

**The internationalisation of FairShares model : where agency meets structure in US and UK company law**

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## The Internationalisation of the FairShares Model: Where Agency Meets Structure in US and UK Company Law

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RORY RIDLEY-DUFF\*

### I. Introduction

This chapter is a reflexive analysis of factors that are affecting the internationalisation of the FairShares Model (FSM) in the US and UK. The goal of the chapter, however, is to explore how Giddens' (1984) structuration theory offers insights into the formation of social enterprises that deploy alternative approaches to incorporation. Between September 2015 and January 2016, three social entrepreneurs used the FSM to constitute two new companies in the UK and US. A study of FSM early adopters provides an opportunity to explore how agents (social entrepreneurs) rewrite structures (Articles of Association) when they form a new social enterprise. By examining how the Articles of Dojo4Life Ltd (UK) and AnyShare Society (US) changed during debates about incorporation, the dialectical relationship between social entrepreneurial agency and institutional structures can be theorised.

The rest of this chapter is organised as follows. In the next section, I briefly set out how Giddens' concept of structuration can inform social entrepreneurship research before establishing the FSM as a product of structuration in the social

\* This book chapter started life as an essay for academics in Japan who wanted to learn about the FairShares Model. The work was further developed for *Shaping the Corporate Landscape*, a two-day conference at Bristol Law School (June 2016). Special thanks to Dr Nina Boeger and Prof Charlotte Villiers for supporting this work. Finally, this paper would not have been possible without the help of Graham Boyd at Dojo4Life Ltd, and Eric Dorian and Rob Jameson at AnyShare Society.

solidarity economy (Baudhardt, 2014; Sahakian and Dunand, 2015; RIPPES, 2015). It advances a new, more open, form of co-operativism that challenges ‘old co-operativism’ over the framing of the common bond (Cruz, 2005; Vieta, 2010; Conaty and Bollier, 2015; Ridley-Duff, 2015a). This is followed by a section on methodology which sets out how I studied changes made by entrepreneurs to FSM model rules to answer the research question ‘what factors are influencing early adopters of the FairShares Model?’ Following a process of naturalistic inquiry, I listed changes made to model FairShares Articles of Association then interviewed company founders about the changes they made. This is presented in two sets of findings: a rich picture of the way social entrepreneurs adapt the FSM to the legal contexts of the UK and US, and; a conceptualisation of the dialectical relationship between social entrepreneurial agents and institutional structures. I conclude that these findings have a wider relevance as they explicate agency-structure dynamics during the formation of innovative social enterprise models.

## II. Structuration and Social Economics

Studies of entrepreneurship can benefit from the application of *structuration theory* (Giddens, 1984). Right-wing think tanks (like the Adam Smith Institute) regard markets as naturally existing entities that people ‘cannot buck’ (Hawkins, 2010). They exist outside human consciousness and guide economic activity through their ‘invisible hand’ (Smith, 1790). Giddens’ structuration theory challenges this assumption by arguing that markets are products of human agency created by millions of people who behave ‘as if’ markets exist. In as much as these activities are produced and reproduced in ways that give rise to stable institutions, the institutions are perceived as immutable social structures that entrepreneurs have to embed themselves within to succeed in business (Giddens, 1990; Jack and Anderson, 2002). However, Giddens’ work is a foundational theory for social entrepreneurship because it frames social structures as *products* of human activity. In short, markets are *produced* by agents who give meaning and substance to them.

The FSM—as a social project—is rooted in this perspective: social entrepreneurs can reframe (and bypass) markets and market institutions through their agency to establish alternatives. Moreover, this can be studied empirically by investigating how they create rules to enfranchise stakeholders in their enterprises. If, as previously argued, social entrepreneurs self-consciously set out to create new social structures (Martin and Osberg, 2007) then they engage in structuration to proactively craft institutions that assist their socio-economic and/or socio-ecological goals.

## A. FairShares as a Contribution to the Social Economy

In 2014, I visited Japan to deliver a seminar titled 'Social Economy: Past, Present and Future'. During this, I introduced a social policy group to the emergence of the FairShares Model (FSM) from a programme of action research to advance democratic governance in associations, co-operatives and social businesses (SHU, 2014). In July 2015, FairShares Association Ltd was incorporated to actively disseminate model constitutions and create support systems (see [www.fairshares.coop](http://www.fairshares.coop)). A core proposition of the FSM is that solidarity between members *and interest groups* is possible if social entrepreneurs work with providers of labour, service users and social investors through multi-stakeholder co-operatives (Ridley-Duff, 2015a).

The 2015 'State of FairShares Survey' (unpublished) received 43 responses from 14 countries (Australia, Canada, China, Columbia, Croatia, Indonesia, Ireland, Italy, Latvia, Netherlands, Puerto Rica, Spain, UK and USA). Whilst this attests to some limited propagation of the FSM internationally, it is a European Project ('FairShares Labs for Innovation in Blue and Social Enterprises') that is proactively spreading it to Hungary, Croatia, Germany, Netherlands and the UK. There is now a persuasive case to develop knowledge of the application of the FSM during internationalisation efforts. This not only informs practice in the social economy but also academic thinking on the role that social entrepreneurship can play in forging an alternative corporate landscape.

Figure 1 shows an interpretation of Defourny and Nyssens' (2015) contribution to an international project to map the logics of social enterprise (ICSEM).<sup>1</sup> Scholars draw on a Polanyian understanding of business models that (re)integrate private, mutual and public interests (Laville, 2014). Social enterprise theory is becoming sensitive to both its origins (in state, private and mutual interests) and the legal forms through which it is being expressed as charitable trading activities (CTAs), socially responsible businesses (SRBs), co-operative and mutual enterprises (CMEs) and public service social enterprises (PSSEs). Whilst Figure 1 seeks to clarify the logics, origins and trajectory of social enterprise models, the process by which social entrepreneurs change from one mode of engagement to another is less clear. How and why do social entrepreneurs organise the switch from a state institution, private company or voluntary association to a social enterprise model? How can single-stakeholder enterprises with unitary governance be transformed into multi-stakeholder social enterprises with a plurality of interests?

<sup>1</sup> International Comparative Social Enterprise Models, see [www.iap-socent.be/icsem-working-papers](http://www.iap-socent.be/icsem-working-papers).

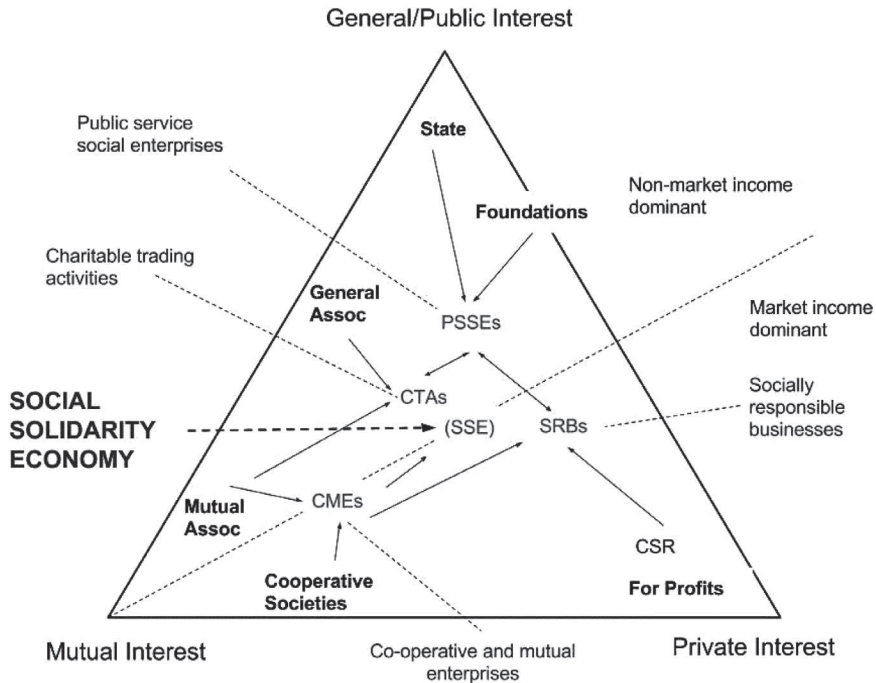


Figure 1: The logics of the social solidarity economy

The FSM represents one of many attempts to stimulate social solidarity enterprises (Ridley-Duff, 2015a, 2015b; Ridley-Duff and Bull, 2016). In single-stakeholder social enterprises, decision-making power is entrusted to an individual philanthropist, social entrepreneur or to a board of directors/trustees that acts as a sovereign power. Solidarity enterprises operate on a different logic, drawing primarily on the democratic traditions of the co-operative movement, but updating the concept to advance the ‘new co-operativism’ described by Vieta (2010):

- Responses by working people and local groups to failures in neo-liberalism;
- Innovations informed (but uninhibited) by pre-existing co-operative sentiments;
- Wealth distribution mechanisms that achieve sustainable development goals;
- More horizontal labour relations with more egalitarian distributions of surplus;
- A stronger community orientation, embracing social objects and goals.

A commonly cited argument against solidarity principles is that conflicts of interest between stakeholders will lead to less efficient resource use and cumbersome governance (Sternberg, 1998; Mason, Kirkbride and Bryde, 2007;

Griffith, 2009). Nevertheless, the success of co-operative and mutual enterprises (CMEs) that involve both savers and borrowers, both producers and consumers, and both individual and organisational members, provides a counter narrative (see Whyte and Whyte, 1991; Turnbull, 1995; Gates, 1999; Vinten, 2001; Erdal, 2011; Moreau and Mertens, 2013; Ridley-Duff and Bull, 2016).

Arguments regarding the viability of multi-stakeholder enterprises have been strengthened through Nobel Prize winning work (Oström, 1990; Oström et al, 1999) that explicates design principles that producers and consumers can follow to successfully collaborate in democratic assemblies. Oström’s findings suggest that mutual benefits and sustainable development goals can be achieved through crafting rules to guide collective action. Lund (2011) goes even further: solidarity can itself be the basis of a business model. This idea is gaining ground at a time when the internet makes it easier to co-produce, co-finance and co-purchase goods through co-operatively managed enterprises and platforms (Murray, 2011; Grenier, 2012; Lehner, 2013; Conaty, 2014; Scholz and Schneider, 2016).

Figure 2 shows how the FSM advocates membership for (and co-operative networking between) four primary groups: *founders* (social entrepreneurs); *labour* (producers and employees), *users* (who may be paying customers), and; *investors* (who create or invest financial capital). The FSM, therefore, *is based on the idea that common bonds can form when stakeholders use shared intellectual property to create constitutions that promote equitable voice rights and wealth distribution*. Capital contributions are framed as intellectual, human, social and financial investments. Each contribution entitles the contributor to membership, with voice rights and a share of the economic and social returns they create (McCulloch and Ridley-Duff, 2016).

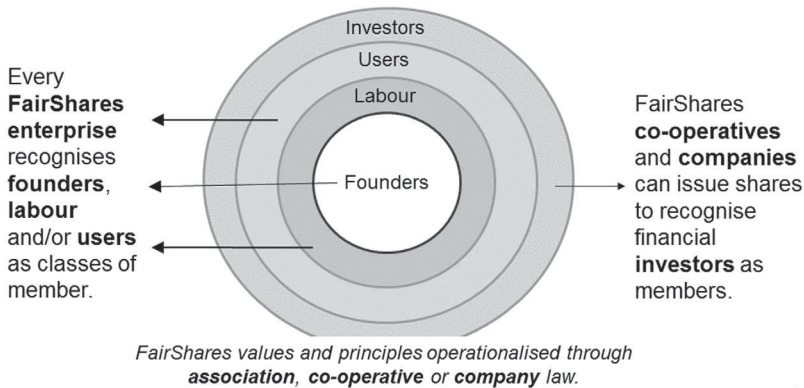


Figure 2: Member classes / shareholders in a FairShares Enterprise

The internationalisation of social entrepreneurship is shaped by factors that are now the subject of a major study (Defourny and Nyssens, 2016). Zahra et al (2008) define the opportunities that led to global interest in this field. The prevalence and relevance of opportunities, the urgency of situations, access to resources and radical attitudes are all fuelling ventures that bring about changes in social structures and governance (Martin and Osberg, 2007). However, while Zahra et al's work examines where international opportunities for social entrepreneurship arise, it tells us less about the influences that act on on social entrepreneurs when they *constitute* social entrepreneurial responses.

Giddens' (1990) discussion of globalisation is more nuanced through its recognition of the *dis-embedding* and *re-embedding* process that occurs in each local iteration of a global idea. Whilst the FSM is a UK-based initiative, it was heavily influenced by works from (and about) Yugoslavia, USA, Australia, Spain and Italy alongside recent developments in UK co-operatives (Vanek, 1977; Rothschild and Whitt-Allen, 1986; Ellerman, 1990; Whyte and Whyte, 1991; Turnbull, 1995; Restakis, 2010; Murray, 2011). In short, it is already a product of re-embedding ideas in a UK context that were dis-embedded from international development.

This chapter looks at the reverse process. It studies what happens when social entrepreneurs dis-embed the FSM from its UK university context and re-embed it in international companies registered in the UK and US (Jack and Anderson, 2002). In studying this, I am mindful that legal frameworks and cultural variation will shape how social entrepreneurs approach re-embedding (Hofstede et al, 1991). Koro-Ljungberg (2004) offers a thoughtful contribution that cross-cultural translation militates against global standards. Instead, local iterations emerge that are shaped by (internal and external) factors that converge at particular times, places and spaces.

This process has already been studied in the case of fair trade social enterprises. Huybrecht (2010) found a diverse range of approaches, from single- to multi-stakeholder ownership involving founders, volunteers, employees, partner NGOs, management groups and financial institutions. Fair trade research shows how internationalisation affects norms established by a movement's pioneers. Certification bodies struggled to implement fair trade doctrines as pressure from multinational corporations increased (Doherty, Davies and Tranchell, 2013). Nevertheless, multi-stakeholder approaches to ownership and governance did develop in some supply chains (Davies, Doherty and Knox, 2009; Mason and Doherty, 2014).

In this section, I have summarised arguments relating to the viability of the social solidarity economy. First, I set out how actors seek to reconcile divergent interests by structuring enterprises to promote solidarity between producers and consumers. The FSM is one approach to achieving this through its provisions for enfranchising four primary stakeholders. After identifying some challenges, such as poor efficiency and over-complexity, I noted how numerous studies of multi-stakeholder enterprises—including those in Oström's Nobel Prize winning

research—establish that viability is grounded in the successful crafting of local rules for collaborative action.

In the next section, I will argue that Giddens' concepts of dis-embedding and re-embedding can inform social constructionist perspectives on social entrepreneurship (Jack and Anderson, 2002). This establishes an epistemology based on the assumption that legal, social and cultural norms are produced and reproduced through the relationships that people create to sustain a community of practice (Wenger, 1999; Johnson et al, 2006). This being the case, my methodology is designed to explore and theorise the (re)construction of the FSM as a community of practice that evolves when socially entrepreneurial agents interact with institutions to shape its future development.

### III. Methodology

This study had three phases of data collection and analysis. In the first, I systematically compared FSM model rules (dated 1 July 2015) to Articles registered by founders of Dojo4Life Ltd (UK) and AnyShare Society (US) in late 2015 and early 2016.<sup>2</sup> I prepared documents that listed all changed clauses and coded them using NVivo to develop a conceptualisation of factors that influenced change. Seven factors emerged in the first phase. In the second phase, the documents were sent to company founders prior to interviewing them. Transcripts and notes were sent to interviewees for them to comment prior to a second round of coding. A further four factors emerged in the second phase. In the final phase, I coded email exchanges and document annotations to develop a reflexive understanding of my own and others' impact on company founders (see Holland, 1999; Johnson and Duberley, 2003). Descriptions of each factor were developed to establish their distinctiveness. Each factor was allocated to 'agency' or 'structure' depending on its nature.

The 11 influencing factors were:

- Entrepreneurial (83 references in five sources)
- Cultural (72 references in five sources)
- Legal (39 references in five sources)
- Professional (28 references in four sources)
- Multi-stakeholding (27 references in three sources)
- Historical (26 references in four sources)
- Practical (23 references in three sources)
- Economic (22 references in three sources)

<sup>2</sup> AnyShare Society—as a Delaware C-Corporation—registered new Bylaws rather than Articles of Association. For the sake of simplicity, I use the word Articles to refer to their Bylaws.



- Philosophical (20 references in three sources)
- Linguistic (15 references in three sources)
- Research-related (14 references in two sources)

My participation in the development of the FSM precludes the possibility of neutrality and objectivity. However, it is not an obstacle to naturalistic inquiry (Guba and Lincoln, 1985) in which *verstehen* (understanding) rather than *eklarieren* (explanation) regarding the application of the FSM to practice is the goal. The systematic identification of variations from model rules did not involve subjectivity: clauses either had or had not been changed. In the third phase, descriptions of the factors were repeatedly updated until they covered all the changes they describe. The result is not an objective account, but a robust, authentic, plausible and confirmable account of the way agency meets structure in social entrepreneurial work (Johnson et al, 2006).

I now set out these findings as follows: 1) a description of the variations in the two case companies that helped to identify influencing factors; 2) the allocation of factors against Giddens' concepts of agency and structure.

## A. A Description of Key Findings

Two social enterprises recently registered as companies limited by shares (CLS) after adapting V2.1 Model Rules for a FairShares Company. The first phase of analysis identified how their constitutions were modified prior to incorporation.<sup>3</sup>

### *i. Dojo4Life Ltd*

Dojo4Life Ltd is a new UK company with the following social objects:

Clause 5(c)—to advance the widespread practical adoption of evidence-based neuroscience and developmental psychology research; and of organisational designs and practices which improve systemically the capacity of organisations to create environmental, human, social and financial capital; to promote the development of financially, socially and environmentally responsible entrepreneurship.

Articles dated 1/12/2015.

Four findings stood out: 1) changes to voting and dividend rights; 2) the use of 'entrenched provisions'<sup>4</sup> to empower Founders; 3) a governance system based on holacracy and requisite organisation design, and; 4) Labour member powers relative to Users and Investors. First, the four member classes were retained (Founders, Labour, Users and Investors) with changed voting and dividend rights.

<sup>3</sup> See [www.fairshares.coop/wiki](http://www.fairshares.coop/wiki), page = FairShares Articles of Association for further details.

<sup>4</sup> Entrenched provisions are a feature of the UK Companies Act 2006 that permits the specification of additional criteria when seeking to change specific clauses by special resolution.

A preference for weighted voting ensures that Founders have 60 per cent of voting power at start-up, but only one per cent of dividend rights. Founders voting power falls to 26 per cent as other forms of membership increase. Given the changed distributions of voting power, Users and Investors cannot block ordinary resolutions proposed jointly by Founders and Labour members, but have sufficient power to oppose special resolutions.

Entrenched clauses prevent changes to rules about share types, voting rights and wage ratios. To change entrenched provisions, unanimous support of the company's Founder members is required. In effect, this protects the veto rights of Founders over the dilution of FairShares principles whilst also preventing a simple majority of Founders from changing articles that take away powers from other member classes. As one founder commented:

The role of the Founders is to guard the company's purpose ... So initially, they ought to have a very strong stewardship role in protecting the integrity of the purpose, and guarding that against the risk of it being watered down in the articles unintentionally or deliberately ... But, as the company matures, and more and more Users and Labour members and Investor members are involved ... their decision weighting will rise and ... the Founders will decrease.<sup>5</sup>

Interestingly, entrenched provisions protect clauses that define capital and voting powers, one-member one-vote principles, governance and eligibility for directorships. For example, entrenched provisions include formal commitments to holacracy (Robertson, 2007, 2015), requisite organisation design (Jaques, 1998; Laske, 2009) and a cognitive development framework created by Graham Boyd (a founder). Holacracy is a philosophy that advocates switching from hierarchy to holacracy: self-organising teams with overlapping management responsibilities. This fits with principles for requisite organisation design (Jaques, 1998) by focussing on changes to systems, not people, when concerns arise about human behaviour.

These commitments arose out of *research* undertaken by Graham Boyd, a founder, who made his career as a corporate turnaround specialist. Boyd cited Jacques (1998) during his interview as his source for thinking that organisation structures trigger psychopathic and pathological behaviour. From this perspective, entrepreneurial agency is directed towards producing systems and organisational structures that forge responsible behaviour by company members. Management concerns are directed towards system designs, not personality traits, to collectively develop viable management systems. As a result, leaders are selected for their capacity to resolve long-term social dilemmas and organisational issues, not the achievement of short-term performance targets. Boyd's cognitive development framework drew heavily on works by Kegan (1982) and Laske (2006, 2009) to frame the concept of 'dialectical fluidity'. Directorships were reserved for those with elevated levels of dialectical fluidity as these were perceived as the cognitive abilities and emotional responses needed for governing a holacracy.

<sup>5</sup> Interview, 23 May 2016.

The last entrenched provision increased Labour (rather than User) representation to reinforce Labour members' role in decision-making. Clause 10 (c) requires three Labour members to be present (rising to 10 as membership increases) before decisions can be made. Boyd gave two reasons: first, many Users will become Labour members; and second, Labour members are likely to be more committed than User members.

Where you draw the line between User and Labour is to some extent arbitrary [and] we will be drawing the line [...] at a point that is quite generous [...] People who truly engage and commit are more likely to have Labour shares than User shares.<sup>6</sup>

## ii. AnyShare Society

US-based AnyShare Society have committed to the following social object:

Clause 5(g)—to develop technologies that eliminate scarcity by unlocking the hidden abundance of resources available amongst our members through systems for buying, selling, trading, gifting, renting, borrowing and collaborating with their friends, community and fellow members.<sup>7</sup>

Five key findings stood out: 1) voting and dividend rights for Founders; 2) *linguistic* changes to accommodate US law and culture; 3) company valuation processes; 4) processes for terminating employment and/or membership; and; 5) handling conflicts over intellectual property. Similar to Dojo4Life Ltd, care is taken to empower the Founders to fulfil their wish to be 'activist philanthropists'. Whilst AnyShare's bylaws gave only 10 per cent of weighted voting rights (and dividends) to Founders, they retained a requirement for a majority in every stakeholder group to pass special resolutions. Founders, therefore, have veto powers like those created by Dojo4Life's entrenched clauses.

*Linguistic* changes accommodated the changed *legal* and *cultural* context. References to non-profit and co-operative legal forms were reframed. References were added to L3C Companies, Foundations, Non-Profit Corporations and B-Corps instead of Charities, Community Interest Companies and Cooperative Societies. Furthermore, specific legislation in the US relating to Employee Benefit Trust (EBTs) and Employee Share Ownership Plans (ESOPs) were directly referenced to add clarity.

As the interview notes attest:

Rob commented that it is more typical to talk of an Employee Cooperative than a Worker Cooperative in the US. People might also talk of a Labour Cooperative. We confirmed that L3C and B-Corp changes were appropriately coded as 'cultural' influences.<sup>8</sup>

<sup>6</sup> *ibid.*

<sup>7</sup> Bylaws, registered 13 January 2016.

<sup>8</sup> Interview notes, 1 June 2016.

Legal changes were also needed. One question that vexed founders Eric Dorian and Rob Jameson was the impact of US 'blue sky' laws for accredited investors. Initially, this looked like it would frustrate FairShares principles by making some shareholdings illegal:

That [blue sky] law on accredited investors looks incredibly restricting. My blood ran cold when I read how restrictive it is, as if it is imposing a 'cost of entry' so that only wealthy people can invest.<sup>9</sup>

However, a response from Rob Jameson (9 October 2015) showed they were exploring the effects of Obama's Jobs Act. On 17 November 2015, the founders reported that this not only provided a solution for issuing Labour shares but also covered how to sell Investor Shares to a community of non-accredited investors (under the Jobs Act, Title III).

Further changes were made to reflect the *culture* of the IT industry. The FSM approach to valuation is based on a combination of practices from Spanish Mondragon Co-operatives (Whyte and Whyte, 1991) and a UK Employee-Owned Business called Gripple. Gripple pays 30 per cent of profits each year to employees and calculates company value as 30 x [last dividend paid to employees]. At Mondragon, members have 'capital accounts' that can be revalued after revaluing fixed assets. The default FSM company valuation clause (the 'Reference Value') reads 'the book value of fixed assets plus 20 (twenty) times the Investor Share for the previous accounting period' (Clause 13).

Following a meeting with a *professional* adviser, Eric Dorian raised how the 'Reference Value' of their company should be calculated. As the Reference Value feeds into a figure for 'capital gains' that determines the issues of Investor shares to Labour and User members, the calculation mechanism was seen as important:

We'd like to change it to assets + reserves + 20x valuation. Assets would then include all assets as per Generally Accepted Accounting Practices. Add 'reserves' just to be clear they [are] included, as they could potentially get large.<sup>10</sup>

An accountant at the FairShares Association confirmed that they could consider:

the IT tools ... as separable internally generated intangible assets under IAS38, International Financial Reporting Standards (which are replacing GAAP). That would give two possible methods of valuation [including] fair value based on future cash flows.<sup>11</sup>

As an ICT company, value calculations were influenced by the *cultural norms* in international reporting standards of a specific industry. Value depends less on fixed assets and more on the volume of subscription income generated through a software platform. The word 'fixed' was removed and 'reserves' was added to frame value as the sum of liquid and intangible assets.

<sup>9</sup> Email from author to Eric Dorian and Rob Jameson, 9 October 2015.

<sup>10</sup> Email from Eric Dorian to author and Rob Jameson, 26 November 2015.

<sup>11</sup> Email, 10 December 2015.

Further challenges arose from the company's *history*. AnyShare's technology was created while the Founders ran Massmosaic where they benefitted from a service offered by StartFast:

They had offered a 7% shareholding in exchange for \$25k of mentoring services [and] participated in a venture accelerator programme in New York. They want to retain options to attract *impact* investors but [are] ruling out negotiating finance with venture capital organisations.<sup>12</sup>

Previous experience in the IT industry also shaped changes to dispute resolution clauses. Jameson described his feelings about past disputes and Dorian recalled how a 'toxic culture' could develop if disruptive people could not be removed. Their previous experiences led to changes in the process for resolving disputes.

Lastly, AnyShare's founders wanted to give support to Creative Commons as part of their commitment to a sharing economy. However, practical *industry* considerations led to discussions about reworking an intellectual property clause. They confronted a paradox that some of their software products needed to be protected through laws designed to advance private property if they were to secure their goal of releasing stable Open Source Software (OSS). Clauses permitting AnyShare to trademark and patent their software products were added alongside other clauses regarding staff rights to IP on the operations of the enterprise. However, as the study makes clear, *professional* advice influenced this:

[They had a] concern about the viability of the code if it is 'too open'. Both Eric and Rob mentioned that the balance of practice is still to be determined. Whilst not a fan of patents, their mentor reinforced that life experience shows that the best way to deal with threats to a company is to protect its IP.<sup>13</sup>

Before fleshing out a conceptualisation of agency-structure dynamics (Giddens, 1984; Jack and Anderson, 2002) it helps to show a list of changes to FSM model rules that were triggered by different influences (see Table 1).

**Table 1: Variations of FSM rules by Dojo4Life Ltd and AnyShare Society**

| Dojo4Life changes  | AnyShare Society changes   | Influence  |
|--|--|--|
| Section: <i>Definitions</i>  |  |  |
| Weighted majority voting for special resolutions (75%)<br>Use of 'entrenched provisions'<br>(Social) Objects | A preference for Employee Shareholders over Labour Shareholders (throughout)<br>Identification of US corporate forms for social entrepreneurship<br>(Social) Objects | Cultural<br>Linguistic<br>Legal<br>Entrepreneurial |

(continued)

<sup>12</sup> Interview notes, 1 June 2016.

<sup>13</sup> *ibid.*

Table 1: (Continued)

| Dojo4Life changes   | AnyShare Society changes   | Influence   |
|---|--|---|
| <i>Section: Membership, Capital and FairShares Branding</i>   |  |   |
| Entrenched provisions for share types / share characteristics and new share issues<br>Support for listing unquoted shares on a crowd investing platform<br>Voting rights for Founders, Labour, Users and Investors that change over time<br>Separation of voting and dividend rights  | Qualifying contributions listed on website<br>Transfer rights to trusts and employee share plans, non-, low- and B-Corps<br>Support for the use of crowd funding / investing platforms<br>Separation of ‘assets’ and ‘reserves’ in company valuation           | Cultural<br>Economic<br>Entrepreneurial<br>Historical<br>Multi-stakeholding<br>Professional |
| <i>Section: Governance</i>  |  |   |
| Labour representation before a Quorum<br>Including Founders in weighted voting<br>Entrenched provisions for holacracy, requisite organisation design and use of a cognitive developmental framework<br>Qualifying criteria for Directors (Dialectic Fluidity/ Kegan Stage/Otto Laske) | Change ‘President’ to ‘Chair Person’<br>Requirement that 10% of a member class needs to support a resolution before going forward to a General Meeting<br>Including Founders in weighted voting<br>500-member threshold before elected directors are triggered | Multi-stakeholding<br>Linguistic<br>Philosophy<br>Practicality<br>Research                  |
| <i>Section: Expenses, Benefit and Pay</i>   |  |   |
| 15:1 ratio between highest and lowest paid<br>Separate Founder and Labour approval for changes to the maximum pay ratio<br>Minimal Founders’ dividends<br>Dividend allocations: Founders (.01), Labour (.40), Users (.24) and Investors (.35)   | 10:1 ratio highest to lowest paid<br>\$100,000 threshold on capital / research costs before investor share issue required<br>Inclusion of Founders in dividends<br>Dividend allocations: Founders (.1), Labour (.25), Users (.25), Investors (.4)              | Economic<br>Entrepreneurial<br>Historical<br>Practical                                      |

(continued)

**Table 1:** (Continued)

| Dojo4Life changes  | AnyShare Society changes  | Influence  |
|--|---|--|
| Section: <i>Accounting and Auditing</i>  |   |  |
| 100 FTE Labour member threshold before social auditing becomes a requirement   | 5,000-member threshold before social auditing becomes a requirement   | Multi-stakeholding<br>Practical                        |
| Section: <i>Dispute Resolution and Intellectual Property</i>   |   |  |
| Use of a Governance Tension resolution process<br>Use of binding arbitration at ACAS if disputes cannot be resolved internally | Governing body rights to terminate membership after investigation / appeal<br>Modified intellectual property rights + six month restriction for departing members | Historical<br>Linguistic<br>Philosophical<br>Practical |
| Section: <i>Dissolution</i>  |   |  |
| N/A  | \$15,000 residual asset threshold before paying a community dividend  | Entrepreneurial  |

Table 1 shows 11 factors that triggered changes to FSM model rules. Prior to the interviews, almost half the changes were thought to be rooted in entrepreneurial desires and knowledge, followed by cultural norms, legal requirements, professional advice and historical context. This initially gave an impression that entrepreneurial agency is a particularly powerful driver for change, and that historical precedent is weak. After conducting interviews, tracking email trails and document annotations, a changed picture emerged. Whilst entrepreneurial desires were still the most common rationale for changing Articles, a wider array of other influences (organisational and management philosophy, economic outcomes, linguistic clarity, personal research and commitments to multi-stakeholding) were identified. This reduced the dominance of entrepreneurial desires to 83 of 347 references (24 per cent). In the next section, the factors identified are grouped into those that reflect institutionalised structures and entrepreneurial / professional agency.

#### IV. Conceptualising the Influence of Social Entrepreneurial Agency on Structures

In this section, I describe ‘agency’ by founders and their advisers to clarify the meanings attributed to each conceptual category. Giddens set out the relationship

between structure and agency by arguing that they are mutually interdependent (Giddens, 1984). In structuration theory, agency is not separate from structure because each recursively shape the other. Social structures—whilst enduring—are products of human agency and ‘free will’ remains subject to social agreements that constrain practice. The Articles of new social enterprises represent evidence of the dialectical relationship between agency and structure.

I start with philosophy (see Figure 3). As Boyd explains, he sought to embed a commitment to requisite organisation design:

So what we built into the Articles here is that for Dojo4Life to truly walk the talk of its purpose of creating deliberately developmental organisations with highly developed individuals as the output, we need to ensure that we are structured as a requisite organisation.<sup>14</sup>

This philosophy was informed by *research* into Kegan (1982), Jacques (1998) and Laske (2006, 2009) as well as his own PhD study into particle physics. The latter taught him that the behaviour of particles depends on the nature of their interactions with other particles as well as the external pressures exerted on them.

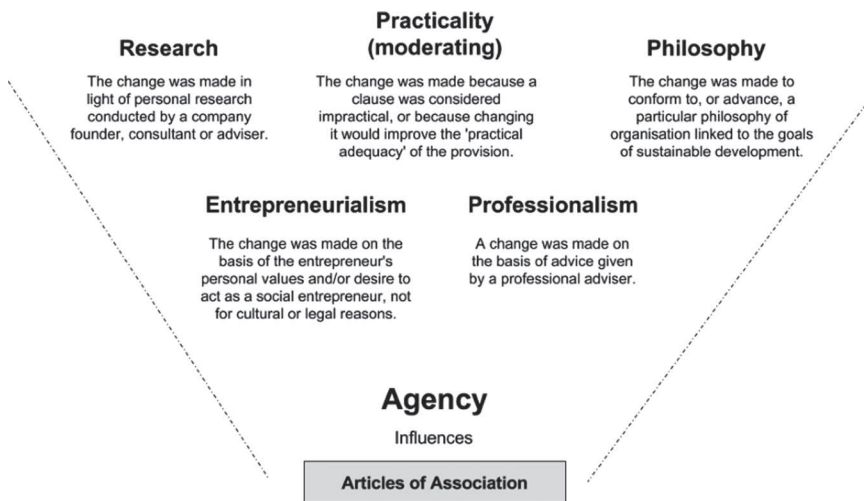


Figure 3: Agency influences on Articles of Association

For Boyd, human agents respond to various pressures (particularly complexity) in a variety of ways that, in turn, depend on the way they interact with other human

<sup>14</sup> Founder interview, 26 July 2016.



agents. These personal philosophies and research informed choices surface as *social entrepreneurial values* and/or *professional judgements* during company formation.

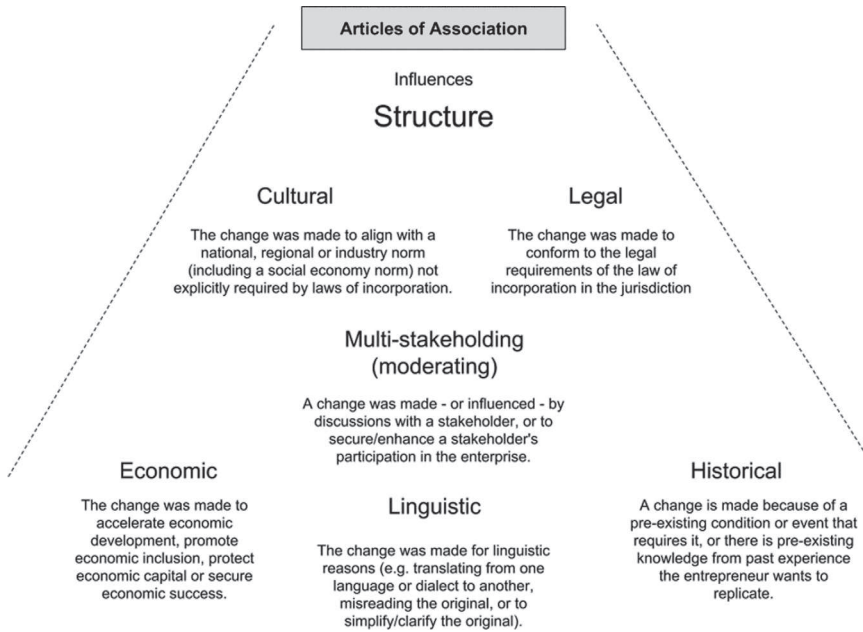
A further example shows not only how philosophy influences choices but also how practical adequacy acts as a moderator. AnyShare's social object 'to eliminate scarcity by unlocking the hidden abundance of resources available amongst our members' was informed by a view that 'all exchange dynamics should be possible' because if they are not, the unconscious bias of the system designer skews practice. Jameson and Doriean insisted their users should determine exchange dynamics rather than having one imposed on them. This shows a preference for pragmatism (James, 1907), with *practical adequacy* moderating entrepreneurial choices and professional advice. The issue of practical adequacy came up often enough to be a distinctive finding, but was not dominant. But when it did surface, it exposes key ethical choices. For example, AnyShare founders felt caught between a wish to support Creative Commons and Open Software Systems (OSS) and market pressures to privatise (and protect) core programming code. As a result, they received this advice:

A pragmatic solution would be to differentiate core IP and peripheral IP. How about rewriting clause 53 ... to distinguish how [code] is treated from everything [that] supports [company] operations ... 'As a condition of membership and/or employment, all programming used to build the domain [www.anyshare.coop] shall be owned by the Company until such time as it is released as part of an Open Source product.'<sup>15</sup>

## V. Conceptualising the Influence of Social Structures on Human Agency

Jack and Anderson (2002) use Giddens' structuration theory to explain how entrepreneurial success is influenced by embeddedness in communities. They found that entrepreneurs who embed themselves in a community are more able to form durable enterprises. The talent of agents—it seems—is not sufficient. It also depends on how institutions (and institutional processes) accommodate and react to their entrepreneurial agency. In short, not all acts are possible in all contexts. Figure 4 summarises how industrial, legal and institutional norms prompted further changes to FSM model rules.

<sup>15</sup> Email from author to Eric Doriean and Rob Jameson, 27 September 2015.



**Figure 4: Structural influences on Articles of Association**

Overall, AnyShare had more challenges addressing institutional issues because of the US legal and cultural context. However, I choose to start with *history*. At AnyShare, Founders wrestled with honouring pre-existing agreements:

I checked the ‘Stock Purchase Agreement—Start Fast’ ... I know they have an anti-dilution clause whereby they get new common stock shares issued if we get investments under \$250k. ... [We] will need to look into [this] more closely, and will undoubtedly require at least further elaboration in our existing agreements.<sup>16</sup>

Finding solutions was more challenging because of *linguistic* differences. For example, correspondence between 17–23 November 2015 focuses on whether ‘shares’ (UK) are ‘stock’ (US), and whether specific types of share were ‘common stock’. Clarifying this was necessary before a response to the ‘anti-dilution’ question could be agreed. For example:

You are right that Founder, Labour and User shares are not common stock. They provide for dividend and voting rights while they are held, but they do not give rights to a share of company assets (only Investor Shares/Common Stock do this). This might keep you the

<sup>16</sup> Document annotation, 4 October 2015.

right side of the anti-dilution clause at the moment, but it could cause a problem when you issue new Investor Shares (common stock) to Employee and User shareholders.<sup>17</sup>

Other changes were made to accommodate *economic* conditions, or to achieve specific economic outcomes. In this example, Dojo4Life discuss adapting shareholder dividends to their economic context:

There may well not be an appreciable capital gain so the idea is that [we] reward people in terms of participation in events ... In a way, part of what we're trying to do here is embed at the shareholder dividend reward level what's already common practice in the Open Source Software movement.<sup>18</sup>

The reference to the OSS movement indicates another type of social structure—the sharing economy. In both companies, numerous changes—second in number only to those that were entrepreneurially driven—align firms *culturally* with local, regional, national—and in some cases, social economy—norms. These changes were not legal requirements but helped them to achieve a viable fit with specific business environments. For example, AnyShare queried how they could reproduce 'vesting' within the FSM:

It's common practice with IT companies to vest stock (ie give an allocation of stock and then vest that stock after milestones like time served are reached). Do you see this as being something we could integrate into the Bylaws? If not, how does increasing allocations of Investor Shares for employees play out over time?<sup>19</sup>

Just as 'practical adequacy' was a moderating influence on changes initiated by entrepreneurial or professional agency, so 'multi-stakeholding' emerged as the moderator of social structure changes. Dojo4Life gave an example that illustrates how founders conceptualised changes to members' stakeholder relationships over time:

[W]e intend this company will go global, so we're expecting to have User shares spread [...] around the world. .... For example, ... a user who has started-up their own practice Dojo in their village ... there may be a transition from being a User to Labour. This is all about trying to prepare the ground for people who are actively engaged [and who] will have their User shares converted to Labour Shares at some point.<sup>20</sup>

Having presented conceptualisations of factors and their agency-structure dynamics, I can now return to the research question. My closing section clarifies the significance of the study and its implications for conceptualising social entrepreneurship.

<sup>17</sup> Adviser email, 21 November 2015.

<sup>18</sup> Interview with Graham Boyd, founder of Dojo4Life, 23 May 2016.

<sup>19</sup> Founder email, 24 September 2015.

<sup>20</sup> Interview with Graham Boyd, founder of Dojo4Life, 23 May 2016.

## VI. Conclusions and Implications

We started with the research question ‘what factors are influencing early adopters of the FairShares Model?’ The practical value of answering this is identifying how early adopters approach the creation of ‘alternative’ corporate forms. This is particularly valuable to practitioners who are concerned with the practical adequacy of the FSM in new contexts (James, 1907). This study finds a complex array of factors that influence and moderate the process. At the heart is a search for *practical approaches to multi-stakeholding*.

In both cases, social entrepreneurs and support professionals found ways to navigate the challenge of adapting the FSM to the logics of industries, local and national laws. Entrepreneurial (and professional) agents refined their language, adjusting it to meet cultural and legal contexts, whilst also innovating their usage of law (eg the Jobs Act) to re-establish the FSM’s credibility as a contribution to the social economy. These dynamics are summarised in Figure 5.

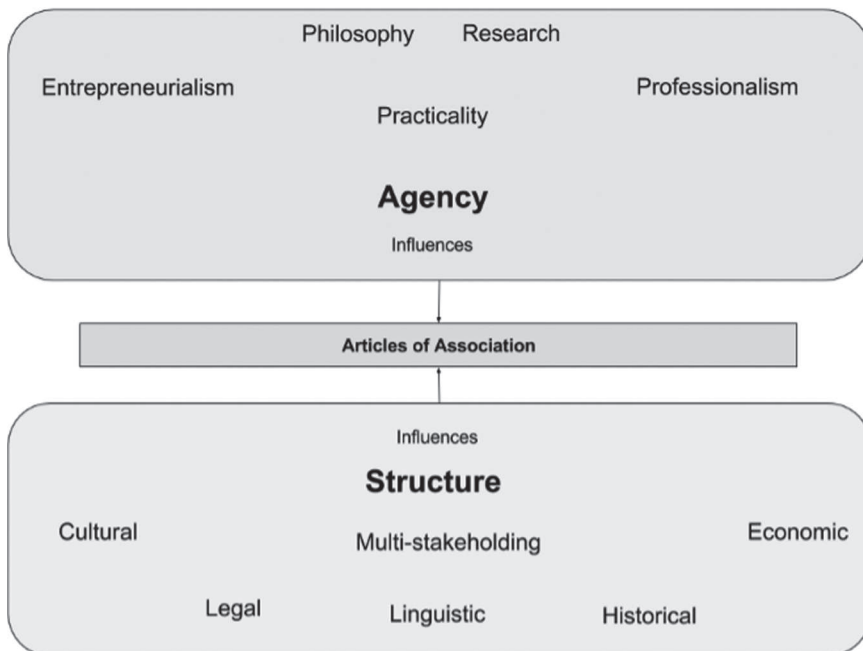


Figure 5: Agency-structure dynamics constituting a multi-stakeholder social enterprise

Articles (Bylaws) are artefacts through which the dialectical relationship between agency and structure is concretely expressed. The academic value of studying them goes well beyond simple descriptions of how the FSM can be applied to

social enterprise creation and new co-operativism (Vieta, 2010; Lund, 2011, 2012). First, it provides rich descriptions from which to theorise how social entrepreneurs dis-embed and re-embed their ideas to change social structures (Jack and Anderson, 2002). In doing so, a new empirically-informed conceptual framework was developed to sensitise practitioners practising social entrepreneurship in new territories.

Second, Giddens' structuration theory proved a valuable lens for understanding Articles as living artefacts. Given that the value propositions of social entrepreneurs are based on their belief that they can challenge social structures and norms (Martin and Osberg, 2007), studying the Articles they produce offers a new way to learn about their agency. In this study, social entrepreneurs and professionals combined their efforts to refine the FSM so it could be used within two new communities of practice—a developmental coaching network (Dojo4Life) and a platform cooperative (AnyShare).

Third, the study made it possible to etch a rich picture of social entrepreneurial efforts to challenge 'unitary' approaches to governance. In this regard, the finding that social entrepreneurs are interested in pursuing multi-stakeholding through holacracy is worthy of further study. Furthermore, a finding that new approaches to management can be based on 'dialectical fluidity' (cognitive and emotional development) extends findings published by Moreau and Mertens (2013) on the qualities needed by social enterprise managers.

Last, this study sets out a viable *methodology* for studying the relationship between social entrepreneurial agency and social structure. The methodology developed here can be repeated when the FSM is adopted in Hungary, Croatia, Germany, Netherlands and the UK to produce further findings on the role of social entrepreneurship in shaping a new corporate landscape.

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