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## The emergence of benefit corporations: A cautionary tale

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### ABSTRACT

The legislative formation of the benefit corporation (BC) institutionalizes a new hybrid corporate form in the United States (US) that allows for both a profit objective and a public welfare objective. This corporate form provides entities endeavoring to act in the public interest access to markets and investment capital alongside compatible governance processes. Since the initial state adoption of this form in 2010, 34 states have enacted BC legislation. Our empirical investigation demonstrates and assesses the emergence and evolution of this hybrid corporate form by articulating the discursive framings of a constellation of actors in and around these legislative enactments. The discursive framing is dynamic and contested over time, evolving from a focus on enabling for-profit firms to broaden out their objectives to include social goals beyond profit maximization to a focus on exposing activities traditionally carried out by government or not-for-profit entities to market discipline. One interpretation of the findings is that BCs are a manifestation and means by which the responsibility for public services and public welfare is transferred to the private sector along with the associated public resources. We consider the implications of a shifting landscape of corporate governance and accountability regimes for public welfare objectives.

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### 1. Introduction

Acting in the public interest for the common good is a contested notion depending on one's ideological proclivities. Should state responsibilities and resources alone provide for the public welfare? In what ways might private responsibilities and resources serve society? Or, would society be better served by some hybrid of the two? Neoliberal ideology purports that public welfare is best accomplished via individualism, free markets, and economic efficiency. Critics hold that the neoliberal ideology constrains the ability of the private sector to act in the public interest for the common good. A pragmatic perspective recognizes the potential of an ideology that explicitly includes acting in the public interest for the common good in economic considerations. Ideological debates surrounding how to facilitate acting in the public interest for the common good are reflected in discussions of hybrid-purpose institutional forms.

As the current primary example of a hybrid-purpose institutional form, this study focuses on the benefit corporation (BC) regarding how governance structures and accountability systems might be designed not only for economic performance but also for acting in the public interest for the common good. A BC is "legally a for-profit, socially obligated, corporate form of

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business, with all of the traditional corporate characteristics but with explicitly stated societal responsibilities" (Hiller, 2013, p.287).<sup>1</sup> The institutional form of the BC allows a for-profit firm<sup>2</sup> to expand their stated mission to include public welfare objectives and allows a not-for-profit (NFP) entity<sup>3</sup> to incorporate as a for-profit firm while maintaining its public welfare mission. We shed light on this hybrid-purpose form by investigating: the discursive framings of a constellation of actors debating the BC; how these actors' understandings (discursive framings) of the BC evolve over time; and the implications of settlement on particular understandings of hybrid-purpose forms and their associated governance and accountability systems.

In the United States (US), the enacting of new forms of business and granting of corporate charters occurs at the state level.<sup>4</sup> Since the passage of the first BC statute in the state of Maryland in 2010, 40 states and the District of Columbia have enacted (34), or have begun the legislative process prerequisite to enacting (6), legislation to recognize the BC as a legal form of business.<sup>5</sup> While BCs represent a small portion of overall firms, the number of BCs has increased from about 300 registered BCs in 2013 to nearly 5500 registered BCs in 2017.<sup>6</sup> Furthermore, BCs exemplify the latest incarnation of a trend towards legislating entities with hybrid purposes, a trend that has been growing since the 1970s. As such, we focus on the emergence and evolution of understandings of this institutional form around its enactment into state law in the US.

Our premise is that the enactment of benefit corporation legislation facilitates, and is facilitated by, new institutional arrangements. Institutional arrangements refer to collectively validated forms, codes, standards or behaviors that are infused with social and cultural meaning (Berger & Luckmann, 1967). Institutional forms are a tangible manifestation of institutional arrangements. Helms et al. (2012) show that these forms emerge from constellations of actors whose discursive framing of institutional forms enables settlement on understandings beyond their technical purpose. Studying the discursive framings of those involved with formulating, debating and enacting benefit corporation legislation thus helps us to understand not only how the benefit corporation has emerged as an institutional form and been codified into US law but also provides insight into how BCs are constituted and ultimately shape practice (Hervieux & Voltan, 2016).

We analyzed the emergence and evolution of BCs using public texts and narrative reflecting the discursive framing mobilized by various actors around the enactment of BC legislation from 2010 to 2018. We followed a typology which classifies framing into three general categories: diagnosing the problem; prognosticating solutions; and motivating participants to act (Snow & Benford, 1988; Hervieux & Voltan, 2016). We primarily followed Hervieux and Voltan (2016) who adapt the Snow and Benford (1988) typology to the study of social entrepreneurship. This typology is relevant to analyzing BCs as social entrepreneurship, or "using business to solve social issues" (p. 520), is a primary motivation behind the enactment of state legislation creating benefit corporations (Hemphill & Cullari, 2014). We evaluated the discursive framing of actors along this typology to develop an interpretive understanding of the BC institutional form. Through our interpretive understanding, we then considered a number of potential implications of the way the BC is framed.

Initially, BLab, a private certifying organization, played a central role in formulating an understanding of the BC and enrolling the support of state legislators. The states act as a conduit for codifying and institutionalizing the BC. As the process evolves, the understanding of the BC is subject to support and challenge by associated attorneys, interested businesses, NFP entities, and the investment community. This broad constellation of actors plays an important role in the framing and settlement of understanding of this emerging hybrid-purpose institutional form.

Our data shows that predominant discursive framings emerge highlighting the motivational aspects of the BC form. These framings evolve to include diagnosing problems or opportunities associated with institutional forms and emphasizing the prognostic potential of the BC form. BLab and legislative sponsors first framed the discourse in terms of the motivational aspects of the BC form and its public interest objectives. Diagnostic frames were employed by business/industry constituents to cast the BC as providing opportunities for advancing the public welfare by allowing for-profit firms to pursue social objectives as well as economic ones. Diagnostic framing was also employed by NFP and legal groups who initially argued that the BC form was a threat to the public welfare because focus and resources would be diverted from the public to the private sector. However, by the last phase of our study, interested constituents, including NFP and legal groups, ultimately frame the BC in a prognostic sense as an opportunity to infuse capital investment, and related governance structures, into previously excluded areas of economic life. The evolution of discourse around the BC form is not a structured, linear process moving from problems, to solutions, to actions. Rather, the evolution shows a dynamic intermingling of these mechanisms during each period and over time as settlement on this understanding takes place.

In its current stage, the BC form is primarily being framed as an extension of the business case for acting in the public interest for the common good. For-profit firms are able to "do well by doing good" through higher profits and the ability to attract employees (McGlone, Spain & McGlone, 2011) and consumers (Bucic, Harris, & Arli, 2012). The BC form provides additional investment opportunities and financial returns to these firm's public interest activities. For NFPs, converting to the

<sup>1</sup> A BC must include a "general" and/or a "specific" public benefit in its charter or amendment documents. A general public benefit produces "a material positive impact on society and the environment, taken as a whole, from the business and operations of the benefit corporation". Specific public benefits include activities such as providing jobs or products for underserved or low-income communities and protecting or improving the environment, human health, the arts, sciences, or advancement of knowledge (<http://benefitcorp.net>, last accessed January 6, 2017).

<sup>2</sup> We use the term "for-profit firm" (or firm) to refer to both publicly held corporations and privately owned corporations with various legal/tax designations.

<sup>3</sup> We use the term "not-for-profit entity" in reference to various not-for-profit, nongovernmental, and charitable organizations.

<sup>4</sup> This is in contrast to the granting of corporate charters at the national level in some countries.

<sup>5</sup> <http://benefitcorp.net/policymakers/state-by-state-status>, last accessed March 31, 2018.

<sup>6</sup> <https://www.forbes.com/sites/brianpotts/2017/12/21/wisconsin-republicans-just-passed-a-law-encouraging-sustainable-business-practices/2/#63b764424c62>.

BC form opens up alternative revenue streams and financing opportunities as these entities extend their objectives to include profit generation and return on assets subject to the discipline of the financial market. There is also some indication that states are beginning to view BCs as a vehicle for transitioning traditional public services into the private sector.

Our paper contributes to the literature on institutional forms and governance regimes. First, we add to the literature on framing and frame analysis focused on repertoires of action in processes of institutional change (Cornelissen & Werner, 2014). This area of research involves a meso-level of analysis focused on the use of discourse invoking framings by a constellation of actors. Cornelissen and Werner (2014) suggest that such research should attend to framing as a process of social construction, and we provide an empirical example of such a process through settlement on understandings of the BC. Just as Archel, Husillos, and Spence (2011) study the way in which corporate social responsibility initiatives in Spain are discursively institutionalized, we unpack understandings of the BC as a hybrid-purpose institutional form through a focus on actor's discursive framing. We expose the way in which the BC is contested, or not, as it becomes codified in state legislation; the presumption being that institutions, even those codified in law, are socially constructed and that paying attention to discursive framing offers a useful way to understand how BCs are constituted and may ultimately shape practice (Archel et al., 2011).

Second, in the understanding how hybrid-purpose institutional forms are constituted and may shape practice, our investigation of BCs is part of a research program directed at enhancing the long term viability of a democratically governed society supported by sustainable economic, social and environmental systems.<sup>7</sup> Brown and Dillard (2013) recognize the need for alternative institutional arrangements and an understanding of how they might be organized and managed to fulfill economic, social and environmental responsibilities. The study reported herein extends work in this research program to the BC as an institutional form and revisits questions on the broadening out and opening up of governance and accountability systems that facilitate more democratic forms and processes (Brown & Dillard, 2013; 2014; 2015).

Finally, we build on research extending governance and accountability debates into different sectors and contexts (Shaul, Stafford, & Stapleton, 2012; Gray, Brennan, & Malpas, 2014); particularly to the context of "regulated hybrids" (Miller, Kurukmaki, & O'Leary, 2008, p. 85). The study of regulated hybrids such as the BC is important as they reappear in various incarnations, each time gaining traction and covering new territory (Hemphill & Cullari, 2014; Rawhouser, Cummings, & Crane, 2015; Strine, 2015). The regulated hybrid that we study speaks to scholarly research on the contested terrain of the market and public welfare that is occupied by the state, capital, business, labor and civil society. The study of such hybrids are important considering that the emergence of the BC highlights an opportunity for the state to work constructively with private actors in this terrain to facilitate more responsible business behavior through alternative governance structures (Reich, 2018).

However, we present this opportunity as a cautionary tale. Our interpretive analysis suggests that the exposure of the public benefit sector (e.g., social enterprises and NFPs) to the capital markets may be a Faustian bargain. BCs may represent an institutional form that not only allows firms to explicitly pursue objectives in the public interest, but also enables further colonization of the public sphere as the legislation institutionalizes a set of governance structures and accountability regimes that facilitate the encroachment of financial capital. Recognizing the possibility of colonization helps to open a conversation about the possible unintended consequences of hybrid-purpose institutional forms, some of which are suggested in the way the BC debates change over time. Considering the possible consequences also helps in identifying future research reiterating the potential to broaden out and open up governance and accountability regimes that facilitate firms acting in the public interest for the common good (Brown & Dillard, 2014; 2015).

The remainder of this paper is organized as follows. The next section positions our study of emerging institutional arrangements relative to debates on business purpose and accountability and the role of framing in understanding such arrangements. Section 3 introduces the research setting, presents our methodology, data sources and approach to data analysis. Following this, we present our study of the emergence and evolution of the BC. Finally, we reflect on the implications of particular understandings of the benefit corporation for the common good.

## 2. Corporate governance and emerging institutional forms

### 2.1. Debates over the purpose and accountability of business

Debates over the purpose and accountability of business and associated governance structures have fueled fields of scholarship for decades. These debates historically revolve around the paradigms that focus on maximizing value and accountability to financial constituents (Friedman, 1970) and on recognizing the social license to operate granted by society and accountability to wider constituents (Freeman, 1984).<sup>8</sup> We outline important developments in these debates pertaining to our study as they relate to the articulation of business purpose and accountability through institutionalized forms and governance structures.

The early days of incorporation in the US required an act by a state legislature that recognized the pursuit of business activities for a public purpose specifically stated in a firm's charter (Sundaram & Inkpen, 2004). Over time, states permitted

<sup>7</sup> For a partial summary of some of the work that has emerged from this project see Dillard and Brown (2015).

<sup>8</sup> Freeman (1984) uses the term stakeholder to define any group or individual who can affect or is affected by the pursuit of a business organization's objectives. Rather than stakeholder, we use the term constituent or interested constituent(cy) throughout this paper. We refer to owners or shareholders specifically as financial constituents. Non-financial constituents, on the other hand, are constituents who do not have a direct financial interest in firm.

general incorporation, shifting the focus from a specific public purpose towards private objectives focused on maximizing profits of the corporation's owners. The profit maximizing objective necessitated governance structures dedicated to ensuring accountability to financial constituents. Over time, profit maximization and shareholder primacy were legally established. As the court ruled in 1919, "the business firm is organized and carried on primarily for the profit of stockholders. The powers of the directors are to be employed for that end."<sup>9</sup> Therefore, accountability to financial constituents through profit maximization is the sole purpose of the firm, and the directors manage it for the owners who are entitled to a share of profits (Friedman, 1970).

Following the 1929 market crash, an alternative paradigm emerged charging that firms are accountable to a broader set of constituents, even if it means a reduction in profit maximizing potential (Dodd, 1932). Many scholars have since upheld that firms are granted a social license to operate by the broader community of constituents with whom it engages and is obligated to consider accountability to that community or the public (Freeman, 1984). This stakeholder-oriented perspective was continually challenged through the latter part of the 20th century (e.g., Jensen, 2001). However, the stakeholder perspective persists and has become more salient with the growing sophistication of constituents and their increasing demands for firms to account for the environmental, social and governance aspects of business (Cho, Roberts, & Patten, 2010; Brown & Dillard, 2013; 2015; Dillard & Layzell, 2014). At the same time, there remains a sense that firms should not engage in activities that do not specifically maximize profit, or which adversely impact distributions to financial constituents (e.g., Jensen, 2001).

For instance, the primacy of accountability to financial constituents and profit maximization were at the center of a court decision in favor of eBay.<sup>10</sup> In the 2010 case, eBay, a major shareholder of craigslist, sued the two founding members of craigslist after they started anti-takeover strategies in an effort to preserve the community focus of craigslist. In the ruling, the judge wrote, "having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form. Those standards include acting in good faith pursuit of a proper corporate purpose", presumably accountability to financial constituents as opposed to a broader constituency (Murray, 2012, p.14).

While extant governance structures seem to emphasize a director's fiduciary responsibility to maximize shareholder value (André, 2012; Resor, 2012; Hiller, 2013; Dillard & Brown, 2014), some indicate that this is not the only option under the law. Stout (2012) argues that a legal doctrine known as the "business judgment rule" gives directors wide latitude to lead firms as they see fit.<sup>11</sup> However, no "bright-line" test exists for determining which choices constitute the pursuit of objectives that are not aligned with business judgement. Further, Hiller (2013) suggests that it may be difficult for firms to shift their conduct towards public benefits unless the laws that govern the criteria by which firms are held accountable support such activities.

At the same time, interested constituents exert pressure on firms to focus on objectives broader than "economic purpose" and on regulatory agencies to implement governance structures consistent with the expanded purpose. Some justify considering accountability beyond owners in light of continued problems of inequality, population and ecology (Tweedie & Hazelton, 2015). Even financial constituents such as investment firms start to publicly demand that firms consider more than profitability (Orsagh, 2018; Sorkin, 2018). Our work asks how we can understand the emergence of a new institutional form that promotes a hybrid business purpose and specifies accountability so as to include the interests of both financial and non-financial constituents (Mahoney, McGhan & Pitelis, 2009).

## 2.2. Hybrid-purpose institutional forms and accountability

Institutional forms provide the context wherein corporate governance is undertaken, specifying the means by which a firm can be held accountable. Institutional forms that reflect hybrid business purposes and governance regimes have been envisioned in various configurations over the past decades. For instance, Van Dam (1975) suggested that the future might bring about a "general benefit corporation" which he referred to as a "legal shell still to be conceived"; a hybrid of the limited liability firm and the NFP entity. In Van Dam's prophesy, a general benefit corporation would "allow firms to embark on public interest activities at a reduced level of profitability, compensated partly by a decreased level of taxation" and be held accountable for their pluralistic objectives (p. 75). Recent years have witnessed a number of initiatives reminiscent of Van Dam's general benefit corporation, each of which exemplifies a hybrid-purpose governance regime.

The creation of constituency statutes, arguably, represents the first stage in the fulfillment of Van Dam's prediction. The first constituency statute appeared in 1983 in Pennsylvania and have since been adopted in some form by 41 states (Hemphill & Cullari, 2014; Strine, 2015). Under constituency statutes, directors of a firm are permitted, but not required, to consider the interests of non-financial constituents in business decisions (Springer, 1999; Hemphill & Cullari, 2014; Strine, 2015). The statutes vary by state but include consideration of employees, customers, suppliers and creditors as well as local and national communities (Hemphill & Cullari, 2014). However, the statutes do not enact a legal form of business, and non-financial constituents have no legal recourse if their interests are not considered (Hemphill & Cullari, 2014). As such,

<sup>9</sup> Dodge v. Ford Motor Co., 170N.W. 668 (Mich. 1919), also see Resor (2012); Hiller (2013).

<sup>10</sup> eBay Domestic Holdings, Inc. v. Newmark, 2010.

<sup>11</sup> The business judgment rule for director liability provides that a director's duties be performed in good faith if done so in a manner the director believes to be in the best interest of the firm and the shareholders and with the care that an ordinary prudent person in a like position would use under similar circumstances. When a director's actions involve a question of policy or business judgment, the director cannot be held liable for an erroneous decision or poor choice in the absence of showing fraud, bad faith or negligence.

studies have concluded that these statutes have done little to alter the centrality of profit maximization and accountability to financial constituents (Springer, 1999; Hemphill & Cullari, 2014).

A second state-level initiative appeared in the form of Low-Profit Limited Liability Companies (L3Cs). The L3Cs, formed by amendment to the general limited liability company acts in state legislation, create an institutional form that allows for-profit firms, previously restricted by tax law to distributing their assets to charitable organizations, to attract funds from private foundations (Rawhouser et al., 2015). This indicates a motivation significantly different from other hybrid-purpose forms. To date, there are approximately 1300 such firms in 10 states (Rawhouser et al., 2015).<sup>12</sup> Vermont was the first state to adopt the amendment allowing for L3C status in 2008 and currently has more than 200 L3Cs as of January 2017.<sup>13</sup> However, no states have adopted this legislation since 2014, North Carolina has repealed the amendment<sup>14</sup>, and Delaware has opted not to offer this legal form to the “more than 65 percent of Fortune 500 companies” incorporated in that state.<sup>15</sup> The L3C form, like the constituency statutes, represents an effort to move the needle on the primacy of maximizing profit to financial constituents as the legal criteria by which management is held accountable; an effort that has received limited acceptance.

In 2010, a third state-level initiative appeared with the enactment of legislation creating a new institutional form: the benefit corporation (Munch, 2012, p. 185).<sup>16</sup> Similar to the constituency statutes and the L3Cs, the BC legislation proposes an alternative to the profit maximizing business purpose that largely persists in corporate America (Brown & Dillard, 2013; Mahoney, Thorne, Cecil, & LaGore, 2013). Legislation enacting the BC form establishes a governance regime that holds a firm accountable for generating wealth for financial constituents along with providing a “general” and/or “specific public benefit” to a broader set of constituents, which is built into the firm’s charter or amendment documents.<sup>17</sup>

BCs have been variously described as gray sector organizations (André, 2012); purpose driven organizations (Hiller, 2013); a “variant” to the traditional for-profit corporate structure (Hemphill & Cullari, 2014); and hybrid organizations (Rawhouser et al., 2015). As a hybrid-purpose institutional form, BCs move an entity’s purpose and accountability expectations away from pure profit maximization to a more holistic purpose and suggest that firms can generate profits while providing public benefits (Munch, 2012; Hemphill & Cullari, 2014). A legally sanctioned focus on both private/financial and public/societal performance evaluation criteria and accountability regimes reflects a paradigm shift (Brown & Dillard, 2013; Mahoney et al., 2013).

However, the motivation for this shift remains unclear. Some claim that legal forms such as the BC have emerged to overcome the threat of shareholder litigation for not meeting performance expectations while engaging in business as usual (Cummings, 2012). Furthermore, the BC may also represent a shift in the role of the government as a traditional provider of public benefits to society as well as in the expectations and support of NFP entities. These questions suggest tensions associated with the emergence of the BC as an institutional form. Therefore, it is worthwhile to explore how this form has come to be understood by actors in the field as well as to consider some of the possible unintended consequences of particular understandings of the BC as an alternative form of governance and accountability.

### 2.3. Emergence and evolution of institutional forms

Berger and Luckmann (1967) refer to institutional arrangements as collectively validated standards, codes, actions, or forms. How new institutional forms emerge and are validated has been informed by research on social movements (Ingram & Rao, 2004; King & Pearce, 2010). While a range of definitions exist for what constitutes social movements, in general, they speak to efforts by collective actors to affect change and to seek support for the ideas and beliefs represented by the movement (Hervieux & Voltan, 2016). Social movement research has touched on social enterprise and the extent to which social enterprise produces new institutional forms of governance (Nicholls, 2009; Arthur, Keenoy, Scott-Cato, & Smith, 2010).<sup>18</sup>

Martin and Osberg (2007, 2015) identify three components helpful in illustrating how institutional forms of social enterprise can be understood, including: (1) highlighting relevant social problems; (2) positioning the enterprise as a solution for affecting change; and (3) affirming the role of the enterprise and its activities in bringing about change. These components are reminiscent of the framing typology applied in the social movement research of Snow and Benford (1988): diagnostic, prognostic and motivational – which align with problems, solutions and actions, respectively. Through this framing typology, Snow and Benford (1988) brought attention to the role of collective actors as meaning-makers in social movements. As meaning-makers, collective actors infuse understandings of institutional forms with social and cultural meaning that

<sup>12</sup> [http://www.intersector13c.com/l3c\\_tally.html](http://www.intersector13c.com/l3c_tally.html), last accessed January 6, 2017.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> [http://global.delaware.gov/incorporate/why-delaware/why\\_firms\\_choose\\_delaware.shtml](http://global.delaware.gov/incorporate/why-delaware/why_firms_choose_delaware.shtml), last accessed January 6, 2017.

<sup>16</sup> Some states have authorized competing legislation, for instance, the creation of a “flexible purpose corporation” (since renamed a “social purpose corporation”). This legislation also allows for the creation of for-profit firms with hybrid purposes written into their articles of incorporation. We do not study social purpose corporations as this legislation passed in only three states between 2012 and 2015, including two states which also enacted the BC form. However, like the constituency statutes and L3Cs, this potential competitor to the BC form further supports the growing trend towards advocating a hybrid business purpose for profit-oriented firms.

<sup>17</sup> <http://benefitcorp.net/businesses/benefit-firm-reporting-requirements>, last accessed January 6, 2017.

<sup>18</sup> Defining social enterprise is a challenge as the forms social enterprise can take and the way they operate can vary significantly (Dillard, Pullman, Bernard, & Scarborough, 2013). We focus on developments related to a particular legal form that social enterprises may elect. We acknowledge there is a much broader history and background of social enterprises as another form of hybrid entity to which our work does not directly refer.

extends beyond their technical purpose through framing processes. Furthermore, framing is derived from underlying structures defined by [Benford and Snow \(2000\)](#) as “sets of beliefs and meanings that inspire and legitimate the activities and campaigns of social movement” (p. 614). Often the ideas and beliefs represented by a social movement around emerging institutions are not aligned among actors or are still being worked out.

Recent research suggests that in cases of misalignment understandings of emerging institutional forms arise from a process of “settlements of framing contests” among pluralistic actors embedded within an institutional field ([Rao & Kenney, 2008](#); [Helms et al., 2012](#)). Settlement processes involve diverse actors who coalesce around institutional projects ([Powell & Colyvas, 2008](#)) and their actions during a process of institutional emergence ([Reay & Hinings, 2005](#); [Delbridge & Edwards, 2008](#)). Actions include those that are discursive, such as how actors communicate ([Hardy & Maguire, 2008](#)) and use language ([Green & Li, 2011](#)) to explain, promote, and legitimate institutions ([Phillips, Lawrence, & Hardy, 2004](#)).

Settlement is produced by discursive framing contests in which actors vie to construct the socio-cultural meaning of an institutional form ([Rao & Kenney, 2008](#)). The use of framing reflects the way in which actors discursively connect proposed institutional forms to the beliefs and practices of actors in the field ([Den Hond & de Bakker, 2007](#); [Kennedy & Fiss, 2009](#)). Actors may challenge each other’s framing over the meaning of the object they seek to define and the specific claims they seek to establish about that object ([Hargrave & Van de Ven, 2006](#)). Actors may also adopt genres of speech and writing that reflect the values and ideology of a particular community ([Suddaby & Greenwood, 2005](#)). Ultimately, the implication is that the framing mobilized will influence the settlement of an institutional form.

We study the discursive framing of actors in the emergence and evolution of a hybrid-purpose institutional form, providing insight into understandings of this governance structure through the framing of the problems that matter, the proposed solutions to those problems, and the calls to act on those solutions. Through discursive framing, we are able to identify points of dispute and speak to how certain underlying assumptions and beliefs, experiences and socio-historic factors are privileged over others and the potential consequences of that privilege. We focus on the following: How do institutional forms emerge, specifically the BC which promotes a hybrid business purpose? How have understandings of the BC as a hybrid-purpose institutional form evolved? What are the implications for acting in the public interest for the common good of particular understandings of the BC as an institutional form?

### 3. Research methods

We undertook a longitudinal analysis of the discursive framings articulated by actors involved in settlement on understandings of the BC as an institutional form. Using publicly available information, we identified the actors, ascertained their discursive framing in the debate, and chronicled the changes. We analyzed public discourse as it appears in texts and narratives focusing on how language contributes to creating, maintaining or transforming institutional forms ([Gee, 2011](#)). We then considered the implications of this hybrid-purpose institutional form as a means for facilitating various sectors acting in the public interest for the common good.

#### 3.1. Data sources

Our analysis focused on the period from 2010 when Maryland became the first state to enact BC legislation and continued through March 2018.<sup>19</sup> We proceeded in three stages. First, we compiled data on legislative enactments from the BC website and state government websites. The BC website ([www.bencorp.net](http://www.bencorp.net)) is powered by BLab,<sup>20</sup> a private standard-setting and certifying organization<sup>21</sup> and a key actor in the emergence and evolution of the BC form.<sup>22</sup> The BC website presents data regarding state legislative enactments and, where available, the number of BCs registered in a state. We validated data in the BC website against information obtained from state government websites to ensure accuracy.<sup>23</sup> The progression of legislative enactments of the BC form in the US is presented in [Table 1](#).

<sup>19</sup> Between March and December 2018 no additional states enacted benefit corporation legislation.

<sup>20</sup> BLab is a not-for-profit founded in Pennsylvania in 2007. BLab develops standards around responsible business conduct and provides the B-Corporation (B-Corp) certification. Benefit corporations are often confused with certified B-Corps. The benefit corporation is an institutional form with a recognized legal structure. By contrast, a B-Corp refers to a business of any legal form that has obtained a certification as to its level of responsible business conduct. B-Corps that have been certified as meeting the standards of BLab are not necessarily designated under law as a benefit corporation. See the BLab website, [www.bcorporation.net](http://www.bcorporation.net) for additional information.

<sup>21</sup> BCs issue an annual report on their benefit objectives. The report may contain an independent assessment of the BC’s performance against a third-party standard, which aids in defining, reporting, and assessing responsible business conduct. BCs choose from over 100 raters of business conduct, including: Global Reporting Initiative, ISO 26000, Green Seal Business Certification, Ceres Roadmap to Sustainability and BLab’s B-Corp certification.

<sup>22</sup> BLab has been instrumental in lobbying state legislators for BC legislation, even proposing a prototype of the BC that outlines the central components of the legislative initiatives. BLab and William Clark of the American Bar Association’s “Committee on Corporate Laws” drafted the prototype. Clark previously drafted the Pennsylvania Business Firm Law and Revised Uniform Limited Partnership Act in the 1980s as well as Pennsylvania’s Limited Liability Company Law in the 1990s.

<sup>23</sup> The number of benefit corporations registered in each state as reflected on the BC website is limited by what each state decides to track and make public about benefit corporations, which varies by state. The estimate on the BC website is likely lower than the actual number of benefit corporations registered in each state. For this reason, we transform the estimate on the BC website into a range of “high”, “medium”, or “low” level of momentum when it comes to registered benefit corporations in each state. In categorizing states along this spectrum, we consider both the estimate of registered BCs as well as the average rate of registration over the period of enactment in each state.

Second, we conducted a search of articles concerning BC legislation published in state newspapers and in the national financial press (such as *The LA Times*, *The New York Times*, and *The Washington Post*).<sup>24</sup> We surveyed the articles chronologically alongside our data on legislative enactments. Together, this data provided historical perspective on benefit corporation law with a focus on sequence in time, key actors, and critical events or activities (Miles & Huberman, 1994). While the press articles were not our primary source of discursive data, our survey of this data allowed us to ascertain preliminary discursive themes lending to our framing analysis. In identifying these themes, we narrowed our focus to press articles published between the date legislation passed and the effective date of the legislation in each state.<sup>25</sup> On this basis, we analyzed approximately 100 press articles. We mobilized quotations from these texts where they provide evidence of actors' discursive framing around the enactment of benefit corporation legislation in various states.

Finally, as our primary data source we collected publicly available data on the legislative debates taking place in each state relevant to the enactment of the BC legislation. We obtained archival documents from the websites of each state government, including committee and legislative hearings and records of testimony on the debates undertaken. We studied the discursive framing of key actors in these debates that reveal how BCs were understood during a time when debates about the law might be expected to be most contentious. A constraining factor in collecting data on legislative debates is that certain states do not make their legislative hearings available to the public.

We addressed potential limitations in the data in several ways. First, we ensured that we do not have major gaps in terms of the timing of legislative enactments by collecting public documents from states with effective dates across our seven-year period of study. Second, we captured discourse in states with higher BC momentum. For example, BC registration in California and Nevada proceeded at a faster rate than other states. We also captured the discourse around BC enactment in states that are "economically interesting" in the US setting even if their BC momentum is low. For instance, Delaware is legal home to more than one million entities, including many of the nation's largest firms and, therefore, is normally an attractive choice for organization. Third, we supplemented the public documents with data from our press review, mainly with public statements made by actors around the legislative process. Based on this approach, we ultimately reached a point at which our data is triangulated and our analysis is saturated in that no new information is being obtained.

### 3.2. Data analysis

We analyzed discourse around the legislative process to study the framings employed by government and private actors in the emergence and evolution of a new institutional form. Our data analysis approach followed Snow and Benford (1988) as adapted by Hervieux and Voltan (2016). Our analysis involved several steps. First, we searched for broad themes pertaining to how benefit corporations are portrayed by distinct sets of actors. We identified the following distinct sets of actors: BLab, state/government actors, private business and industry associations (business/industry), attorneys and legal associations (attorneys), NFP entities and associations.

In analyzing how these actors portray benefit corporations, our search was informed by the framing typology of Snow and Benford (1988): diagnostic, prognostic and motivational. According to Snow and Benford (1988), diagnostic framing consists of discourse referring to identifying the problem or attributing blame or causality in a problematic situation. In contrast, prognostic framing focuses on articulating or proposing solutions to problems or identifying strategies, tactics and targets for addressing problematic situations (Snow & Benford, 1988). Finally, these authors define motivational framing as discourse beyond the identification of problems and solutions that outlines calls and rationales for action. These frames not only perform an interpretive function but also are agentic in the way they challenge existing views and understandings.

Second, adapting the work of Hervieux and Voltan (2016), we analyzed the data at a deeper level to examine more specific discursive and framing tendencies contributing to how BCs were portrayed, including underlying assumptions and privileging of particular perspectives. For instance, within the diagnostic frame, we identified two specific tendencies, one which highlights the problems with existing institutions, such as, the current profit maximizing regime is unsustainable and that entities risk litigation if they don't maximize profit to financial constituents. The second diagnostic tendency identifies the proposed BC itself as a problem or threat to traditional institutional forms.

Relative to the prognostic frame we noted three specific discursive trends that address the problems revealed by diagnostic framing. For example, the BC form: harnesses entrepreneurial intent and focuses private business on the long-term; reflects a support network and infrastructure favorable to achieving private and state goals; and represents a way to overcome deficiencies in current capital and funding models. Finally, in analyzing the motivational frame we identified three discursive tendencies relating to the BC: creating jobs and business opportunities for economic growth; meeting higher standards of accountability being demanded of business; and attracting entrepreneurs and innovative individuals, firms and investors who wish to work on societal issues.

<sup>24</sup> We conducted our press search in the Nexis Uni Database using the search phrase "benefit corporation" and excluding the terms "B Corp, B-Corp and BCorp". We restricted our search to articles published in English (1,114 articles) and in US news outlets (814). We narrowed our search to articles published between January 1, 2010 and March 31, 2018 to encompass the first year that benefit corporation law was enacted up to the contemporary period (572). Finally, as our focus is on discourse around the enactment of legislation, we focused on press that is associated with a jurisdiction (state) as opposed to a non-jurisdictional piece. We identified 404 distinct news articles.

<sup>25</sup> Our search window also included the thirty days leading up to the date the legislation was passed and the thirty days following the effective date of the legislation. This window is adequate as looking at a longer search window (up to 60 days) added few articles to the analysis.

**Table 1**  
Enactment of benefit corporation legislation by state.

Period	Order of Enactment	State	Effective Date of Legislation	Legislation Reference	Level of BC Momentum
Phase 1	1	Maryland (MD)	10/01/10	SB 690/HB 1009	Medium
	2	New Jersey (NJ)	03/01/11	S 2170	Low
	3	Vermont (VT)	07/01/11	S 263	Low
	4	Virginia (VA)	07/01/11	HB 2358	Medium
	5	Hawaii (HI)	07/08/11	SB 298	Low
Phase 2	6	California (CA)	01/01/12	AB 361	High
	7	New York (NY)	02/10/12	A4692-a and S79-a	Medium
	8	South Carolina (SC)	06/14/12	HB 4766	Low
	9	Louisiana (LA)	08/01/12	HB 1178	Low
	10	Massachusetts (MA)	12/01/12	H 4352	Medium
	11	Illinois (IL)	01/01/13	SB 2897	Low
	12	Pennsylvania (PA)	01/01/13	HB 1616	Medium
	13	Washington, D.C.	05/01/13	B 19-058	Low
	14	Arkansas (AR)	07/18/13	HB 1510	Low
	15	Delaware (DE)	08/01/13	SB 47	Low
Phase 3	16	Nevada (NV)	01/01/14	AB 89	High
	17	Oregon (OR)	01/01/14	HB 2296	High
	18	Rhode Island (RI)	01/01/14	HB 5720	Low
	19	Colorado (CO)	04/01/14	HB 13-1138	High
	20	Utah (UT)	05/13/14	SB 133	Low
	21	Florida (FL)	07/01/14	SB 654, HB 685	Low
	22	West Virginia (WV)	07/01/14	SB 202	Low
	23	Nebraska (NE)	07/18/14	LB 751	Low
	24	Connecticut (CT)	10/01/14	SB 23, HB 5597	Medium
	25	Arizona (AZ)	12/31/14	SB 1238	Low
Phase 4	26	Minnesota (MN)	01/01/15	SF 2053, HF 2582	Low
	27	New Hampshire (NH)	01/01/15	SB 215	Low
	28	Idaho (ID)	07/01/15	SB 1076	Low
	29	Indiana (IN)	07/01/15	HB 1015	Low
	30	Montana (MT)	10/01/15	HB 2458	Low
	31	Tennessee (TN)	01/01/16	HB 0767/SB 0972	Low
	32	Kansas (KS)	05/15/17	HB 2125	Low
	33	Kentucky (KY)	06/29/17	HB 35	Low
	34	Texas (TX)	09/01/17	HB 3488	Low
	35	Wisconsin (WI)	02/26/18	SB 298	Low

Table 1 shows the order in which each US state enacted legislation codifying the benefit corporation as a legal form of business. The order of enactment is based on the date that each state made the legislation effective; on average five months after the date the law was voted on. The table reflects the legislative reference as well as an indication of the extent to which benefit corporation registrations have prospered in each state since enactment.

At the same time we coded for these specific themes, we also noted any evolution in the discursive framings of distinct sets of actors over time in different legislative processes. This led us to decompose the process of institutional emergence and evolution that we study into four periods in accordance with natural breaks in patterns in the date of legislative enactments and in changes in framing. We organized our data within successive periods not necessarily having any particular theoretical significance but rather having a certain continuity in discursive frames within each period and discontinuity with other periods (Langley, 1999). This permitted a comparative examination of discourses across periods for the exploration of ideas. Representative examples of our coding are reflected in Table 2.

Finally, we considered the potential implications of these framing tendencies for an institutional form manifest as the BC. After the initial classification and interpretive understanding obtained using the framing mechanisms, we then focused on assessing the consequences of settlement on particular understandings of this new institutional form relative to traditional governance and accountability structures. To do so, we considered how understandings emerge from and are reinforced by assumptions and belief systems and the lived experience of interested constituents, and situated settlement of the BC as an institutional form within the broader socio-political context.<sup>26</sup>

In what follows, we trace the emergence and evolution of understandings of the BC as an institutional form across various state legislative processes. We connect the emergence of the BC to framing processes mobilized in the discourse of actors around these legislative processes. The way in which actors frame their understanding of BCs also helps us to consider the implications of BCs acting in the public interest for the common good. Our concern is with what can be learned from the settlement of the BC institutional form regarding corporate governance structures and accountability systems.

<sup>26</sup> These factors align well with three additional elements of Snow and Benford's (1988) model, which help us to understand the power of the discourses promoted in the framing process. For instance, Snow and Benford's (1988) infrastructural constraints pertain to the assumptions and belief systems within which the institutional form is embedded. Furthermore, phenomenological constraints examine how well framing is linked to common experiences and cycles of protest refer to general movement activity in the environment in which more specific movements are embedded. Our focus is on the meaning systems – beliefs, experiences and socio-historic factors – underlying what we identify in the discursive framing process.



**Table 2**  
Representative examples of framing and themes.

Framing, Definition and Themes	Used Primarily By	Representative Examples from BC Enactments
<b>Motivational Framing</b>		
<i>Promoting actions and elaborating of “call to arms or rationale for acting”</i>		
Attracting entrepreneurs/innovative individuals/firms/ investors to work on societal issues	BLab, State Sponsor	“Tremendous demand from the business community in California, namely visionary entrepreneurs and investors who want to build businesses with an eye toward the triple bottom line of people, planet and profit.” (BLAB, CA) “Connecticut entrepreneurs can start businesses that compete in the private sector while also working to solve the toughest social and economic problems that our communities face.” (State Sponsor, CT)
Meeting higher standards of accountability demanded of business	BLab, Business/ Industry, State Sponsor	“We believe Oregon is a great place to do business... The new BC registration gives Oregon companies a great opportunity to do greater good in their communities, showing responsibility and accountability. Our heart and passion aligns with the benefits firm registration.” (Business/Industry, OR)
Creating jobs and business opportunities for economic growth	Business/Industry, State Sponsor	“I was honored to have sponsored the new Benefit corporation Law... allows our NH businesses to compete, attract talent, market what they do best to investors and customers, and create jobs.” (State Sponsor, NH) “It’s sending a message to companies that want to make money – but also don’t just look at their bottom line – that we want them to come to our state.” (State Sponsor, MN)
<b>Diagnostic Framing</b>		
<i>Finding the cause of the problematic situation and/or attributing blame or causality</i>		
Problems with existing institutions: Profit maximizing pressure is not sustainable Entities risk litigation if they don’t maximize profit to financial constituents	BLab, State Sponsor	“We have seen growth in companies with a social mission in the last 10 years. The more prominent that becomes, the more frustrated businesspeople become with the existing legal structure... It does not give you the flexibility to say, ‘Maybe I want to take the second-highest bid on something or go with a vendor who is a little more expensive but fits my social mission’ (State Sponsor, VA)
Problems with BC as institution: Threat to protecting the interest of/accountability to certain constituents (state, not-for-profit, private firms)	Attorneys, Not-for-profits	“Unclear as to whether corporate directors have any fiduciary duty to act in the interest of shareholders... and, consequently, will pose a risk to shareholder protections and create a framework in which directors are no longer accountable to shareholders” (Attorneys, CA)
<b>Prognostic Framing</b>		
<i>Articulating proposed solutions to problems, identification of strategies, tactics and targets</i>		
Addresses longevity of business/industry, entrepreneurial intent, and power of private business	Business/Industry	“It is important for us to take the next step, to convert to a Public Benefit corporation, in order to ‘bake’ our mission legally into the DNA of the company. Not only do we want to make a statement about the importance of mission-based companies to society as whole, but we also want to make sure that if the company sells, our mission lives on.” (Business/Industry, CO)
Creates support network and infrastructure favorable to BCs (which meets other public goals)	Attorneys, Business/Industry	“No longer would Tennesseans need to go out of state to incorporate under this new and completely voluntary model. Having this law in place will make Tennessee an even more attractive place to do business, offering companies the same tax structure and legal benefits of a traditional firm, but with the ability to pursue a broader vision of community benefit. Everyone wins in that equation.” (Business/Industry, TN)
Resolves deficiencies in funding models (state, NFP, private firms)	Attorneys, Business/Industry, Not-for-profits	“Increase flexibility for businesses in Kansas by expanding the choice of business forms, facilitating their access to new sources of private finance that are directed at benefit corporations, giving Kansas entrepreneurs the freedom to conduct business using a corporate form that is free from certain restrictions that apply to non-profit firms, and keeping Kansas competitive as a forum for new entity formation.” (Attorney, KS)

Table 2 reflects the themes that we identified as falling within the three overarching framing mechanisms: motivational, diagnostic, and prognostic (Snow & Benford, 1988). While our interpretation of actor’s discourse may be considered to contain language indicative of another theme or framing mechanism, a predominant profile of each theme and framing mechanism could be distinguished for actors in each period of our study. Table 2 indicates the actors who mobilized each theme and provides examples of the representative discourse from our analysis.

#### 4. Understanding the benefit corporation through framing processes

Through our study of the discursive framing of key actors in the emergence and evolution of the BC, we find that the process of settling on an understanding of the BC occurred in four periods or phases. A small group of interested constituents sets the initial framing of the BC form. Over time, this group of constituents expanded and the type of framing used by the various actors changed as illustrated in [Table 3](#). Principally, attention shifted from the public interest aspects to the private interest aspects.

##### 4.1. Initiating action on the benefit corporation (2010–2011)

The idea for the enactment of BC legislation surfaced through the activities of BLab. In November 2009, Maryland Senator Raskin met BLab representatives at an impact investing event. Following this meeting, Senator Raskin sponsored legislation proposing the creation of a new corporate entity in the form of the BC. The legislation passed in 2010 making Maryland the first state in the US to enact the BC form into law. The enactment of BC legislation in Hawaii, New Jersey, Vermont and Virginia followed in 2011.

During this period, BLab and the legislative sponsors direct the framing process using discursive framing focused on the transformation of for-profit firms into hybrid-purpose entities and the related public interest benefits as the rationale for implementing the new institutional form. Two themes center on motivational mechanisms. First, legislative sponsors and BLab frame the BC as an institutional form that meets broader standards of accountability and governance. For example, legislative sponsors in Maryland indicate that the BC creates “socially and environmentally-conscious branding that hundreds of firms” are seeking.<sup>27</sup> Senator Raskin noted that such consciousness is “expected by the community” and “people are often willing to pay for products when they know the money goes toward groups and causes they support.”<sup>28</sup> A second motivational frame, presented as a rationale for action espoused by the legislative sponsors, characterizes the BC as a way to create jobs and business opportunities, leading to economic growth. For example, the governor of Maryland highlights the tangible economic benefits associated with the BC accruing to the citizens of the state, stating, “the new law is as much about social responsibility as it is about job creation.”<sup>29</sup>

However, alongside motivational calls to action lies diagnostic framing that identifies the problems that BC legislation might address. According to BLab, the BC form allows a firm to take actions in pursuit of a public interest objective that might not maximize profits with less litigation exposure than would be the case under existing institutional forms. This idea is reflected in the discourse of BLab as well as state legislative sponsors, as in:

“We have seen growth in companies with a social mission in the last 10 years. The more prominent that becomes, the more frustrated businesspeople become with the existing legal structure. . . It does not give you the flexibility to say, ‘Maybe I want to take the second-highest bid on something or go with a vendor who is a little more expensive but fits my social mission’.” (State Sponsor, VA)

In this quote, the legislative sponsor in Virginia implies that the BC option allows firms electing this new institutional form the flexibility to make choices that they cannot make under current law, since these choices would not maximize profit.

In this phase, a limited group of constituents makes claims primarily related to the public interest benefits of the BC form. BLab and state legislative sponsors control the discursive framing of BCs as the voice of a broader set of actors is not publicly observable in our data in this period. While BLab and state sponsors remain prominent in the next legislative phase, other interested constituents enter the public debate presenting BCs as both a problem and a solution. The emergence of new constituents is consistent with Hargrove and van de Ven’s (2006) supposition that collectives of actors evolve, both in terms of coalitions and discursive frames.

##### 4.2. Enrolling the opposition in the debate (2012–2013)

During this period, ten states enacted BC legislation (see [Table 1](#)) including Delaware, the primary state for business incorporation in the US. Our analysis indicates that BLab and state legislative sponsors continue to mobilize motivational and diagnostic framing of the BC form. At the same time, attorneys and business/industry constituents, as well as the NFP community, enter the public discourse and debate.

Legislators portray the BC form as a way for states to acknowledge participation in a “movement” toward responsible businesses exhibiting expanded governance and accountability. According to the governor of Delaware,

“with the addition of public benefit corporations, Delaware will continue to be a leader and support a now movement of social entrepreneurs and investors stepping forward to meet high standards of corporate purpose, accountability and transparency.” (State Sponsor, DE)

<sup>27</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/30/AR2010033003924.html>, last accessed January 9, 2017.

<sup>28</sup> [https://www.washingtonpost.com/local/takoma-park-coffee-company-is-among-first-benefit-firms-in-state/2011/09/16/gIQRQzdYK\\_story.html?utm\\_term=.97aaf91ca317](https://www.washingtonpost.com/local/takoma-park-coffee-company-is-among-first-benefit-firms-in-state/2011/09/16/gIQRQzdYK_story.html?utm_term=.97aaf91ca317), last accessed January 9, 2017.

<sup>29</sup> [https://www.washingtonpost.com/local/takoma-park-coffee-company-is-among-first-benefit-firms-in-state/2011/09/16/gIQRQzdYK\\_story.html?utm\\_term=.97aaf91ca317](https://www.washingtonpost.com/local/takoma-park-coffee-company-is-among-first-benefit-firms-in-state/2011/09/16/gIQRQzdYK_story.html?utm_term=.97aaf91ca317), last accessed January 9, 2017.

**Table 3**  
Evolution of framing by key actors over enactment period.

Framing	Period			
	2010–11	2012–13	2014	2015–18
Diagnostic	Blab State Sponsor	Attorneys Blab Not-for-profits State Sponsor		
Motivational	Blab State Sponsor	Blab State Sponsor	Blab Business/Industry State Sponsor	
Prognostic		Attorneys Business/Industry	Attorneys Business/Industry Not-for-profits	Attorneys Business/Industry State Sponsor
Enactments of BC Law During Period	5	10	10	10

Table 3 reflects the key actors employing each framing mechanism during each phase within our period of study.

Further, legislative actors responsible for the Delaware bill describe how their “unique role in corporate America... will make benefit corporations a viable option for entrepreneurs and investors in Delaware and throughout the nation.”<sup>30</sup> As such, the law was again framed by state legislative sponsors in the motivational sense.

Embedded in the motivational discourse are themes that portray the BC as an institutional form meeting a demand for broader standards of accountability and creating jobs and economic growth. In New York, the legislative sponsor links economic growth to specific public interest related accountability goals for the state, suggesting that the BC aligns with the state’s

“efforts to strengthen and diversify our economy while ensuring that New York remains a national leader in progressive policies that help our environment, protect consumers and bolster the rights of working men and women.” (State Sponsor, NY)

In California, the law’s legislative sponsor states that BCs

“offer for-profit companies a way to do well and do right. There is a way to create jobs and grow the economy while raising the bar for social and environmental responsibility. With this new law, we are attracting new socially conscious companies, investors and consumers.” (State Sponsor, CA)

As this quote reveals, discursive framing is broadened out in this phase with the additional motivational theme of attracting socially conscious businesses and investors concerned with advancing the public interest. Indeed, private businesses and industry associations appear as supporters of the BC legislation mobilizing framings similar to those of socially conscious firms and related associations. However, the discursive framing from such organizations leans toward the economic dimensions associated with benefits claimed for BCs. For example, a sustainable business association implies that the BC form was indicative of

“a new economy [is] blossoming across the country, made up of businesses that are finding ways to do well while helping our environment and society at large. States that welcome these new businesses will be poised for [economic] growth.” (Business/Industry, CA)

Alongside motivational framing, aspects of diagnostic framing are also prevalent. For example, in discussing the necessary legal structure needed to support BCs, BLab points to the potential exposure to litigation for trading off profits related to societal benefits under existing institutional structures. This exposure is framed as a problem for entities wanting to focus on a broader set of objectives and be held accountable within a more inclusive governance structure:

“It has been generally decided that companies could not do this [focus on stakeholders] and be protected... We worked with Delaware Secretary of State and Court of Chancery, and they said that if a company acted like a benefit corp[oration] and made decisions that did not maximize profits, they would have to rule against them in a lawsuit brought by shareholders.” (BLAB, DE)

BLAB supports the BC form and uses diagnostic framing to present the legal issue as a problem with traditional institutional forms. However, oppositional groups, comprised of attorneys or associations of attorneys<sup>31</sup> as well as a group of NFP entities, employ diagnostic framing in this phase that addresses problematics associated with the BC institutional form itself.

<sup>30</sup> <http://news.delaware.gov/2013/07/17/governor-markell-signs-public-benefit-firm-legislation/>, last accessed January 12, 2017.

<sup>31</sup> As mentioned, attorneys helped BLab create the model legislation. However, in the second period we note that outside sponsors of the legislation expanded in certain states to include both BLab and local attorneys, some who work for law firms certified by BLab.

The oppositional frame content explicitly defends the private interests of financial capital and criticizes the governance regime called forth in the BC form as a threat to the interests of, and accountability to, traditional financial constituents. For instance, some legal constituents claim the BC form to be

“unclear as to whether corporate directors have any fiduciary duty to act in the interest of shareholders. . . consequently, will pose a risk to shareholder protections and create a framework in which directors are no longer accountable to shareholders.” (Attorneys, CA)

Further, the NFP constituents articulate diagnostic frames that go beyond problem with financial interests to include problems with governance and accountability processes stating, for example, that the California BC legislation

“places benefit corporations in the same arena as non-profit organizations. . . [yet] limits external accountability, including monetary liability for directors who fail to perform their duties or benefit corporations that fail to produce a public benefit.” (Not-for-profits, CA)

Not only is the BC form framed as an existential threat to NFPs but also as creating the potential to allow entities with purposes similar to NFPs to be less subject to oversight and accountability.<sup>32</sup> In addition, NFP constituents recognize the possibility of shifting resources from the public and NFP sector, having the sole mission to act in the public interest, to a hybrid-purpose form where resources would be used to provide societal benefits but would also be expected to provide a return to capital. The BC form “may result in philanthropy dollars being siphoned off from effective existing NFPs by redirecting donor dollars from charitable contributions”,<sup>33</sup> presumably to invest in benefit corporations.

Finally, in this period, attorneys and business/industry constituents mobilize prognostic framing touching on three themes that portray the BC form as a solution or strategy. Thus, while some attorneys were opponents in this period, there were also attorneys supporting the legislative proposals that framed the BC form as a solution rather than a problem. First, prognostic framing articulates the BC form as way to address the constraints of funding models associated with existing institutional forms. Specifically, advocates highlight how the BC form would be a tool for NFPs to raise capital:

“when a non-profit develops a great solution that’s going to revolutionize the world, it can’t bring in the money it will need to scale it up. . . If this solution were developed in a for-profit business, shares can be issued to investors who will be given a share of the company. . . Some non-profits that have a product or service that they want to actually spin off as a for-profit so they can bring in investors will see this as a real tool.” (Attorneys, CA)

A second prognostic theme sees the BC form as creating a governance structure that allows entities to align their hybrid purpose with their legal form. In this theme, discourse indicates that

“It’s not for most companies. It’s a choice for companies that, generally speaking, are operating in this manner, but they want a legal structure that reflects the type of business they’re doing.” (Attorney, NY)

The final prognostic theme involves framing of the BC form as an opportunity to focus on the long-term entrepreneurial intent, and public interest objectives, of private business:

“Patagonia is trying to build a company that could last 100 years. . . BC framework enables mission-driven companies like Patagonia to stay mission-driven through succession, capital raises and even changes in ownership by institutionalizing the values, culture, processes and high standards put in place by founding entrepreneurs.” (Business/Industry, CA)

Likewise, BLab purports that the BC form enables firms to build long-term trust relationships not only with capital but also with talent and customers. This long-term trust may increase socially responsible investing, satisfy employee preferences for working for firms with ethical business practices, and result in consumers aligning their purchases with their values.<sup>34</sup>

Evidence in this period shows the public discourse of a plurality of interested constituent’s on the BC form, including that of attorneys, business/industry, and NFPs. While the discourse of state legislative sponsors and BLab remains focused on both motivational and diagnostic framing, the business and legal community are enrolled in the collective of actors promoting the BC form through a prognostic perspective. However, not without opposition. It is noteworthy that in this phase market oriented framings by proponents, relating to acquiring capital and attracting a desirable work force, are mentioned alongside the ability to pursue public interest objectives over the long term.

While the focus is on the transformation of a for-profit firm to a hybrid-purpose entity, there is also mention of NFP entities transforming to hybrid-purpose entities as well. For instance, the BC form is proposed to be a significant opportunity for social enterprises “that seek access to venture capital, private equity and public capital markets.”<sup>35</sup> In this sense, the discourses focused on public interest objectives become intermingled with the acquisition of capital. We find further evolution in the support for, and framing of, the BC form as we analyze the enactment of BC legislation in the third phase.

<sup>32</sup> Senate Judiciary Committee, Testimony of the Nonprofit and Unincorporated Organizations Committee of the Business Law Section of the California State Bar, July 5, 2011.

<sup>33</sup> Assembly Committee on Judiciary, California Association of Nonprofits, May 3, 2011.

<sup>34</sup> <http://www.forbes.com/sites/skollworldforum/2013/07/17/today-marks-a-tipping-point-in-the-evolution-of-capitalism/#558479b559eb>, last accessed January 12, 2017.

<sup>35</sup> *Ibid.*

### 4.3. Turning a problem into an opportunity (2014)

The number of states enacting BC legislation increased by ten states in 2014, as many as in the previous two years (see [Table 1](#)). BLab and the legislative sponsors continue to mobilize motivational framing in advocating for this new institutional form. The presence of attorneys, the business community and the NFP community discourse becomes more prominent as the public discussion and debate broadens out. The predominant framings are motivational and prognostic. Despite its prevalence in the previous phases, diagnostic framing is not prevalent in this phase.

As in prior periods, the motivational themes remain present and are mobilized by BLab and state sponsors as well as by the business and investor community. First, the BC form is characterized as responding to calls by interested constituents for more accountability from business. In Nevada, for example, BLab projects the potential demand for BCs from:

“60 million conscious consumers, people that want to buy a product or service, but also want to pay attention to how the company performs. . . . There is potential for an estimated \$3 trillion of socially impacted investments in our economy, whether negative or positive filters.” (BLab, NV)

Along these same lines, business/industry frame the BC form as supporting actions they can take in responding to demands for accountability from the local community. For instance, firms in Oregon express how the BC form

“embeds our triple bottom line commitment as an eco-business. This is a way for us to have it there from square one, and it gives us the opportunity to report back to the community about what we’re doing.” (Business/Industry, OR)

The theme of meeting standards of accountability was at times presented with the second motivational theme of economic improvement through job creation and new business opportunities. For example, state legislators portray the BC form as generating economic growth by sending “a clear message that Nevada is a hospitable place to set up and operate a company wanting to make a societal impact as well as making a profit.”<sup>36</sup> Furthermore, BLab claims that the BC form would “solve some of the pressing issues facing society, attract new jobs and investment and provide opportunities for economic development.”<sup>37</sup>

This reflects the framing content portraying the BC form as attractive to entrepreneurs and investors interested in societal impacts alongside the themes of job creation and accountability to constituents. However, the main point we interpret through these quotes is a focus on competition and investment in “social impact”. Legislative sponsors state that through the BC form “entrepreneurs can start businesses that compete in the private sector while also working to solve the toughest social and economic problems that our communities face.”<sup>38</sup> Likewise, legislative sponsors indicate that the BC form would

“allow our NH businesses to compete, attract talent, market what they do best to investors and customers, and create jobs. . . . W.S. Badger will be the first to take advantage of this new law, which allows them to have a broader impact benefiting our environment and our community.” (State Sponsor, NH)

Thus, the BC form is not only about competition for employees, customers and investors who seek such businesses but about having a broader impact on the community.

The motivational framing around impact investing is also used in the business community as a rationale for action:

“Businesses large and small and from across the state advocated for this law that empowers business leaders to make smart choices that serve their shareholders, employees, communities and improve the environment. It is another way to support entrepreneurs and to attract impact investors who see that business can be a force for good.” (Business/Industry, OR)

Relatedly, business constituents frame the BC form as a call to investors that will encourage business growth in the state by attracting investment capital, as in:

“Nevada is already an attractive place to incorporate and . . . can be that much more attractive for business development. We should not miss the opportunity to pass legislation that will attract much needed investment capital to our communities.” (Business/Industry, NV)

Interested constituents also employ prognostic framing where the BC form is portrayed as having the ability to unleash the power of the market-driven private sector to provide solutions to societal problems. In Nevada, the state sponsor discusses the BC form in terms of the

“transformational power the private sector could have if given the freedom to think beyond profit. This would not only be good for society but also the expansion of the free market and the entrepreneurs that innovate.” (State Sponsor, NV)

Similarly, business/industry proponents stress how the BC resolves funding and investing issues, as in

“investors who are not interested in traditional venture capital pathways, who are not only looking for a return on investment but a return on community. . . . There are individuals who are interested in the value structure of a non-profit, but they are not very interested in putting in an investment and not getting a return. We are interested in bringing them some new funding structures. . . . We see it bringing more money here to the state.” (Business/Industry, NV)

<sup>36</sup> Senate Committee on Judiciary, Testimony of Nevada Chamber of Commerce, April 16, 2013.

<sup>37</sup> <https://www.cga.ct.gov/2014/JFR/S/2014SB-00023-R00CE-JFR.htm>, last accessed January 12, 2017.

<sup>38</sup> [http://patch.com/connecticut/westport/malloys-plans-legislation-to-establish-benefit-firms\\_b1a4183d](http://patch.com/connecticut/westport/malloys-plans-legislation-to-establish-benefit-firms_b1a4183d), last accessed January 12, 2017.

Along with celebrating the power of hybrid-purpose entities, the prognostic theme commends the BC form as a solution to the potential legal implications of doing “good work” at the expense of financial constituents. Indeed, the BC form is portrayed as solving the problem of existing legal structures by creating an institutional form favorable to hybrid purposes. The focus here is on protecting the identity and choices of firms with a hybrid purpose through networks and infrastructures that establish supportive legal environments, governance structures and accountability regimes.

“it is important for us to take the next step, to convert to a public benefit corporation, in order to ‘bake’ our mission legally into the DNA of the company. Not only do we want to make a statement about the importance of mission-based companies to society as whole, but we also want to make sure that if the company sells, our mission lives on.” (Business/Industry, CO)

“important to foster the concept of social entrepreneurship in Connecticut and eliminate any barriers, legal or otherwise, for a business firm to pursue social benefits.” (Attorney, CT)

Furthermore, business constituents speak of the BC form as a strategy, whereby socially-minded firms and investors actively seek states where benefit corporations are permissible.<sup>39</sup>

Finally, our analysis reveals a third prognostic theme where the BC form is promoted as a way to overcome deficiencies in current capital and funding models. Attorneys, business/industry and NFPs all use this theme in the third period of study. NFPs previously spoke in opposition, characterizing the BC form as problematic and a threat to their existence. Now, the NFPs voice support and have come to frame the BC form as providing a market solution to their funding challenges as traditional funding sources are reduced.

“...many non-profit providers continue to face enormous fiscal challenges, having been forced in many cases to reduce programs, services and staff in response to underfunding. With the constraints on the state budget and uncertainty with federal funding, the non-profit community is looking for, and supportive of, new revenue sources as well as new partnerships with the communities we serve to maintain the highest quality services and programs. Social enterprise, particularly benefit corporations, is a tool that can help non-profits achieve these objectives.” (Not-for-profits, CT)

As such, we see the evolution of the NFP discourse move from a position of threat to their public interest purpose in the second period to a position of opportunity in the third. The NFP discourse, thus, appropriates the business/industry sector’s discursive framing regarding economic and capital investment prospects.

By the third phase, the discursive framing of BLab and state legislative sponsors shifts from diagnosing a problem for socially conscious for-profit firms that the BC form addresses to focus on the rationale for attorneys, business/industry and NFPs to support the BC form. Each of these actor groups appear prominently in framing the discourse and debate surrounding the issues. Their framing discourses evidence motivational and prognostic themes and the content reveals an increasing alignment in the discourses across the various groups. More specifically, in contrast with the second period where the voice of NFPs was present but mobilized oppositional diagnostic framing regarding the BC legislation, this period indicates a supportive, prognostic view of the BC form by NFP entities. Interestingly, actors in this period articulate the interest of impact investors and venture capitalists, particularly in opening up the private and NFP sector to investment, overshadowing the public benefit aspect of the hybrid-purpose business by its potential as a market based solution and a strategy for private business and NFPs.

#### 4.4. Further transforming the opportunity (2015–2018)

By the beginning of 2015, twenty-four states and the District of Columbia enacted legislation authorizing the BC form, with over one-third of them enacting in 2014. From 2015 on, the rate of BC enactment per year declined but not before another ten states put the BC form into law. Our analysis of this period indicates that the diagnostic framing, particularly of BLab the initiating organization, has essentially disappeared. What persists are the prognostic framings of constituents, primarily the business/industry constituents. While the public discourse of the attorneys and the legislative sponsors is still publicly observable, the frames they mobilize are prognostic and market oriented.

All three of the previously identified prognostic themes are evident in this period as are changes in how those themes are discussed. First, the BC form is framed as a solution for addressing the long-term objectives and entrepreneurial intent of private business owners. However, the discourse of business/industry constituents in this period indicates that the BC solution is still as much about profit and competition as about other objectives.

“Don’t mistake for a minute that this legislation isn’t about profit. You don’t succeed in business for nearly 24 years—as I have—without paying attention to the bottom line. Or as we like to say, “No margin, no mission.” It’s just a different way of delivering profit and one that makes our state and our businesses more competitive. In our case ... this includes contributing nearly \$1.8 million in cash and services to more than a hundred non-profits in the state of Idaho over our history. These grants have gone toward initiatives ranging from youth development and education to community farming efforts—and everywhere in between.” (Business/Industry, ID)

<sup>39</sup> <http://www.courant.com/business/hc-social-enterprise-bill-1001-20141001-story.html>, last accessed January 12, 2017.

Further, the BC form is framed as a solution which creates the legal infrastructure, governance structures and accountability regimes that firms need to operate with objectives in addition to profit maximization. In this phase, legal infrastructure is discussed not only from the perspective that it protects private business but also from the perspective that it makes states more attractive places to incorporate. Here, we see business/industry constituents procure themes that were more common of attorneys in prior periods. For example, business/industry constituents focus on the legal and structural aspect, as in:

“No longer would Tennesseans need to go out of state to incorporate under this new and completely voluntary model. Having this law in place will make Tennessee an even more attractive place to do business, offering companies the same tax structure and legal benefits of a traditional firm, but with the ability to pursue a broader vision of community benefit. Everyone wins in that equation.” (Business/Industry, TN)

Finally, in this period the BC form is again framed in terms of a funding solution for private business and NFPs that might make the transition to private business. Similar to prior periods, attorneys focus on access to private finance and more market-oriented forms in framing the enactment of the BC form in Kansas as a way to:

“increase flexibility for businesses in Kansas by expanding the choice of business forms, facilitating their access to new sources of private finance that are directed at benefit corporations, giving Kansas entrepreneurs the freedom to conduct business using a corporate form that is free from certain restrictions that apply to non-profit firms, and keeping Kansas competitive as a forum for new entity formation.” (Attorney, KS)

Furthermore, the BC form is not only framed as a funding solution for private business but also for states via private investment in firms engaged in community related projects. Specifically, we start to see both state legislative sponsors and business/industry constituents adopt the idea that the BC form helps not only to facilitate private investment in firms with a hybrid purpose but also to shift what were formerly government activities and responsibilities to private business. For instance, the state legislative sponsor in Texas highlights the BC form as a solution to the states own funding issues

“at a time when a constrained State budget will undoubtedly leave many needs within our communities unmet, Texas should, at minimum, facilitate opportunities for private investment in the greater good. Legislation enabling BCs ... can be a vehicle through which the private sector can invest in the growing needs of our state now, while simultaneously meeting today's dynamic market demands. It's a “win-win” for business and communities and a solid win for Texas.” (State Sponsor, TX)

Likewise, the potential for business constituents to accept this facilitating shift of the BC form and even to embrace it is shown in discourse on the enactment of the BC form in Wisconsin.

“Benefit corporations are a free-market solution for companies that don't believe short-termism is a good business model, or that want to use business as a force for social good while staying profitable. In many respects, benefit corporations are shifting what are otherwise government responsibilities to the private sector. The market is demanding these types of companies, and the government shouldn't get in the way of allowing them to exist.” (Business/Industry, WI)

In the next section, we evaluate the evolving collective of actors and framing processes mobilized by those actors in relation to their settlement on a particular understanding of the BC form. While institutional settlement of the BC as a governance structure may continue to evolve, the framing of the BC as an institutional form providing capital market solutions to public interest concerns and activities is unlikely to reverse. We briefly consider the socio-political context wherein the framing activities are carried out, in an attempt to gain insights into what this new institutional form and mode of governing business conduct implies for traditional public and private sector activities and the common good. We highlight the emergence and evolution of this hybrid-purpose institutional form as a cautionary tale.

## 5. Implications of benefit corporations: a cautionary tale

Our interpretive understanding of the emergence and evolution of the BC illustrates the potential for broadening out and opening up private sector objectives to include public interest considerations. However, our analysis also suggests that this broadening out and opening up may be another instance of shifting the responsibility for the public interest to private actors, exposing another sector of society to the discipline of the market and control by financial capital (e.g. [Alawattage, Graham, & Wickramasinghe \(2018\)](#) regarding microfinance).

### 5.1. Broadening out and opening up

Interestingly, the locus of activity surrounding BCs begins in the private sector, enrolls the public sector and then shifts back to the private sector with the activity domain circumscribed by legislative and regulatory directives. In the private sector, a consultative and certification supplier acted as a principal player formulating and disseminating the idea. BLab recognized the potential of, and opportunity for codifying, this hybrid-purpose form. Overall, we identify BLab as the mobilizing structure of an eventual collective of interested constituents, one whose efforts to promote a hybrid-purpose institutional form were necessary but not sufficient.

While BLab might be considered a “mobilizing structure”, an actor that is the building block of change for having defined an idea and being appropriately organized and resourced to act on it (McAdam & Scott, 2005), it needed the state to institutionalize the idea and put it into action. Reciprocally, the legislators maintain the ultimate power to act yet they needed BLab’s perceived expertise in order to craft business policy around this idea. BLab actively advocated for BC legislation and in many cases the states relied heavily on the model legislation suggested by BLab. Therefore, both BLab, as the initial activist, and the state, as the political authority, are required members of the collective involved in settlement of this institutional form. Such actors may be referred to as “signifying agents” (Snow & Benford, 1988) engaged in the “politics of signification” (Hall, 1982) and setting the discursive framing of the legislation based on their beliefs and their experiences.

In chronicling the journey to settlement on an understanding of BCs, we note how the state acts as the conduit by which the mobilizing actor’s idea is codified. That codification and its legitimization as an institutional form of corporate governance is subject to challenge by associated professional advisors, potential BCs, and the investment community. Indeed, the broader community of business and industry, impact investors, attorneys and NFP entities plays an important role in constituting the collective of interested constituents ultimately enveloped into the coalition of support. This collective affects settlement on understanding the hybrid-purpose institutional form as members of the collective galvanize around select discourses. We consider how the composition and discursive framing of the various actors involved morphed over time as support increased and changed and as arguments were (re)formulated to promote the legislation creating the BC legal form.

Initially, the framing of BLab and legislative sponsors dealt with motivating aspects such as attracting entrepreneurial talent and job creation leading to state economic growth and meeting demands for higher standards of business conduct. At the same time, diagnostic aspects of the BC were promoted by supporters indicating how the BC form would fix problems with existing for-profit governance structures and by opponents framing the BC form as a threat to NFP entities. Later, the BC form was recognized for its potential to provide additional investment opportunities and financial returns to private firm’s public interest activities and to expand such opportunities to NFP entities. Table 3 depicts the way in which the same key actor group employed multiple framing mechanisms both within and across periods.

Furthermore, Table 3 reflects the evolution of predominant framing mechanisms over time. Discursive framing evolved from the diagnostic and motivational premises of the BC legislation to its prognostic potential, transforming capitalism and economic competitiveness and, ultimately, bringing capital investment to previously excluded areas of economic life. This evolution is not a linear process moving from problems, to solutions, to actions but allows for the integration and reordering of framing mechanisms where actors call others to action, debate problematics of acting and ultimately propose solutions while settlement takes place. According to Benford and Snow (2000), “the more highly integrated the diagnostic, prognostic and action frames, the higher the probability of becoming active in any particular cause” (p. 203).

## 5.2. Privatization of the public interest

Our data presents the BC form as an option in both for-profit and not-for-profit settings, yet little consideration has been given to the appropriateness of private oversight of activities that have formerly been considered the responsibility of the public sphere. The shift of activities from the public and NFP sector to a hybrid-purpose institutional form, such as the BC, claims to facilitate the benefits of the private sector such as the incentive for initiative and innovation. Furthermore, the legislation enables the participation in capital markets by entities that claim to be focused on enhancing the public welfare as well as the opportunity for investors to invest in social enterprises through the capital markets. Finally, the BC form also maintains traditional governance structures of for-profit firms, providing owners of BCs with limited liability and limited government oversight raising concerns over mechanisms of accountability for the BCs claimed public objective. All of this injects and intertwines the structures and interests of private financiers with that of potentially underprivileged public groups. Thus, the appeal of neoclassical economics and its discourse seems to be capable of enrolling actors who we might even expect to be opposed to the consequences of capitalism (Chiapello, 2017).

We reflect on the implications of settlement on an understanding of a hybrid-purpose institutional form that may ultimately privilege private over public interests by considering the socio-political context that facilitated and shaped the framing of that institutional form. One way of interpreting the settlement of the BC form is as part of the neoliberal political agenda. Market exposure and discipline are held to be primary benefits of the neoclassical economic philosophy upon which such an agenda is based. The logic follows that the market, not the state, provides the necessary governance mechanisms for the effective and efficient allocation of a society’s resources. Such logic has been used to justify the continued privatization of state-owned enterprises in England (Jupe & Funnell, 2015) and developing countries alike (Sharma & Lawrence, 2015; Bakre & Lauwo, 2016). So, how might the emergence and evolution of the BC as an institutional form be interpreted if it is viewed as a means for facilitating the “privatization of the public interest” or the shift of responsibility for public welfare into the private sector?

Accepting the tenets of neoclassical economics, society’s needs can best be provided for by developing market-based incentives that stimulate innovation and risk taking. The best strategies for successfully operating in a market environment have been developed and implemented by the business sector. The “business case” for addressing public welfare problems (see Brown & Fraser, 2006; Gray, Adams, & Owen, 2014; Gray, Brennan & Malpas, 2014) comes to be unquestionably accepted in the discursive framing of the BC form and legislation. Following the business case motif, the BC is touted as facilitating the application of business practices to solving public interest problems. Thus, business and industry constituents establish their objectives as responding to a market need. Further, consultants (i.e. BLab and attorneys) aid in the transfer



of public interest activities to the private sector and the market (Jupe & Funnell, 2015; Sharma & Lawrence, 2015), seeing their influence and the demand for their services grow as the understanding of BCs settles.

Reflecting the accepted wisdom of the business case logic and the influence of capital in perpetuating that logic, states are amenable to shifting their responsibilities for public welfare to the private sector via owners/boards of directors and exposure to market forces.<sup>40</sup> The BC as a governance regime is primarily private with some government oversight, though there is variation across states. Not only has the government abdicated its responsibility to provide for the public welfare, it has also abdicated its responsibility for governance of the entities created to address the demands of public welfare.

In this setting, the role of the government remains central with regards to codification and in articulating governance and accountability processes. The government seemingly controls the codifying process, sets the parameters, and puts in place the basic infrastructure and required procedures. Yet most of the enacted legislation offers weak enforcement of accountability regarding a BC's established public benefit objectives or to the constituents that the BC claims to benefit. Furthermore, the way the current statutes are written and implemented, while the government maintains some regulatory requirements, analogous to traditional firms, the governance of entities electing this new institutional form falls primarily to the private sector through voluntary disclosure, certifying organizations and markets. As such, critics have questioned whether granting self-regulating accountability for business conduct to an expanded set of constituents could in essence hold BCs accountable to none (Phillips, Freeman, & Wicks, 2003). It is a question for future research whether these governance and reporting regimes will facilitate the public benefit objectives being met (Resor, 2012).

In summary, settlement on an understanding of the BC form manifests the business case logic applied within the public welfare sector. The passage of the BC legislation and the way it is collectively understood by interested constituents subjects another segment of society to a higher propensity of control by capital. Where investors in certain social enterprises have already begun to represent such enterprises as “financially inclined performers” that aim to deliver results as defined by the investors (Duval, Gendron, & Roux-Doufort, 2015), the BC form grounds public interest activities even more firmly in the traditional capital centered form of corporate governance. Not only do BCs have access to new sources of capital, capital now has the ability to control, and profit from, BCs by virtue of the governance and accountability mechanisms, or lack thereof, enacted in the law. Capital gains direct access to, and exercises control over, a portion of society previously considered the domain of the government or the NFP sector. In our reading of the emergence and evolution of the BC as a hybrid-purpose institutional form, the BC is a means for expanding capital's power and influence over a sector that has not been, at least directly, colonized by it. At the same time, the BC form legitimizes the state's abdication of its responsibility to provide for the welfare of the public.

## 6. Summary and reflections

Our paper explores discursively the process of settling on an understanding of an emerging institutional form. To do so, we analyzed the public discourse of a collective of interested constituents in and around the enactment of legislation codifying an institutional form at the state-level. Our study is limited by public availability of data at this level; however, publicity and public discourse often drive movements and reflect the way the broader population thinks about institutions. Particular attention is paid to the discursive framing of the benefit corporation and how that framing evolves over time.

Discursive framing of the BC does not proceed linearly from diagnosing problems, prognosticating solutions, and motivating participants to take action. Rather, in our setting, the motivation to act appears along with the justification, and problematization, of why one should act while afterwards comes the solution or strategy. Ultimately, the discursive framing of the BC settles on an understanding of the BC as an institutional form that provides both for-profit and NFP entities claiming public interest objectives with access to investment capital and associated governance processes. As such, this new institutional form may encourage the migration of responsibility and funding for public services and public welfare to the private sector.

We present the institutional form of BCs revealed by our analysis as a cautionary tale. While we do not aim to judge whether the public interest is being (better) served by BCs, our work illuminates some of the issues underlying this question and encourages further exploration on several fronts. As a way of reflecting on future exploration of our findings, we consider Flyvbjerg's (2001) questions directed toward *making social science matter*. Thus, we consider: Where are we going with regards to institutions such as the BC? Are hybrid-purpose institutional forms desirable? What are the mechanisms of power? What might be done to broaden out and open up possibilities for responsible corporate action?

### 6.1. Where are we going?

Our analysis provides an understanding of the BC as an alternative institutional form. That understanding shows the business case to be emerging as the dominant interpretation of the BC. Under this interpretation, one possibility is that for-profit firms expand their objectives beyond profit maximization to include a public interest objective. A second possibility is that NFPs engage in competitive market activities in the pursuit of a public interest objective as well as in the acquisition of resources to support that objective. Market pressures and financial capital are then brought to bear on societal activities

<sup>40</sup> See Harvey (2005) for a discussion of the role of the state in the evolution of neoliberalism.

and objectives traditionally carried out by the state or NFP entities within the context of traditional, equity-oriented governance structures. Future research might provide insight into how hybrid-purpose institutional forms negotiate the tradeoffs between market pressures and their public interest objectives.

Yet these tradeoffs may differ across contexts. We look at the way a hybrid governance conception emerged and evolved in the US. In some countries, institutional forms reminiscent of BCs have been enacted prior to the US legislation; including, the “social solidarity co-operative” in Italy and similar forms in France and Spain (Spear & Bidet, 2005) as well as the “community interest company” in the UK (Nicholls, 2010). However, the closest contemporary approximation of the benefit corporation legal form may be Italy’s recently introduced “società benefit” (Nigri & Del Baldo, 2018). Further, the Economy for the Common Good (ECG), a sister-organization to BLab, was initiated in Europe in 2010 to advocate for alternative economic models that work towards the common good. An extension of this paper would be to compare the emergence and evolution of hybrid business forms and concepts within different political and cultural contexts.

Furthermore, in the US and internationally, not all hybrid conceptions require the adoption of a particular legal form. Rather, entities of any legal form may choose to be certified as complying with voluntary standards of responsible business conduct such as those developed by BLab. Gehman and Grimes (2017) study certified B-Corps and find that entities may actively pursue certification yet fail to promote their certification afterwards. More work could be done to tease out the reasons why firms decide to become benefit corporations and/or submit to voluntary certification, including what firms and their constituents stand to gain and lose. Such questions may also speak to challenges in balancing private pressures and public interest objectives.

### 6.2. *Is it desirable?*

Considering such challenges, our work opens a conversation as to whether hybrid-purpose institutional forms are desirable (Flyvberg, 2001). The BC movement may foster a shift toward broader, community-oriented objectives spawning innovative solutions to societal problems as in the case of Patagonia and product sustainability.<sup>41</sup> Or, the BC form may shift objectives toward a narrower, individualistic, market driven perspective possibly exacerbating societal problems as in the case of Laureate Education, scrutinized for high student-loan default rates in the for-profit education sector.<sup>42</sup> Research on firms that operate in the space between the state and market can reveal the range of dilemmas these firms potentially confront. Such dilemmas have been debated long before hybrid-purpose institutions appeared. Widespread human rights issues, increasing inequality, and environmental degradation, among other “wicked problems” (Churchman, 1967), may need to be reconsidered in relation to the blending of public and private business objectives. Researchers can explore what efforts the state devotes to particular objectives and more broadly the provision of public services as a good in its own right (Wood & Wright, 2015), as BCs recognize the potential of the public interest and the common good as marketable commodities.

### 6.3. *Mechanisms of power*

Just as the desirability of the BC form is an open question, it is also too early in the evolution of the BCs to tell who wins and who loses in the settlement on an understanding of this legal form. In some ways, the BC form allows firms to internalize the distribution of wealth and public services and enables investment and return on such activities. This internalization grants BCs a choice as to which segments of society are more or less deserving and which services are more or less critical. This elevates the potential for discriminatory objectives or practices, especially considering there are few constraints on how BCs establish and, ultimately, meet their objectives. Researchers might therefore study the allocation of resources in a system that claims to emphasize the alignment of public and private objectives (Mahoney et al., 2009).

Some express concern that acting in the public interest does not become another avenue for transferring public resources into the private sector (Jupe & Funnell, 2015). Alongside research exploring this concern, studies can investigate whether the power of private enterprises operating as hybrid-purpose entities is actually focused on solving pressing societal problems. Especially considering that mechanisms of power seem to be migrating objectives toward the neoliberal tenets of individualism, free markets and economic efficiency instead of “social benefit provided by corporations”. Future research needs to track the continued evolution of the hybrid-purpose entity and monitor activities that may lead the public sector to become colonized by the market-based ideology.

### 6.4. *What might be done?*

Finally, as mechanisms of power around hybrid-purpose entities develop, researchers can investigate what might be done to broaden out and open up firms toward responsible action. The BC institutionalizes a form under which state oversight of responsible action is lacking in terms of accountability mechanisms. This aligns with Nicholls (2010) suggestion that the community interest company accountability requirements, which reflect a logic of “light touch” regulation, are inadequate to demonstrate the outcomes of the specific policy objectives set forth for this type of legal form. Killian (2015) discusses the

<sup>41</sup> <https://www.gq.com/story/patagonia-versus-donald-trump>, last accessed May 15, 2018.

<sup>42</sup> <https://www.forbes.com/sites/laurengensler/2017/02/01/laureate-education-initial-public-offering/#94dd3062b3da>, last accessed May, 24, 2018.

negative consequences of removing accountability mechanisms from relationships between the state and private bodies to which public services are outsourced or privatized. Research might further explore the extent to which accountability mechanisms influence the effectiveness and efficiency of hybrid-purpose forms, including BCs, at achieving their objectives. Similarly, research on hybrid-purpose institutional forms can examine how managers of such entities make sense of their pluralistic accountability and how standardized accountability regimes might influence that sense-making process.

At this point, we can tell only a cautionary tale of the possibility of a Faustian bargain whereby honorable intentions manifest as unintended consequences. On the one hand, our analysis indicates the broadening out and opening up private sector objectives to include public interest considerations beyond the economic. On the other hand, the data suggests that this may be yet another means for privatizing and commodifying the public interest, exposing another sector of society to the morality and discipline of the market and unfettered control by financial capital. As we engage in dialogue and debate regarding hybrid-purpose arrangements, hopefully, new alternatives will emerge and governance structures and accountability systems will be developed and institutionalized that encourage acting in the public interest for the common good.

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