Policy Brief

John Tyler*

# Regulation and Incentives for "Social Enterprise" in the United States: But First Greater and More Substantive Differentiation

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**Abstract:** Nomenclature around social enterprise, social entrepreneurship, the social economy, social business, or social purpose business means different things to different people under different circumstances. Sometimes, it means different things to the same people in the same circumstances – sometimes even in the same conversation. Clarity can be especially relevant for nonprofits – particularly charitable, tax-exempt nonprofits – for at least three reasons. First, they undertake their own strategic efforts to engage the marketplace to generate revenue and/or advance/scale their programmatic objectives. Second, they are often approached by enterprises purporting to be – even fully believing they are – social. Finally, charities increasingly compete with "social enterprises" for financial support, employees, customers, policymaker attention, etc. Given legal compliance mandates, charities must clearly understand who they are engaging with, how, and the extent of

General Counsel, Secretary, Chief Ethics Officer for the Ewing Marion Kauffman Foundation. Lecturer for Columbia University's Masters of Nonprofit Management program. Adjunct faculty for the University of Kansas School of Law. The content of this essay should not be ascribed to any organization with which the author is affiliated. I am grateful to many people who have contributed to, challenged, reinforced, and encouraged my thinking in this space over the years. There are too many to mention. More specifically, I am grateful to the Urban Institute and Lilly School of Philanthropy at Indiana University for the opportunity to present this topic and get feedback on its substance at its conference in April 2024. I also had the chance to present an expanded article on this topic at a conference hosted by the Grunin Center on Law and Social Entrepreneurship at the New York University School of Law. I am grateful for comments and feedback through both events, particularly those of Dana Brakman Reiser who was gracious enough to serve as the commentator on my paper at Grunin, which is being published by the NYU Journal of Law and Business (Tyler forthcoming 2025). Comments and feedback from anonymous peer reviewers of drafts of this essay for the Forum are also greatly appreciated. I am also grateful for Zoda Bellew's fabulous work as a research assistant on both papers.

***Corresponding author: John Tyler**, Ewing Marion Kauffman Foundation, Kansas City, USA, E-mail: jtyler@kauffman.org

alignment or lack thereof. It can be reasonable to want government regulatory and policy interventions to help force much-needed clarity, which would also benefit the social enterprise movement and its enterprises. Regulatory and policy interventions could reduce green/purpose washing, ambiguity, and confusion and promote aligned engagement, but only if that "middle" space is sufficiently differentiated from traditional approaches and/or flexibility. Neither interest is served by vague invocations of nebulous degrees of attention to owner financial interests, market participation, and social good.Differentiation is important – if not essential. Differentiation must allow for reliably, consistently, and uniformly ascertaining over time what counts as a social enterprise and what does not. If "virtually any organization can call itself a social enterprise," it will lead to "blurriness as to which business is actually a 'social' one," which arguably describes the current state in the U.S. Whether through legal structure or modalities, social enterprises should exhibit the following: (1) heightened commitment to social good, (2) greater intentionality about predictably and reliably connecting their behaviors to socially good outcomes, and (3) consistency through time and persistence through circumstance. This essay submits that the U.S. lacks coherence, predictability, differentiation, critical mass, and a general will to enforce a reliable ordering of priorities that persists over time and can weather changes in ownership priorities and personnel. Even so, there are organizations whose operations are sufficiently different. There are also those that only purport to be different enough. Until there is differentiation at scale, this essay suggests that government regulation in the present will need to be through means applicable to for-profit businesses and, in the process, help identify green/purpose washing, promote clearer communication of purposes and priorities, and facilitate alignment. This essay first evaluates words commonly used in reference to social enterprise – impact, intentions, and outcomes – but finds them deficient. The essay next considers means for differentiation per the three characteristics listed above. Finally, the essay compares how other countries have invoked those concepts through legal structures or modalities, ultimately concluding that the legal structures and modalities in the U.S. do not support finding a cohesive "middle" space, yet.

**Keywords:** benefit corporation; social enterprise; social economy; impact investing; regulation; nonprofit

# 1 Introduction

Too often, what people mean and understand when they talk or write about social enterprise, social entrepreneurship, the social economy, social business, social purpose business, and other similar terms does not align. Sometimes, the same person in the same conversation will use the same words but mean different things. For instance, the nomenclature may invoke overall movements and their variations; specific legal structures; categories of businesses or operations with certain features; discrete, unique enterprises; and/or some varying, interchangeable combinations of the preceding. No one involved in the communication may realize the disconnect until sometime later.

In nearly all cases, the references often invoke undeclared degrees of attention to owners' financial interests, pursuing and/or achieving social good, and engaging the market.

Clarity about such meanings and understandings (or the lack thereof) can be especially relevant, even essential for decision-makers at nonprofits – particularly charitable, tax-exempt nonprofits – for at least three reasons. First, they sometimes undertake their own strategic efforts to engage the marketplace to generate revenue and/or advance/scale their programmatic objectives. They may do this directly or through tandem structures involving parent-subsidiary relationships. In doing so, non-donative sources of capital may be available to them, and their leaders and managers will need to be clear among themselves about what they are doing/ prioritizing and why, not to mention also being as clear with the providers of capital. The above terms, along with terms like "impact investing," can facilitate either clarity or confusion, but too often tend towards the latter.

A second reason for clarity is that charities are often approached by enterprises purporting to be – even fully believing they are – social. Charities may be asked to facilitate supply and/or distribution chains for buy-one-give-one enterprises; to provide their name and reputation for cause marketing, "point-of-sale," or "rounding up" campaigns; to contribute resources (e.g. financial, data, content, networks, etc.) to a joint venture, public-private partnership, or some other collaboration; to engage with an endeavor because it is a benefit corporation, certified B corporation, or L3C; and more. Ambiguity inhibits the abilities of charities' decision-makers to understand what is being asked of them, what they need to guard against, and what they can reasonably expect from the asker.

Finally, and perhaps most broadly, charities increasingly compete with so-called social enterprises, whether for capital, employees, customers, policymaker attention, etc. (Ashley and Young 2014, 208, 210). Some of that competition may be appropriate and even constructive, but charities suffer when competition is rooted in confused people who might mistakenly think they are advancing or supporting a charitable endeavor when they are not (Andreadakis 2023, 888). In other words, charities and society suffer when people want to believe in what they are doing even if they are not doing what they believe in.

Given charitable mandates, non-distribution constraints, and prohibitions against impermissible private benefit, charities must clearly understand who they are engaging with, how, and the extent of alignment or lack thereof. Such understandings are more than mere conveniences or reputational concerns. Clarity can be existential for compliance with legal obligations. For these charities and for the sector broadly, including private foundations and other funders, it can be tempting and reasonable to want government regulatory and policy interventions to help force much-needed clarity.

The social enterprise movement and its component parts and enterprises also would benefit from such clarity. If a meaningful part of the rationale for a social enterprise movement is to attract resources to problems or opportunities that the market, government, and/or charitable endeavors neglect or cannot fully engage – a so-called “middle” space – it is not enough to vaguely invoke nebulous combinations or degrees of attention to owner financial interests, market participation, and social good. It seems that the attraction of resources would significantly depend on emphasizing – if not prioritizing – pursuit of neglected social goods.

Social enterprise, done right and well, will attract capital, talent, and attention to those problems and opportunities (Abramson and Billings 2019, 1; Anheier and Toepler 2019, 2; Bohinc and Schwartz 2021, 1, 6; Calo and Teasdale 2016, 6; Dadush 2015, 200; Giagnocavo 2023, 455; Langer 2021, 497). Anything else risks merely tolerating social good while advancing owner financial interests, which is expected in the for-profit space but is less fine in and even arguably detrimental to that “middle” space.

Even the part of the movement and its enterprises that prioritize owners’ financial interests and/or flexibility to choose what to prioritize when could also benefit from clarity if for no other reason than they would no longer need to disclaim tolerating concessionary returns. It would be clear that such returns are not within their sphere.

Regulatory and policy interventions could reduce green/purpose washing, ambiguity, and confusion, and thereby promote aligned engagement, but only if that “middle” space is sufficiently differentiated from traditional for-profits and charities and/or flexibility of purpose.

Differentiation is important – if not essential (Anheier and Toepler 2019, 5; Bohinc and Schwartz 2021, 4; Fici 2023, 157, 163; Hiez 2023b, 696; Serres and De Moor 2023, 864, 878; Sheehy and Diaz-Granados 2023, 635–36). People should be clear that social enterprises are unique from other types of operations (Aldohni 2023, 575; Bohinc and Schwartz 2021, 2; Goldstein et al. 2023, 393), which requires that distinguishing features be meaningful and worthwhile (Dadush 2015, 163, 184, 2018, 11; Liao 2018, 112) so that social enterprises present a clear alternative to existing laws and traditional approaches (Liao 2018, 119).

If “virtually any organization can call itself a social enterprise,” it will lead to “blurriness as to which business is actually a ‘social’ one” (Serres and De Moor 2023, 862; see Sheehy and Diaz-Granados 2023, 639), which arguably describes the current state in the U.S. Thus, differentiation should determine who is in and who is out, what is and is not subject to applicable regulatory oversight, and who can be advantaged by incentives and who cannot (Sheehy and Diaz-Granados 2023, 638). Those who are advantaged through policy should be structured and/or operated differently from those who are disadvantaged. They should contribute differentiable social goods that the latter do not, cannot, and/or choose not to do. Otherwise, society risks making concessions without getting an equivalent positive return for doing so and might even be harming itself by instituting unwarranted disadvantages. (See Abramson and Billings 2019, 7 (citation omitted)).

Among ways to ascertain differentiation of the “middle” space is through legal structures that achieve the requisite ordering of purposes. Another is whether the features and characteristics of an enterprise demonstrate the requisite ordering of priorities, regardless of legal structure – what Hiez refers to as a “modality” approach (Hiez 2023a, 449–50, 2023b, 701). Whether through legal structure or modalities, it seems that all should exhibit something like the following differentiating characteristics relative to traditional and pretend approaches:

(1) heightened commitment to social good,
(2) greater intentionality about predictably and reliably connecting their behaviors to socially good outcomes, and
(3) consistency through time and persistence through circumstance.

This framework can help with understanding the current landscape of regulatory and policy efforts to differentiate and whether the status quo in the U.S. actually does so to any meaningful degree. What, if anything, distinguishes traditional approaches to for-profits and charities from the “middle” space? Is there a truly “middle” space in practice? If so, do regulations and policies need to catch up to reinforce and advance it? If not, how might existing regulatory and policy environments be applied to protect against fraud and misrepresentation? To guard against securities manipulation and misunderstandings? To ensure that consumers and employees have enough of the right information for their decision-making and otherwise? Also, if there currently is not sufficient differentiation and if a “middle” space is desired, then this understanding of the status quo can facilitate developing new and different regulatory and policy approaches.

In short, there is not a current governmental – or even private – regulatory environment in the U.S. that clearly facilitates operating in, for, or through that “middle” space of social enterprise; instead, the environment has been characterized as deficient, even potentially harmful (Abramson and Billings 2019, 1; Anheier and Toepler 2019, 2; Bohinc and Schwartz 2021, 19; Brakman Reiser 2014, 240; Dadush 2015, 146, 184; Ebrahim et al. 2014, 86–87; Tyler 2018b, 2020; Tyler et al. 2015, 2018).

Ultimately, this essay submits that the U.S. lacks coherence, predictability, differentiation, critical mass, and a general will to enforce a reliable ordering of priorities that persists over time and can weather changes in ownership priorities and personnel. To begin with, we lack a coherent, limiting definition of "social enterprise" (Abramson and Billings 2019, 6). We also lack the distinguishing features of a social enterprise sector sufficient to enable a distinctive regulatory environment such as has emerged elsewhere: explicitly declared priority of purpose, delimiting scopes (e.g. hard-to-employ workers ("WISE")), distribution caps or reinvestment mandates, asset locks, stakeholder participation, one-member-one-vote, discretely charged and empowered regulatory agencies, among other possibilities.

Even so, there are organizations whose operations are different. Unfortunately, there also are organizations, industries, and movements that only purport to be different, but they may not be different enough to justify treatment other than as for-profit companies. Until there is differentiation at scale, this essay builds on prior work to suggest that clarity through government regulation in the present will need to be through means applicable to for-profit businesses (e.g. securities, consumer protection, fiduciary duties, fraud and misrepresentation, contract, etc.). While such means may not incentivize enterprises to operate in the "middle" space, these tools and other analyses in this essay can help identify green/purpose washing (whether done fraudulently, intentionally, carelessly, or accidentally), promote clearer communication of purposes and priorities, and facilitate alignment of interests and accountabilities. Such efforts also can help clarify the starting point for the journey of future regulations, incentives, and greater practical adoption – in the U.S. especially.

Clear, unambiguous differentiation could facilitate alignment among and between investors, entrepreneurs, employees, consumers, creditors, and researchers, in addition to providing clarity for charitable nonprofits and their boards, leaders, managers, personnel, and funders. Of course, the need for and benefits of differentiation should not be confused with the will to make it happen.

This essay begins in part 2.0 by understanding what might be regulated and incentivized based on words and concepts commonly used in reference to social business – impact, intentions, and outcomes – before concluding that clarity would be advanced if accountability and nomenclature were instead to process and priorities of purpose. Part 3.0 more deeply considers a proposed framework for differentiation: commitment to social good, intentionally connecting behaviors to social good outcomes, and ensuring persistence through and consistency across time and circumstances. Finally, part 4.0 compares ways in which thirty-nine non-U.S. jurisdictions have invoked those concepts through formal legal structures and/or modalities with no or limited regard to legal structure, ultimately concluding that the structures and modalities in the U.S. do not support finding a cohesive "middle" space to support new, different regulation or incentives … yet.

# 2 Regulation, Incentives, and Accountability for What: Impact? Intentions? Outcomes? Process?

Efforts to regulate or incentivize begin with clearly understanding what is to be regulated or incentivized. Unfortunately for this task, ambiguous terminology pervades the social entrepreneurship space in the U.S. (Tyler forthcoming 2025, Appendix A presents and categorizes 166 definitions.) This is not to suggest bad faith or nefarious efforts; quite the contrary. Word selection in this space is usually well-meaning, hopeful, and full of aspirational goodwill. Unfortunately, it still too often lacks clarity about underlying possible meanings and/or applications in practice, which makes regulation and practical implementation challenging and unappealing.

At even the highest level, among frequent assertions are that social enterprises can or should variably be held to account for intentions; impact, outcomes, or results; effort; and otherwise. For instance, there are references to the "promise" of social enterprise (Dadush 2015, 143, 2018, 2). While fine as an expression of aspiration and hope, the word is not helpful for the practice of regulation or accountability. "Promise" is even less helpful in conversations between investors and entrepreneurs or as a way for leaders and decision-makers in charitable nonprofits to be clear about their priorities and to have standards against which to assess those of others. None may know what others in the conversation mean by the noun "promise," how or even whether to engage them, or how they will assess success or failure, much less progress.

Similar problems arise with the term "impact" (Abramson and Billings 2019, 5; Tyler 2018a, 46–47). On its face, the term suggests a focus on outcomes, results, or effects, but when used in social enterprise, it frequently gets re-configured to mean "intending" both financial returns and social good. That intent can vary from one person or situation to the next, between investor and entrepreneur, within groups of investors or entrepreneurs, and/or among charitable nonprofit leaders and those with whom they might collaborate. All are within the ambit of "impact" if even some minuscule level of intending both distributable profits and social good are present. Being only one percent committed to either purpose qualifies for inclusion.

Contrary to the nearly all-embracing term, investors and entrepreneurs are not homogenous (Dadush 2018, 441; 2015, 154–55, 163), and they can fit anywhere within a wide-ranging calibration of permissible intentions. Their varying and unstated degrees of relative importance and intensity can be problematic and even harmful (Shepherd et al. 2019) as they engage with each other in ways that mistakenly suggest alignment that does not exist despite a well-intentioned embrace of taxonomies and terminology that suggests otherwise.

As a practical matter, then, the “impact” terminology does not effectively differentiate capital sourcing in social enterprise from traditional investing. After all, the investor 100 % focused on the owners’ financial interests and not willing to even tolerate or wanting to affirmatively prevent any social good whatsoever would be rare (if not non-existent); all are willing to tolerate at least 1 % social good and, thus, would qualify as “impact” investors. That lack of distinction undermines the ability to effectively regulate differently, not to mention the practical problems with people trying to put deals together or ascertain accountability, progress, or success or failure within them. Of course, there may be ratios that clearly qualify as differentiated social good, but current all-embracing terminology is not that clear, nor does there seem to be a meaningful willingness to pursue clarity.

Even “outcomes,” “results,” and “effects,” without regard to intentions, can be problematic as generic expressions for what social enterprises will be held to account through regulation, incentives, or in practice. Adding modifiers such as “positive,” while slightly better, is still too vague. Relying on these concepts has at least two problems. First, finding causal connections between effort and results is “fraught, imprecise, and expensive” (Dadush 2018, 444). Second, and more practically, such reliance is likely to disincentivize engagement and is inconsistent with approaches in traditional for-profit and charity contexts that most people more readily understand. Why would anyone want to be personally liable for failure to achieve projected future outcomes, results, or effects?

Legal/regulatory accountability in the for-profit context is not for any of these terms. For-profit companies lose money all the time, some to the point of going out of business with corresponding financial losses. Under the business judgment rule, there is no legal or regulatory recourse against decision-makers or the company if decisions were made in good faith, with adequate information, and with conflicts of interest having been managed properly. In other words, with the business judgment rule, there is no legal or regulatory recourse if decisions were made consistent with fiduciary duties of care and loyalty (ebay Domestic 2010; Giulano 2024, 903; Mantese and Louis 2020; Palella 2024, 2; Simeone 2023, 971–73). Through the fiduciary duty of care in for-profit companies, legal accountability is to process rather than to outcomes, results, etc. (Giulano 2024, 903).

The same applies in the charitable context, except that instead of losing money, the corollary outcome, result, or effect is failing to achieve charitable objectives (or maybe even generating harm), although losing money might be involved, too. If decisions are made in good faith, with sufficient information, and without illicit conflicts of interest – that is, consistent with duties of care and loyalty (and perhaps obedience) – there is no personal liability, nor should there be (American Law Institute 2021; McCord 2024, 43, 49, 50). Again, legal duties in charitable nonprofit entities are also to process.

In both for-profits and charities, things sometimes do not go well and are beyond one’s ability to control or predict. In the U.S., attaching personal liability and/or governmental accountability has been deemed extreme and counterproductive in both contexts. Of course, directors, officers, managers, and others might be replaced through private decision-making – most notably by owners of for-profit companies. Imposing personal liability or governmental accountability is not imposed in either context. Nor should it be.

Why should the standard be different – and especially harsher – for truly social enterprises? Of course, social and owner accountability exist for social enterprises, and they should. Imposing legal regulatory accountability and/or personal liability for the outcomes, results, or effects of a social enterprise would likely further destabilize the uses of social enterprise rather than encourage them.

Maybe when people invoke “accountability for outcomes,” they don’t mean personal liability or governmental accountability. But, as noted above, that is part of the problem in trying to develop, regulate, or engage in the “middle” social space. People too often say one thing but mean something else entirely.

This does not leave a regulatory vacuum. There can and should still be personal and governmental oversight and accountability based on fiduciary duties and whether decision-makers act in good faith, with requisite knowledge and information, and without illicit conflicts of interest – as is the case with for-profit companies and charitable nonprofits; that is, to process. However, in the U.S., there is no legal structure that reorders fiduciary duties to require that heightened commitment to social good be consistently and persistently prioritized over owners’ financial interests such as would evidence a differentiated “middle” space. Other mechanisms under law must and can be relied on to bring accountability, including laws regarding securities, consumer protection, fraud and misrepresentation, and otherwise.

## 3 Meaningful Differentiation: Commitment, Persistence, and Intentionality

In some ways, meaningful differentiation might be thought about in terms of means and ends (see Bebchuk and Tallarita 2020, 109, 114; Dodge 1919, 684; Karametaxas and Huber 2023, 508, 598; Spence 2025, 27, 65; Tyler 2020, 970; Utah 2025, 21–25). Are socially good efforts and outcomes a means to the end of owners’ financial interests? Or are such efforts and outcomes the ends for which financial interests are a byproduct, conduit, or means? The first is generally considered consistent with for-profit models and approaches, while the second might be more indicative of a social enterprise.

In that regard, the ultimate differentiating feature seems to be the degree of commitment to social good. Related would be whether that commitment remains consistent over time and persists through changed circumstances. A third component might assess intentionality about how behaviors connect to achieving socially good outcomes.

Regarding commitment, even the greediest for-profit endeavors will at least tolerate social good as they maximize distributable profits and capital growth. Moreover, some for-profit endeavors sometimes pursue and achieve social good with great intentionality while still prioritizing owners' financial interests (Ebrahim et al. 2014, 84; Tyler et al. 2015, 301). Differentiation would seem to require that social enterprises in the "middle" space demonstrate an elevated commitment to social good to provide clarity for regulation, accountability, and incentives. As a practical matter, clarity of such commitment also can facilitate alignment within and across stakeholder groups, especially investors and entrepreneurs, but others too, including decision-makers at charitable nonprofits and those with whom they collaborate.

Figure 1 presents a spectrum for conceiving of relative commitments to priorities of purpose.[1] Both social good and financial interests can be juxtaposed on the spectrum, albeit not necessarily in a directly inverse relationship. For instance, devotion to or focus on owners' financial interests likely means tolerating – or perhaps awareness of or even support for – social good. Similarly, a focus on social good is likely to involve a neutral awareness of the owner's financial interests or perhaps more likely to welcome permissions for it.

A company's decision-makers cannot always be devoted to both social good and owners' financial interests. At some point, interests irreconcilably collide, and one purpose must give way to another. That will be the priority, which is why Figure 1 does not include a purely middle option. Also, a company and its personnel are not likely to be perpetually agnostic about social good and financial interests such that each is merely tolerated or permitted. A company will be devoted to or focused on one while tolerating or being aware of the other, or it could favor one and permit the other. Or the priorities might change over time and circumstances.

Leaders of charitable nonprofits that operate or are contemplating operating in the social good "middle" or even for-profit spaces need to be clear among themselves about where their priorities of purposes lie on this continuum along with understanding the degrees to which those with whom they collaborate are or are not aligned.

Query: which combination(s), if any, differentiate sufficiently from traditional for-profit approaches to justify a unique regulatory regime and

1 For a discussion of how commitment could be ascertained and a description of each of these proposed points on the spectrum, see Tyler 2018a, 2018b, 2020.


**Figure 1:** Commitment to priority of purposes (Tyler 2018a, 2018b).

corresponding incentives for operating in the “middle”? While many situations can allow for both social good and profitability, when interests collide, it seems that a social enterprise must prioritize social good over owners’ financial interests. Returns need not be concessionary as a feature or requirement, but circumstances may be such that concessions might become necessary. Of course, concessionary returns, dividend caps, reinvestment requirements, and asset locks would, by definition, reflect an ordering of priorities in which the legal structure or enterprise is devoted to or focused on social good, but they aren’t the only way to do so. Merely favoring social good may be harder to ascertain, much less regulate or incentivize.

The context will matter, and words alone are not likely ever to suffice (Bohinc and Schwartz 2021, 5). Words can too easily be a “branding exercise” (Liao 2018, 114), good marketing (Andreadakis 2023, 893; Gartenberg 2023, 1), and/or reflect “greenwashing,” “purpose washing,” or being a “pseudo-social enterprise” (Andreadakis 2023, 893; Fici 2023, 158; Liao 2018, 103). Behaviors reflect the commitment to which those involved can align (e.g. investors, entrepreneurs, customers, employees, creditors, charitable nonprofit decision-makers and their collaborators, etc.), understand (e.g. researchers, regulators, etc.), and/or promote/incentivize (e.g. policymakers, others). Within the context of decision-making, those behaviors could include what options were considered, how the pros and cons of each were deliberated, whether or how accountability and assessment were factored, and ultimately what was rejected and why and what was decided and why.

Another consideration for ascertaining commitment is the ease with which decision-makers may change or deviate from any given priority. Stated differently, whether any commitment to social good as a – or the – priority purpose should be a nearly permanent, perpetual condition and not be subject to relatively easy modification (Bohinc and Schwartz 2021, 16 re Etsy). Easy modification, which is one of Brakman Reiser’s criticisms of the L3C (2013, 2010; Brakman Reiser and Dean 2017b), could present regulatory challenges–not to mention market engagement problems for investors and others – if a company can evade accountability by merely converting to or reprioritizing something else with impunity.

The book The Tipping Point: How Little Things Can Make a Big Difference (Gladwell 2002) has a chapter on how certain marquis, for-profit businesses advanced their owners' financial interests by serving various social goods, including stakeholder interests. Another part of the chapter, though, points out how transient that emphasis can be and the detrimental economic effects of deviating to focus on profitability while, at best, permitting – but perhaps more likely merely tolerating – consideration of social good defined broadly.

While flexibility across purposes and priorities may be useful (even inherent) in a for-profit context, consistency and persistence of priority should be defining characteristics of social enterprise if it is to be understood and treated differently from traditional for-profit approaches.

The same may be said about the intentionality with which behaviors reliably and predictably result in achieving social good outcomes (Tyler 2018a, 2018b). In the for-profit context, such reliability is generally connected to behaviors that generate revenues. For-profit companies do not last long if there is not at least some correlational (if not causal) connection between their goods, services, and revenue generation and levels thereof. Correlational, causal, and instrumental connections to profitability can be replicated, repeated, and scaled because the business understands and can be intentional about connecting its behaviors with revenue outcomes. Arbitrary, accidental, or incidental connections are substantially harder to predict and thereby monetize.

The analysis should be similar for social enterprises in the "middle," except that the objective is not revenues for their own sake but instead is intentionality in connecting behaviors with socially good outcomes in ways that can be replicated, repeated, and scaled. Mere arbitrary, accidental, or incidental connections do not reliably enable such pursuit of those socially good outcomes.

## 4 Differentiating Based on Legal Structures and Modalities

We can look at how other jurisdictions have or have not undertaken to differentiate their social enterprises from traditional for-profit companies and/or charities to evidence commitment, intentionality, and persistence. This essay first samples non-U.S. legal structures before considering how the still relatively new hybrid, blended structures in the U.S. compare with traditional approaches. The essay then presents how various features – modalities – in non-U.S. and U.S. approaches advance differentiation or confusion, thereby enabling regulation or not, and perhaps even practical clarity, including especially for decision-makers at charitable nonprofits.

## 4.1 Differentiation by Legal Structures: U.K. and Canada

Only three of the forty-two jurisdictions analyzed for this essay have discrete legal social enterprise structures whose features formally differentiate them from for-profits and charities and require giving priority to social good. The UK has the "community interest company" (CIC), whose primary purpose must be social objectives rather than maximizing owners' financial interests (Calo and Teasdale 2016, 10). CICs also must meet requirements as to the scope of their activities and decision-making (although not those typically deemed "democratic" or like cooperatives) along with adopting distribution caps, a partial asset lock, and other distinguishing features (Andreadakis 2023, 892 and 894; Calo and Teasdale 2016, 11; Dadush 2015, 161; Ebrahim et al. 2014, 86, 92; Liao 2018, 107–08, Table 6.1; Vasserot 2023a, 37).

There are two versions of the CIC: those limited by shares, which have owners much like for-profit companies; and those limited by guarantee, which do not have owners and are more like nonprofits in the U.S. CICs limited by guarantee are subject to non-distribution constraints and asset locks by virtue of not having owners while caps and locks are conditions that owners accept in CICs limited by shares.

The UK complements its legal structure with a regulatory body specifically charged with overseeing – even promoting – individual CICs and the movement more broadly.[2]

Two Canadian provinces have similar variations: British Columbia has a "community contribution company," and Nova Scotia has a "community interest company" (Giagnocavo 2023, 456, 461; Liao 2018, 107–08, Table 6.1). Both have dividend caps, asset locks (a partial lock for the CCC), and other differentiating features (Giagnocavo 2023, 461; Liao 2018, 107–08, Table 6.1), and both can be structured either by shares (with owners) or by guarantee (with no owners). There is no regulator for the CCC, but Nova Scotia has a CIC Registrar (Liao 2018, 107–08, Table 6.1). The Canadian provinces do not seem to go beyond processes typical of States in the U.S. when incorporating new businesses of any type that invokes state law (e.g. corporations, limited liability companies, nonprofits, benefit corporations, L3Cs, etc.) (Andreadakis 2023, 895); that is, perhaps cursory review but mostly maintaining lists without necessarily providing validations.

Neither the UK nor the two Canadian provinces provide tax-favored treatment, bid procurement preferences, or other government incentives for adopting and

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2 The CIC Regulator's duties are extensive. It screens applicants, monitors activities thereafter, ensures compliance with financial restrictions, receives and evaluates annual reporting, and receives and examines complaints. It also has the authority to appoint, suspend, and dismiss board members and/or institute proceedings to force the termination of CIC enterprises (Andreadakis 2023, 890–92).

operating pursuant to the available forms. However, both the UK and British Columbia cap interest on debt if payments on that debt are connected to the company's underlying performance (Liao 2018, 107–08, Table 6.1).

As noted elsewhere, social enterprises in these jurisdictions are not limited to these specific legal structures. All three, and Canada more broadly, welcome and recognize that social enterprises may function effectively through other legal structures, albeit less formally. For instance, Canada's national government operates a Social Enterprises Directory as part of its Canadian Company Capabilities database that allows companies to register when they self-identify as "social enterprises" per a definition from the Canadian Ministry of Innovation, Science, and Economic Development (Liao 2018, 102; https://www.canadiansocialenterprises.ca/).

## 4.2 Differentiation by Legal Structures in the U.S.?

None of the formally available legal structures in the U.S. require dividend caps, reinvestment mandates, participatory or limited voting, or even that social good be the main, primary, or priority purpose for which the enterprise operates. As for purposes and priorities thereof, the main U.S. Corporate Hybrids (i.e. benefit corporation/LLC and the social purpose corporation) are substantially more like traditional for-profit counterparts than they are different from them in the following categories:[3]

(a) maximizing owner value,
(b) pursuing or prioritizing charitable objectives as defined by 501(c)(3), and/or
(c) pursuing or prioritizing social/public good/stakeholder value.

Traditional for-profit companies MUST maximize owner financial value.[4] They MAY pursue charitable objectives and/or social/public good/stakeholder value as

3 For more detailed discussions about how the U.S. Hybrids achieve their respective purposes and priorities, see Brakman Reiser 2010, 2013; Tyler et al. 2015, 2018; and other publications.

4 Although there are differences of opinion about whether U.S. law adopts this standard in practice, for purposes of this analysis, I adopt the predominating view of the Delaware courts that maximizing owner value is the presumptive underlying fiduciary duty, while also respecting that other purposes and stakeholders can have a role provided they contribute in the long-term to owner value (McRitchie 2024). Other jurisdictions are more tolerant of stakeholder interests or even expect/require due consideration of them as part of pursuing the best interests of the company: Belgium (Cools and Verheyden 2023, 83, 88; Hiez 2023a, 449); Canada (Giagnocavo 2023, 461; Liao 2018, 113); Germany (Weitemeyer 2023, 256, 259); Japan (Matsumoto 2023b, 345, 347–48); New Zealand (Goldstein et al. 2023, 394); Peru (Ochoa 2023, 414, 418); Singapore (Koh and Tang 2023, 478); Switzerland (Karametaxas and Huber 2023, 510–11; Peter and Pfammatter 2023, 843, 856); and the United Arab Emirates (Aldohni 2023, 570).

long as doing so furthers owners' financial interests (See McRitchie 2024; see also, e.g. Spence 2025).

U.S. Corporate Hybrids are not required to maximize owner value and may even choose to deprioritize it. However, they MAY pursue and/or prioritize any of the above at any given time and context. This is one of the key innovations of the U.S. Corporate Hybrids: they permit – but do not require – that priority be given to other than owners' financial interests, while also allowing for the ability to prioritize those financial interests over others. In other words, U.S. Corporate Hybrids have the flexibility to choose to prioritize from among various, even competing, purposes as they determine under the circumstances (Abramson and Billings 2019, 3; Brakman Reiser and Dean 2017b, 28; Clark and Babson 2012; Tyler forthcoming 2025, Table 1; Tyler et al. 2015, 2018).

While innovative, it does not seem that "flexibility" should be enough of a differentiating feature for being regulated differently from for-profits (see Breen et al. 2023, 318; Cools and Verheyden 2023, 100; Fusaro 2023, 339). An ability to deprioritize social good certainly does not evidence a strong commitment to social good. Nor does the ability to prioritize behaviors that connect to repeating, replicating, or scaling distributable revenues to advance owner financial interests rather than social goods. Flexibility to choose what to prioritize when also means that there is tremendous ease with which to move back and forth between purposes and a corresponding lack of consistency or persistence.

Unlike the U.S. Corporate Hybrids, the L3C enabling statutes explicitly prioritize social good – specifically charitable purposes – over owners' financial interests. But there is very little adoption, and there is a dispute about whether converting is too easy or must be consistent with a fiduciary ordering of purposes (Brakman Reiser 2013, 2014; Brakman Reiser and Dean 2017b; Tyler 2010; Tyler III et al. 2018; Tyler et al. 2015). Consequently, even the L3C does not yet meet the above criteria for being in the "middle."

For legal structures in the U.S. to truly differentiate from traditional for-profits, it would take something like the hypothetical "social primacy company" (Tyler et al. 2015 (which includes model legislation); Tyler et al. 2018; Tyler 2020) or the mission-protected hybrid (Brakman Reiser and Dean 2017a, 2017b), which would unambiguously prioritize social/public good over owner financial interests while still acknowledging the presence and certain rights of owners. That clear ordering of purposes would suffice as distinctive enough from traditional for-profit and charity legal structures and approaches to warrant new regulatory regimes. Alas, there is no such legal form in the U.S.

This does not mean that the available legal structures in the U.S. cannot be adapted to function as social enterprises on individual, company-by-company levels and, thereby, operate in the "middle" space by demonstrating requisite degrees of commitment, persistence, and intentionality. They all can and have done so – corporation, limited liability company, partnership, limited partnership, benefit corporation/LLC, social purpose corporation, and L3C. That is the essence of the modality approach.

## 4.3 Differentiation by Modality: A Survey of Thirty-Nine Jurisdictions

Social enterprises may exist without regard to legal structures based on their adoption of certain features and characteristics. These, too, often evidence commitment to social good, consistency and persistence across time and circumstance, and intentionality about connecting behaviors to socially good outcomes. A survey of thirty-nine jurisdictions exemplifies how modality approaches can differentiate from traditional approaches. These jurisdictions are as follows:[5]

| | | | | |
|---|---|---|---|---|
| Abu Dhabi | Australia | Beijing, China | Belgium | Brazil |
| Bulgaria | Chengdu, China | Chile | Columbia | Croatia |
| Czech Republic | Denmark | Finland | France | Greece |
| Hungary | Ireland | Italy | Japan | Kazakhstan |
| Latvia | Lithuania | Luxemburg | Netherlands | New Zealand |
| Peru | Poland | Portugal | Romania | Shenzhen, China |
| Shunde, China | Singapore | Slovakia | Slovenia | Spain |
| Switzerland | Taiwan | Turkey | United Arab Emirates | |

Information about the above jurisdictions is substantially informed by two edited volumes published in the last couple of years that contain chapters written by those with deep knowledge of the jurisdictions that they cover in their respective chapters: Social Enterprise Law: A Multijurisdictional Comparative Review edited by Dana Brakman Reiser, Steven Dean and Giedre Lideikyte Huber (Brakman Reiser et al. 2023) and The International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies edited by Henry Peter, Carlos Vargas Vasserot, and Jaime Alcalde Silva (2023).

5 The UK and two Canadian provinces are not included in this list because they have formal legal structures as discussed above. This does not mean that modality approaches are not also used in those three jurisdictions or Canada more broadly; they are but with great degrees of informality like many of the listed jurisdictions. Addressing modality approaches in the UK and Canada in this section risked avoidable confusion. For instance, because the legal structures have distribution caps and the modality approaches in the UK and Canada do not, including them in a list of modality jurisdictions that do not have such caps risks confusion, so they are not considered in this section.

These two books primarily drove the jurisdictions selected for analysis in this essay and the substantive analysis itself. Countries whose forays into social enterprise that have principally involved adapting the benefit corporation or certified B corp are not separately treated in this section because those concepts and applications have already been treated in the preceding Section 4.2 of this essay.

Approaches within any given jurisdiction are not monolithic. Many have several approaches, some of which have priorities, restrictions, or mandates and others that do not, even within the same jurisdiction. Because this discussion is illustrative rather than scientific and is intended primarily to juxtapose approaches with that of the U.S., the below characterizations of a jurisdiction as having any particular restriction or requirement is an acknowledgment that one or more of its social enterprise iterations has that restriction or requirement, not that it applies to each and every iteration available in that jurisdiction. For instance, identifying that a jurisdiction clearly prioritizes social good over owners’ financial interests means that at least one of the jurisdiction’s approaches has that characteristic, not that all of its approaches do so. A more rigorous analysis is beyond the scope of this essay.

The information below is summarized in the table attached as Appendix A. Appendix A lists all 39 jurisdictions in the first column and the various characteristics or features discussed below across the top row: whether a jurisdiction has an approach that formally prioritizes social good over owners’ financial interests, limits scopes to only defined type(s) of social goods (e.g. WISE), imposes distribution caps or reinvestment mandates, requires asset locks, contains governance participation or one-person-one-vote expectations, or provides government incentives. Appendix A is intended to allow the reader to more easily identify which countries have or do not have which features on a jurisdiction-by-jurisdiction and feature-by-feature basis, which is the essence of the following paragraphs. The Appendix also more easily allows for comparing similarities and differences across jurisdictions.[6]

**6** Tyler (forthcoming 2025) presents a version of the information that follows in the body of the essay, including jurisdictions listed under the corresponding features (i.e., listing the 16 jurisdictions that have distribution caps or reinvestment requirements). That article also provides citations to the source material. Until the law review article is published, a prepublication copy can be provided for personal upon request to the author at jtyler@kauffman.org. Following are citations to the specific materials relied on to create Appendix A and the information that follows in the body of the essay: Abu Dhabi (Aldohni 2023); Australia (Baumfield 2023); Beijing, China (Ye 2023); Belgium (Hiez 2023a; Cools & Verheyden 2023); Brazil (Dias & Andrade 2023); Bulgaria (Vasserot 2023b); Chengdu, China (Li, et al. 2023; Ye 2023); Chile (Ibanez et al. 2023); Colombia (Pereira and Pereira 2023); Croatia (Brakman Reiser and Dean 2023; Fici 2023); Czech Republic (Brakman Reiser and Dean 2023; Fici 2023); Denmark (Vasserot 2023b; Sorenson 2023); Finland (Vasserot 2023b); France (Vasserot 2023a; Brakman Reiser and Dean 2023); Greece (Vasserot 2023a, 2023b); Hungary (Sandor 2023; Brakman Reiser and Dean 2023); Ireland (Breen at al. 2023); Italy (Calo & Teasdale 2016; Vasserot 2023a; Fusaro 2023; Ventura 2023; Fici 2023); Japan (Matsumoto 2023a, 2023b); Kazakhstan (Karagussov 2023); Latvia (Vasserot

Of the countries with official definitions and approaches to social enterprise and its corollaries, eight have versions that arguably declare that social good MUST be a priority over owners' financial interests as a substantive part of their social enterprise sector. See Column 3 of Appendix A. Among these eight, all but one (Shenzen, China) impose financial restrictions along with the mandated priority of purpose, and four of the eight also use governance participation and/or voting requirements as well. Thus, clearly stated ordering of priorities has rarely been deemed enough.

Belgium had an exemplar version of this clearly ordered priority of purposes from 1995 to 2019 (Hiez 2023a, 446). Adopters could call their enterprise a "Social Purpose Company," regardless of legal structure, so long as direct financial profits and enriching shareholders were not the main purpose of the enterprise (Hiez 2023a, 446). Belgium discontinued this approach due to the low adoption rates (Hiez 2023a, 449–50).

Five jurisdictions more explicitly limit permissible scopes for their social enterprises to those that are "worker integration social enterprises" (WISE). See Column 10 of Appendix A. That is, employing the vulnerable, those with diminished capacity to work or who cannot compete in the labor market on equal terms because of a disability, age, long-term unemployment, or otherwise. The L.A. County approach discussed below falls into this category, except that it takes the additional step of declaring that the WISE scope must be the priority. Four of these five "WISE-only" jurisdictions also rely on one or more financial restrictions or prohibitions; Finland does not. Only one (Hungary) complements these WISE-only and financial restrictions with a governance participation and voting requirements. Thus, a restrictive scope is almost never alone sufficient.

Five other countries define permissible scopes as including WISE among other (often vaguely) described or listed social goods or purposes. See Column 11 of Appendix A. All five also have one or more financial restrictions along with their scope descriptions, and three of these five also add governance mandates.

Sixteen countries use a distribution cap or reinvestment requirement to limit dividends or other financial disbursements to owners, thus implicitly deprioritizing owners' financial interests and differentiating from traditional for-profit businesses.

2023b); Lithuania (Vasserot 2023a, 2023b); Luxembourg (Hiez 2023b); Netherlands (Vasserot 2023b; Serres & De Moor 2023); New Zealand (Goldstein et al. 2023); Peru (Ochoa 2023); Poland (Byczko 2023); Portugal (Brakman Reiser and Dean 2023; Fici 2023); Romania (Bercea 2023; Vasserot 2023b); Shenzhen, China (Li, et al. 2023; Ye 2023); Shunde, China (Li, et al. 2023; Ye 2023); Singapore (Koh & Tang 2023); Slovakia (Vasserot 2023b); Slovenia (Vasserot 2023b); Spain (del Val Talen 2023); Switzerland (Karametaxas & Huber 2023; Peter & Pfammatter 2023); Taiwan (Wang 2023); Turkey (Sahin 2023); United Arab Emirates (Aldohini 2023).

Four additional countries have iterations that prohibit distributions entirely, much like charitable nonprofits in the U.S. See Column 5 of Appendix A.

Eight jurisdictions use asset locks that prohibit or restrict return of capital to its contributors. Seven of these eight also use distribution caps or reinvestment requirements. Only Japan does not. See Column 6 of Appendix A.

Two Chinese provinces – Shenzhen and Shunde – previously restricted disbursements to owners and imposed asset locks, but they eliminated both (Ye 2023, 174, Table 4).

Six countries impose salary caps or ratios to limit how high salaries in their social enterprises can be relative to the lowest wages, or they otherwise require “fair wages.” See Column 7 of Appendix A. Four of these six also restrict disbursements and have asset locks. One (Greece) uses a cap but not an asset lock (Vasserot 2023b, 946). Lithuania’s only financial restrictions are that salaries must be fair; in other words, it does not also require caps, reinvestment mandates, or asset locks (Vasserot 2023a, 443, Table 1).

Nine jurisdictions require some type of stakeholder participation in governance and/or one-member-one-vote schemes as distinguished from voting by shares or interests in which a single person or a minority of owners can dominate decision-making. Three of these nine jurisdictions adopt both approaches to governance mandates. See Columns 8 and 9 of Appendix A. Four of the nine invoke only the participation element. See Column 8 of Appendix A. Greece and Belgium rely solely on voting requirements or restrictions without a participation requirement. See Column 9 of Appendix A. Greece requires a one-member-one-vote approach (Vasserot 2023a, 39, 2023b, 946). Belgium instead caps voting strength at no more than 10 % of influence (Brakman Reiser and Dean 2023, 40; Hiez 2023a, 446). All nine also apply one or more of the financial limitations discussed above, two of which prohibit distributions to owners entirely.

Sixteen jurisdictions permit distributions to owners without incorporating any of the preceding financial or governance components into their conceptions of social enterprise. See Column 4 of Appendix A. This is the group to which the U.S. would belong.

Although not strictly a characteristic of the modality approach, some jurisdictions complement that approach with incentives such as tax-favored treatment, bid procurement preferences, favorable access to public funding, etc. See Column 12 of Appendix A. Eleven of the 39 jurisdictions make incentives available for one or more of its iterations, which means that twenty-eight do not. Of these eleven jurisdictions, four are among the eight that have versions of social enterprise that mandate priority of social good over owners’ financial interests, and these same four also have other restrictions that help justify government incentives. Among the remaining four jurisdictions that also expect social good to be THE priority, none provide government incentives for social enterprise, even though all but one impose other restrictions or mandates to accompany the priority of social good over owner financial interests.

## 4.4 Differentiation by Modality in the United States (or Generally Not)

In the absence of a legal form in the U.S. that differentiates sufficiently, the modality approach focuses on discrete features, characteristics, behaviors, etc. as reflections of being a social enterprise – or not. Countless permutations of for-profit companies dot the marketplace and make or intuit claims for being social enterprises and, thus, being regulated differently – sometimes even more favorably – because of claimed distinctions in their missions, behaviors, or operations. Among these are the following:

– Certification as a “B corp”;
– “Buy-one-give-one models”;
– Cause marketing;
– Donating percentages or dollars amounts from sales;
– Tandem structures;
– Corporate social responsibility;
– ESG/“impact” investing;
– And more.

Of course, the key questions are whether any of these approaches are sufficiently different from being for-profit to justify treating them as “middle” social enterprises and giving them the benefit of new/different regulations, incentives, oversight, accountability, enforcement, reputation, credibility, halo effects, etc. Do they have a differentiable commitment to social good as the priority and intentionality in connecting their behaviors to being able to repeat, replicate, and scale socially good outcomes? If so, how easy is it to deviate from and/or abandon those commitments and intentions?

Again, differentiate ends and means.

There is little or nothing that inherently differentiates any of the approaches on the above list from traditional for-profit companies. The first four listed above could all be generally described as wholly marketing efforts designed to generate goodwill and appeal to consumer sentiment as they make their purchases, even as individual exceptions exist. Nothing about those approaches or CSR or ESG/“impact” investing inherently requires a commitment to social good, much less than the level of commitment rises to devotion or focus such that social good is the clear priority (see Securities Industry 2024; Skinner 2024; Spence 2025; Utah 2025).

There also is no indication that any of the above models or approaches are adopted to apply consistently through time or otherwise persist through changed circumstances in ways that favor differentiated social good over owners' financial interests. Moreover, in the for-profit context as noted above, there may be fiduciary duties to require that those models and efforts explicitly connect to those financial interests rather than to repeating, replicating, and/or scaling – much less conceding to – socially good outcomes, which none of the models or approaches may even track, measure, or assess (see Kaufman and Botha 2024).

In some ways, the preceding are consistent with notions that for-profit businesses should be good corporate citizens. But being a good corporate citizen should not be confused with having an advanced level of commitment to social good (Fici 2023, 158). While all social enterprises should be good corporate citizens, not all good corporate citizens are – or should be – treated as social enterprises (Fici 2023, 158). Sufficient differentiation is lacking. This does not mean that they are bad or that they are somehow "less than" social enterprises, or even that social enterprises are inherently good, better than, or "more than" for-profit companies (Peter and Pfammatter 2023, 857; Tyler et al. 2015). It also does not mean that there is differentiation.

Consider this test: If a traditional for-profit enterprise can implement the model or approach without fundamentally altering its duties, governance, and/or structure, then is the model or approach differentiable enough to be a social enterprise in the "middle" space, and, thereby, subject to alternative regulation and/or benefit from incentives (much less "halo" effects)?

The exception in the above list may be tandem structures with a charity parent wholly owning a for-profit subsidiary (Bromberger 2011; Brakman Reiser and Dean 2023, 27), but once others' capital gets involved, the dynamic can change dramatically. Witness the litigation and regulatory investigations of OpenAI, which is anything but easy to understand (Aprill et al. 2024; Davis 2023; Ebrahim 2023). Consider, too, how existing regulatory regimes are analyzing OpenAI's operations in the United States, Britain, and Germany (Mackrael 2023; Michaels 2024; Seetharaman 2024).

In addition, there are lawsuits against OpenAI and others for breach of contract, breach of fiduciary duty, and unfair business practices for prioritizing profits and commercial interests over the charitable public good that was the priority and underlying reason for tens of millions of dollars of donations and in-kind contributions to OpenAI's charitable parent (Roose 2024; Satariano et al. 2024; see also Bolies 2024 for copyright infringement lawsuits).

The OpenAI situation, however, does help demonstrate how existing mechanisms for regulation and accountability can be available using traditional means:

securities law, fair advertising, consumer protection, anti-trust, etc. – even private rights of action. Until there is greater clarity and a critical mass of differentiation regarding social enterprise, the status quo can help fill that void.

Certainly, some tandem structures seem to meet the criteria for being a differentiated social enterprise: Greyston Bakeries, owned by the Greyston Foundation; the Water Equity and Water Credit vehicles provided through water.org.; among others.

Likewise, some discrete iterations of the above-listed approaches are social enterprises because details in implementation, governance, and operation show that they differentiate themselves from traditional approaches. They have a different, heightened commitment to social good that is consistent and persists through time and circumstances. They have greater intentionality in connecting their behaviors to replicating and/or scaling socially good outcomes. Most importantly, they are clear and unambiguous about "saying what they mean" and "doing what they say" regarding the ordering of their purposes and prioritizing social good over owners' financial interests, albeit even if not necessarily denigrating those latter interests.

From a regulatory perspective through the modality approach in the U.S., a potential exemplar is a program in Los Angeles County. The County provides bid preferences to "Social Enterprises" that the requisite governing authority certifies as being a "social enterprise." The certification is available to any for-profit or nonprofit business – without regard to legal structure – that distinguishes themselves "by accounting for their measurable social, public health, and environmental impact" (L.A. County, Chapter 2.205.010). The companies also MUST provide "transitional and permanent employment to a Transition Workforce," which is a limited scope very similar to the "WISE" approach (L.A. County Code, Chapter 2.205.020; 2.205.030.L).[7]

The County requires further that the "primary" purpose of the business must be the "common good" through market-oriented mechanisms to advance its social good agenda (L.A. County Code, 2.205.030.F). Unfortunately, the County risks confusion by stating that the purposes "MAY include 'maximizing social impact rather than profits for external shareholders'" (L.A. County Code, 2.205.030.F, emphasis added). This permissive language – "may" – rather than a consistent mandatory ordering of purposes could call into question whether "common good" really is "primary" as otherwise stated in the County Code.

7 In mid-2023, the California Office of the Small Business Advocate announced the California Regional Initiative for Social Enterprise (CalRISE) program. The program will invest a total of $25 million in "employment social enterprises": "businesses [that] employ, train, and support talented Californians overcoming barriers to employment, including people often overlooked by employers because of their experiences of homelessness, incarceration, or mental health or substance abuse challenges; refugees, survivors of domestic violence and trafficking; and youth who have been in foster care" (Cal OSBA press release, 2023/07/17). Certain of LA's certified social enterprises would qualify for funding.

Going further, the County provides for legal accountability and enforcement (L.A. County Code, 2.205.080.D) that includes a process for investigating third-party complaints about a company's eligibility to be treated as a "social enterprise" (L.A. County Code, 2.205.090).

Juxtapose the L.A. County approach with other approaches listed earlier in this section. Differentiation and commitment to social good are clearly stated and expected, and accountability with consequences for representing otherwise is provided for. The same cannot be said of the other U.S. modality approaches listed.

# 5 Conclusions

We need to be clear about what we mean by "social enterprise," what is covered and why, and what is excluded and why. A "broad tent" foments confusion, which can harm investors, entrepreneurs, employees, consumers, charities, donors, volunteers, researchers, boards and management of charitable nonprofits, etc. It might also generate unfair and unwarranted competitive advantages and corresponding disadvantages (Peter and Pfammatter 2023, 841, 852).

Perhaps there is a critical mass of enterprises in the U.S. whose operations meet the standards for being differentiated social enterprises that operate in the "middle" as described throughout this essay. If so, then perhaps regulation and incentives might be appropriate and even helpful for bringing greater clarity and better accountability. A comprehensive research project to that effect might be worthwhile. When there is a critical mass of differentiated activity or paralyzing/litigation-generating confusion, then perhaps policymakers and regulators might be more inclined to provide formal guidance and incentives that properly and unambiguously differentiate this space and its enterprises from traditional spaces and operations. In the meantime, the status quo does not leave a regulatory vacuum, given the application of for-profit means that are available.

As much as this essay presents criteria for juxtaposing against traditional approaches to suggest that differentiation is lacking, the same criteria (commitment, intentionality, and persistence) might be adopted with a forward-looking view toward how regulations and incentives might be used prospectively to build a differentiated "middle" space, facilitate attracting resources to it, and better enable its contributions to society.

Those responsible for charitable nonprofits – and others – can also use the same three criteria to facilitate questions, discussions, and ultimately understanding and thereby secure alignment and compliance for their charitable nonprofits while also exposing those who are competing unfairly.

# Appendix A

Summary of Approaches to Differentiation and Incentives by Jurisdiction[a]

| | | Clear priority of social good over owner financial value | No financial or governance restrictions[b] | Financial requirements | | | Governance requirements | | Scope WISE | Scope WISE + | Incentives | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Distribution caps or reinvestment mandate | Asset lock | Salary caps or ratios | Participate | 1:1 vote | | | | |
| 1 | Abu Dhabi | | | x | | | | | | | | Abu Dhabi |
| 2 | Australia | | | No distributions | | | | | | | | Australia |
| 3 | Beijing, China | | x | | | | | | | | | Beijing, China |
| 4 | Belgium | x | | x | x | | | x | | | x | Belgium |
| 5 | Brazil | | x | | | | | | | | | Brazil |
| 6 | Bulgaria | | | x | | | x | | | x | | Bulgaria |
| 7 | Chengdu, China | | x | | | | | | | | x | Chengdu, China |
| 8 | Chile | | x | | | | | | | | | Chile |
| 9 | Columbia | | x | | | | | | | | | Columbia |
| 10 | Croatia | | x | | | | | | | | | Croatia |
| 11 | Czech Republic | | x | | | | | | | | | Czech Republic |
| 12 | Denmark | | | x | x | | x | | | | x | Denmark |
| 13 | Finland | | x | | | | | | x | | | Finland |
| 14 | France | x | | x | x | x | | | | | x | France |
| 15 | Greece | | | x | | x | | x | | | | Greece |
| 16 | Hungary | x | | x | | | x | x | x | | | Hungary |
| 17 | Ireland | | | x | x | | | | | | | Ireland |
| 18 | Italy | | | x | x | x | x | | | | x | Italy |
| 19 | Japan | | | | x | | | | | | x | Japan |
| 20 | Kazakhstan | | | x | | | | | | x | | Kazakhstan |

(continued)

| | | Clear priority of social good over owner financial value | No financial or governance restrictions[b] | Financial requirements | | | Governance requirements | | Scope WISE | Scope WISE + | Incentives | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Distribution caps or reinvestment mandate | Asset lock | Salary caps or ratios | Participate | 1:1 vote | | | | |
| 21 | Latvia | | | No distributions | | | x | | | x | | Latvia |
| 22 | Lithuania | | | | | x | | | x | | | Lithuania |
| 23 | Luxembourg | | | x | x | x | | | | x | x | Luxembourg |
| 24 | Netherlands | | x | | | | | | | | | Netherlands |
| 25 | New Zealand | | x | | | | | | | | | New Zealand |
| 26 | Peru | | x | | | | | | | | | Peru |
| 27 | Poland | | | x | | | | | x | | x | Poland |
| 28 | Portugal | | x | | | | | | | | | Portugal |
| 29 | Romania | | | x | x | x | | | x | | x | Romania |
| 30 | Shenzhen, China | x | | | | | | | | | | Shenzhen, China |
| 31 | Shunde, China | | x | | | | | | | | | Shunde, China |
| 32 | Singapore | | | x | | | | | | | | Singapore |
| 33 | Slovakia | x | | x | | | x | x | | x | | Slovakia |
| 34 | Slovenia | x | | No distributions | | | x | x | | | | Slovenia |
| 35 | Spain | | x | | | | | | | | | Spain |
| 36 | Switzerland | x | | No distributions | | | | | | | x | Switzerland |
| 37 | Taiwan | x | | x | | | | | | | x | Taiwan |
| 38 | Turkey | | x | | | | | | | | | Turkey |
| 39 | United Arab Emirates | | x | | | | | | | | | United Arab Emirates |
| | Totals | 8 | 16 | 16 | 8 | 6 | 7 | 5 | 5 | 5 | 11 | Totals |

[a]For citations, see Tyler (forthcoming) and its treatment of each feature. [b]Where distributions to owners are allowed.

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