Organizational Characteristics of U.S. Benefit Corporations

by Ellen Berrey

The benefit corporation is now the most widely adopted innovation in state corporate law in nearly two decades, yet little is known about the firms that incorporate as benefit corporations. This *Sustainability Matters* report draws on an empirical study of benefit corporations to understand how business owners are using social enterprise law.[1] The report provides the most comprehensive count of benefit corporations available and original, data-driven analysis of benefit corporations' national dynamics and organizational characteristics. The findings suggest that benefit corporation legislation serves a subset of firms, yet it falls short of its transformative promise to upend the prevailing model of shareholder supremacy. Statutes are not well tailored to new, small, privately held businesses, and lack of oversight enables inappropriate firms to become and remain benefit corporations.

1 *For the larger study, see:* Ellen Berrey. 2018. "Social Enterprise Law in Action: The Organizational Characteristics of U.S. Benefit Corporations," *Transactions: The Tennessee Journal of Business Law*. 20: 21-114.

The benefit corporation is a new sort of American corporate entity that is legally obligated to pursue both a social mission and private profits. Faced with unique legal requirements on their firms, directors and boards of benefit corporations must consider the impacts of their decisions not only on shareholders but also on their stakeholders who may include employees, customers, community members, the environment, and society at large. According to its proponents, benefit corporation law upends the reigning model of shareholder supremacy, which directs firms to maximize shareholders' short-term financial returns. The pay-off of this more flexible legal alternative, advocates say, is that social entrepreneurs can run mission-driven businesses that prioritize a higher standard of social responsibility.

Beginning with Maryland in 2010, 35 states and the District of Columbia have enacted benefit corporation statutes, which makes it the most widely adopted innovation in state corporate law in nearly two decades. The adoption of a variation on benefit corporation legislation by the state of Delaware is especially noteworthy. Delaware is home to the majority of publicly held U.S. companies, including the vast majority of Fortune 500 firms, and Delaware law, upheld by the highly influential Delaware Court of Chancery, mandates that firms work to maximize shareholder value. Beyond the United States, benefit corporation legislation passed in Italy in 2015 and has advocates in numerous other countries, such as Colombia and Canada.

Firms have taken notice. While those interested in using business strategies to accomplish social or environmental objectives can choose from a growing menu of legal forms of social enterprise, the benefit corporation has become the most popular option. High-profile examples of benefit corporations include:

- Kickstarter, an online crowdfunding platform geared toward creative projects;
- People Against Dirty, which sells "planet-friendly" products from Method (home, fabric and personal care) and Ecover (ecological cleaning) and pays workers more than 40 percent of the minimum wage;
- Warby Parker, whose "Buy a Pair, Give a Pair" program has distributed more than 4 million eyeglasses to individuals with low income;
- This American Life, which produces narrative journalism for public radio;
- Patagonia, an outdoor apparel firm with a mission to "build the best product, do no unnecessary harm, use business to inspire and implement solutions to the environmental crisis"; and
- Laureate Education, the world's largest network of for-profit higher education institutions, which went public in February 2017, making it the first (and, apparently, the only) publicly held American benefit corporation.

The genesis of benefit corporations has created much hype about remarkable firms and the potential for social change. Yet little is known about what exactly benefit corporations actually do or how they understand and pursue their social missions. This report draws on an innovative and original empirical study to document the implementation of U.S. benefit corporation law. Its novel data demonstrate the prevalence, location, and age of all known benefit corporations ever created, finding that at least 7,704 benefit corporations were created between October 1, 2010, and December 31, 2017. The study includes an in-depth analysis of the online content of 570 randomly sampled firms, to determine their industries, organizational characteristics, and identities, as well as analysis of the ease of filing as a benefit corporation in different states.

The benefit corporation as a legal form of social enterprise

Background and model legislation

Over the last 25 years, there has been a surge of interest in social enterprise, from impact investing to conscious consumerism to fair trade certification. In the United States, social enterprises are typically for-profit entities that generate revenue through commerce while advancing a social mission. Captured in the slogan of B Lab, a U.S.-based nonprofit advocate of social enterprise, these organizations "use the power of business to solve social and environmental problems."

A body of social enterprise law is emerging. It aims to shield businesses from the legal and market pressures that lead them to prioritize financial returns over social mission. It creates legal tools for owners who want to generate monetary returns and achieve social goals while being willing to sacrifice some profit in the process. Social enterprise law enables the creation of a "fourth sector" of new hybrid corporate entities as alternatives to traditional for-profit and nonprofit firms. Benefit corporations appear to be the most popular current form.

Although B Lab is best known for its work on B Corporations (described in the box on page 5), the non-profit organization has played a central role in the benefit corporation movement. Together with Drinker, Biddle, and Reath, LLP and firm partner William H. Clark, Jr, it created the model legislation on benefit corporation entities, which states can adopt and modify as statutes. B Lab also has supported state-level adoption by lobbying lawmakers, mobilizing supporters, and assisting in customizing state-specific provisions.

Consequentially, almost every state with a benefit corporation statute adopted a version that closely resembles the model legislation. As defined in the model legislation, benefit corporations' social objectives, accountability, and transparency all differ from the traditional for-profit corporation. The model legislation requires benefit corporations to tailor the corporate purpose in their charters, most significantly regarding their benefits, obligations, fiduciary conduct, director liability, shareholder voting, disclosure, and accountability. Under the model legislation:

- Benefit corporations must have a "general public benefit," which is defined as "[a] material positive impact on society and the environment, taken as a whole, from the business and operations of a benefit corporation."
- Benefit corporations have the option of articulating "specific public benefits," such as providing low-income and underserved individuals or communities with beneficial products or services, protecting or restoring the environment, and increasing capital flow to other social enterprises.
- Directors must take into account, though not necessarily pursue, the interests of non-shareholders alongside shareholders' financial interests.

- Directors gain some protection from personal liability for making decisions that favor non-shareholders' interests (or not), as well.
- Shareholders can challenge how directors balance constituencies through claims that request injunctive relief. Supermajorities of shareholders are necessary to create or end benefit corporation status.
- Two mechanisms exist to create accountability: 1) shareholders and directors have standing to sue to enforce public benefit obligations, and 2) benefit corporations are required to share with shareholders, the public, and the state a statement on their performance in the form of a benefit report. That report should contain a self-assessment of the organization's performance using a transparent, independent, reliable standard established by a third party.

In all other major respects, benefit corporations are subject to existing corporate law. There is no tax advantage.

Although the model legislation is widely used as a template, benefit corporation statutes vary somewhat across states. The most significant departure is Delaware, which introduced its public benefit corporation legislation in 2014. In step with Delaware General Corporation Law, which disfavors regulation, Delaware's statutory provisions place more relaxed requirements on benefit corporations. These provisions make few requirements of benefit corporations, beyond modifying the director's duties and obliging the firm to state its specific benefits, and outline fewer mechanisms for disclosure and accountability. Colorado has followed Delaware's approach.

The advantages of the benefit corporation

The potential payoffs of becoming a benefit corporation are many. The benefit corporation form is intended to provide legal protections to directors. It can expand shareholder rights, help businesses maintain their social mission during ownership changes, and provide them with greater access to capital when raising money. Becoming a benefit corporation can clarify the business's mission to interested parties, including business partners, employees, and consumers. The special legal provisions specify governance mechanisms to enable a benefit corporation to achieve the legal requirements. Another stated advantage is that the benefit corporation form can prevent "greenwashing"— in which companies make misleading and false claims about engaging in positive pro-environment activities while neglecting to disclose their negative environmental impacts.

Criticisms of the benefit corporation

The legislation has its detractors. Some legal analysts argue that benefit corporation statutes are not necessary because the ruling model of shareholder supremacy is not that rigid. Supporters counter that the legal form does useful extra-legal work: it signals a firm's social mission and facilitates cooperation among firms, investors, and other stakeholders. Critics point to the ambiguities in statutes, which have "vague" and "nebulous" definitions of general and specific public benefits. Some skeptics note that the legislation lacks guidance on how firms should prioritize and manage commitments to multiple missions and interests, which creates potential litigation risks and uncertainty in how the courts will interpret statutes. Another criticism is that benefit corporation law, with "tepid protections" for shielding the social missions of benefit corporations from resistant shareholders, fails to create a trusted brand that will attract investors. Sociologists point out that, despite advocates' lofty ambitions, the law does not change the balance of power by providing greater authority to workers, consumers, or communities.

Enthusiasts and critics alike have pointed to a major shortcoming of benefit corporation law, as formulated in the model legislation and as adopted by states: the law lacks sufficient mechanisms for accountability and enforcement. The bar to becoming a benefit corporation is very low. Firms are supposed to use their benefit reports (produced annually or biannually, depending on the state) to verify their impacts and create transparency. The model legislation calls for yearly reporting measured according to a third-party standard along with a compliance statement. However, the requirements are ambiguous. Firms are obliged to provide only a narrative description of the benefits they have created and any obstacles they have encountered toward achieving those benefits. The model legislation does not mandate an external audit or certification. It provides no method for verifying the truthfulness of firms' reports or even confirming that firms have complied with filing requirements.

The difference between benefit corporations and B Corporations

Benefit corporations should not be confused with certified B Corporations ("B Corps"), despite their similar names and common origins in the work of B Lab. An organization can be a B Corp, a benefit corporation, or both:

- *The benefit corporation* is a legal form. A firm can opt into the form by filing with the Secretary of State or equivalent office of its domicile state, so long as state legislation is in effect.
- *B Corp certification* refers to a private third-party assessment by B Lab. The assessment aims to determine whether the organization meets rigorous standards of social and environmental performance, accountability, and transparency. As B Lab explains its certification: "B Corp is to business what Fair Trade certification is to coffee or USDA Organic certification is to milk." Both for-profit and nonprofit entities (not just benefit corporations) can apply for B Corp certification.

More and more B Corps-certified organizations are likely to become benefit corporations in the near future. B Lab now requires B Corporations to have a legal structure for considering how their decisions impact all stakeholders. While the available options vary depending on the state, the easiest way for firms to fulfill this requirement is to also become a benefit corporation.

Organizational characteristics

Prevalence of benefit corporations, domicile states, and timing of incorporation model legislation

The overwhelming majority of the known 7,704 benefit corporations are new, small firms. Most (94 percent) incorporated as firms after legislation went into effect in their domicile state. The vast majority of these began as benefit corporations. The remainder of benefit corporations (6 percent) began as traditional corporations (or as another form, such as nonprofits), then opted to become benefit corporations after legislation went into effect in their state.

As illustrated in Figure 1, most known benefit corporations are clustered in a few states, based on the available data through December 2017. At the state level, the rates of benefit corporation incorporation diverge sharply from the geographic locations of both smaller U.S. firms and the U.S. population, as Figure 1 illustrates. More than a quarter of the nation's known benefit corporations have incorporated or formed LLCs in Oregon, although Oregon is home to just over one percent of smaller U.S. firms and one percent of the American population. The relatively high proportion of benefit corporations in Delaware, compared to the proportion of smaller U.S. firms in that state (16 percent vs 0.26 percent), is likely connected to Delaware's popularity as a domicile state. In 2017, Delaware was home to more than 1.3 million legal entities, with 41,553 corporations and 143,996 LLCs incorporating in Delaware that year alone.

Figure 1
Proportion of Benefit Corporations, Smaller Firms, and U.S. Population by State

	Proportion of U.S. benefit corporations	Proportion of U.S. employers with under 500 employees and U.S. non-employers[a]	Proportion of U.S. Population[b]
Oregon	26%	1%	1%
New York	19	7	7
Nevada	18	1	1
Delaware	16	0.3	0.3
Colorado	8	2	2
California	3	13	12
Maryland	2	2	2
All other states	9	74	72

a Data on non-employer firms and firms with under 500 employers are for 2014. U.S. SMALL BUS. ADMIN., OFFICE OF ADVOCACY, *Small Business Profile, 2014*., (last visited July 25, 2018). Data are based on U.S. Census Bureau's Statistics of U.S. Businesses and Nonemployer Statistics.

b U.S. Census Bureau, *Estimates of the Total Resident Population and Resident Population Age 18 Years and Older for the United States, States, and Puerto Rico: July 1, 2017*, (last visited Aug. 6, 2018).

One possible reason for higher rates of benefit corporation incorporation in the top states might be the aggressiveness of a state-level political and legislative campaign by B Lab, elected officials, and other proponents. Other reasons could include favorable local press coverage, an existing density of social enterprises, state financial and legal resources for social enterprise, and a state bar familiar with social enterprise law. Another potential contributing factor is whether the state government facilitates the process of filing as a benefit corporation.

The ease of filing as a benefit corporation

State governments can make it easier or more difficult for prospective business owners to incorporate as a benefit corporation. Registering as a benefit corporation through the websites of seven state governments appeared to be easy (see Figure 2). On these seven websites, the registration portal and/or downloadable forms gave clear indications of where and how a registrant should indicate that the firm is a benefit corporation. The governments of four of those states made the technicalities of registration (at least appear) easy. In addition, those seven websites provided substantial educational information about benefit corporations on topics such as the differences between traditional corporations and benefit corporations. The states of Colorado and Oregon stand out as providing especially detailed, high quality information.

Figure 2
Ease of Filing as a Benefit Corporation by State[a]

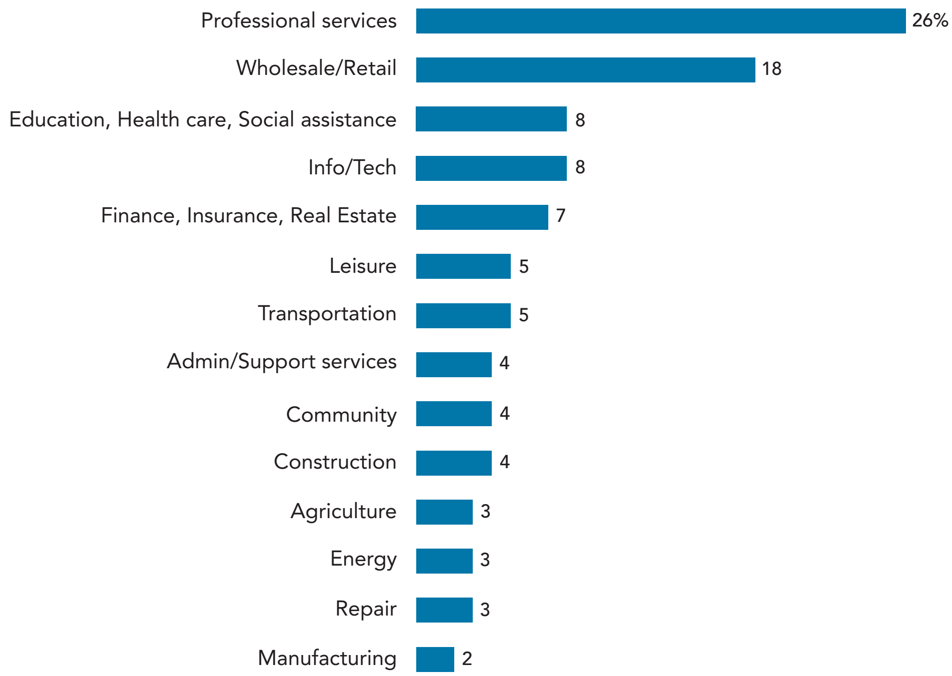
	Detailed educational information about benefit corporations	Minimal or no educational information about benefit corporations
Easy to register	CO, ID, OR, PA, TN, UT, VT	AR, CA, CT, DE, MN, NH, NV, RI, SC
Difficult to register	DC, NJ	AZ, FL, HI, IL, MD, MA, TX, VA

a The ease of registering a new business in Louisiana and New York could not be assessed given restrictions on use of the state governments' websites.

The industries of benefit corporations

Benefit corporations represent a wide range of industries. As demonstrated by the author's online content analysis of benefit corporations with an identifiable industry, the plurality of firms (26 percent) provide professional services (see Figure 3). These include consulting (7 percent), scientific research and development (4 percent), computer systems and design (3 percent), marketing (3 percent), and law firms (3 percent). Another 18 percent of benefit corporations specialize in wholesale or retail sales, primarily clothing and sporting goods (5 percent), food (3 percent), or medical, health, or personal care (3 percent). Another 5 percent of benefit corporations are in leisure or transportation. Indeed, more than 2 percent of all benefit corporations are very small trucking businesses that haul cargo, most of them incorporated in Nevada (as explained below, these trucking businesses are among the 30 percent of benefit corporations that, in their online content, make no claims to providing benefits). Four percent are community-oriented, with a religious, grantmaking, civic, professional, or similar focus; these firms tend to resemble traditional social service agencies or nonprofits such as trade associations or organizations doing social advocacy.

Figure 3
Industry of U.S. Benefit Corporations



OVERREPRESENTED: PROFESSIONAL SERVICES AND AGRICULTURE

Benefit corporations are *overrepresented* in professional services (by 13 percentage points) and in the wholesale/retail sector (by 7 percentage points) when compared to smaller U.S. firms (non-employers and employers with fewer than 500 employees in 2015). One possible explanation is that firm leaders may perceive the benefit corporation form as effective marketing, to differentiate their products, services, and organization from competitors.

Benefit corporations are overrepresented in agricultural crop production, as well, with 3 percent specializing in agriculture compared to 0.07 percent of firms nationally. This overrepresentation is likely linked to market and cultural dynamics. Although there is a growing market for organic, sustainably produced, and local food, agriculture remains a difficult industry to enter and succeed in. Farming is costly, risky, and dominated by large agribusinesses. Owners of new, small, eco-friendly agricultural businesses commonly are connected to larger social movements around specialized farming methods and techniques (e.g., organic, aquaponics) and around particular foods, beverages, and products (e.g., grass-fed meat). Those movements work to build distinctive markets, in part by fostering a collective identity among producers and consumers based on cultural cues such as authenticity and naturalness. Both the benefit corporation legal form and the movement, with its emphasis on social consciousness and long-term sustainability, would understandably speak to many eco-oriented agricultural producers.

UNDERREPRESENTED: COMMUNITY, EDUCATION, AND HEALTH SECTORS

Meanwhile, benefit corporations are very modestly *underrepresented* in sectors where nonprofit organizations and the government have a strong or dominant presence. Benefit corporations are relatively less common in the "community" industry category (underrepresented by one percentage point), which is overwhelmingly comprised of charitable and nonprofit organizations. They are also underrepresented in the education sector and health care and social assistance sector (by three percentage points total), where the nonprofit model is widely prevalent, especially for colleges and hospitals. Importantly, there is not *overrepresentation* of benefit corporations in the community, education, and health sectors.

These findings indicate that the benefit corporation is not undermining the nonprofit sector. It is a desirable departure from a traditional corporation, more so than a desirable departure from a nonprofit model. That conclusion is further supported by the newsworthy conversion of for-profit educational institutions into benefit corporations. The most publicized is Laureate Education, a publicly traded firm that reports more than $3 billion in revenue for the 60-plus campus programs it owns in 20 different countries. Of the five other known universities and colleges that have become benefit corporations, four were formerly for-profit. Undoubtedly, these institutions could use the benefit corporation moniker as market differentiation. However, that moniker also can serve as deceptive corporate branding in the rapidly growing field of for-profit higher education, which has been riddled with predatory recruitment tactics, disturbingly low completion and job placement rates, and very high levels of debt among students.

Products and services, workforce size, and geographic scope

Overall, there is tremendous range in the types of services, technology, and goods sold by benefit corporations and also in the size of the workforce and the geographic scope of their activity, as demonstrated by the analysis of 227 active firms with detailed information online.

Products and services vary widely, from those immediately recognizable as socially or environmentally beneficial (such as naturally-derived personal care products, sanitation technology, social impact investment advising, and social dining events with proceeds going to charity) to those whose social and environmental benefits are not evident from their website or are more controversial (such as residential painting, industry trade representation, and sale of firearms). Some benefit corporations' activities are small scale and idiosyncratic, such as one property owner's effort to mechanize recycling on their homestead. A small portion of benefit corporations active online seem to be very temporary or situation-specific endeavors, such as a short-lived website for an event.

Although it is difficult to assess the size of the workforce of these firms, the larger ones are usually discernable from their web sites and media coverage. With more than 1,400 employees, Patagonia is the only large benefit corporation active online (500+ employees). Just over 1 percent of benefit corporations are medium sized (100–499 employees). Another 11 percent of benefit corporations active online are small (10–99 employees). At least 31 percent are micro-firms (under ten employees or no employees, only an owner). In all likelihood, the vast majority of those benefit corporations whose size could not be ascertained (56 percent) are also micro-firms.

About 23 percent of benefit corporations active online do business outside the United States. Another 29 percent are working at the national level, while others are local (25 percent) or regional (11 percent) in their scope.

Stated benefits

What benefits do benefit corporations claim to provide? Statutes do not require benefit corporations to be beneficial in every respect. The benefit corporation must be doing at least *one* thing beneficial. Although this study cannot determine whether a benefit corporation is in fact engaged in beneficial activities or truly having a beneficial impact, we can glean useful information by analyzing the *claims* made by benefit corporations active online.

A full 30 percent of the benefit corporations active online give no indication of the benefits they provide. These firms sell products and services such as used cars, wire transfers, and cleaning services. Such firms are disproportionately located in Nevada (37 percent, although the state has 23 percent of benefit corporations nationally), Colorado (15 percent versus 9 percent), and Oregon (28 percent versus 24 percent). Such firms are less common in New York (5 percent versus 14 percent) and non-existent in Delaware (0 percent versus 16 percent). This suggests that states that make it easy to register as a benefit corporation are enlisting a disproportionate number of firms that probably should not be benefit corporations.

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Most of the benefit corporations active online (70 percent) make reference to (what they claim to be) their beneficial activity. They typically signal that they provide social benefits (41 percent) or both social and environmental benefits (23 percent). These firms make mention of their (purported) benefits and the (stated) means by which they deliver those benefits. The most popular way of delivering benefits is through *direct services* (44 percent): services that should directly deliver benefits to the populations with which the firm interacts, such as social impact advising and consulting with employees on conflict management skills. About 18 percent of benefit corporations provide *indirect services* by connecting end users with other organizations' services, such as providing pregnant women with information on nearby health care facilities.

A substantial proportion of benefit corporations active online (30 percent) point to their *products* as a means of distributing benefits, such as energy-efficient commercial refrigeration, portable healthcare hardware that nurses can bring into communities, and organic and fair trade spices. Another 24 percent of benefit corporations active online use *fundraising, philanthropy, and community service*. An additional 21 percent point to their *operations*—how they do business, from their recycling activities to their supply chain to their worker cooperative ownership structure—as the vehicle for their benefits.

Regardless of the strategies they use to reach the public, many benefit corporations active online (again, 70 percent) have much to say about their stated benefits. The research team's coding captured both the *primary* benefit each of these firms emphasized (see Figure 4) as well as any other *secondary* benefits they pointed to. The most popular *primary* benefit was health and wellness (16 percent of benefit corporations active online), which ranged from basic health care needs to spiritual enlightenment. Many other firms (12 percent) present their primary benefit in terms of their economic interventions. Eleven percent cite their environmental efforts as their primary benefit, such as promoting or using renewable energy (4 percent), reducing human impact (4 percent), and participating in sustainable agriculture (3 percent). Another 8 percent foreground the ways they empower disadvantaged populations, such as communities of color, poor people, or people with autism, typically through direct services or philanthropy. Five percent either reference their general charitable giving or their work prompting others to engage in philanthropy. Another 5 percent highlight their contributions to education or to fostering community. Smaller proportions emphasize employee empowerment or good governance. Almost half of the benefit corporations active online describe additional *secondary* benefits of their businesses. In other words, 47 percent of benefit corporations claim to engage in activities that are beneficial in multiple ways.

Figure 4

U.S. Benefit Corporations' Primary Stated Benefits

Of particular interest is the emerging social enterprise niche of benefit corporations that intentionally do business with other benefit corporations, nonprofit organizations, and firms interested in corporate social responsibility. Fifteen percent of benefit corporations active online note that their primary or secondary benefit entails work with other social enterprises, which may involve providing support services (10 percent) or increasing cash flow to them (5 percent, although this figure increases if philanthropy is included). All of these specialized niche firms are in professional services (50 percent), finance (21 percent), IT (15 percent), or wholesale/retail (15 percent).

Contrary to advocates' assertion that benefit corporations can use their legal status as market differentiation, close to three-quarters of benefit corporations active online (71 percent) make no mention of being a benefit corporation on their website. Just 10 percent have an extensive discussion of their benefit corporation status. Yet the benefit corporations that are active online and also are certified B Corps almost always mention their B Corp certification (85 percent). This suggests that firm leaders do not view benefit corporation status as useful marketing in contrast to B Corps certification, which is well branded with a recognizable logo.

Annual benefit reporting

Under the model benefit corporation legislation, firms are required to post on their website, if they have one, an annual benefit report that assesses their overall social and environmental performance against a third-party standard. Most states statutes have a similar requirement of publicly posting a report, with Delaware the most noteworthy exception. However, as this study finds, only 6 percent of relevant benefit corporations—i.e. those that have a website or Facebook page and are incorporated in a state with a public posting requirement—actually post their benefit report. Many of those reports do not reference a third-party standard. There are higher rates of reporting among benefit corporations that tailor their business to other social enterprises (18 percent of those active online post a benefit report) and among older, more established benefit corporations (17 percent post a report, compared to 5 percent of more recently incorporated firms). Most benefit reports, if firms produce them, are best understood as branding and marketing, not indicators of good governance.

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The massive underreporting by benefit corporations, combined with the lack of state oversight, also raises the very real possibility that some firms are abusing benefit corporation law. Some companies might be using the legal form to try to hide financial losses.

But are they beneficial?

This study was not designed to audit the veracity of benefit corporations' claims or assess the impacts of their business. It does provide, very tentatively, a measure of whether a firm *appears* to be credibly beneficial. The final summary question in the protocol asks whether an organization is "logically or convincingly," "arguably," or "not logically or convincingly" a benefit corporation. This question was easiest to answer when the product or service was clearly beneficial (e.g., low-chemical household cleaners), when the firm claimed multiple benefits, and when it was a certified B Corp. From their websites, some benefit corporations appear clearly beneficial or clearly not. Lots of caveats apply, however, as the research team's answers to the questions are highly subjective and interpretive and based only on online content.

The author cautiously surmises that half of the benefit corporations active online, and at most 20 percent of all benefit corporations, are logically or convincingly beneficial. The pool gets even narrower when the analysis accounts for whether firms appear to be operational (i.e. selling products, services, or technology or creating organizational capacity, such as raising funds). The author infers that, based on their online content, 18 percent of all benefit corporations appear both operational and beneficial in at least one respect. Another 5 percent appear operational and arguably beneficial. Another 12 percent appear operational but not evidently beneficial. Likewise, the author infers that the remaining 65 percent of all benefit corporations are inactive, have no online presence or an extremely limited online presence, or are not clearly operational. Again, these assessments are tentative, based on limited information, and subject to bias.

Recommendations for supporting benefit corporations

These findings point to three strategies for improving benefit corporation law and its implementation:

Tailor the law and advocacy to small, new firms: It is very significant that the overwhelming majority of the known 7,704 benefit corporations are new, small or very small, privately owned firms. This fact challenges the rhetoric of B Lab, which often characterizes benefit corporations as large or aggressively growing companies. Those supporters who promote, pass, and help firms implement benefit corporation law should tailor their activities appropriately to the businesses they want to serve. In short, most of the needs of most benefit corporations will be similar to the needs of new, privately owned, small businesses.

Both proponents of benefit corporation law and law scholars routinely discuss the importance of venture capitalists and angel investors for capital formation for benefit corporations, or they assume anonymous stockholders. But this is not supported by the facts of small business in general. For financing, smaller businesses rarely rely on venture or angel capital; such sources make up less than 2 percent of their business financing, according to the U.S. Small Business Administration. Most small business owners use their personal or family savings as their primary source of capital when starting or acquiring their business (57 percent) and when expanding or making improvements (22 percent). Most (57 percent) report that they are not trying to expand or make costly improvements (and, at least for non-employers, this is not for a lack of funds).[2]

In other words, benefit corporation law appears to solve a problem related to raising capital that is not, in fact, a major obstacle for most mission-driven firms. But benefit corporation law, as written, is not designed centrally for their capital needs.

Treat the legal form as a business facilitator, not branding: A striking finding from this study is that most benefit corporations are not using their legal status for marketing purposes. Close to three-quarters of benefit corporations active online (71 percent) make no mention of being a benefit corporation on their website. Just 10 percent have an extensive discussion of their benefit corporation status. Creating a branded logo for benefit corporations would likely help them advertise their legal form, although that would be difficult to achieve. Notably, the websites of benefit corporations that also are certified B Corps almost always mention their B Corp certification (85 percent), usually by using the well branded B Corps logo.

It appears that many benefit corporation owners do not see the benefit corporation designation as meaningful branding. At least some owners likely do not understand what a benefit corporation even is. Of those who do understand it, many apparently do not perceive their legal form as a selling point to attract consumers, customers, or investors. They seem to care much more about announcing their businesses' benefits (real or imagined) than their legal form, at least in their public online communications.

2 U.S. Small Bus. Admin., Office of Advocacy, Small Business Finance Frequently Asked Questions (2014), available at *http://www.sba.gov/sites/default/files/Finance-FAQ-2016_WEB.pdf;*. U.S. Census Bureau, *Statistics for All U.S. Firms by Sources Used to Finance Expansion or Capital Improvements by Industry, Gender, Ethnicity, Race, and Veteran Status for the U.S.: 2012*, Am. FactFinder, *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk* (last visited Aug. 6, 2017)

Raise the threshold for becoming a benefit corporation and improve oversight: This study supports prior analyses that identify major problems, both actual and potential, with compliance with benefit corporation law. A key take-away is that too many of the wrong sorts of firms are becoming benefit corporations. This legal form seems to be *too* accessible, at least in some states. Over-adoption is diluting one of the original intended purposes of the benefit corporation: to serve as a reliable indicator of authentic social enterprise. In addition, the law's key mechanism of accountability is not working. Once firms incorporate as a benefit corporation or amend their existing charters, most flout a central provision of the law by not producing annual benefit reports.

Statutes should raise standards and require more accountability. Creating a higher threshold to becoming a benefit corporation is an important way to protect the integrity of the legal innovation. One possible legal provision could be a reasonable wait period, between the time an organization is formed to the time it becomes a benefit corporation. Such a wait period, coupled with better government oversight and greater accountability, could transform the benefit corporation form into an achievement that firms work toward—a reward for their effort and a success. This is the case for B Corp certification (although the certification process entails far more rigorous oversight by B Lab than is reasonable to expect of Secretary of State offices, given budget limitations). However, a wait period could be problematic if the benefit corporation form is indeed a meaningful spark that gets socially driven would-be entrepreneurs to start a business, as that advantage would be lost.

Conclusion

The findings of this study suggest that U.S. benefit corporation legislation has generated innovation and serves a subset of firms. Many firms have fully embraced the benefit corporation concept by marrying it to their organization's identity and business. A smaller set of firms uses their benefit corporation form to publicly validate their firm's identities as social enterprises. One positive outcome is that the benefit corporation form appears to support (or at least not hamper) the emergence of a cohort of interconnected social enterprises.

However, the field of U.S. benefit corporations is mostly full of inactivity, activity that is not socially beneficial, and some questionable activity. A considerable number of benefit corporations are subverting and undermining the integrity of the legal innovation. The likely causes are the lack of accountability mechanisms in statutes, an apparent lack of legal knowledge among many business owners, the difficulties of explaining benefit corporation status, and perhaps intentional manipulation.

Absent better mechanisms for accountability and enforcement, firms that should not be benefit corporations will continue to become benefit corporations and stay benefit corporations, with little or no repercussions. This will continue to dilute the authenticity, trustworthiness, and transformative potential of the benefit corporation.

Research Design and Methods

The research study consists of three datasets:

1. **The only compilation of all known incorporated benefit corporations**
   Names of firms were gathered from B Lab records posted on data.world (an open source repository of datasets and also a benefit corporation), individual Secretary of State or equivalent offices, and internet searches. Data points include the state and date of incorporation and (if different) the date the entity became a benefit corporation. This extensive inventorying reveals that at least 7,704 benefit corporations incorporated in the United States between October 2010, when the first state statute went into effect, and December 2017. This is undoubtedly an undercount, given the uneven availability of data.

2. **The organizational characteristics of a random sample of benefit corporations**
   The author randomly sampled 10 percent of all known benefit corporations that incorporated as of March 2017 (n=570) to obtain a nationally representative subset of firms. She then analyzed their online content to gather detailed, nationally representative data on their organizational characteristics. Specifically, for each of those 570 benefit corporations, the research team examined the relevant online content available on their public website, their Facebook page, and B Lab's website and in their publicly posted state filings. Using a 50-question protocol, the team conducted both quantitative and qualitative coding. Quantitative codes captured data points such as their industry (using modified NAICS codes), the types of benefits provided, and the public posting of a benefit report. Qualitative codes captured text on topics such as the products and services sold, the stated benefits, and benefit corporation law; the author then conducted a secondary round of text analysis to identify discursive themes.

   The analysis in this article focuses primarily on the 40 percent of those 570 benefit corporations that had detailed online content (n=227, as of March 2017); the remainder did not have an online presence (49 percent) or had a marginal online presence (11 percent). Importantly, the content analysis is based on benefit corporations' own representations of their business—their public organizational discourse, including their projections of their organizational image. Undoubtedly, some firms post misleading or false information about their business and operations. The research team did not attempt to assess the validity of their claims.

3. **Descriptive data on the state-level process of filing as a benefit corporation**
   The research team examined the state government websites for filing as a benefit corporation in 27 states and Washington, D.C. The team generated a two-by-two grid that summarizes the ease of registering as a benefit corporation based on a) the website's technical interface and b) the website's inclusion of educational information on benefit corporations. These data are instructive for documenting the filing process and explaining why rates of incorporation may be higher in some states than others.

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