Regulatory Waves 2: Comparative Perspectives on State Regulation and Self-Regulation Policies in the Nonprofit Sector

This proposal is for the second of two interlinked panels (Regulatory Waves 1 & 2: each with 4 papers) which, as a whole, will provide a multi-country analysis of the drivers for and relationships between statutory and non-statutory intervention in nonprofit regulatory frameworks. These Panels come out of a project conceived at ISTR’s Siena conference in 2012 and which seeks to fill a gap in existing comparative nonprofit regulatory literature. Both Panels seek to test a thesis of whether regulatory intervention in the nonprofit sector occurs in ‘waves’, alternating between state regulation and self-regulatory initiatives. Two Panels are required to allow a diverse range of country approaches, contexts and perspectives to be analyzed and so provide comparative sampling of a significant empirical base. Country approaches include Canada, China, England and Wales, Ireland, Israel, Mexico, USA. These two Panels will complement other papers on legal and regulatory themes that will be presented at the 2014 ISTR International Conference and will help towards providing an extensive picture of current, emerging and developing trends in legal and governance frameworks for nonprofit organizations across many countries and regions.

There are two key inter-related themes which run through the papers in both Panels. The first key theme is how balances are struck (or not) between state regulation and sector self-regulation, and the extent to which those balances are influenced by political, ideological and fiscal imperatives. In drawing out this theme the papers reveal a complex and nuanced picture of the rationales and stimuli for statutory and non-statutory intervention in nonprofit regulation.

The second key theme running through the papers in both Panels concerns the impact different forms of regulation have upon the relationships and interaction between the nonprofit sector and government. This too is a nuanced picture, with papers alternatively presenting united and divergent aspirations, goals and consequences for nonprofit organizations and government. Tied in both themes is the complexity of using different forms of regulation to enhance transparency and achieve public and/or donor confidence in the nonprofit sector at same time as protecting (or not) sector autonomy against government control.

While the focus of individual papers will be upon specific country contexts, Panel discussion will draw out broader themes, comparisons and divergences between different regulatory and economic, ideological and political contexts. The aims of both Panels are to work towards an understanding of the rationale, stimuli for and variables affecting the regulatory waves in nonprofit governance and provide empirical insights into the nature of the relationship and rationale for the use of one form of regulation over another at a given time.

Beyond the legal frameworks, an understanding of the rational and stimuli for emerging trends in nonprofit regulatory cycles is crucial for developing strong government-nonprofit sector relations and assisting nonprofit organizations in current and nascent nonprofit jurisdictions to develop, promote and protect sector voice and autonomy at a time when both are under threat.

In so doing, panel papers seek to fill a gap in existing comparative regulatory literature by providing a critical account of the balance between statutory and non-statutory intervention in nonprofit regulatory frameworks in specific local, state, national and international contexts. This will be drawn out further into broader comparative themes through panel discussion.

By focusing upon the drivers for and roles of regulation in shaping the environment in which nonprofit organizations operate and seek to realize their goals, these two Panels will contribute to the specific theme of the 2014 ISTR International Conference on ‘Civil Society and the Citizen’. Consideration will be given in the Panels to sector participation in governance and collaborative governance, the contribution organizations make to regulatory policy-making and developments in government policy and the regulatory environment. The Panels will also contribute to ongoing subjects of interest for ISTR members and sector organizations, including the relationship
between nonprofit organizations and the state, challenges to the nonprofit sector and issues of governance and accountability.

**From Zero to 100: The Accelerated Pace of Charity Law Reform in Canada**

Adam Parachin, aparachi@uwo.ca; University of Western Ontario

In recent years different patterns of regulation and nonprofit organizations have developed. The first decade of this century saw a strong preference for the creation or enhancement of charity regulatory frameworks based on overarching regulator-based supervisory control, evidenced in New Zealand (2005), Scotland (2005), England/Wales (2006), Northern Ireland (2008) and Ireland (2009). The mid-2000s also saw the emergence of greater community based self-regulation or co-regulation in the UK (2007) and Ireland (2008). Both patterns have been at work in China; first strong state regulation to the virtual exclusion of self-regulation, and now a more nuanced and related development of the two, though, of course, state regulation remains in the ascendancy. Change is afoot once more as some countries press ahead with new central regulators (Australia), others retrenching by dismantling independent regulators in favour of direct state controls (New Zealand), failing to commence legislation intended to create independent statutory agencies (Ireland), continuing a long-standing pattern of dual or more control mechanisms over nonprofits, both regulatory and self-regulatory (and more than one each, as in the USA), witnessing the emergence of self-regulatory frameworks (though not independent regulators) in a state-dominated framework (China), or the emergence of competing self-regulatory initiatives in a state-centered federal framework (India).

The research aims in this paper and all panel papers are to analyse the rationales for these developments and consider whether there is a systematic base to these seemingly conflicting approaches. These issues will be explored by considering the diverse range of catalysts that drive such policy and legal change and range from political, ideological and fiscal-based concerns through to concerns brought to the fore by global events. This exploration will sit alongside an examination of the pressures existing within the nonprofit sector itself, including concerns with autonomy and voice, and the influence these have on nonprofit law and policy.

In so doing the specific focus of this paper will be upon Canada: Historically, Canadian charity law has been a very slow moving body of law characterized by modest and infrequent regulatory reform. In recent years, however, the pace and scope of regulatory reform has intensified. This paper offers an account of why charity law and regulation has recently been attracting the attention of law reformers. To some extent the answer lies internal to the charitable sector, which has become better organized and better able to impress upon lawmakers the desirability of reform. Perhaps more important, though, is that legal charity is treated, for better or for worse, as mainly an income tax concept in Canada. To a great extent the pace of charity reform has been driven by income tax considerations. This paper will link income tax considerations to concrete reforms and offer insights on how income tax driven reforms are likely to shape the charitable sector going forward.

Research questions
The following research questions will be addressed:
1. What are the key state regulatory and self-regulatory initiatives and trends directly affecting the nonprofit sector in each country currently and in recent history?
2. How, if at all, have these state regulatory and self-regulatory initiatives affected or impacted upon each other?
3. Has there been a direct, indirect or causal link between the ‘success’ or ‘failure’ of state regulation and the emergence, or lack of emergence, of self-regulation and vice versa?
4. What is the relationship between the state and the nonprofit sector in each country and is there a wider political and/or nonprofit sector agenda to the development, or lack of development, of state regulation and self-regulation in each country?
Theories/concepts informing the research
This paper and all panel papers will be informed by an analysis of theories and concepts of regulation and regulatory oversight, the drivers for regulatory mechanisms and regulatory reform and the theories and concepts which inform the interrelationship of and balance between state regulation, self-regulation and co-regulation.

Research methodology and design, key theoretical/empirical findings
This paper and all panel papers will focus on presenting information on the thematic trends and ideological, political and fiscal contexts for the balance of statutory and non-statutory regulation of nonprofit organizations in local, state, national and international contexts. Where appropriate to individual papers, there will be a comparison across national contexts, drawing conclusions both on the nature and extent of state-regulation and self-regulation of nonprofit organizations as well as the consequences that can occur when the balance of that regulation changes.

The key theoretical findings from this paper and all panel papers will focus on the forms of and drivers for state regulation and self-regulation of nonprofit organizations and the inter-relationship between the two. The empirical findings from each country considered in the papers will inform consideration of the broader thesis of the Panel project, which is whether regulatory intervention in the nonprofit sector occurs in waves.

Waiting for the Big Wave: A Fifty Year Retrospective on the Ebbs and Flow of Irish Charity Regulation
Oonagh Breen, oonagh.breen@ucd.ie; University College Dublin

In recent years different patterns of regulation and nonprofit organizations have developed. The first decade of this century saw a strong preference for the creation or enhancement of charity regulatory frameworks based on overarching regulator-based supervisory control, evidenced in New Zealand (2005), Scotland (2005), England/Wales (2006), Northern Ireland (2008) and Ireland (2009). The mid-2000s also saw the emergence of greater community based self-regulation or co-regulation in the UK (2007) and Ireland (2008). Both patterns have been at work in China; first strong state regulation to the virtual exclusion of self-regulation, and now a more nuanced and related development of the two, though, of course, state regulation remains in the ascendency. Change is afoot once more as some countries press ahead with new central regulators (Australia), others retrenching by dismantling independent regulators in favour of direct state controls (New Zealand), failing to commence legislation intended to create independent statutory agencies (Ireland), continuing a long-standing pattern of dual or more control mechanisms over nonprofits, both regulatory and self-regulatory (and more than one each, as in the USA), witnessing the emergence of self-regulatory frameworks (though not independent regulators) in a state-dominated framework (China), or the emergence of competing self-regulatory initiatives in a state-centered federal framework (India).

The research aims in this paper and all panel papers are to analyse the rationales for these developments and consider whether there is a systematic base to these seemingly conflicting approaches. These issues will be explored by considering the diverse range of catalysts that drive such policy and legal change and range from political, ideological and fiscal-based concerns through to concerns brought to the fore by global events. This exploration will sit alongside an examination of the pressures existing within the nonprofit sector itself, including concerns with autonomy and voice, and the influence these have on nonprofit law and policy.

In so doing the specific focus of this paper will be upon Ireland: This paper charts the shifting dynamics in the landscape of Irish charity regulation. It uncovers the catalysts driving the timing and nature of those shifts and it maps out the journey from viewing charities as partners in the delivery of essential services to co-policymakers and de facto legislators in the Irish experiment with Social Partnership to the more recent changing tide which peremptorily views charities as part of the problem rather than the solution, bringing new calls for greater accountability and
transparency.

Research questions
The following research questions will be addressed:
1. What are the key state regulatory and self-regulatory initiatives and trends directly affecting the nonprofit sector in each country currently and in recent history?
2. How, if at all, have these state regulatory and self-regulatory initiatives affected or impacted upon each other?
3. Has there been a direct, indirect or causal link between the ‘success’ or ‘failure’ of state regulation and the emergence, or lack of emergence, of self-regulation and vice versa?
4. What is the relationship between the state and the nonprofit sector in each country and is there a wider political and/or nonprofit sector agenda to the development, or lack of development, of state regulation and self-regulation in each country?

Theories/concepts informing the research
This paper and all panel papers will be informed by an analysis of theories and concepts of regulation and regulatory oversight, the drivers for regulatory mechanisms and regulatory reform and the theories and concepts which inform the interrelationship of and balance between state regulation, self-regulation and co-regulation.

Research methodology and design, key theoretical/empirical findings
This paper and all panel papers will focus on presenting information on the thematic trends and ideological, political and fiscal contexts for the balance of statutory and non-statutory regulation of nonprofit organizations in local, state, national and international contexts. Where appropriate to individual papers, there will be a comparison across national contexts, drawing conclusions both on the nature and extent of state-regulation and self-regulation of nonprofit organizations as well as the consequences that can occur when the balance of that regulation changes.

The key theoretical findings from this paper and all panel papers will focus on the forms of and drivers for state regulation and self-regulation of nonprofit organizations and the inter-relationship between the two. The empirical findings from each country considered in the papers will inform consideration of the broader thesis of the Panel project, which is whether regulatory intervention in the nonprofit sector occurs in waves.

Mapping the Regulators: Charitable Solicitations Regulations in the American States

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In recent years different patterns of regulation and nonprofit organizations have developed. The first decade of this century saw a strong preference for the creation or enhancement of charity regulatory frameworks based on overarching regulator-based supervisory control, evidenced in New Zealand (2005), Scotland (2005), England/ Wales (2006), Northern Ireland (2008) and Ireland (2009). The mid-2000s also saw the emergence of greater community based self-regulation or co-regulation in the UK (2007) and Ireland (2008). Both patterns have been at work in China; first strong state regulation to the virtual exclusion of self-regulation, and now a more nuanced and related development of the two, though, of course, state regulation remains in the ascendancy. Change is afoot once more as some countries press ahead with new central regulators (Australia), others retrenching by dismantling independent regulators in favour of direct state controls (New Zealand), failing to commence legislation intended to create independent statutory agencies (Ireland), continuing a long-standing pattern of dual or more control mechanisms over nonprofits, both regulatory and self-regulatory (and more than one each, as in the USA), witnessing the emergence of self-regulatory frameworks (though not independent regulators) in a state-dominated framework (China), or the emergence of competing self-
regulatory initiatives in a state-centered federal framework (India).

The research aims in this paper and all panel papers are to analyse the rationales for these developments and consider whether there is a systematic base to these seemingly conflicting approaches. These issues will be explored by considering the diverse range of catalysts that drive such policy and legal change and range from political, ideological and fiscal-based concerns through to concerns brought to the fore by global events. This exploration will sit alongside an examination of the pressures existing within the nonprofit sector itself, including concerns with autonomy and voice, and the influence these have on nonprofit law and policy.

In so doing the specific focus of this paper will be upon the USA: It develops the authors’ earlier work on regulation of solicitation disclosure by reviewing and comparing what states’ offer donors today compared with one year ago as donors seek information about donating in general or about a specific organization. Changes have occurred, for example, Arizona has ended its program entirely; Delaware is in the process of developing capacity to oversee solicitations; Connecticut has redesigned the relevant pages on the state’s website. This paper draws more explicitly on the understanding of regulatory disclosure developed by David Weil, Archon Fung, Mary Graham, and others.

Research questions
The following research questions will be addressed:
1. What are the key state regulatory and self-regulatory initiatives and trends directly affecting the nonprofit sector in each country currently and in recent history?
2. How, if at all, have these state regulatory and self-regulatory initiatives affected or impacted upon each other?
3. Has there been a direct, indirect or causal link between the ‘success’ or ‘failure’ of state regulation and the emergence, or lack of emergence, of self-regulation and vice versa?
4. What is the relationship between the state and the nonprofit sector in each country and is there a wider political and/or nonprofit sector agenda to the development, or lack of development, of state regulation and self-regulation in each country?

Theories/concepts informing the research
This paper and all panel papers will be informed by an analysis of theories and concepts of regulation and regulatory oversight, the drivers for regulatory mechanisms and regulatory reform and the theories and concepts which inform the interrelationship of and balance between state regulation, self-regulation and co-regulation.

Research methodology and design, key theoretical/empirical findings
This paper and all panel papers will focus on presenting information on the thematic trends and ideological, political and fiscal contexts for the balance of statutory and non-statutory regulation of nonprofit organizations in local, state, national and international contexts. Where appropriate to individual papers, there will be a comparison across national contexts, drawing conclusions both on the nature and extent of state-regulation and self-regulation of nonprofit organizations as well as the consequences that can occur when the balance of that regulation changes.

The key theoretical findings from this paper and all panel papers will focus on the forms of and drivers for state regulation and self-regulation of nonprofit organizations and the inter-relationship between the two. The empirical findings from each country considered in the papers will inform consideration of the broader thesis of the Panel project, which is whether regulatory intervention in the nonprofit sector occurs in waves.

Comparative Ideational Currents: How ideas about philanthropy move regulatory regimes
In recent years different patterns of regulation and nonprofit organizations have developed. The first decade of this century saw a strong preference for the creation or enhancement of charity regulatory frameworks based on overarching regulator-based supervisory control, evidenced in New Zealand (2005), Scotland (2005), England/Wales (2006), Northern Ireland (2008) and Ireland (2009). The mid-2000s also saw the emergence of greater community based self-regulation or co-regulation in the UK (2007) and Ireland (2008). Both patterns have been at work in China; first strong state regulation to the virtual exclusion of self-regulation, and now a more nuanced and related development of the two, though, of course, state regulation remains in the ascendency. Change is afoot once more as some countries press ahead with new central regulators (Australia), others retrenching by dismantling independent regulators in favour of direct state controls (New Zealand), failing to commence legislation intended to create independent statutory agencies (Ireland), continuing a long-standing pattern of dual or more control mechanisms over nonprofits, both regulatory and self-regulatory (and more than one each, as in the USA), witnessing the emergence of self-regulatory frameworks (though not independent regulators) in a state-dominated framework (China), or the emergence of competing self-regulatory initiatives in a state-centered federal framework (India).

The research aims in this paper and all panel papers are to analyse the rationales for these developments and consider whether there is a systematic base to these seemingly conflicting approaches. These issues will be explored by considering the diverse range of catalysts that drive such policy and legal change and range from political, ideological and fiscal-based concerns through to concerns brought to the fore by global events. This exploration will sit alongside an examination of the pressures existing within the nonprofit sector itself, including concerns with autonomy and voice, and the influence these have on nonprofit law and policy.

In so doing this paper steps back from changing patterns of regulation to consider the ideas that may be moving such change. It explores the ideational bases, as advanced by different epistemic communities, for the regulation of charities and philanthropy with a focus on the ‘Anglo’ cluster of countries. It considers convergence in these ideas across countries and the extent to which they are being reflected in the waves of change discussed in this panel. The analysis includes ‘big ideas’ about the role of philanthropy and nonprofits, as well as more specific notions of what should be regulated, and why, and the value of state versus self-regulation.

Research questions
The following research questions will be addressed:
1. What are the current and evolving ideas about philanthropy, and who is advancing them?
2. What do official policy statements and legislative debates indicate about the ideas that have claim to be politicized in a big ‘P’ sense?
3. What is the extent to which ideas are moving regulatory change? And is there congruence across the Anglo countries?

Theories/concepts informing the research
This paper and all panel papers will be informed by an analysis of theories and concepts of regulation and regulatory oversight, the drivers for regulatory mechanisms and regulatory reform and the theories and concepts which inform the interrelationship of and balance between state regulation, self-regulation and co-regulation.

Research methodology and design, key theoretical/empirical findings
This paper and all panel papers will focus on presenting information on the thematic trends and ideological, political and fiscal contexts for the balance of statutory and non-statutory regulation of nonprofit organizations in local, state, national and international contexts. Where appropriate to individual papers, there will be a comparison across national contexts, drawing conclusions both
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