


National Styles of NGO Regulation

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Abstract

Why do Organisation for Economic Cooperation and Development (OECD) countries vary in their regulatory approach toward nongovernmental organizations (NGOs)? This article introduces an index to assess NGO regulation regarding barriers to entry, NGOs' political capacity, and economic activity. Our cross-section analysis of 28 OECD countries offers preliminary evidence of systematic differences in NGO regulation between corporatist and pluralist systems. We suggest corporatist systems have more restrictive regulations because NGOs risk upsetting the political order and managed social consensus. In pluralist countries, NGOs face fewer restrictions because governments view them as substitutes for formal communication channels. We present two cases, Japan (corporatist) and the United States (pluralist), to illustrate this argument. In sum, macroinstitutional arrangements of political representation have a crucial bearing on national styles of NGO regulation. Future uses of this index include examining the effects of national context on international NGOs (INGOs), explaining variations in organizational structures and strategies among NGOs, and tracking variations in NGO–state relations over time.

Keywords

NGO regulation, political opportunity structure, state–society, pluralism, corporatism, association

Introduction

Institutions shape politics by deciding whose voice counts, who can mobilize and organize, and who can access the policy-making process. Institutions themselves are a

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reflection of political arrangements and compromises different categories of actors have worked out in the past. We investigate how macroinstitutional arrangements of political representation, interest articulation, and interest mediation shape national styles of regulating nongovernmental organizations (NGOs) (Bloodgood, 2010).¹ Based on media and scholarly attention to NGOs (Carpenter, 2007; Keck & Sikkink, 1998; Tarrow, 2001; Wapner, 1995), it is tempting to assume that most governments enthusiastically support NGOs' emergence and functioning, allowing them to devote their resources to serving citizens rather than complying with regulations. While there is much talk about the need for NGOs to participate in policy processes and provide public goods, it is not clear that enthusiasm for NGOs' participation is shared across even advanced industrial democracies (Bloodgood & Tremblay-Boire, 2011). The attention, resources, and political space afforded to NGOs have political consequences as NGOs may upset the political status quo, create political uncertainty, and generate new sets of political winners and losers. Even in advanced industrial democracies, the incentives for the established political order to support NGOs need to be investigated instead of assumed.

Toward this end, this article addresses the "supply side" of the associational revolution (Sokolowski & Salamon 1999), particularly the national regulatory context in which NGOs emerge and function. Although identified (and hailed) as "nongovernmental," we suggest that NGOs should be viewed as products of a political system in which the state is the key supplier of the rules that govern NGOs' emergence and functioning.

Our key empirical contribution is to introduce a new index of NGO regulation which summarizes a country's regulatory approach toward NGOs in three areas, namely (a) barriers to entry, (b) constraints on NGOs' political activities, and (c) constraints on NGOs' economic resources. Based on this index, our empirical analysis suggests that, even in the context of advanced Organisation for Economic Cooperation and Development (OECD) countries, support for NGOs varies in a systematic way. We find that corporatist countries tend to provide a constraining regulatory environment while pluralist countries provide a permissive environment. To contextualize our statistical findings, we present illustrative studies of Japan (corporatist) and the United States (pluralist) to examine how a corporatist country provides a more restrictive style of NGO regulation (with high barriers to entry, limited scope for activity, and limited access to independent sources of money), while a pluralist country provides an enabling style of NGO regulation (with lower barriers to entry, greater scope and flexibility in activity, and fewer limits on the ability to raise funds).

The practical implication of this research is that optimism regarding the ability of the NGO sector to mitigate societal problems needs to be tempered—not necessarily because NGOs are "good" or "bad" (Bob, 2005; Gibelman & Gelman, 2001; Sell & Prakash, 2004), but because the political space afforded to any NGO might be restricted by national regulatory structures. NGO planners can use our NGO regulatory index in order to strategically evaluate expansion into new countries.

This article is organized as follows. The first sections reviews cross-disciplinary research on political opportunity structures as they affect NGOs. The second section

introduces the NGO Regulation Index. We then present our explanation for why countries have different regulatory styles for NGOs and provide suggestive evidence to support our hypothesis that corporatist systems are likely to supply more restrictive environments than pluralist systems. The next section outlines our illustrative cases, Japan and the United States. In the last section, we present our conclusions and identify avenues for future research. In particular, we examine the potential for regulatory change and how globalization may encourage governments to rethink NGO regulation.

Political Opportunity Structures and National NGO Regulations

Regulations shape actors' behaviors by permitting, prescribing, or prohibiting specific categories of actions (Ostrom, 1990). In particular, regulations influence the entry costs for new actors, thereby protecting incumbents from political competition (Stigler, 1971). Governments seeking to preserve the political status quo can erect barriers for new actors like NGOs (Keck & Sikkink, 1998).² Such regulatory barriers can discourage political participation by increasing NGOs' costs of operations or by limiting their ability to raise revenue. Alternatively, government regulations can provide NGOs with institutionalized access to political forums and economic resources to encourage their participation.

The political opportunity structure has been extensively studied by sociologists and political scientists. Sociologists have examined how institutional contexts influence the evolution and strategies of activist groups which, when disenfranchised in electoral politics, have incentives to seek political voice by organizing themselves as NGOs. To operationalize the institutional context, social movement scholars have developed the concept of the "political opportunity structure" which reflects: (a) the relative openness of the political system, (b) the stability of elite alignments, (c) the presence of elite allies, and (d) the state's capacity and propensity for repression (McAdam, 1996, p. 27). The social movement literature examines the political opportunity structure in a given issue area, instead of the macro- or national-level institutional context of NGOs. We argue, however, that macropolitical opportunity structures as reflected in national regulations matter for all NGOs because they shape the context in which NGOs exist and operate.

New institutionalists assert that institutions are purposive human artifacts (Keohane, 1984; North, 1990; Ostrom, 1990). They identify specific actors (and interests) behind the emergence of an institution and the specific form it takes (Abbott & Snidal, 2001; Moe, 1984). Institutions function by altering the costs and benefits actors face in any given situation. The greater their effect on actors' incentives, the higher the institutional efficacy will be. We suggest that the ways governments, as purposive actors, structure NGO laws is not accidental or random; rather it is purposeful with an intention to create incentives for social and political actors to organize or not organize as NGOs. We posit that governments seek to ensure state survival (Keohane, 1984) and stability in policy making (Baumgartner & Jones, 1993). NGOs serve as providers of goods and services and as "important factors of social and political coordination"

(Seibel, 1990, p. 46) with an important bearing on the political process. Hence, we expect that governments will strategically decide the extent to which they will supply a supportive regulatory infrastructure to manage NGO growth.

Nonprofit scholarship also suggests that economics, particularly access to adequate financing, serve as an additional constraint or opportunity facing NGOs. While NGOs are defined by a nondistributional constraint (profits might be earned but cannot be distributed to principals (Hansmann, 1980 but see Prakash & Gugerty, 2010)), they nevertheless need resources to support their service delivery and advocacy activities. Governments can use regulations to restrict or extend NGOs' access to funding sources, including foundation, and government grants, as well as less traditional revenue-generating activities.

Salamon and Anheier (1998) suggest that countries have taken different routes of nonprofit development—liberal, social democratic, corporatist, and statist—according to differences in class relations and state–society relations. Given that rules and regulations governing NGOs are slow to evolve and sometimes difficult to change, we examine the comparative statics of national regulatory contexts post-1990 for the OECD countries. Indeed, regulatory changes governing the NGO sector are likely to be relatively rare and incremental given the stable arrangements of interest representation in these countries. The path dependent nature of institutional development combined with the configurations of interests which emerge in support of a set of institutions help preserve institutional stability. While it is not impossible to upset such structures, especially with strong exogenous shocks (which we examine in the conclusion), these arrangements tend to be fairly stable in the short and medium term and establish the broad rules of the political game (Greif & Laitin, 2004).

Our research builds on the above literatures in important ways. We refine the notion of political opportunity by focusing on three specific dimensions of the national-level regulatory systems in which NGOs function. We expect that governments seeking to protect the political status quo are likely to enact regulations to discourage NGOs' political participation by increasing the costs of operations and by making it more difficult for “unwelcome” organizations to register, raise revenue, and engage in political activities (Dupuy et al., 2012). Advocacy and service delivery can be expensive and NGOs often need a formal organization with specific characteristics to participate in policy and political processes. By restricting NGOs' access to revenue sources and legal personality, governments can restrict NGOs' involvement in these processes. In contrast, governments might view NGOs as necessary actors which provide access to information, serve as a vehicle for aggregating preferences, and help coordinate the political process, rather than as threats to the status quo. In such situations, governments are likely to remove barriers and facilitate access to resources to encourage NGO formation.

We examine the corporatism/pluralism classification as an important factor influencing variations in NGO regulation because these categories encompass key elements of state–society relations and governing institutions likely to shape government preferences toward NGOs. Corporatism is the organization of employer and labor interests into hierarchical peak associations. These associations have a monopoly role

on the inclusion of interest groups into policy making and implementation via coordinated and cooperative management of the economy (Lijphardt & Crepaz, 1991, p. 235; Siaroff, 1999, p. 177). Scholars have explored how corporatism affects economic growth (Lijphardt & Crepaz, 1991; Siaroff, 1999), patterns of economic development (Amsden 1989; Evans 1995), imperial spread (Snyder, 1991), national foreign economic policies in response to global financial shocks (Garrett, 1998; Katzenstein, 1978), and even global governance (Ottaway, 2001; Schäferhoff et al., 2009; Streek & Schmitter, 1991). Corporatist bargaining among peak associations creates the incentives to maintain the status quo that we anticipate are likely to lead to restrictive NGO regulations as a means to preserve consensus and well-developed formal procedures for collaboration (Siaroff, 1999; Lijphardt & Crepaz, 1991). Pluralist³ governing arrangements, on the other hand, depend upon open competition among diverse interest groups for the expression of popular interests and quality policy making. From a pluralist perspective, NGOs provide valuable services by giving a voice to segments of the population which would otherwise have difficulty finding representation in elite or for-profit institutions (Lowery & Gray, 2004).

Research Design

To test our argument regarding the relationship between macropolitical institutions and NGO regulation, we focus on advanced democracies in the OECD. This controls for levels of economic and political development, which are important predictors of the strength of the NGO sector, and allow us to focus on the relationship between national regulation and state–society arrangements of interest representation. Our empirical research takes two forms. First, we conduct a statistical analysis examining the correlation between macropolitical institutions and NGO regulations in 28 OECD countries.⁴ Then, to probe deeper in the relationship between political institutions and NGO regulatory context, we present comparative case studies of a corporatist country (Japan) and a pluralist country (United States). Each case study examines the three basic components of NGO regulation used to assess NGO regulatory style—barriers to entry, freedom to mix service and advocacy activities, and access to a variety of funding sources. These factors enable us to link the nature of structures governing interest representation (i.e., corporatism or pluralism) to the style of NGO regulation in that country. Because institutional arrangements for interest representation and mediation tend to be quite stable, their effects on NGO regulation persist over a long time.

Methodology: Measuring NGO Regulation

To measure the restrictiveness of national regulation of NGOs, we focus on three factors: barriers to entry, the ability to combine advocacy with service delivery, and the scope of economic activity. These measures were selected because they directly affect the emergence and capacity of NGOs in a given country and reflect governments' regulatory control on NGOs. *Barriers to entry* consist of (a) the severity of

requirements for registration to gain legal status; (b) government discretion in the approval of NGO registration; and (c) the complexity of regulation overall.

An organization's ability to *participate in political activity* is influenced by (a) formal prohibitions on political activity such as civic education, policy advocacy, and lobbying; (b) restrictions on partisan political activity; (c) registration requirements in order to lobby or engage in electoral politics (including campaign contributions); and (d) the ability of a government to dissolve an organization.

The *scope of economic activity* depends on (a) tax benefits to individuals and corporations for contributing to NGOs; (b) tax exemptions or benefits for the NGO itself; and (c) restrictions on NGOs' ability to engage in profit-generating economic activity to fund programs. The terminology regarding NGOs varies slightly across countries, but we use as defining characteristics the central features that all OECD countries agree on: nonprofit, nongovernmental, and formally organized. The category NGO thus includes entities called associations, charities, nonprofit organizations, public benefit organizations, and civil society organizations.

Using these indicators, we create a regulatory index which combines the effects of these factors and enables cross-country comparisons. The majority of the regulations in the dataset were enacted between 1970 and 1995, with some recent updates. The index ranges from -7 to 8 as national regulations are judged to be NGO-restricting or NGO-facilitating. Higher index values indicate fewer restrictions on NGOs' activities and greater availability of economic opportunities.⁵ Figure 1 gives values for the components of the index for the case countries.

The majority of the components of the index concern whether an actor has a right or obligation explicitly within national law, for example to approve the formation or dissolution of an organization, to register to lobby, or to grant individual or corporate donors tax credits. Other components examine countries' regulation comparatively. The complexity of regulation, or total word count of NGO regulation in English translation, and the severity of registration, or number of discrete requirements NGOs must meet to form, are compared against the OECD average. Countries are coded 0 if they are at the average, 1 if they are one standard deviation or more below the average, and -1 if they are one standard deviation or more above the average. The ability of NGOs to engage in political and economic activity is coded in terms of whether organizations can engage in no such activity (-1), some activities with additional requirements (0), and a variety of activities with few requirements (1). Restrictions on NGOs' formation and behavior are given negative values; regulations which provide opportunities for NGOs are given positive values. Each component of the index is weighted equally and the values are summed to produce an index value.⁶

Figure 2 presents the NGO regulation index for countries within the OECD. We label countries as restrictive if they have an index value of two or less and permissive with a value of more than two. Among OECD cases, no country has a value greater than 5.5 or less than 0.

Country	Barriers to Entry			Political Activities			Ability to Raise Funds				Index
	Government Approval	Complexity	Severity	Political Activity	Lobbying Registration	Dissolution	Individ Tax Break	Corporate Tax Break	NGO Tax Exempt	Economic Activity	
Variable Range	Yes/No -1, 0	Std Devs from Mean -1 to 1	Std Devs from Mean -1 to 1	None Non-Partisan Any -1 to 1	Yes/No -1, 0	Yes/No -1, 0	No/Yes 0, 1	No/Yes 0, 1	None, Charity, All 0 to 2	None Restricted Any -1 to 1	-7 to 8
United States	-0.5	-1	1	0.5	-1	0	1	1	2	1	4
Japan	-1	-1	-1	0.5	0	-1	1	1	1	1	0.5

Figure I. NGO Regulatory Index.

Country	Corporatism Index (Siaroff, 1999)	Macro-Institutions	Regulatory Index	Regulatory Style
Australia	1.688	Compet. Plural.	5.5	Permissive
Austria	5.000	Corporatism	1	Restrictive
Belgium	2.841	Corporatism	0.5	Restrictive
Canada	1.150	Compet. Plural.	2.5	Permissive
Czech Republic			4	Permissive
Denmark	3.545	Corporatism	1	Restrictive
Finland	3.295	Corporatism	2	Restrictive
France	1.674	Compet. Plural.	4	Permissive
Germany	3.543	Corporatism	1.5	Restrictive
Greece	1.000	Compet. Plural.	4	Permissive
Hungary			3.5	Permissive
Ireland	2.000	Compet. Plural.	1	Restrictive
Italy	1.477	Compet. Plural.	0	Restrictive
Japan	2.912	Corporatism	0.5	Restrictive
Korea	3.000	Corporatism	2	Restrictive
Luxembourg	3.000	Corporatism	2	Restrictive
Mexico			3.5	Permissive
Netherlands	4.000	Corporatism	2	Restrictive
New Zealand	1.955	Compet. Plural.	2	Restrictive
Norway	4.864	Corporatism	0	Restrictive
Poland			0	Restrictive
Portugal	1.500	Compet. Plural.	2	Restrictive
Slovakia			1.5	Restrictive
Spain	1.250	Compet. Plural.	3	Permissive
Sweden	4.674	Corporatism	1.5	Restrictive
Switzerland	3.375	Corporatism	5	Permissive
United Kingdom	1.652	Compet. Plural.	4	Permissive
United States	1.150	Compet. Plural.	4	Permissive

Figure 2. Regulatory Styles and Macroinstitutions Within the OECD.

Notes: Compet. Plural. = Competitive Pluralism.

Explaining National Regulatory Styles

We argue that governments' preferences regarding NGOs at time " t " lead to lasting patterns of NGO regulation at time " $t + n$." The first national regulations on NGOs in the OECD date to 1948. Significant waves occurred between 1900-1940 (7), 1964-1980 (7), and 1989-1999 (5). The later wave was largely confined to Eastern European countries. While all countries have updated their regulations in the 2000s, styles of NGO governance were established during these earlier periods and generally only incrementally adjusted.

	Restrictive Style NGO Regulation	In-Between (Index value of 2)	Permissive Style NGO Regulation
Corporatist Structures	Austria, Belgium, Denmark, Germany, Japan, Norway, Sweden	Finland, Korea, Luxembourg, Netherlands	Switzerland
Pluralist Structures	Ireland, Italy	New Zealand, Portugal	Australia, Canada, France, Greece, Spain, United Kingdom, United States
Others	Poland, Slovakia		Czech Republic, Hungary, Mexico

Figure 3. National Regulatory and Governance Styles.

We argue that governments' preferences regarding NGOs are, in large part, determined by whether their structures of interest representation are corporatist or pluralist. We categorize countries as corporatist or pluralist using measures from Lijphart and Crepaz (1991) and Siaroff (1999). Each combines multiple indicators of corporatism to derive a new single measure. Lijphart and Crepaz (1991) provide an average of standardized values for 12 experts' measurements of corporatism on a scale of -2 to 2 . Siaroff (1999) uses a similar method, averaging 23 experts' rankings of corporatism on a five-point scale from 0 to 5. Experts' assessments of corporatism include measures of the degree of unionization, the number and concentration of unions and business organizations, social consensus on economic goals, numbers of strikes, state strength, and the size and exposure of the economy.⁷ The Siaroff and Lijphart-Crepaz indices are highly correlated (96%; statistically significant at the 99% level). We categorize a country as corporatist if it scores above 0 on Lijphart and Crepaz's scale or above 2 on Siaroff's scale, which are the thresholds they identify (Lijphardt & Crepaz, 1991, p. 240; Siaroff, 1999, p. 184).

We find that 92% (11 of 12) of corporatist countries have a restrictive regulatory style while 64% of pluralist countries (7 of 11) have a permissive regulatory style. Figure 3 provides the countries in each category.

The association between the regulatory style of NGOs and governance style is highly statistically significant, with a Pearson χ^2 test result of $p = 0.005$. Yet, a number of countries have values of 2 on the NGO regulation index (6 of 28). It is interesting to note that many of the countries near the break point between categories (such as Portugal, New Zealand, and Luxembourg) are the same countries for which scholars of corporatism debate appropriate categorization (Lijphart & Crepaz, 1991; Siaroff, 1999). When these countries are excluded from the analysis, we find that the relationship between having corporatist governing structures and a restrictive NGO regulatory style still holds. Of the remaining countries, 88% of corporatist countries have a

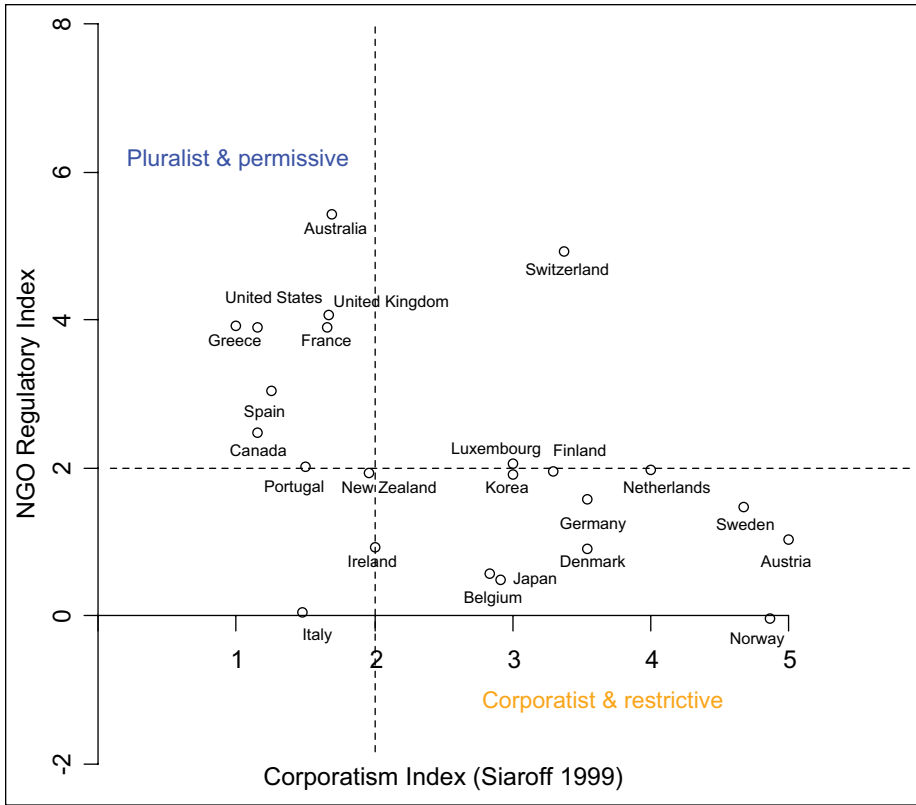


Figure 4. National Regulatory and Governance Styles Graphed.

restrictive regulatory style (7 of 8) while 75% of the pluralist countries are permissive (6 of 8).⁸ Figure 4 above shows the relationship between governing structures and NGO regulatory style graphically.

Illustrative Cases

To contextualize our findings about the relationship between national institutions of interest representation and NGO regulatory style, we present two illustrative case studies: the United States (a pluralist country) and Japan (a corporatist country). The United States is argued to have one of the strongest civil societies due to a positive and supportive legal and cultural environment (Sokolowski et al., 1999, p. 261). NGO regulations in the United States can be considered permissive not only because they impose relatively few restraints, but also because they enable political and economic activities. The Japanese regulatory system for NGOs, in contrast, has been described

as “one of the most severe . . . in the developed world” (Pekkanen, 2000, p. 116; Simon, 2009). For instance, until recent reforms to NGO law, only strictly regulated incorporated NGOs were allowed to deliver welfare services while large numbers of unincorporated NGOs were prohibited from doing so because they had not received legal status, and thus legitimacy, from the state (Laratta, 2009, pp. 308, 309). We discuss both these cases below. The case studies demonstrate the temporal ordering of the establishment of NGOs and state structures. Politically active NGOs should precede strong state structures in the pluralist case, while restrictive NGO regulation should follow the establishment of corporatist patterns of governance in the corporatist case. We also look for evidence of governments’ desire to limit, or enhance, NGO activism in order to preserve social or political order.

United States

The prominence of NGOs in the United States is often attributed to American ideological commitments to individualism and against arbitrary centralized authority. Voluntary associations are an alternative form of organization to fulfill individuals’ basic needs without increasing state control. NGOs in the United States provide useful functions for the government, including interest organization and representation as well as basic service provision, where corporatist structures of mediation between state and society never developed. While Americans turned to voluntary associations for pragmatic reasons, as these predated the state and provided for public welfare in the interim, an essential distrust of elite institutions led to a series of popular efforts to establish government controls. Government has historically provided a significant share of NGOs funding in the United States, but in return instituted means for public oversight (Hammack, 2001; Sokolowski & Salamon, 1999, p. 262). The regulatory style of the United States is permissive, although this does not imply a lack of regulations. In the United States, regulations enable as well as constrain NGO activity, but constrain less than in the case of Japan. With the exception of formal lobbying and the addition of reporting requirements, U.S. law does not discriminate between the domestic and international activities of foreign and national NGOs.

Barriers to entry in the United States are minimal at the federal level, but vary at the state level where nonprofits incorporate. Generally organizations fill out an application with the appropriate state authority, provide documents such as articles of incorporation and bylaws, designate a local agent and office, and pay an incorporation fee.⁹ Nonprofits do not have to incorporate to qualify for federal tax exemption. “Unincorporated associations,” consisting of a designated number of members (determined by the state) who have signed an agreement for a common nonprofit purpose, can apply for a federal tax exemption. NGOs often incorporate, despite the effort, to gain legal personality and liability protection. While the dual-level requirements for NGO creation in the United States adds complexity, and may raise barriers to entry, this is offset by permissiveness of political and economic regulations. The size of the organization influences the extent of regulation. As of 2010, NGOs with an income below US\$200,000 and total assets below US\$500,000 can file a shortened tax return

form (990-EZ) rather than the extensive form (990), while NGOs below US\$50,000 need not file at all.

U.S. regulations, while generally permissive, present NGOs with tradeoffs among organizational forms given their differing political and tax benefits. NGOs in the United States are regulated according to classifications given in Title 26, section 501(c) of the *Internal Revenue Code* (IRC), the primary source of national NGO regulation in the United States. A distinction is made between charitable organizations—501(c)(3) organizations—and other types of nonprofits. This system dates to 1939 and has seen only marginal changes since. Charitable organizations—type 501(c)(3)—receive more generous tax treatment, but are prohibited from engaging in political campaigns or partisan political activities, including endorsing a candidate or contributing to a campaign. Partisan political activity can lead to loss of tax-exempt status—(IRC, 26, section 501(c)(3)(h)). Charities can engage in advocacy, including educational activities and activities that encourage citizens to vote, as long as they remain nonpartisan. Charitable organizations can also attempt to influence legislation, that is, lobby. However, lobbying cannot “constitute a substantial part of [their] overall activities.”¹⁰ Charitable organizations are limited regarding the amount of lobbying expenditure. Organizations with exempt expenditures of US\$500,000 or less can spend 20% of that amount on lobbying and it will remain nontaxable. Spending more than the allowance can result in a temporary loss of tax exemption. The freedom of charities to engage in issue advocacy leads us to assess these regulations as relatively permissive, despite prohibitions on partisan activities by charities.

Regulations on other NGOs’ political activities are more permissive, but include reporting requirements. 501(c)(4), (c)(5), and (c)(6) organizations (social welfare organizations, labor and agricultural organizations, and business leagues) can support political candidates, as long as it is not their primary purpose. They can also engage in an unlimited amount of lobbying, as long as lobbying is connected to their primary purpose. Lobbyists must register with the Secretary of the Senate and the Clerk of the House of Representatives (Lobbying Disclosure Act 1995, sections 3-5) and lobbying expenditures must be reported annually and are taxable.

The tax exemptions provided to NGOs in the United States are generous, including exemptions for the organization itself and tax benefits for individual and corporate donors. Organizations apply to the Internal Revenue Service (IRS) for an Employer Identification Number, whether they have employees or not, to become tax-exempt. NGOs then classify themselves according to Title 26, section 501(c) of the IRC. Finally, NGOs submit an application for tax exemption with the IRS, including their articles of incorporation, bylaws, and financial statements, and pay a fee. Once recognized as tax-exempt by the IRS, NGOs are required to file annual returns. Some documents, including annual returns, must be made publicly available. Charitable organizations, in addition, must comply with disclosure requirements for charitable donations. Individuals and corporations can take tax deductions for charitable donations to recognized 501(c)(3) organizations. Only in selected cases can other NGOs confer tax breaks on donors. For instance, contributions to 501(c)(4), 501(c)(5), and

501(c)(6) organizations “may be deductible as trade or business expenses, if ordinary and necessary in the conduct of the taxpayer’s business.”¹¹

Economic regulation of NGOs in the United States is highly permissive. All kinds of 501(c) nonprofit organizations, including charitable organizations, are allowed to conduct economic and business activities. If these activities are substantially related to an organization’s primary nonprofit purpose, they are tax-exempt. For example, if a natural history museum publishes an educational magazine that it sells for a small fee or if an NGO provides expert services to another NGO at less than cost, it is consistent with their nonprofit purpose. Unrelated business income, from “any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function,” (IRC, section 513) is subject to taxation.

Government efforts to tighten NGO regulations in the United States have generally failed due to NGO advocacy within state and federal legislatures and legal challenges by NGOs within state and federal courts. Courts have heard cases regarding NGO independence from state interference. Tax and accounting rules regarding NGOs have been clarified as a result of scandals involving nonprofit and for-profit organizations. For example, the Sarbanes-Oxley Act of 2002 has required NGOs to tighten their financial auditing processes. Allegations of government corruption have also produced increased regulations of NGOs. The Supreme Court decided in January 2010, however, that the Bipartisan Campaign Reform Act of 2002, which limited corporate spending—including non-501(c)(3) NGOs—on election campaigning was unconstitutional (*Citizens United v. FEC*). Court challenges have generally prevented national regulation on NGOs from becoming more restrictive. Given the stability of governing structures in the United States, and the recognition of NGOs’ role in service provision and interest representation, it is unlikely that the basic regulatory style of NGOs will change significantly in the near term.

In conclusion, barriers to entry for NGOs in the United States are low although organizations trade-off permissiveness of regulations for perks and privileges. Incorporation at the state level brings benefits in terms of legal protections and personality, while 501(c)(3) status brings tax benefits and government grants. Economic regulations are permissive for all, as all types of NGOs can conduct economic and business activities.

Japan

Laws governing NGOs in Japan date to 1896, but were changed in 1998 and 2006. The 1998 and 2006 laws have increased the ability of NGOs to participate in society, thus increasing the number of NGOs active in Japan, as well as reducing the extent of bureaucratic oversight. Analysts draw a causal link from the legal system, rather than cultural opposition to voluntary associations, to the limited number of NGOs in Japan, which in turn limited NGOs’ capacity to change governing institutions (Reimann, 2010). State–society relations in Japan are strongly influenced by Confucian moral

teachings which place the obligation for the welfare of individuals within the family and local community.

The nature of NGO regulation in Japan can be linked to the design of its administrative structures. Public administration in Japan is vertically organized and divided by bureaucratic agency. Between 1896 and 1995, NGOs were given legal status, and overseen, by the relevant government agency. The administrative structuring of NGOs served the purpose of dividing the NGO community and separating NGO advocacy by issue. Associations not-for-profit and not in the public interest had no legal basis to form. Despite guarantees to freedom of association in the constitution, the requirements to legally exist were set within the *Civil Code*. Additional Special Laws created new subcategories of public interest legal persons (NGOs), including social welfare groups (shakai fukushi hojin, 1951), schools (gakko hojin, 1947), and religious groups (shukyo hojin, 1951), which otherwise would have been denied as they did not fit within the bureaucratic structure. These new designations were part of forced liberalization after World War II by the Allied Powers (Pekkanen, 2000, p. 118).

Two classes of NGOs existed under initial Japanese regulations—a small number of incorporated organizations working closely with government agencies in formal partnerships and much larger numbers of unincorporated nonprofit organizations, without legal status, prohibited from advocacy, fundraising, and service delivery (Laratta, 2009, p. 308). Article 34 of the Japanese *Civil Code* (1896) stated that “Any association or foundation relating to any academic activities, art, charity, worship, religion, or other public interest which is not for-profit may be established as a juridical person with the permission of the competent government agency.” Such associations were referred to as “public interest corporations.” The number of public interest corporations created remained small for numerous reasons. First, government permission was required. Second, permission was granted by the appropriate government agency, making it difficult for organizations whose purposes encompassed the interest of multiple agencies. Third, bureaucrats imposed stringent requirements on organizations, for instance in their interpretation of a “sound financial base” (Pekkanen, 2000, p. 118; Pekkanen & Simon, 2003). The Japanese case fits our expectations about barriers to entry in corporatist systems. The inability of most NGOs to obtain legal personality, combined with bureaucratic discretionary powers and a complex web of legislation creating multiple types of NGOs, all contributed to a restrictive environment for NGOs in Japan. Furthermore, public interest corporations were prohibited from profit-making activities (Laratta et al., 2011, p. 52), leaving them economically dependent on donors. The state also provided NGOs with limited tax and other benefits (Pekkanen & Simon, 2003, p. 76).

Since 1995, the Japanese government has enacted multiple reforms to facilitate the creation of NGOs. The Law to Promote Specified Nonprofit Activities (SNPC Law), enacted in 1998, created a new legal form, the special nonprofit corporation (SNPC). Prior to 1998, organizations not considered to provide for the “public interest” (article 34 of the *Civil Code*) could not achieve legal status. In December 2008, this was replaced by a new set of three laws (signed in 2006). NGOs in Japan can now be general incorporated associations (“ippan shadan”—created by the new law), specified

nonprofit corporations (SNPCs), or special public benefit organizations (under special laws derived from article 34 of the *Civil Code*). Domestic and international activities by national and foreign NGOs are treated identically within these laws.

Based on the new act 48/2006, general incorporated associations, like SNPCs, are not required to operate for the “public benefit” to obtain legal status.¹² They must register with the Registry Office, however, and have at least two members, one trustee, and a general assembly. Large organizations must have an auditor. An organization wishing to be registered must show its statutes to a notary public prior to registration.

Once they are legally recognized, general incorporated associations can apply to receive public interest status (the equivalent of charitable status) in accordance with the *Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundation* (49/2006). The Public Interest Corporation Commission (PICC) is responsible for approving public interest applications and monitoring approved public interest organizations. To receive public interest status, an organization must be established for one of the 23 charitable purposes listed in the appendix to the act. It must also fulfill 18 basic requirements (Article 5).

SNPCs must also register with the governor of the prefecture in which their main office is located to obtain legal status (or with the Cabinet Office if operating in more than one prefecture) (Article 9). They must have at least ten members, three or more directors, and one or more auditors as their officers (Articles 10, 15). They must submit an application comprising their articles of incorporation, which must specify all matters enumerated in the law (Article 11), as well as a number of documents (regarding officers, inventory of assets, budget and operating plan for the two first years of operation, etc.; Article 10). Acts 48/2006 and 49/2006 and the SNPC Law have made the Japanese system less restrictive than in the past as more organizations can obtain legal personality, yet Japanese NGO regulations still impose high barriers to entry. NGOs must fulfill more extensive requirements and register with government officials.

The SNPC Law clearly states that NGOs cannot conduct activities “for the purpose of promoting, supporting, or opposing a political principle” or “the purpose of recommending, supporting, or opposing a candidate” (Article 2(2)). According to the Japan Association of Charitable Organizations (JACO), public interest organizations are equally prohibited from supporting specific political parties.¹² A 1996 Cabinet directive allows nonprofits to conduct political activities if they contribute to realizing their primary purpose.¹⁴ There is an ambiguous prohibition on “promoting, supporting, or opposing a *political principle*” (emphasis added) which could be used to restrict a variety of advocacy activities by NGOs opposing government measures.

Traditionally, Japanese NGOs have been highly dependent on government funding (Laratta et al., 2011, p. 52; Yamauchi et al., 1999, pp. 253-258). As of 1998, NGOs, including public interest organizations, are allowed to engage in profit-making activities, as long as these activities do not interfere with their primary purpose, and earned income has been a fast-growing source of revenue (Laratta et al., 2011, p. 52). “Interference,” in the case of public interest associations, is understood as spending less than half of the organization’s total expenditure on public interest activities (Act

49/2006, article 15). Taxation law divides income-generating activities into 33 categories. Any revenue generated outside of these 33 categories, for example membership fees, is exempt from income tax. Revenue generated through these activities is subject to a 22% tax for the first eight million yen, and a 30% rate, the same as corporations, afterwards. Nonprofit organizations can deduct up to 20% of their income if they use this to further their primary nonprofit purpose. In the case of economic activities, we conclude that the Japanese government does not legally prohibit NGOs' access to economic resources and, on paper, the tax benefits that NGOs can receive are similar to those in the United States. The regulation is restrictive in terms of its complexity and severity. NGOs must fulfill a number of conditions and it is very difficult to obtain the status necessary to confer tax benefits to donors; only 15 NGOs had gained this status as of 2003.¹⁵

In conclusion, new Japanese NGO regulations are more permissive than in the past. Yet, a large number of conditions are still imposed. Complex regulations with numerous restrictions and government authority to block the formation of NGOs create high barriers to entry. The political activities of NGOs are limited, including nonpartisan acts on "political principle", and tax status is difficult to achieve. While new regulations create opportunities for new types of NGOs to form, the overall regulatory style is still restrictive.

Conclusions and Implications

Our article explores how institutions of political representation influence national styles of NGO regulation. We expected that governments would have incentives to strictly regulate NGOs in societies where the structures of interest mediation are well established and closed to outside influence. In corporatist countries, NGOs present a potential risk for upsetting the political order and managed social consensus. In pluralist countries, NGOs provide a useful forum for societal voice, a means of organizing and representing social interests, policy information, and welfare provision which are otherwise lacking. In such countries, we expected governments to have enabling regulations with lower entry barriers, fewer restrictions on NGOs ability to combine advocacy with service delivery, and to raise resources from nontraditional channels. The statistically significant association between our NGO Regulatory Index and expert assessments of national levels of corporatism seems to confirm these expectations.

In Japan, complex regulations with numerous restrictions create high barriers to entry. The political activities of NGOs are limited, including nonpartisan acts on "political principle", and tax status is difficult to achieve. In the United States, national regulations allow a variety of types of NGOs to form with considerable degrees of economic and political freedom. Incorporation is not required for tax benefits, although it brings legal protections, and many types of organizations can engage in a wide range of political activities while receiving tax exemptions. NGOs are also free to engage in commercial activities as long as the money is used to fund core activities. We believe variations in NGO regulation would be even starker if comparing national NGO regulation in democracies and non-democracies, or the OECD and the non-OECD.

Arguably, by focusing on the OECD, our article examines the “hard cases,” the least likely scenario for observing variations in NGO regulations.

The NGO Regulation Index presented in this article should be useful for scholars seeking to explain cross-national variations in NGOs’ organizational structures, strategies, and tactics and provides another tool to examine NGO-state relations (building systematically and empirically on Salamon & Anheier, 1998). Given that most international NGOs (INGOs) are headquartered in the OECD countries, this index can illuminate the role of the “country of origin” (Prakash & Potoski, 2007) or the country in which INGOs are headquartered in shaping NGOs’ organizational structures, tactics, and global strategies. Such “home country” effects on transnational NGOs’ foreign operations are potentially long lasting (Stroup, 2012). Furthermore, NGOs carefully select countries of operation, and by carefully describing political opportunity structures, this index can help predict countries which are amenable to direct NGO campaigns (pluralist countries) as opposed to “boomerang effect” type campaigns (Joachim, 2007; Keck & Sikkink, 1998; Risse, Ropp, & Sikkink, 1999).

While we present a cross-section of national NGO regulation, we recognize that governmental regulations of NGOs might change. Exogenous events might give NGOs access to the lawmaking process. Increasing access might lead to regulatory change reinforced by the new power and influence of NGOs in the process. Regulatory reforms in Japan in 1998 and 2006 ushered in a change in the institutional setting for NGOs in Japan (Laratta & Mason, 2010). This change was made possible by the weakening of the central government, as loss of support for the ruling party led to a coalition government which appealed to NGOs for their electoral support, as well as exogenous events. Earthquakes in Japan in 1995 challenged emergency response capacity and NGOs were called upon to provide assistance. New regulations were needed to provide more NGOs legal personality (Pekkanen, 2000, p. 142). In the United States, new NGO regulations targeted at NGOs are also linked to an exogenous shock—9/11. The U.S. government has tightened accounting and reporting requirements because of the fear that charities were funding terrorist organizations.

Other changes also create incentives for states to revise NGO regulations. Policy diffusion might introduce new ideas about NGO regulation. New regulations in Japan resemble regulations in England and Wales, with oversight by an independent agency dedicated to NGOs (Laratta and Mason, 2010, 49). Not all trends point toward liberalization of NGO regulation (Dupuy et al., 2012). New developments in U.S. law increased requirements for accounting and reporting (Howell & Lind, 2009). The new IRS Form 990, which all NGOs must file annually, requires separate reporting of foreign activities.

Globalization may put pressure on corporatist institutions, opening political space for NGOs. For example, integration within the European Union has forced aspects of NGO regulation to change to accord with EU law. Tax law must conform to EU requirements on value-added taxes. There are also increasing opportunities for contact between NGOs and policy-makers with shifts toward open-method coordination within the EU, particularly for social policy. Shifts in NGO law are likely in the future, as “Europeanization” continues, although this may be due as much to NGO efforts to

implement new regulations which open political opportunities as top-down pressure from the EU (Jacobsson & Johansson, 2009, p. 175; Radaelli, 1997).

In conclusion, NGO scholars should bring governments explicitly back in to the study of NGOs. NGOs are not independent of the state, as the phrase nongovernmental suggests. Rather, their emergence and functioning is influenced by macropolitical institutions of the state. Scholars need to systematically examine national variations as a step in understanding NGOs' structures, strategies, and tactics. National regulations influence which NGOs emerge, where, and how they can function. While NGOs can shape policies and institutions, they are also shaped by broader state–societal arrangements (Midgal, 1988). States' preferences for NGO regulation reflect states' need, or desire, for institutions of political representation and interest articulation and mediation.

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Notes

1. For consistency we use the term NGO, but include in this category charities, advocacy organizations, service-oriented organizations, and civil society organizations that are non-profit and not officially linked to government.
2. Excluded actors might try to overcome such barriers. Keck and Sikkink (1998) describe gate-crashing strategies via the “boomerang effect.” We focus on the national regulatory environment in which NGOs function rather than NGO strategies to circumvent institutional obstacles.
3. We use the term pluralism, rather than liberalism (as used by Salamon & Anheier, 1998) in order to remain consistent with the literature in comparative politics on interest representation and interest groups.
4. Turkey and Iceland are omitted for lack of data; these countries are commonly excluded from analyses of corporatism.
5. Our NGO Regulation Index differs from the Civic Civil Society Index (CSI) (Heinrich & Fioramonti, 2008, pp. 258-261). Of the 44 countries in the CSI, only eight belong to the OECD. CSI measures concentrate on civil society organizations, their perceived impact,

and external context, while our Index focuses on national regulatory context.

6. Charities/public benefit organizations and associations/nonprofit organizations are sometimes regulated differently. When this occurs, the values are averaged.
7. Lijphardt & Crepaz, 1991 and Siaroff, 1999 are the most commonly used measures of corporatism, with 251 and 311 cites respectively. Their measures are based on experts' evaluations published between 1976 and 1990.
8. This is significant (Pearson $\chi^2 p = 0.012$).
9. <http://www.irs.gov/charities/article/0,,id=129028,00.html>
10. <http://www.irs.gov/charities/article/0,,id=163393,00.html>
11. <http://www.irs.gov/charities/nonprofits/article/0,,id=156411,00.html>
12. The Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundations (Act No. 49 of June 2, 2006) has been translated to English (see <http://www.japaneselawtranslation.go.jp/>). The two other new laws have not so we rely on translations in Miyakawa, 2006.
13. <http://www.kohokyo.or.jp/english/Charitable%20organizations%20in%20Japan/Regulation.html>
14. <http://www.usig.org/countryinfo/japan.asp>
15. <http://www.jnpoc.ne.jp/English/issues/issues.html>

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