular, points out the risk of a mission drift of BCs, in other words, a shift from achieving social value

towards profit (Rawhouser, Cummings, & Crane, 2015). Another study claims that BCs give managers unnecessarily broad discretion at the expense of shareholders (Brokaw, 2012).

BC law differs from state to state in its details (BCIC, 2015); however, the law mainly aims to allow firms to distinguish themselves from traditional corporations with regard to their purpose, accountability and transparency (Clark & Vranka, 2012; Wilburn & Wilburn, 2014). Ideally, these three major goals should form the base for building regulative legitimacy for social enterprises.

According to the law, a BC has to generate a general public benefit, defined as a material positive impact on society and/or the environment (Kruschwitz, 2012). In addition, the law demands from candidate companies to write down their specific benefits in their mission statements (see section 3.2).

Accountability is a function of governance, showing for what an organization is accountable as well as to whom it is primarily accountable (Ebrahim, Battilana, & Mair, 2014). In that regard, the first part of accountability is the description of a BC's specific benefit as described above. By writing down their goal clearly, BCs declare what stakeholders could expect from them. The second part of accountability requires BCs to describe the beneficiaries who will receive the supposed benefit/value generated by BCs.

Accountability does not work without transparency (Dubbink, Graafland, & Liedekerke, 2008; Owino, Munene, & Ntayi, 2016). Transparency is a key pillar for stakeholders/beneficiaries to observe the performance of BCs with respect to the promises made to them (Cynthia, Steckler, & Newell, 2016). To secure transparency, the law expects

BCs to deliver an annual benefit report prepared by a third-party standard, in which they present their performance on their public goals (Clark & Vranka, 2012). Directors of a BC operate the business with the same authority as in a traditional corporation, but they need to deliver not only profits but also public benefits. Shareholders can sue directors for not carrying out the company's social mission, just as they can sue directors of traditional companies for violating their fiduciary duty. Thus, transparency becomes a critical element of supplying information to stakeholders, who could enforce accountability on BCs.

3. METHOD

The study adopts two methods: case study approach and content analysis. Given the fact that BC is a new phenomenon and there are almost no empirical studies, this study adopts a case study approach and chooses its unit of analysis as the pioneer BCs established within the first two years of the enactment of the law, namely during the period of 2010-12. Case studies are widely used in management literature in order to test theoretical concepts (Eisenhardt & Graebner, 2007). Thus, we will use this method to observe the implementation of the ideals of the BC law.

To examine our cases, we will adopt content analysis, a method widely used for the examination of texts, language and other forms of written communication (Krippendorff, 2012). Content analysis of narrative texts provides many potential benefits (Leuthesser & Kohli, 1997). Content analysis of organizational texts, such as mission statements, provides insights about the assumptions and ideas guiding organizational identity and practices (Leuthesser & Kohli, 1997; Moss et al., 2011; Palmer & Short, 2008).

Specifically, we will conduct content analysis to observe the articles of incorporation and annual benefit reports of the case firms in order to observe the implementation of the law. The use of content analysis increases the reliability and replicability of the research using narrative texts.

The content analysis is carried out by a team of the author and the author's PhD student in the field of organization theory. Both team members independently coded the texts and then gathered to discuss their coding lists. As coders, we agreed in the majority of cases, but for the remaining few cases we discussed together and decided on the final codification. While doing the coding, we relied on the content analysis approach of the archival data (Krippendorff, 2012). Our texts were articles of incorporation and annual benefit reports.

3.1. Data

In April 2010, Maryland became the first state to pass the BC Legislation. Others have followed, adding up to 31 states as of March 30, 2017. The most extensive list of BCs can be found at the website operated as a public service by a non-profit company called B-Lab, a non-governmental organization (see details at <http://benefitcorp.net/>). B-Lab operates at the global level and offers a certification labeled as "B Corp" to companies on a voluntary basis. B Corp is a certification and it is not a state legislative mandate, while state governments give the BC status. However, B Lab is now demanding that each certificate applicant should apply to become a BC within the two-year period after B Lab issues a certificate. In this way, all companies with a B Lab certification will switch to the BC status officially, or lose their rights of holding a B Lab certificate.

The Secretaries of States are the source of information for firms operating in any state; however, their web sites do not offer a classification of firms according to their legal forms. That is why, in this study, we started to build a list of BCs by examining 433 companies available at BCIC (2014) on August 30, 2014. We checked the list of potential BC firms with the Secretary of States about their status of companies. We found out that some firms simply did not exist at the state registrar at all and some firms were not holding a BC status. After cleaning up the list, we eventually had 151 firms as our sample firms. Table 1 presents their distribution according to their states, statuses, and establishment dates. California hosts the majority of our sample firms, which constitute 37% of the dataset, followed by Maryland. As the bulk of these firms were located in California and Maryland, most of the dissolved firms were located in these two states as well, followed by Virginia. One fifth of the companies were established before the BC legislation, but they changed their corporate statuses when the BC law passed in their individual states.

Insert Table 1 about here

The major problem for the study was collecting BCs' articles of incorporation documents. Out of 12 states, only three of them (HI, MA, MD) deliver articles of incorporation online and free of charge. Therefore, we purchased their articles of incorporation from the remaining nine Secretaries of States. Out of these 151 companies, 83 of them had clearly written mission statements in their articles of incorporation, while the remaining ones had left that section empty.

Gathering data regarding the annual benefit reports was also difficult. Theoretically, BCs must publicly report on their social and environmental performances using established third-party standards. With slight differences, almost all states require that each BC should post its benefit reports on the public portion of its Internet website; but if a BC does not have an Internet website, it shall provide a copy of its most recent benefit report, free of charge, to any person that requests a copy. The law does not include a penalty for those BCs not delivering their annual benefit reports or make them public. The only exception is New Jersey, where if a company fails to deliver a benefit report in two years, it loses its legal status. Furthermore, the law delegates third-party companies to decide on the format of these reports (Reiser, 2011). Further, the statutes do not dictate how the standards should be applied, how often, or by whom (Reiser, 2011). Instead, the statutes simply mandate that standard-setters be independent and transparent (Murray, 2012).

For the companies established in the period of 2010-12, only 15 companies out of 151 BCs had made their benefit reports available through company websites. Thus, we sent emails to the remaining firms in our list, asking for their benefit reports. In total, 19 companies sent their benefit reports by email. We ended up with 34 annual reports for the period of 2010-12.

In sum, this paper presents the analysis of 151 BCs in order to understand their goals and accountability. Then, the paper continues with the transparency analysis of 34 BCs that have annual benefit reports. .

3.2. Measures

Regulative legitimacy can be “operationalized by consistency with laws, filing articles of incorporation” (Zimmerman and Zeitz, 2002, p. 418). Thus, this paper focuses on companies

that have freely chosen to become a BC that allows them to benefit from regulative legitimacy the BC law offers. However, regulative legitimacy is not automatic unless BC firms act in accordance to the law. Therefore, the paper will investigate whether the practices of BCs comply with the goals of the BC law in terms of having purpose, accountability and transparency (BCIC, 2013; Stecker, 2016; Wilburn & Wilburn, 2014).

We look at the articles of incorporation and identify the social purpose of firms. Each coder independently tried matching company statements in their articles of corporations with the seven purposes mentioned in the BC law (Wilburn & Wilburn, 2014):

- “(1) providing low-income or underserved individuals or communities with beneficial products or services;
- (2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
- (3) Promoting the preservation and conservation of the environment;
- (4) Improving human health;
- (5) Promoting the arts, sciences, access to and advancement of knowledge;
- (6) Increasing or facilitating the flow of capital and assets to entities with a general public benefit purpose;
- (7) Conferring any other particular benefit on society or the environment.”

Based on the law’s seven categories, namely “community”, “job creation”, “environment”, “health”, “capital”, “art and science”, and other, we were able to rate whether a social logic existed by examining each investee firm’s mission and/or vision statements. Table 2 presents these keywords and their counts. Some companies write a very general statement such as “preserving the environment, improving human health, promoting the arts, sciences or

advancement of knowledge”, indicating that their social benefits fall into more than one category in the list. Some others express very specific missions such as “provide products and services relating to solar power energy and other alternative systems”.

Insert Table 2 about here

As described in Section 2, accountability includes how BCs explain what they are accountable for, and to whom they are primarily accountable. Our first measure, the description of a BC’s specific benefit, will help us to understand for what BCs are accountable. To understand to which stakeholders BCs hold themselves accountable, we carry out a content analysis of the articles of incorporation. These stakeholders are beneficiaries / customers of services and products delivered by each BC.

Using five keyword derivations, namely “society”, “community”, “individual”, “nature”, and “social businesses”, we identify beneficiaries by examining each investee firm’s mission and/or vision statements. Table 3 shows these keywords and their counts.

Insert Table 3 about here

As for transparency, we analyze annual benefit reports. The law expects BCs to be open to their stakeholders by supplying a benefit report each year. These reports are the base for communication between BCs and their stakeholders and. We evaluate these reports in terms of how much they comply with B-Lab standards, how long they are, and how detailed they are, following some of the studies in performance literature (Bini, Dainelli, & Giunta, 2017).

4. OBSERVATIONS ON THE IMPLEMENTATION OF THE BC LAW

The fit between the law and its implementation, in other words, regulative legitimacy is assessed by comparing how BCs in practice confirm to the law through three dimensions: corporate purpose, accountability, and transparency. Assessment is an evaluation of adoption of the rules by the sample of early BCs established during the 2010-12 period.

4.1. Purpose

According to the law, BCs need to indicate their actual benefit in their mission statements in the articles of incorporation documents. Firms can identify one or more benefits as shown in Table 2. Analyzing the mission statements according to the benefit categories laid out in the law, we saw that only 83 firms out of 151 companies (representing 55% of the companies) had clearly specified their targeted social benefits. Even though the law requires them to state their benefits in their articles of incorporation, nearly half of the firms (45%) had left their purpose statements empty. We find this to be a critical shortcoming of the legal enforcement.

In addition to companies leaving their specific public benefit statements empty, the majority of the companies who indicate their purposes do so in very brief statements, ranging from one or two sentences to a short paragraph. For example, a firm states its mission merely as the supply of “free software services to social businesses”. There are, however, exceptional firms that give importance to defining their dual-purposes. For example, Patagonia was established in 1978 with a mission statement that read: build the best product, cause no unnecessary harm, use business to inspire and implement solutions to the environmental crisis. During its status

change into a BC in 2013, Patagonia changed its mission statement into six paragraphs of detailed text on different topics. One paragraph goes as follows:

“Build the best product with no unnecessary harm. This corporation will endeavor to build the best products and cause no unnecessary harm to the planet or its inhabitants by:

(a) designing and fabricating products with minimum impacts through to the supply chain –including resource extraction, manufacturing and transportation –on water use, water quality, energy use, greenhouse gas emissions, chemical use, toxicity and waste; and b) partnering with customers to take mutual responsibility for the life-cycle of its products, including repair, reuse and recycling.”

4.2. Accountability

Each BC’s article of incorporation should consist of a reference to their beneficiaries who will have the most benefit out of the services and products they provide. Even though some companies do not point out a specific beneficiary, a detailed content analysis of the 83 BCs’ mission statements helps us to identify targeted beneficiaries. As shown in Table 3, the top four targeted beneficiaries are society (23%), nature (20%), community (14%), and social businesses (14%).

Categories are straightforward but some examples could help further clarify them. First, we categorize a firm’s beneficiary as “society” when its mission statement indicates general customers, as may be observed in the following examples. PeopleCount.org’s mission statement defines itself as “[an] organization that empowers the public to communicate constructively by taking stands on political issues influencing the country today and seeing the collective results.” Another firm, Singularity University in California, argues that it

“advances human being through the study, discussion, assessment and encouragement of beneficial applications of rapidly accelerating technological change and through regular evaluation of the impact of such change on society and its institutions.” Second, the category of “nature” covers companies that target environment as the major beneficiary. A few exemplar company statements read as “preserving the environment” or “to develop and protect the earth and humanity”. The third broad category is “community”. The beneficiary target is the immediate location, as defined in Greyston Bakery Company’s statement: “We care deeply about making Yonkers a better place, about setting an example as a social enterprise, and about making great products that provide jobs to our community’s most disenfranchised members.” Some others express a well-described community, such as the Veteran Beverage Company: “dedicated to producing, selling and delivering beers of superior quality and taste and creating meaningful post-service careers for military Veterans. The company strives to employ Veterans in every role within the organization and the supply chain.” The final broad category is “individual”. This title refers companies, which serve individuals in general but do not mention a particular group, such as beauty companies, gift companies, or food companies. In some cases, mission statements indicate more than one beneficiary group. For example, a mission statement reads as “Provide access to civil justice to individuals, nonprofit businesses, and communities that are not being effectively served today.” Accordingly, it falls under three categories: individuals, communities and social businesses.

4.3. Transparency

As mentioned in the Methods section, out of the 151 BCs, which are accountable for preparing benefit reports and making them available publicly, only the 15 firms in our sample

have done so. This signals a serious problem, since reporting is a crucial part of transparency for BCs.

The law requires annual reports to follow a third-party standard. In all the benefit reports we were able to collect, we observed that 23 BCs out of the total 34 firms follow B-Lab's standard for their annual benefit reports. However, the heavy reliance on the B Lab format of reporting poses a potential problem. When BCs receive the B Lab certification, they tend to use the report they submit to the B Lab as their own annual benefit report. This practice could generate both advantages and disadvantages. One obvious advantage from the point of view of BCs is that it is timesaving, while another advantage is that it provides uniformity, which makes it easier to compare the performances of BCs. On the other hand, one clear disadvantage is that the version of the report presented on the B Lab website is very limited, as it is an index value rather than a detailed account of the actual activities of BCs. While indexes help to compare companies on a concrete number, it does not expose the richness of what really goes on inside each company. Moreover, it does not show whether a BC delivers the public benefit as promised in its own specific article of incorporation.

The concern on transparency confirms the possible risk of BCs becoming "puffery" (André, 2015). The same phenomenon of a drifting goal was a major point of criticism when the UN Global Compact was first established (Sethi & Schepers, 2014). As a voluntary initiative for corporate social responsibility, UN Global Compact expects companies to become members by declaring their promise to follow 11 principles. Becoming a member of the initiative was easy, since all it required was the declaration of a promise. However, many companies failed to fulfill that promise, which led to severe criticism. Thus, in an effort to pressure companies

to deliver on their promises, UN Global Compact introduced a rule that expels a company from the Global Compact in the event that they fail to submit a report in two years.

The law does not provide any guidelines as to how benefit reports should be prepared. Hence, we evaluated the reports based on their length and depth of detail. This revealed yet another problem associated with reporting, as half of the firms had reports consisting of only five or fewer pages. In addition, the level of information in the annual reports varied greatly. While a quarter of the firms have written general statements, 32% of 34 BCs present some data and only 29% of the firms include a combination of details and some data in their reports. Finally, only 14% of the firms have given detailed information on their activities along with rich data on their social purpose and performance.

In addition, there is no audit required for annual benefit reports and there is no negative consequence in the event of a negative report (André, 2015). This poses a problem concerning transparency. Further, given the recent failures of private third party rating agencies to maintain independence and provide consumer protection, leaving such a fundamental decision to a non-government entity might create problems, as has been experienced and documented in corporate social responsibility reporting (Reiser, 2011; Hahn & Regina, 2014).

5. CONCLUDING REMARKS

The BC law targets to induce a hybrid organization with a dual mission of generating profit and social value (Meyer, 2015). However, having laws and regulations in place might not guarantee the establishment of effective hybrid organizations that will serve the goals of the lawmakers. This paper aims to contribute to literature first by empirically investigating BCs, a

legal form of social enterprises by using institutional perspective. Second, the paper utilizes the theoretical construct of regulative legitimacy to assess the implementation of the law by examining the ideals of the law from an institutional point of view through three dimensions: corporate purpose, accountability, and transparency. These three dimensions form the base of regulative legitimacy firms seek to gain by engaging with the legal institutional entitlement.

The paper uses the unique dataset built upon the pioneer BCs established during the 2010-12 period, consisting of 151 firms. We acquired the articles of incorporation for each company and observed that 68 firms (representing 45% of the total) have no public benefit statements in their articles of incorporation. How could stakeholders consider these firms as new organizations that will contribute to social goals if the firms fail to write down their dual missions clearly? Similarly, our search for the annual reports of BCs ended with skepticism, since 136 firms (90% of all companies) have not posted an annual benefit report publicly. The law does not describe any penalty for not complying with the law. In the absence of these reports, the role of society as a stakeholder of these companies will not be effective due to lack of knowledge on their operations.

In sum, the lack of mission statements in the articles of incorporation and annual reports highlights a problem regarding the realization of the ideals of the BC law. Contrary to the optimistic expectations that the BC law would increase the credibility and visibility of social goals for social enterprises (Rawhouser et al., 2015), our findings reveal that there are many challenges in its implementation. Even though regulation aims to establish regulative legitimacy for social enterprises, it will not be realized unless firms comply with the rules. In other words, if these companies do not inform their stakeholders about their benefit

offerings/social missions and demonstrate their performance, how they could transparent.

How can managers become accountable if stakeholders are not involved in the work for the dual mission promised by the law? These concerns harm regulator legitimacy, something the legislators who designed BC law to help social enterprises' credibility did not intend to achieve.

Implications of the Study

Overall, this paper attempts to enhance scholarly understanding of the role of institutions in shaping organizations (Powell & DiMaggio, 1991; Cooney, 2006; Rawhouser et al., 2015; Ebrahim et al., 2014). Our first contribution is presenting an empirical work on a special type of social enterprises, established by the BC law. Since there are hardly any studies on BCs, this is one of the early attempts to analyze BCs from an institutional perspective.

Our second contribution to theory is adopting the regulative legitimacy concept developed in institutional theory to explain the discrepancy between the goals of the BC law and their realization by social enterprises. We implement a theoretical concept to a real life case by evaluating BCs' performance in three dimensions: purpose, accountability and transparency.

The failure of the majority of BCs to follow the law might be due to many reasons but one major problem arises from loosely defined legal enforcement. The literature refers to this problem as one of the limitations of formal institutional designs (Brammer, Jackson, & Matten, 2012; Yin et al., 2017). The BC law faces to suffer from the lack of legal enforcement, a general problem for regulation-based changes (Bini, Dainelli, & Giunta, 2017). Current literature already suggests two main improvements to the legislation: stakeholder involvement and regulation of reporting (Munch, 2012; Reiser, 2011). Regarding stakeholder involvement,

one suggestion is to give stakeholder groups access to legal remedies as a check on corporate action, with the condition that standing could be conferred only on those stakeholders who can show injury to a “legitimate interest” (Munch, 2012). This approach might insulate BC boards from extensive liability by limiting the pool of potential claimants, while at the same time preventing firms from categorically ignoring stakeholders’ interests (Munch, 2012). Regarding the regulation of reporting, a number of solutions exist such as requesting clear guidelines on reporting format, its content, its auditing process, and explanation of sanctions when firms do not generate positive social and environmental impact (Bini, Dainelli, & Giunta, 2017). In addition, the BC law could institute a kind of oversight board that could regulate the reviewers who assess firms’ nonfinancial performance reports, by verifying the stringency and integrity of their measures.

Besides the suggestions offered by current literature, our study offers another solution to enhance law enforcement based on institutional theory. Formal institutions alone might not change behavior of organizations. In fact, lawmakers should pay attention to the fact that legitimacy towards a ‘role’ are socially constructed through interaction with others (Giddens 1991). That is why; lawmakers should find ways of designing formal rules that could interact with informal institutions and work collaboratively to diffuse institutional changes through both formal and informal mechanisms.

Limitations

There are two major limitations of the study. First, it is necessary to acknowledge that a short amount of time has passed since the inception of the BC law. Our study sheds light on pioneer BCs as social hybrids. Since numbers are increasing with the addition of new states passing the law, future studies should have a larger population of companies to include in their

analyses. Second, we relied on the social practices of BCs as stated in their own reports, and we used their self-reported performances regarding their social/community benefits. It is possible to observe the BCs' impact by conducting case studies of not only the companies but also their stakeholders. We think that large-scale, in-depth studies might help to unveil the behavior of these companies.

Future studies

This preliminary study aims to understand BCs, a new hybrid organization form designed by state legislators. We used institutional theoretical lens in observing the discrepancy between the goals set by the BC law with their implementation in practice. Future studies might expand the discussion in four major avenues of research. First, our data analysis shows that most of the BCs turn mainly to B-Lab's assessment as a third-party standard to verify their social benefit. Future studies might attempt to understand the role of a non-profit organization both in the institutionalization of a law and in shaping hybrid organizations. Second, a recent study (Haigh et al., 2016) points out how hybrid organizations evolve because of the changes in their legal forms. Future research might focus on in-depth case studies of BCs and other social enterprises with different legal forms. Comparisons of cases could improve our understanding of the relationship between legal forms and realization of dual missions. Third, our study considers all BCs as one category. However, as recent studies (Santos, Pache, & Birkholz, 2015) point out, hybrids might take on different shapes. Future studies could classify BCs according to their hybrid types in order to investigate how they fit with the ideals and the implementation of the BC law.

Endnotes

Besides the legal form of BC, the US tests two other corporate forms: L3C and the Flexible Purpose Corporation. The L3C is a variant of an LLC, designed primarily to enable companies to access investment from tax-exempt sources such as private foundations. The Flexible Purpose Corporation, which has passed in California and Washington (where it is called the Social Purpose Corporation), requires boards and management to agree on one or more social and environmental purposes with shareholders, while providing additional protection against liability for directors and management. Both forms are outside the scope of this study.

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Table 1. The Distribution of the Benefit Corporations in the Study, The Year when Benefit Status is taken, The Year of Establishment, and Status

State	No	The year when Benefit status is taken			The year of establishment			Status		
		2010	2011	2012	Before 2000	2000-9	2010-12	Dis-solved	Pending*	Active
CA	56	1	1	54	5	10	41	13	1	42
HI	6	0	3	3	0	0	6	0	2	4
IL	3	0	1	2	0	0	3	0	0	3
LA	6	1	0	5	0	1	5	0	0	6
MA	7	0	0	7	1	1	5	0	0	7
MD	40	5	12	23	0	4	36	7	13	20
NJ	2	0	1	1	0	0	2	1	1	0
NY	8	0	1	7	1	3	4	0	0	8
PA	3	0	3	0	1	1	1	0	0	3
VA	17	0	5	12	0	1	16	6	1	10
VM	3	0	1	2	1	0	1	0	0	3
Total	151	7	28	116	9	21	121	27	18	106

* Firms waiting decision for their bankruptcy process.

Table 2. Key terms used to assess social purposes in mission statements and their count (some mission statements included several key terms)

Content analysis terms	Count
Community (serving/providing/ products for: LGBT, children, veterans, diaspora, local artists, homeless, women, Latin America coffee producer, farmers)	20
Job creation (creating careers, jobs for refugees, empowering individuals to find job, foster skills, provide/create jobs, employing individuals with handicaps, green jobs)	27
Environment (zero-waste, renewable energy, preserving environment, green jobs, recycle, sustainable*, local sourcing, protect/reserve earth/nature/planet)	58
Health (improving human health, health epidemic, support/nurture the physical, emotional and mental health, health development)	11
Art and science (art, creativity, technology, culture, advancing/promoting/increasing knowledge)	46
Capital (crowdfunding, online platform for investment, finance, philanthropy*, charities, investor*, finance*, financial literacy)	18
Other (education, social networking, exchange economy)	13

Note: The total of different benefit categories are more than the total number of clear mission statements since companies could choose to write more than one social and environmental benefit.

Table 3. Key terms used to assess stakeholders in mission statements and their count (some mission statements included several key terms)

Content analysis terms	Count
Society (human being, people, society in large, public)	43
Nature (planet, environment, renewable, sustainable, energy, organic market place, natural*)	19
Social businesses (non-profits, institutions, socially responsible, non-government organizations, charities)	21
Community (LGBT, children, veterans, diaspora, local artists, homeless, women, Latin America coffee producer, farmers)	20
Individual (empowering individuals, consumer, education, customized products/services)	6

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Public Interest Statement

Social enterprises aim to generate both profit and social value. In most countries, there are only two legal corporatization options for social enterprises: being a for-profit organization or a non-profit organization. Benefit Corporation (BC) status, enacted as a new corporate law in 2010 in the United States (US), is one of the rare legal forms designed by legislators for social enterprises in the world. Since this is an experiment at the society level, our goal in this paper is to observe the very practice of BCs. This paper studies 151 BCs established during the period of 2010-12 in order to examine the realization of the BC law's three major goals: purpose, accountability, and transparency. Contrary to the optimistic expectations that the BC law would increase the credibility and visibility of social goals for social enterprises, our findings reveal that there are many challenges in its implementation.

About the author

She received her BSc degree from Industrial Engineering Department at Bogazici University, her MA degree from Economics Department at BU, and her PhD degree from Management Department at Istanbul Technical University. In 2017, she joined to the Faculty of Engineering and IT at University Technology Sydney where she serves as the Director of Masters in Business and Technology. Previously, she worked at Case Western Reserve University (USA), Chalmers University of Technology (Sweden), and Sabanci University (Turkey). Her research primarily falls into two academic disciplines: Technology Management and Entrepreneurship. Her fundamental curiosity is to discover the societal conditions that foster and utilize innovation and technology for economic growth. Her research particularly focuses on how new technologies are formed and the role of entrepreneurship and public policy in their creation. Another intellectual stimulus in her studies is to develop tools for managers, entrepreneurs and policy makers.