ABSTRACT: This paper explores both state-based and self-regulation, shared narratives and lessons to better understand the interaction of these two forms of regulation in the non-profit space. The paper outlines six preliminary research questions that inform the work before briefly outlining the regulatory framework, focusing on various regulatory motivations. The heart of the paper builds upon 16 case studies of regulatory interaction between state regulation and non-state regulation conducted across all five continents, including Asia. In unpacking some of the major findings, we look first at state perspectives on the role of regulation before considering the sector’s perspective. Taking both on board enables us to configure the relationship spectrum between state and sector when it comes to regulation and to begin to identify, based on the 16 case studies undertaken, the most common triggers for regulatory change identified therein and to reframe them through the development of a series of five Regulatory Propositions and seven Environmental Variables to help understand how different forms of regulation are triggered and interact.

KEYWORDS: Regulatory Theory, Nonprofit regulation, Statutory Regulation, Self-Regulation, Cross-country comparative analysis

Note: This paper has been accepted for forthcoming publication in NVSQ and is co-authored with Dr. Alison Dunn and Professor Mark Sidel. It continues the research that we began at the ISTR International Conference in Siena Italy in 2012 and that first took published form in the unpacking of the individual case studies in Breen et al (eds.) Regulatory Waves: Comparative Perspectives on State Regulation and Self-Regulation Policies in the Nonprofit Sector (Cambridge University Press: Cambridge, 2017)
What can we expect of charity regulators? Charity scandals, declining public trust and confidence ... and regulator accountability

Carolyn Cordery

Abstract:
Recent charity scandals highlight one reason for increasing charity regulation across the Western World. Andrew Hind, a prior CEO of the Charity Commission of England and Wales, favours such regulation, but he argues that ‘appropriate regulation requires a desire to be on the side of the angels’ (Hind, 2011) Helge (2015) is concerned that this attitude of ‘policing the good guys’ means charities can experience less-rigorous regulation than they should. This is borne out by recent scandals (such as the 2018 Oxfam scandal following the announcement that field staff in Haiti had engaged sex workers, Kidscan and other fundraising misdemeanours) which have dented public trust and confidence in specific charities and the charitable sector at large. Indeed, in the most recent measurement of public trust and confidence, respondents trusted the ‘person in the street’ more than charities (Populus & Charity Commission for England and Wales, 2018).

While the Charity Commission of England and Wales (CCEW) is the oldest when compared to other charity regulators internationally, the effects of austerity since 2010 may have emasculated the powers endowed in successive charity reforms since the early 2000s. Indeed, to ‘make ends meet’ the CCEW increasingly invokes the New Public Governance rhetoric of co-regulation and its inability to effect regulation on its own. For example, its recent Statement of Strategic Intent (CCEW, 2018) calls for ‘co-operation from trustees, charities and bodies across the sector’. In this paper I analyse how the trustees and charities have responded to CCEW monitoring. The past four years of CCEW enquiry reports, decisions and case reports are analysed against subsequent reporting by the charities concerned. Thus, this paper elicits themes from these regulatory activities and the effectiveness of this approach. It makes specific recommendations to build public trust and confidence that must be heeded if charities are once again to be held in high esteem.
NGO Regulatory Backlash? A Cross-National Examination of State Motives for NGO Regulation

Elizabeth Bloodgood and Joannie Tremblay-Boire

What causes regulatory backlashes? Newer waves of NGO (non-governmental organizations) scholarship argue that the legal, political, and economic environments facing the nonprofit sector are not as pleasant, optimistic, or enabling as they were once. Exuberance for NGOs as an organizational form and a political actor (civil society domestically, INGOs internationally) among scholars and practitioners in the late 1990s and early 2000s has begun to wane (sooner among practitioners than scholars) (Edwards and Hulme 1996b; Mendelson and Glenn 2002; McGann and Johnstone 2006). NGOs have instead been cast as sources of security vulnerability (given their overlap with terrorist organizations) (Howell 2006; Sidel 2008), political agitators (based on their role in local revolutions and protest movements) (Carothers 2006; DeMars 2015), and corrupt or conniving business enterprises in disguise (after several dramatic scandals and large-scale failures) (Gibelman and Gelman 2004). We present a systematic empirical examination of these competing explanations in 102 countries based on our original index of national NGO regulations. This dataset provides new opportunities to test the “closing space” phenomenon as it covers more aspects of NGO regulation, including the statutory definition of an NGO, bounds on operations, disclosure requirements, and the enforcement of regulations, in a broader array of countries. A broader overview of national NGO regulations is necessary as NGO regulations often include informal quid pro quos; reductions in access or activities in one area, such as partisan political behavior, are compensated by increased access and resources in another, such as access to tax exemptions or grants. We also examine a greater variety of countries, beyond the highly repressive, illiberal end of the spectrum, in order to examine the potential transnational diffusion of norms for NGO regulation.

We conclude that the international system is currently in a period of maturation and regularization of NGO regulation, which is better characterized as the end of the “Wild West”, or “anything goes”, era of civil society growth than a full regulatory backlash. While regulatory crackdowns are certainly occurring (e.g. in Russia, Ethiopia, Pakistan, Egypt, and Zimbabwe), these are not the norm. In more countries, new NGO regulation enables the development of a more stable, durable relationship between state and society. In an era when globalization complicates governance and international policy problems are increasingly complex (Abbott et al. 2016), the increasing variety of types of non-state actors creates the need for more and better regulation for the protection of both sides. Quality NGOs demand regulations that protect their reputations and credibility from contamination by problematic organizations, as states seek mechanisms to differentiate between useful partners and political challenges (Prakash and Gugerty 2014; Mitchell and Stroup 2016).
The Shifts in the Regulatory Regime of State and Civil Society Organizations Partnerships in Brazil

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The regulatory space of state-civil society partnerships in Brazil is highly fragmented. At 2018, no less than eight different regulatory regimes are governing state and civil society organizations partnerships in the country. These distinct regimes vary according to the nature of the activity connected by the partnership (e.g., free social service provisions, paid social service provisions, mutual benefit services, public interest services, etc.). They also vary according to the types of civil society organizations acting as partners (mutual benefit organizations, voluntary organizations, religious organizations, etc.).

Despite of being submitted to a very fragmented regulatory regime and suffering from problems of funding, civil society organizations have been operating with relative freedom after the re-democratization, which reflects the growth of the sector in the last decades. In 1990, there were almost 200 thousand nonprofit organizations operating in Brazil. In 2016, this number jumped to 820 thousand nonprofit organizations, with almost 320 thousand civic associations and advocacy groups.

However, with the election of President Jair Bolsonaro in 2018 under a populist right-wing platform, the scenario of the relationships between state and civil society in Brazil became very uncertain. A retired army captain, apologist of the military dictatorship that governed Brazil from 1964 to 1985, Bolsonaro has never hidden his disdain for human rights and human rights organizations. On the day of his inauguration, President Bolsonaro has signed an executive order that give the Government Secretary the power to “supervise, coordinate, monitor and accompany the activities and actions of international organizations and non-governmental organizations in the national territory.”

This paper describes the process through which the regulatory space governing state-civil society organizations partnerships in Brazil has been shifting in the last three decades. In this paper, our primary concern is analyzing how government and civil society organizations responded to innovations in the regulatory space and how the new government may threaten the balance between regulation and freedom for civil society activities.
State Control on INGO in China

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Abstract
This paper will discuss the state control over INGOs in China based on the analysis of the law on managing overseas NGOs promulgated in 2017 and its implementation since then. This new law has drawn enormous concern because the authorities responsible for the registration and management of INGOs changed from Ministry of Civil Affairs to Police – a clear sign of control instead of facilitation. In this paper, the contributions of INGOs and foreign foundations to the development of civil society in terms of funding, coaching and institutional building for Chinese NGOs will be traced back to early 21st Century. Gradually, their presence and impacts aroused attention from the authorities. The development of “graduate control” over NGOs and subsequently INGOs is a result of the growing confidence of the regime in differentiating what groups could serve as a supplement to the Chinese state while others may post potential threats. A rather sophisticated set of control strategies in terms of crackdown, containment and cooptation has been developed by the authorities to deal with NGOs as demonstrated in the promulgation of Charity Law in 2017. Advocacy and rights defending groups, usually funded by foreign foundations, are either contained or suppressed. Service groups at community levels are coopted through government funding and constant coaching. At the same time, the Chinese state encourages the development of local foundations to implement their own charity projects or to fund local NGOs. Many of these foundations are initiated by enterprises and are willing to cooperate with the government. Gradually, direct influence of INGOs and foreign foundations on Chinese NGOs will be reduced and its implications to civil society in China will be assessed in this paper.

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