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Kite-marks, standards and privileged legal structures;
artefacts of constraint disciplining structure choices

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EMES Conference Paper

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Abstract.

As different countries and regions continue to develop policy and legal frameworks for social enterprises this paper offers new insights into the dynamics of legal structure choice by social entrepreneurs. The potential nodes of conflict between exogenous prescriptions and social entrepreneur's own orientation to certain aspects of organization and what social entrepreneurs actually do in the face of such conflict is explicated. Kite-marks, standards and legal structures privileged by powerful actors are cast as political artefacts that serve to discipline the choices of legal structure by social entrepreneurs as they prescribe desirable characteristics, behaviours and structures for social enterprises. This paper argues that social enterprises should not be understood as the homogenous organisational category that is portrayed in government policy documents, kite-marks and privileged legal structures but as organisations facing a proliferation of structural forms which are increasingly rendered a governable domain (Nickel & Eikenberry, 2016; Scott, 1998) through the development of kite marks, funder / investor requirements and government policy initiatives. Further, that these developments act to prioritise and marginalise particular forms of social enterprises as they exert coercive, mimetic and normative pressures (DiMaggio & Powell, 1983) that act to facilitate the categorising of social enterprises in a way that strengthens institutional coherence and serves to drive the structural isomorphism (Boxenbaum & Jonsson, 2017; DiMaggio & Powell, 1983) of social enterprise activity. Whilst the actions of powerful actors work to maintain (Greenwood & Suddaby, 2006) the social enterprise category the embedded agency of social entrepreneurs acts to transform it (Battilana, Leca, & Boxenbaum, 2009). The prevailing Institutional logics (Ocasio, Thornton, & Lounsbury, 2017; Zhao & Lounsbury, 2016) that serve to both marginalise and prioritise those legal structures are used to present argument that the choice of legal structure for a social enterprise is often in conflict with the social entrepreneur's orientation to certain aspects of how they wish to organise.

Where the chosen legal structure for a social enterprise is in conflict with the social entrepreneur's own organising principles as to how they wish to organise then this can result in the social entrepreneur decoupling (Battilana, Leca, & Boxenbaum, 2009) their business and/or governance practices from their chosen legal structure in order to resolve the tensions that they experience. Social entrepreneurs also experiencing the same tension enact a different response in that they begin to create and legitimate new legal structures on the margins of the social enterprise category through a process of institutional entrepreneurship (Battilana, Leca, & Boxenbaum, 2009; Hardy & Maguire, 2017).

Keywords: social enterprise, legal structures, categorisation, structural isomorphism, governance.

Introduction.

Despite the founders of social enterprises being faced with a plurality of structural forms to pursue their interests, social enterprise is most often portrayed as a homogenous organisational category that is increasingly being rendered a governable domain (Nickel & Eikenberry, 2016) through the development of kite marks, funder/investor requirements and government policy initiatives which shape and control what it means to be a 'good', therefore legitimate (Suchman, 1995) social enterprise. Such mechanisms have been shown to strengthen institutional coherence and drive structural isomorphism (i.e. Similarity) (DiMaggio & Powell, 1983; Boxenbaum & Jonsson, 2017). As yet, however, scant attention has been given to the ways in which kite marks, standards and funding criteria serve to prioritise and marginalise particular forms of social enterprise by bestowing or denying access to material (e.g. financial) and symbolic (e.g. legitimacy) resources alongside the implications of such disciplining affects or how individual entrepreneurs respond to them.

In seeking to understand the complex, nuanced nature of social enterprise legal structures and their selection by social entrepreneurs the theoretical lens of categorization (Lakoff, 1987; Zuckerman, 1999; Lounsbury & Glynn, 2001; Glynn & Navis, 2013) has been drawn upon. I argue that social enterprise cannot be understood as the homogenous organisational category that is often presented to us but as organisations facing a proliferation of structural forms that are being increasingly disciplined through the development of kite marks, funder / investor requirements and government policy initiatives. A further argument is advanced that these developments act to prioritise certain forms of social enterprise whilst and marginalising others. Through the exertion of coercive, mimetic and normative pressures (DiMaggio & Powell, 1983) they act to facilitate the categorising of social enterprises in a way that strengthens institutional coherence and serves to drive the structural isomorphism (DiMaggio & Powell, 1983; Boxenbaum & Jonsson, 2017) of social enterprise activity. Further to this I argue that these prescriptions whilst the actions of powerful actors work to maintain (Greenwood and Suddaby, 2006; Mutch, 2007) the social enterprise category, the embedded agency of social entrepreneurs acts to create new and alternative categories through processes of institutional entrepreneurship (Battilana, Leca, & Boxenbaum, 2009; Hardy & Maguire, 2017).

I seek to extend the current understanding of social enterprise legal structure selection in two ways. Firstly, by highlighting the disciplining effects of kite marks, standards and funding criteria on the structure choices of social entrepreneurs. In doing so, I explain how these serve to prioritise and marginalise particular forms of social enterprise by bestowing or denying access to material and symbolic resources. Secondly, by examining the implications of such disciplining effects and how individual entrepreneurs respond to them, showing how new forms of social enterprise emerge.

The disciplining effects of categorisation on structure choices.

I argue here that the absence of a clear and unified definition of what social enterprise is and should be that powerful actors such as funders, practitioner bodies and governments have sought to provide definitions that suit their own particular conceptions or political imperatives.

At the present time, there is no single definition in law of a "social enterprise" excepting for the purposes a small number of government programmes that have provided their own definitions, such as the Health and Social Care Act, 2012 (Gov.uk, 2012). Successive governments, however, have continued to provide a very broad definition of a social enterprise;

> "a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners".

> (Gov.uk, 2012, p 2)

Academics for their part have approached the issue from a variety of viewpoints and interests concerning; entrepreneurship and doing business (Dees, 1998; Thompson, 2002), social or community action (Leadbeater, 1997; Harding, 2007), social value (Austin, Stevenson, & Wei-Skillern, 2006; Dees, 1998; Peredo & McLean, 2006), social change (Nicholls & Cho, 2008), community engagement (Defourny & Nyssens, 2006), the delivery of public services (Pearce & Kay, 2003); employee ownership and profit distribution (Arthur, Cato, Keenoy, & Smith, 2003; Spreckley, 2011; Ridley-Duff, 2015). Placed alongside these dimensions are the ways that the enterprise is financed (Bates, Wells &

Braithwaite and Social Enterprise London, 2003) and its legal structure (Bull, 2015).

Given the lack of a definition in law and the further lack of a singular definition in practice, social entrepreneurs are faced with plethora of choices regarding the legal structure for their social enterprise(s) with the support organisation the School for Social Entrepreneurs (2018) suggesting that there are twelve common structures available to social entrepreneurs including; Unincorporated association, Trust, Partnership, Sole Trader, Company Ltd by Shares, Company Ltd by Guarantee, Charitable Incorporated Organisation, Community Interest Company limited by shares, Community Interest Company limited by guarantee, Limited Liability Partnership, Co-operative Society and Community Benefit Society (CBS). (See also; Social Enterprise London, 2001; Morrison Foerster & Trust Law, 2012; DLA Piper & UNLtd (2014); Wrigley's Solicitors LLP, 2014; Bates, Wells & Braithwaite and Social Enterprise UK, 2017). The plethora of potential legal forms that each fit or partly fit differing definitions of what constitutes a social enterprise has led government, funders and kite-marking bodies to seek to categorise the varying forms of social enterprise structure based on their own nuanced definitions.

As Glynn and Navis (2013) observe, categories can be regarded as useful social constructions that provide a useful and flexible conceptual framework that can be modelled and remodelled in relation to the changing economic and social realities that are encountered (Mervis & Rosch, 1981) by social enterprises. In addition to being shaped by economic and social realities, categories are shaped by the purpose being pursued (Zuckerman, 1999), as in this case, by the social and economic activity of social enterprise. In relation to the categorisation of social enterprise activity, legitimacy (Suchman, 1995) plays an important role in terms of social enterprise structures as this not only concerns how audiences respond to the enterprise, but also how they understand it; such that certain forms of social enterprise legal structure may not only be seen as more worthy, but also as more meaningful, more predictable, and more trustworthy by customers, advisers, funders and investors. In the case of social enterprise legal structure selection, categorical legitimacy relates to both external structural legitimacy through the pursuit of a legal structure that might convey organisational legitimacy at a macro level (Suchman, 1995) to the stakeholders of the enterprise

alongside the internal pursuit of legitimacy by social entrepreneurs as they seek to project their own micro-level evaluation of legitimacy to the macro level through the adoption of rhetorical legitimation strategies (Bitektine & Haack, 2015). Underlying these categories of social enterprise are a number of competing institutional logics (Thornton & Ocasio, 1999) or shared systems of meaning and understanding that underpin the category and also act to confer legitimacy upon particular social or economic goals and operating practices (Thornton, Ocasio, & Lounsbury, 2017). As social enterprises embody both entrepreneurial and social welfare logics to one degree, or another it is argued that they are more likely to experience conflict and tension than other enterprises due to the difficultly in concurrently pursuing both the financial and social goals associated with these logics (Battilana & Lee, 2014). Particular conflicts arise when social entrepreneurs within the enterprise and powerful actors outside it (funders, government or kite-marking organisations) support differing logics and come into conflict over which logics should be adopted (Battilana & Dorado, 2010; Ridley-Duff & Southcombe, 2012).

Two particular examples of organising logics, the Social Enterprise Mark (SEM) and the Community Interest Company (CIC) serve to illustrate the tensions experienced by social entrepreneurs. The Social Enterprise Mark is promoted by the Social Enterprise Mark CIC as "the social enterprise accreditation authority" (Social Enterprise Mark CIC, 2018) and applicants must demonstrate that they meet the criteria of the SEM definition of a social enterprise in that they must;

1. Have social and/or environmental objectives.
2. Are an independent business.
3. Earn 50% or more of its income from trading.
4. Dedicate a principal proportion (51%+) of any annual profit to social/environmental purposes.
5. On dissolution of the business, will distribute all remaining residual assets for social/environmental purposes.
6. Can demonstrate that social/ environmental objectives are being achieved.

(Social enterprise Mark CIC, 2016)

The Community Interest Company (or CIC) is one of the newest types of legal structure for social enterprise and was introduced in 2005 by the Companies Act 2004 (Gov.uk, 2004) and regulated by The Community Interest Company Regulations 2005 (Gov.uk, 2005) through the Regulator of Community Interest Companies. A CIC may formed to limit its liability by shares or by guarantee but whilst a CIC limited by shares can issue shares and pay dividends it is subject to a dividend cap. The two most important features associated with the CIC are the asset lock, and the Community Interest Statement and Report. The asset lock ensures that profits and assets remain within the CIC and are used solely for community benefit, or transferred to another organisation which also has an asset lock. Alongside the asset lock is a Community Interest Statement, signed by all the company's directors, declaring that the purpose of the enterprise is for community benefit rather than private profit whilst describing the activities that it intends to engage in to pursue its mission.

A very particular area of tension surrounds the privileging through promotion by powerful actors such as government and practitioner groups of kite-mark standards such as the Social Enterprise Mark and legal structures such as the Community Interest Company. Alongside this, further tension surrounds the construction of funding criteria that exclude certain forms of social enterprise, particularly those that do not conform to the Social Enterprise Mark, adopt the CIC structure or additionally seek charitable status. This privileging of selected forms of social enterprise activity serves to further define and strengthen the boundaries of the social enterprise category, i.e. what is and what is not legitimately a social enterprise and therefore the collective identity of the category members (Hsu & Hannan, 2005).

Research method

The findings in this paper are drawn from a broader research endeavour seeking to develop a model for social enterprise legal structure selection based on a qualitative data set comprising of fifteen in-depth interviews with social entrepreneurs and their advisors regarding legal structure choice. The interviews ranged from one hour to one hour forty-five minutes in length and were digitally recorded before being transcribed verbatim. In addition, field notes were created

for each interview in order to record any interesting points or additional sources that might be pursued at a later date.

In respect of the nascent theoretical understanding of the complex and nuanced nature of social enterprise legal structure selection, a qualitative approach and an inductive strategy were adopted that followed the systematic procedure presented by Thomas's (2006) general inductive approach for analyzing qualitative evaluation data. The significant volume of raw data collected in the form of transcribed interviews, varying in size from twenty-seven to fifty-six pages long alongside the additional field notes were reduced through a process of coding and categorisation using the NVivo software package. An inductive approach was adopted in analysing the interview data driven by a pursuit of understanding the legal structure selection choices of social entrepreneurs in which detailed readings of the raw data drove the identification of concepts, themes and a model that emerged through the interpretations I made from the data. Figure 1.0 below outlines this process of data reduction from many pages of text interview transcripts down to six model components.

Initial reading of text data	Identify specific text segments related to objectives	Label the segments of text to create categories	Reduce overlap and redundancy among the categories	Create a model incorporating most important categories
518 pages of research interview transcripts	935 segments of text	31 First order Categories	19 Second order Themes	6 Model Components

Figure 1.0 adapted from Thomas (2006)

The coding process followed a sequence of initial open coding that involved my search for patterns in the data that related in some logical way to addressing the research question. In this search of the data, five hundred and eighteen pages of transcribed interviews were reviewed resulting in nine hundred and thirty five segments of text being identified as holding significance to the research question. The second stage of the analysis involved the creation of second order themes from the nine hundred and thirty five segments of text as an emerging

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understanding of social enterprise legal structure selection was developed. This stage involved making decisions, through interpretation, as to which segments of text held the most appropriate meaning for which first-order category (Dey, 2003). Following this second stage of analysis, thirty one first-order categories were derived from the initial nine hundred and thirty five segments of text. The third stage of the analysis involved the reduction of overlap and redundancy amongst the first order categories resulting in 19 more focused second order themes. The fourth and final stage of analysis involved the continuing revision and refinement of the category system searching for subtopics, contradictory points of view and new insights alongside the combining of linked and superordinate categories with similar meanings. From this final stage, six model components emerged from the most important second order themes. Figure 2.0 illustrates the data structure during the three stages of analysis and shows how the categories, themes and model components emerged.
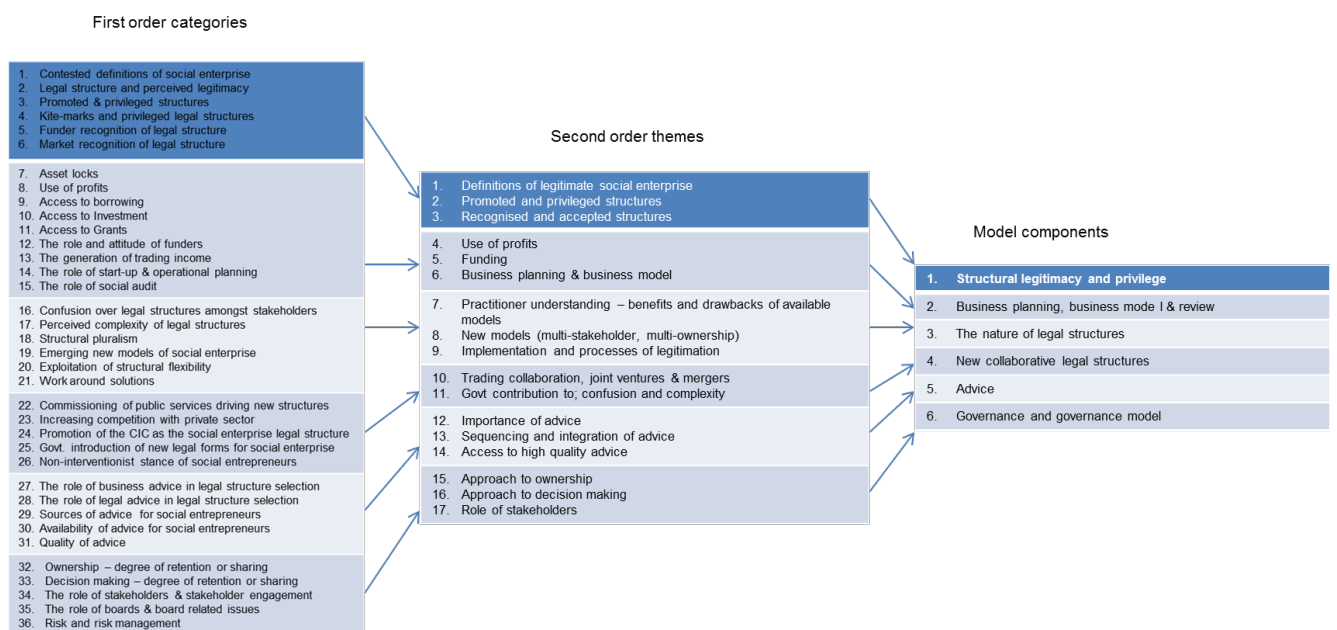

Figure 2.0 Data structure

Discussion

The construction and categorisation of social enterprises

The analysis presented in this paper offers new insights into the dynamics surrounding the structure choices made by social entrepreneurs, including the potential nodes of conflict between exogenous prescriptions and social

entrepreneur's own orientation to certain aspects of organizing and what social entrepreneurs actually do in the face of such conflict. I find that conflict is particularly prevalent in respect of ownership (the control the use of profits) and governance arrangements (the control decision-making) where the treatment of these aspects within the logic of the social enterprise category are at odds with the social entrepreneurs orientation to how these issues should be organised. In order to resolve the tensions that they experience, social entrepreneurs often 'decouple' (Boxenbaum & Jonsson, 2017) their governance and/or organising practices from those prescribed in external standards or begin to create new legal structures and ways of organising on the margins of the social enterprise category through processes of institutional entrepreneurship (Battilana et al., 2009).

These mechanisms have been shown to strengthen institutional coherence and drive structural isomorphism (DiMaggio & Powell, 1983; Boxenbaum & Jonsson, 2017) but as there has been little focus upon the role that kite marks, standards and funding criteria play in prioritising and marginalising particular forms of social enterprise I explore how the bestowing or denying access to material and symbolic resources hold implications for such disciplining affects and how individual entrepreneurs respond to them.

The way that social enterprise is currently understood by many social entrepreneurs is constructed by policy-makers, funders and quality standards/kite marks in such a way that constitutes a 'social enterprise' category of organisation. The prioritising of this category of 'social enterprise' also serves to marginalise other forms of social enterprise activity thus creating a categorical imperative for social entrepreneurs to conform to particular forms/structures of social enterprise. Categorisation is used here as a useful lens through which to view the legal structure selection process, as I find that categories of social enterprise are continually being constructed and reconstructed in response to the influences of; social entrepreneurs desired ways of organising, the macro-economic environment and the social realities of social enterprise activity. Categories play a key role in imposing a structural coherence on social entrepreneurs by placing their ways of organising into recognisable categories of social enterprise activity (Vergne & Wry, 2014). The placing of ways of organising into recognisable categories therefore implies the membership of a particular

category and therefore not of others resulting in relational tensions between categories. Social entrepreneurs who were not deemed to be part social enterprise category clearly expressed concerns at not being seen as a member of the category and therefore not a legitimate social enterprise.

"years down the line, after selecting this particular model, the Social Enterprise Mark came along and we were basically told, "You're not a social enterprise, you'll abide by the Mark,".

The ways that categories of social enterprise activity are constructed by government, funders and kite-marking organisations serves to minimize the differences between the members in a category while maximizing the differences between that category and others. This separation of categories of social enterprise activity serves to create clear boundaries between the categories that in turn serve to further facilitate the categorization process as social entrepreneurs expressed concerns over recognition by stakeholders.

. "…. the biggest minus side was the lack of recognition, so the regular business support community would treat us a second-class citizen because we weren't really a proper business and some of the social enterprise community would treat us as a second-class citizen because we weren't a proper social enterprise".

The placing of organizations into categories acts as a disciplining function that can shape the allocation of attention among various organizations (Zuckerman, 1999) as well as facilitating comparisons between the institutions within a category (Hsu & Hannan, 2005). The use of categories by government, funders, kite-marking organisations and practitioner networks in order to recognise, evaluate and select the dominant category of social enterprise creates an 'organizational 'imperative' (Glynn & Navis, 2013) for social entrepreneurs to fit their social enterprise activity into that category as a precursor to acquiring both social approval (acceptance as a social enterprise) and material resources (grants, investment and business support) (Zuckerman, 1999; Lounsbury & Glynn, 2001; Glynn & Navis, 2013). Social entrepreneurs have been found to select their legal structure in response to the pressure exerted by this 'organizational 'imperative' in pursuit of acceptance by a powerful public actor.

> "So we picked the CIC thing because it would – it reassured the Council that they were dealing with a legitimate social enterprise and that these private sector people weren't trying to just pull one over on them"."…

Additionally, when social entrepreneurs strategically self-categorize in response to their audiences they do so largely in pursuit of legitimacy, and this can act as a prime driver for their structure selection. We see within the narratives of the social entrepreneurs, for example, a significant concern for their categorization by; funders from whom they were are seeking grants or investment, customers seeking products or services, and specialist social enterprise networks / business support organisations from whom they were seeking assistance.

In addition to self-categorisation, social enterprises are subject to a form of social categorization by expert legitimating agencies (Vergne & Wry, 2014) such as kite-marking organisations, funding bodies and government. As we can see in the accounts of social entrepreneurs and their advisers this categorisation occurs both directly and indirectly. Direct social categorisation by funding bodies can be seen in the requirements set out in the funding requirements of social investors and grant givers as social entrepreneurs seek access to material resources as can be seen in the cases of a number social entrepreneur's in this research.

> "Sometimes funder driven decisions – I mean the reason I set my first social enterprise up as a charity – I set it up as a company limited by guarantee because I wasn't interested in personal gain and the big funder came, (name redacted) came and said, "We want to give you three-quarters of a million pounds, but we need you to be a charity," so what would you do?"

Indirect social categorisation can be seen in the legitimating actions of sector kite-mark awarding bodies such as SEM or those promoting particular legal structures such as the CIC Association or CIC regulator. I find, for example, that social entrepreneurs clearly recognised the CIC structure as part of this social enterprise category of organising.

We can also clearly see this social categorization in action through the promotion of the CIC structure as part of the social enterprise category, as expressed here concerning the transfer of social assets.

"we grabbed the CIC moniker because we did not – I don't know if we didn't have a track record so much as we needed something to reassure public bodies that we – that somehow we weren't taking their money and running off."

By way of further example, we see the category being reinforced in the practice of UK local government officers in their decision making processes in the application business rate relief.

" they give reduced business rates for charities and community interest companies. Okay, what about a company limited by shares where 51% or more of its shareholding is community, not interested? Not interested in the slightest, because they don't understand the difference, and I think that's where the problem is, where maybe the government has promoted certain models more than others, ..".

In both these examples the actions of the expert legitimizing organisation serves to favour those legal structures that conform to the social enterprise category of organising and penalise those that do not.

Additionally, and when taken from a sociological perspective, legitimacy is predicated on an organization conveying an identity that fits within an established category (Glynn & Navis, 2013; Navis & Glynn, 2011) of social enterprise activity. Wry, Lounsbury and Glynn, 2011, p. 1) also suggest that this identity represents a "clear defining collective identity story" that identifies the group is engaged in a social enterprise activity, "with a common orienting purpose and core practices" such as those recognised by social entrepreneurs in the SEM organising template and the CIC structure. However, and again from a psychological perspective, organizations with common attributes will also see themselves as part of the same category and self-categorize themselves accordingly (Glynn & Navis, 2013). The social enterprise category is predominantly based upon politically nuanced government, funder and practitioner group definitions that act to place all of social enterprise activity into a governable category, thus rendering it controllable. My findings highlight for example, that particularly experienced business advisers and social entrepreneurs such as the two participants below challenged the category of social enterprise as narrow and undemocratically arrived by those groups of powerful actors such as the CIC association, SEM

Company and Social Enterprise UK that would seek to define and categorise social enterprise activity in this way.

> "It only matters when people like S. UK. [Social Enterprise UK] start to try and position themselves, and say, 'We are the voice of social enterprise in the UK.' And you say, 'Well, a) you're not, and b) your definition is undemocratically arrived at and narrow, and who the hell are you?"

Further, that the definition of what they were doing as social entrepreneurs had somehow been taken from them.

> "I think it's that sort of… it's that feeling that – that what you are has been taken – the definition of what you are has been taken possession of by somebody else… doesn't seem to me to be overly helpful."

I find that categorisation is a major influence upon legal structure selection given that the social entrepreneurs interviewed clearly articulated concerns about the categorisation of their social enterprise activity in terms of control, legitimacy, recognition, access to support and the potential effect on trading related to their legal structure.

> "what worried me about the Social Enterprise Mark. It's the only time, since setting it up, going back to being an entrepreneur, that's the only time that I've felt worried for the future, was when we went, "Oh right, we'd better get this Mark thing," and they said, "No, you're not." And strategically, I'm thinking that's a nightmare for us now, because if we can't call ourselves a social enterprise, or we become unable to tender for things or not on databases, then it's the beginning of the end ..".

I identify two very specific issues that emerge from the concerns of social entrepreneurs and their advisers, with regard to the privileging a particular category of social enterprise activity; firstly the role of the social enterprise mark (SEM) and the role of the Community Interest Company (CIC) as templates of category membership. The SEM is promoted as a form of social enterprise accreditation and brand that suggests that it "tells customers that a product or service comes from a social enterprise" (Social Enterprise Mark CIC, 2016). The categorisation of social enterprise activity in this way serves to privilege that

particular conceptualisation of what a social enterprise is (Dart, Clow, & Armstrong, 2010; Lyon & Sepulveda, 2009) and thereby confers both structural (Suchman, 1995) and categorical (Vergne & Wry, 2014) legitimacy upon the particular legal structures that fit the category boundaries set out by the kite-marking organisation.

The systematic privileging of one category over others (Lakoff, 1987) and the meaning systems embedded within the promoted category facilitates the stratification of category membership based on certain attributes (Rosch & LLoyd, 1978) such as governance structures that promote shared ownership or those that restrict the use of profits or the ownership of assets by social entrepreneurs. The stratification of membership within categories of social enterprise activity and the privileging or conferring of legitimacy on one category over another holds implications for practice in terms of promoting the selection of legal structures of social enterprise that fit the social enterprise category boundary whilst challenging the selection of others that do not. In addition to the influence of social entrepreneur behaviour there are further and much more far-reaching considerations as this influencing of social entrepreneur behaviour manifests as a form of state-craft (Scott, 1998) that can be seen to influence the discourses of public policy, politics and economics.

The challenge to legitimacy discussed above is particularly evident for example in respect of those social enterprise legal structures that include employee ownership and distribution of profits (Ridley-Duff & Southcombe, 2012) as they do not easily conform to the social enterprise mark and therefore fall outside the social enterprise category boundary. The SEM and the CIC both benefit from specific infrastructure support via the social enterprise mark CIC and the CIC Association alongside their associated online information channels;

- www.socialenterprisemark.org.uk
- www.cicassociation.org.uk

The infrastructure support afforded to the SEM and CIC alongside the CIC Regulator's mission to develop the profile of community interest companies and raise awareness of the CIC structure (Regulator CIC, 2017a) serves to reinforce audience perceptions of the legitimacy of these categories that in turn acts to

maintain and strengthen them. The systematic privileging and bestowing of legitimacy upon the social enterprise category and the structure(s) that fit within it serves to drive the isomorphism of social enterprise institutions (DiMaggio & Powell, 1983; Boxenbaum & Jonsson, 2017) as social enterprises adopt structures not in response to environmental and competitive pressures but rather through a process of adaptation to a socially constructed environment.

"…. given the way the social enterprise legal structures were lorded as like these are like the golden children of business now, I'm not sure we would have been able to avoid being a CIC".

I find that the Isomorphism of social enterprise institutions is being driven by the three types of isomorphic pressure posited by DiMaggio and Powell (1983) in the form of coercive, mimetic and normative processes. Coercive pressures are generally the result of politics and power relationships and in this case the demands of government, funders and other large actors such as commissioners of services to adopt specific structures or practices, or face sanctions for non-compliance (Boxenbaum & Jonsson, 2017). This coercive pressure is clearly demonstrated in the social entrepreneur's accounts of funders directly dictating the legal structure of their social enterprise as a precondition to the provision of funding and support. Social entrepreneurs are often coerced into the adoption of promoted and privileged legal structures for fear of being excluded from practitioner networks, commissioning processes, grant funding, business support or other forms of support such as business rate relief (exampled earlier).

Mimetic pressures typically concern the response of organisations to uncertainty as they seek to imitate other organisations that are seen to be successful and this is to a degree true of the social enterprises in this research though a significant driver for the adoption of legal structures through imitation relates to the adoption of for example the CIC structure as the expression of successful social enterprise activity that brings with it both legitimacy and privilege.

Normative pressure is exerted by social enterprise peer networks and support organisations that for example act to promote certain structures such as the CIC or those that meet the criteria for the SEM as the normative choices through the diffusion of case studies of successful organisations adopting those structures as well as promoting their benefits (Finlay, 2017).

See also Regulator of Community Interest Companies (2017) Memorandum of understanding for the co-operation between the Regulator of Community Interest Companies and the CIC Association CIC (Regulator, CIC, 2017b).

Following Nickel & Eikenberry (2016) the isomorphic pressures on the selection of social enterprise legal structures can be expressed as a form of 'governing' as both state and non-state actors encourage particular forms of social enterprise structure that fit within the social enterprise category such that the activity of social enterprise becomes increasingly governable. This categorical governing or control serves not only to discipline the choice of social enterprise legal structure but also acts to inhibit the development of new, more radical forms of social enterprise legal structures. Moreover, the transformation of what some of the social entrepreneurs interviewed regarded as the 'grass roots movement' of social enterprise is a manifest form of statecraft as the complex reality of social enterprise becomes typified, legible (Scott, 1998) and rendered a governable domain (Nickel & Eikenberry, 2016). My findings concerning the political views of the social entrepreneurs highlighted concerns for this form of control and a rejection of the legitimacy of those government and practitioner groups that they saw as conspiring to discipline the social enterprise movement in this way.

"'Social enterprise is a grass root movement, it's continually changing, and we are not in control of that change…… people will try and control it, which is one of the reasons why I had real difficulties with the Social Enterprise Mark, and with any sort of given definition".

The category of organisation that is social enterprise exists in a field of tensions between the dominant category imposed by powerful actors and the organising orientations of social entrepreneurs in relation to ownership and decision-making. Where the social enterprise category is in conflict with the organising orientations of social entrepreneurs I find that this results in one of three responses by social entrepreneurs; conformance to the social enterprise category, symbolic adherence whilst decoupling from the category template or the pursuit of the creation of new categories of social enterprise activity. In the narratives of the social entrepreneurs interviewed there were particular concerns for the current institutional orientation (Vurro, Dacin, & Perrini, 2010) or institutionalized template for organising (Battilana et al., 2009) in relation to decision making and

ownership. The social enterprise category acts to promote the sharing of decision making and the involvement of the social beneficiaries of the enterprise in that decision making as an expression of the categorical legitimacy (March & Olsen, 1989; Glynn & Navis, 2013) of social enterprise activity and this provided a particular focus to the tensions that social some entrepreneurs' experienced.

"We were running a business. This isn't a sort of pocket money that we're trying to give away, and we want people's perspectives. We're running a business; so I think the structures were a hindrance because it was – you feel as if you've got to put these people in positions of power when what you actually need to do is to have conversations with people".

In addition to and often further compounding the decision making tensions the category template related to the ownership of the enterprise and its assets, but particularly those that concerned the distribution of profits amongst the social entrepreneurs or other shareholders/investors were a source of further tension apparent in the narratives of social entrepreneurs.

"This is not an entrepreneurial style of thing because why wouldn't it be 50:50. Basically, you have to be an entrepreneur and be a monk. It's like actually, I'm going to give you 99% of everything I have and then it will go to the community; well that's really insane. I mean that's just totally insane. It's totally insane to me".

I find that the narratives of social entrepreneurs often revealed the juxtaposition of entrepreneurial personality in terms of business orientation, central locus of control, need for reward from the venture (Meredith, Nelson, & Neck, 1982; Timmons & Spinelli, 2009) with the current institutional orientation in respect of philanthropic shared ownership and decision making that amplified the above tension.

"So the social entrepreneur comes back, and he says, "Does that mean I've got to share ownership with some other people?" to which I say yes, and they say, "I don't want it.""

First of top three issues for clients…..

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"One, control and not to relinquishing control".

Where the social enterprise category is in conflict with the social entrepreneur's orientation as to how they wish to organise then this can result in the social entrepreneur decoupling their business and/or governance practices from those expressed by the current institutional orientation (Vurro et al., 2010) of the category of social enterprise in order to resolve the tensions that they experience. The practical manifestation of this decoupling (Boxenbaum & Jonsson, 2017) can be seen in the accounts of social entrepreneurs or their advisers as they sought ways to circumvent the asset lock or shared decision making in the governance arrangements associated with the CIC structure.

"I don't think the asset lock works anyway. Any clever person could pull it apart".

"The asset lock in the community interest company….. Nearly all the CICs that I deal with have got a handful of directors who are on the payroll, so if the business is going down the hill, they simply carry on paying themselves until the bank account is empty".

I find that the decoupling of practice from the current institutional orientation whilst symbolically complying in pursuit of categorical legitimacy to be clearly articulated in the accounts of social entrepreneurs or their advisers as they sought to organise in ways that limited or obviated the constraints imposed over ownership and/or decision making by the dominant institutional orientation of the social enterprise category.

"I can design structures with very subtle variations and pick and choose from different bits, so it gratifies me that a client can come to me with some really quite weird and wonderful requirements and I can manipulate these little bits and pieces by using a CIC, or whatever, to meet their needs, so I find that quite creative."

"the other thing is people don't realise how flexible these structures can be. A lot of business advisors don't realise how much they can bend and twist these structures."

A very different response to the above tensions was sought by other social entrepreneurs also experiencing the same tension as they began to create new categories of social enterprise activity with new ways of organising and new legal structures on the margins of the emerging governable domain of social activity. The social entrepreneurs, in this case, sought to take 'situated institutional action' (Lawrence & Suddaby, 2006) through processes of institutional entrepreneurship (Battilana, Leca & Boxenbaum, 2009) in order to modify or create new institutional orientations. The institutional change enacted by social entrepreneurs is exampled in this research through the accounts of three groups of social entrepreneurs.

Firstly social entrepreneurs responding to institutional orientation of the social enterprise category have sought to facilitate shared ownership, investment and profit distribution in the development of the FairShares model (Ridley-Duff, 2015) in which it is possible to distinguish between different types of assets by their origin and therefore their future use so as to enable shares to be held and realised by employees, social entrepreneurs, investors and customers for social purpose as well as personal gain (See www.fairshares.coop/what-is-fairshares/). The institutional work pursued by the social entrepreneurs in creating this new category relate to defining the category and changing the normative associations of the current social enterprise category of organising through the employment of rhetorical strategies (Suddaby & Greenwood, 2005) that define the category by drawing upon the history and values of co-operative social enterprise. In pursuit of identity construction and the development of normative associations the meta-narratives (Czarniawska, 1997) or 'master frames' (Creed, Scully, & Austin, 2002) employed are those of ethics and democracy alongside wealth and power-sharing placed against the 'mirror narratives' (Ruebottom, 2013) of the inequality, inequity and dominance of control inherent in the current social enterprise category of organising. Interestingly, these logics can be clearly observed in public service bureaucracies, private for-profit companies, and non-member led

charitable associations. Further institutional work by the social entrepreneurs can be seen in the development of a normative network (www.fairshares-association.com) through which the new practices associated with this category are being normatively sanctioned (Lawrence & Suddaby, 2006). Secondly, findings highlighted another of the participants who sought to develop an alternative structural category, also in pursuit of shared ownership. However, this NewCo model was at that time a bespoke structure for a single enterprise without the broader pursuit of legitimacy by seeking to influence the sense-making (Weick, 1995; Weick, Sutcliffe, & Obstfeld, 2005) of those groups of powerful actors then defining and categorising social enterprise activity. The NewCo model experienced significant tensions in practice that concerned both recognition and acceptance which resulted in adverse impacts upon trading as the enterprise was recognised by stakeholders as neither a true social enterprise nor a true private business. However, it is interesting to note that the FairShares Association was amongst the first to recognise the NewCo model as a legitimate form of social enterprise. Thirdly, the findings highlight other social entrepreneurs who in pursuit of scale in order to compete with the private sector in a very competitive commissioning environment have begun to organise in innovative new ways. These social entrepreneurs are creating a new collective category of social enterprise by adopting a legal structure not typically associated with social enterprise activity in the form of the social enterprise limited liability partnership (SELLP).

The social entrepreneurs, in this case, have sought to implement this novel structure for collective benefit whilst acting to maintain the governance model, business model and social mission of the individual members (Health and Wellbeing Partnership LLP, 2019). The use of the LLP structure by social enterprises was first proposed by Stephen Lloyd in an article in the Barrister Magazine in 2006 (Lloyd, 2006) and there has been little previous evidence of its use by social enterprises but this now emerges as a potential new category of social enterprise organising that enables scale, whilst retaining the individual governance, profit distribution and tax advantages of its members.

Adapting the work of Bull (2015, 2018) we can locate these new structures within the context of a broader understanding of the legal structures available to social entrepreneurs (See Figure 3.0 adapted from Bull, 2015) alongside the new,

alternative forms of social enterprise legal structure being developed in response to the tensions entrepreneurs experience between their organising orientations and the available legal structures.
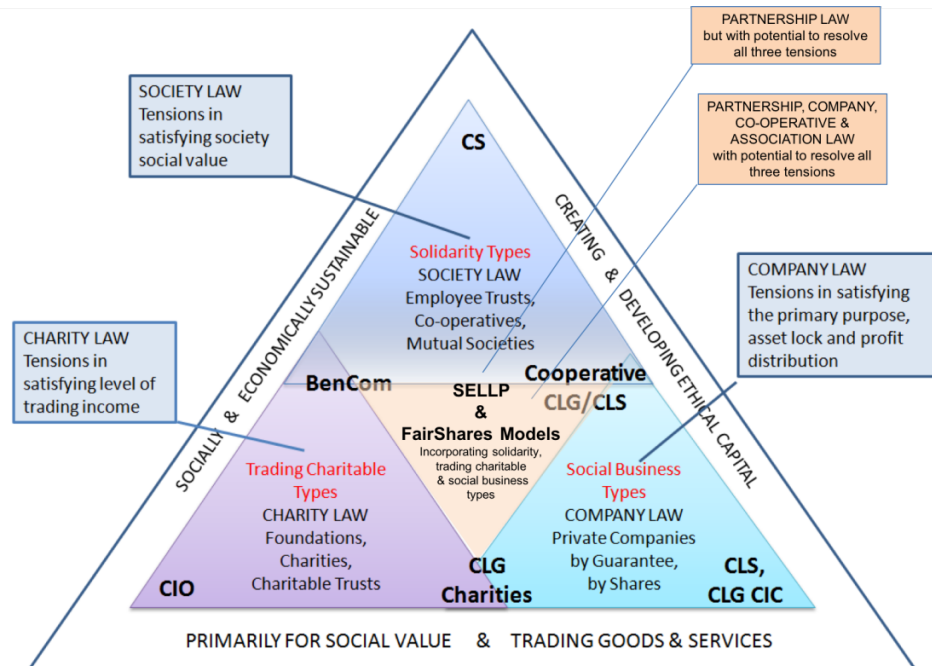

Figure 3.0 Adapted form Bull (2015)

In presenting this holistic view of legal structures for social enterprises, the aim is not to reinforce the positioning of the dominant categories of social enterprise but rather to illuminate how the current organising templates of social enterprise activity are re-shaped by the agency of social entrepreneurs.

Conclusion

This paper seeks to extend the current social entrepreneurship discourse by providing scholars with a deeper understanding of how social enterprise legal structure selection is disciplined by powerful actors such as government, funders, and kite-marking bodies who seek to construct social enterprise activity into the dominant, governable category of organising. In this respect; a further contribution is made to the understanding by scholars of the typology of social enterprise activity that pertains to legal structures as new categories of organising are identified and added to an existing typology (Figure 3.0).

This paper contributes further to extending current theory by blending (Oswick, Fleming, & Hanlon, 2011) social entrepreneurship and categorisation theory (Glynn & Navis (2013) in order to frame the social enterprise structure selection process as an ongoing field of tensions between what I argue is the social enterprise category of organising and the orientation of social entrepreneurs towards organising. A further contribution to theory is made in explicating the responses of social entrepreneurs to the disciplining of the social enterprise category as they seek to identify a legal structure, decouple their organising practice or create and seek legitimacy for new categories of social enterprise such as the SELLP, NewCo and Fair-shares structures.

References

Arthur, L., Cato, M., Keenoy, T., & Smith, R. (2003), "Developing an operational definition of the social economy", Journal of Co-operative Studies, Vol. 36 No. 3, pp. 163-89.

Austin, A., Stevenson, H., & Wei-Skillern, J., (2006) Social and Commercial Entrepreneurship. Same, Different or Both?, Entrepreneurship Theory and Practice, January ,2006

Bates, Wells & Braithwaite and Social Enterprise London (2003) Keeping it legal, legal forms for social enterprises, Social Enterprise London.

Battilana, J., & Dorado, S. (2010). Building sustainable hybrid organizations: The case of commercial microfinance organizations. Academy of management Journal, 53(6), 1419-1440.

Battilana, J., Leca, B., & Boxenbaum, E. (2009). 2 how actors change institutions: towards a theory of institutional entrepreneurship. Academy of Management annals, 3(1), 65-107.

Battilana, J., & Lee, M. (2014). Advancing research on hybrid organizing–Insights from the study of social enterprises. The Academy of Management Annals, 8(1), 397-441.

Bitektine, A., & Haack, P. (2015). The macro and the micro of legitimacy: Towards a multi-level theory of the legitimacy process. Academy of Management Review, 40(1): 49–75.

Boxenbaum, E., & Jonsson, S. (2017). Isomorphism, diffusion and decoupling: Concept evolution and theoretical challenges in Greenwood, R., Oliver, C., Lawrence, T. B., & Meyer, R. E. (Eds.). The Sage handbook of organizational institutionalism, pp, pages 79-104.

Bull, M. F. (2015). Shape sorting: towards defining Social Enterprise in the UK.

Bull, M. (2018). Reconceptualising social enterprise in the UK through an appreciation of legal identities. International Journal of Entrepreneurial Behavior & Research, 24(3), 587-605.

Creed, W. D., Scully, M. A., & Austin, J. R. (2002). Clothes make the person? The tailoring of legitimating accounts and the social construction of identity. Organization Science, 13(5), 475-496.

Czarniawska, B. (1997) Narrating the organization: Dramas of institutional identity. University of Chicago Press.

Dart, R., Clow, E., & Armstrong, A. (2010). Meaningful difficulties in the mapping of social enterprises. Social Enterprise Journal, 6(3), 186-193.

Department for Business Innovation & Skills (2011) A Guide to Legal Forms for Social Enterprise.

Dees, J. G. (1998). The meaning of "social entrepreneurship" [online] Available at: https://centers.fuqua.duke.edu/case/wp-content/uploads/sites/7/2015/03/Article_Dees_MeaningofSocialEntrepreneurship_2001.pdf [Accessed 20th Feb 2018].

Defourny, J., & Nyssens, M. (2006). Defining social enterprise. Social enterprise: At the crossroads of market, public policies and civil society, 7, 3-27.

Dey, I. (2003). Qualitative data analysis: A user friendly guide for social scientists. Routledge.

DiMaggio, P., & Powell, W. W. (1983). The iron cage revisited: Collective rationality and institutional isomorphism in organizational fields. American Sociological Review, 48(2), 147-160.

DLA Piper & UNLtd (2014) Structures for Social Enterprises. DLA Piper

Finlay, L. (2017, September 8). Social Enterprise Mark: Providing Credible Standards for Social Enterprise [Blog post]. Retrieved from https://communityinterestcompanies.blog.gov.uk/2017/09/08/social-enterprise-mark-providing-credible-standards-for-social-enterprise/.

Glynn, M. A., & Navis, C. (2013). Categories, identities, and cultural classification: Moving beyond a model of categorical constraint. Journal of Management Studies, 50(6), 1124-1137.

Gov.uk. (2004). Companies (Audit, Investigations and Community Enterprise) Act 2004. GOV.UK. [online] Available at: https://www.legislation.gov.uk/ukpga/2004/27/ pdfs/ukpga_20040027_en.pdf [Accessed 22 April. 2018].

Gov.uk. (2005). The Community Interest Company Regulations 2005. GOV.UK. [online] Available at: http://www.legislation.gov.uk/uksi/2005/1788/pdfs/ uksi_20051788_en.pdf [Accessed 22 April. 2018].

Gov.uk (2011). A guide to legal forms for social enterprise. GOV.UK. [online] Available at: https://www.gov.uk/government/publications/legal-forms-for-social-enterprise-a-guide [Accessed 24 April. 2018].

Gov.uk. (2012). Health and Social Care Act 2012: fact sheets - Publications - GOV.UK. [online] Available at: https://www.gov.uk/government/publications/health-and-social-care-act-2012-fact-sheets [Accessed 22nd April. 2018].

Greenwood, R., & Suddaby, R. (2006). Institutional entrepreneurship in mature fields: The big five accounting firms. Academy of Management journal, 49(1), 27-48.

Greenwood, R., Raynard, M., Kodeih, F., Micelotta, E. R., & Lounsbury, M. (2011). Institutional complexity and organizational responses. The Academy of Management Annals, 5, 317-371.

Harding, R. (2007). Understanding social entrepreneurship. Industry and Higher Education, 21(1), pp. 73-84.

Hardy, C., & Maguire, S. (2017). Institutional entrepreneurship and change in fields in Greenwood, R., Oliver, C., Lawrence, T. B., & Meyer, R. E. (Eds.). The Sage handbook of organizational institutionalism, pp. 261-280.

Health and Wellbeing Partnership LLP, (2019). https://hwp-llp.org.uk/ accessed 3rd May 2019.

Hsu, G., & Hannan, M. T. (2005). Identities, genres, and organizational forms. Organization Science, 16(5), 474-490.

Lakoff, G. (1987). Women, Fire, and Dangerous Things: What Categories Reveal about the Mind. Chicago: University of Chicago Press.

Lawrence, T. B., & Suddaby, R. (2006). Institutions and institutional work. In S. R. Clegg, C. Hardy, T. B. Lawrence, & W. R. Nord (Eds.), Handbook of organization studies (2nd ed. pp. 215-254). London, UK: Sage.

Leadbeater, C. (1997). The rise of the social entrepreneur (No. 25). Demos.

Lloyd (2006) The Social Enterprise LLP – What Is It; And What Is It For?, The barrister magazine.

Lounsbury, M., & Glynn, M. A. (2001). Cultural entrepreneurship: Stories, legitimacy, and the acquisition of resources. Strategic management journal, 22(6-7), 545-564.
Lyon, F., & Sepulveda, L. (2009). Mapping social enterprises: past approaches, challenges and future directions. Social Enterprise Journal, 5(1), 83-94.

March, J. G. & Olsen, J.P. (1989) Rediscovering Institutions. The Organizational Basis of Politics. New York: Free Press.

Meredith, E., Nelson, R., & Neck, P. (1982) The Practice of Entrepreneurship, International Labour Office

Mervis, C. B., and Rosch, E., (1981). 'Categorization of natural objects'. Annual Review of Psychology, 32, 89–115.

Morrison Foerster & Trust Law (2012) WHICH LEGAL STRUCTURE IS RIGHT FOR MY SOCIAL ENTERPRISE? A GUIDE TO ESTABLISHING A SOCIAL ENTERPRISE IN ENGLAND AND WALES, Thomson Reuters Foundation

Mutch, A. (2007). Reflexivity and the institutional entrepreneur: A historical exploration. Organization studies, 28(7), 1123-1140.

Navis, C., & Glynn, M. A. (2011). Legitimate distinctiveness and the entrepreneurial identity: Influence on investor judgments of new venture plausibility. Academy of Management Review, 36(3), 479-499.

Nicholls, A., & Cho, A.H. (2006). Social entrepreneurship: the structuration of a field. Social Entrepreneurship: New Models of Sustainable Social Change. In Nicholls, A. (Ed.) Oxford: Oxford University Press, 99-118.

Nickel, P. M., & Eikenberry, A. M. (2016). Knowing and governing: The mapping of the nonprofit and voluntary sector as statecraft. VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations, 27(1), 392-408.

Oswick, C., Fleming, P., & Hanlon, G. (2011). From borrowing to blending: Rethinking the processes of organizational theory building. Academy of Management Review, 36(2), 318-337.

Pearce, J., & Kay, A. (2003). Social enterprise in anytown. Calouste Gulbenkian Foundation.

Peredo, A. M., & McLean, M. (2006). Social entrepreneurship: A critical review of the concept. Journal of world business, 41(1), 56-65.

Regulator, C. I. C. (2017a). 2016/17 Annual Report, The Regulator of Community Interest Companies.

Regulator, C. I. C. (2017b). Memorandum of understanding for the co-operation between the Regulator of Community Interest Companies and the CIC Association CIC [online] Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/635099/Memorandum_of_Understanding_2017_between_Social_Enterprise_Mark_CIC_and_CIC_Regulator.pdf, Accessed 24th April 2018.

Ridley-Duff, R., & Southcombe, C. (2012). The Social Enterprise Mark: a critical review of its conceptual dimensions. Social Enterprise Journal, 8(3), 178-200.

Ridley-Duff, R. (2015). The FairShares Model: an ethical approach to social enterprise development?. Ekonomski vjesnik: Review of Contemporary Entrepreneurship, Business, and Economic Issues, 28(1), 43-66.

Rosch, E. "Principles of categorization' in Rosch, E, and B Lloyd (eds) 1978 Cognition and Categorization. Lawrence Erlbaum Associates.

Ruebottom, T. (2013). The microstructures of rhetorical strategy in social entrepreneurship: Building legitimacy through heroes and villains. Journal of Business Venturing, 28(1), 98-116.

School for Social Entrepreneurs (2018) Selecting a legal structure for your social enterprise [online] Available at:

https://www.thesse.org/resources/starting/selecting -a-legal-structure-for-your-social-enterprise/, Accessed 22nd April 2018.

Scott, J. C. (1998). Seeing like a state: How certain schemes to improve the human condition have failed. Yale University Press.

Social Enterprise Mark CIC (2016) http://www.socialenterprisemark.org.uk/, accessed 22nd April 2018.

Social Enterprise Mark CIC (2018) http://www.socialenterprisemark.org.uk/, accessed 22nd April 2018.

Social Enterprise London, (2001). Introducing Social Enterprise, London: Social Enterprise London.

Social Enterprise UK. (2017). Start you social enterprise, The social enterprise guide. [online] Available at: https://www.socialenterprise.org.uk/Handlers/Download.ashx?IDMF=b5514bc0-5a3b-4c4e-afe1-d8aaec3ebb19. [Accessed 9th August 2018]

Spreckley, F. (2011). Social Enterprise Planning Toolkit. The British Council, Manchester.

Suchman, M. C. (1995). Managing legitimacy: Strategic and institutional approaches. Academy of Management: The Academy of Management Review, 20, 571-610.

Suddaby, R., & Greenwood, R. (2005). Rhetorical strategies of legitimacy. Administrative science quarterly, 50(1), 35-67.

Thomas, D. R. (2006). A general inductive approach for analyzing qualitative evaluation data. American journal of evaluation, 27(2), 237-246.

Thompson, J. (2002). The world of the social entrepreneur. International Journal of Public Sector Management, 15(5): 412-431.

Thornton, P. H., & Ocasio, W. (1999). Institutional logics and the historical contingency of power in organizations: Executive succession in the higher education publishing industry, 1958–1990. American journal of Sociology, 105(3), 801-843.

Thornton, P.H. Ocasio, W. & , Lounsbury, M (2017). Advances to the Institutional Logics Perspective in Greenwood, R., Oliver, C., Lawrence, T. B., & Meyer, R. E. (Eds.). The Sage handbook of organizational institutionalism, pp. 509-531. Sage.

Timmons, J., & Spinelli, S., (2009) New Venture Creation: Entrepreneurship for the 21st Century, New York: McGraw Hill

Vergne, J. P., & Wry, T. (2014). Categorizing categorization research: Review, integration, and future directions. Journal of Management Studies, 51(1), 56-94.

Vurro, C., Dacin, M. T., & Perrini, F. (2010). Institutional antecedents of partnering for social change: How institutional logics shape cross-sector social partnerships. Journal of Business Ethics, 94(1), 39-53.

Weick, K. E. (1995). Sensemaking in organizations (Vol. 3). Sage.

Weick, K. E., Sutcliffe, K. M., & Obstfeld, D. (2005). Organizing and the process of sensemaking. Organization science, 16(4), 409-421.

Wrigley's Solicitors LLP (2014). A Guide to Legal Structures for Social Enterprise, Leeds, Wrigley's Solicitors LLP.

Wry, T., Lounsbury., M. & Glynn, M. A. (2011). 'Collective identity mobilization: prototype framing, boundary expansion, and cultural recognition'. Organization Science, 22, 449–63.

Zuckerman, E. W. (1999). 'The categorical imperative: securities analysts and the illegitimacy discount'. American Journal of Sociology, 104, 1398–438.

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