



# **Regulatory Waves**

Comparative Perspectives on State  
Regulation and Self-Regulation Policies  
in the Nonprofit Sector

**Edited by Oonagh B. Breen,  
Alison Dunn and Mark Sidel**

**CAMBRIDGE**

# Regulatory Waves

COMPARATIVE PERSPECTIVES ON STATE  
REGULATION AND SELF-REGULATION POLICIES IN  
THE NONPROFIT SECTOR

*Edited by*

**OONAGH B. BREEN**

University College Dublin

**ALISON DUNN**

**MARK SIDEL**

University of Wisconsin



**CAMBRIDGE**  
UNIVERSITY PRESS

# CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
4843/24, 2nd Floor, Ansari Road, Daryaganj, Delhi - 110002, India  
79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107166851](http://www.cambridge.org/9781107166851)

© Cambridge University Press 2017

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2017

*A catalogue record for this publication is available from the British Library.*

*Library of Congress Cataloging-in-Publication Data*

Names: Breen, Oonagh, editor. | Dunn, Alison, 1969– editor. | Sidel, Mark, editor.

Title: Regulatory waves : comparative perspectives on state regulation and self-regulation policies in the nonprofit sector / edited by Oonagh B. Breen, University College Dublin; Alison Dunn; Mark Sidel, University of Wisconsin ; foreword by Marion Fremont-Smith.

Description: Cambridge [UK] : Cambridge University Press, 2016. | Includes index.

Identifiers: LCCN 2016027430 | ISBN 9781107166851 (Hardback) | ISBN 9781316617755 (Paperback)

Subjects: LCSH: Nonprofit organizations—Law and legislation. | Nonprofit organizations—Political aspects. | Nonprofit organizations—History.

Classification: LCC K656 .R43 2016 | DDC 346/.064—dc23 LC record available at <https://lccn.loc.gov/2016027430>

ISBN 978-1-107-16685-1 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

## REGULATORY WAVES

All governments, in various ways, regulate and control nonprofit organizations. Nongovernmental organizations (NGOs), while hopeful of supportive regulatory environments, are simultaneously seeking greater autonomy both to provide services and to advocate for policy change. In part to counter increasing statutory regulation, there is a global nonprofit sector movement toward greater grassroots regulation – what the authors call self-regulation – through codes of conduct and self-accreditation processes. This book drills down to the country level to examine both sides of this equation, examining how state regulation and nonprofit self-regulation affect each other and investigating the causal nature of this interaction. Exploring these issues from historical, cultural, political, and environmental perspectives, and in sixteen jurisdictions (Australia, Brazil, China, Ecuador, England and Wales, Ethiopia, Ireland, Israel, Kenya, Malawi, Mexico, Scotland, Tanzania, Uganda, United States, and Vietnam) the authors analyze the interplay between state control and nonprofit self-regulation to better understand broader emerging trends.

**Oonagh B. Breen** is a senior lecturer at the Sutherland School of Law, University College Dublin where she teaches NGO law. Her research focuses on comparative charity law regulation and governance and the development of more structured legal relationships between the state and the nonprofit sector. She has been a Research Fellow at Harvard's Hauser Center for Nonprofit Organizations (2009) and an Ian Potter Foundation Fellow at the Australian Centre for Philanthropy and Nonprofit Studies (2016) and serves on the boards of both the International Society for Third-Sector Research and the International Center for Not-for-Profit Law.

**Alison Dunn** is an independent researcher, having recently retired from the position of Senior Lecturer at Newcastle Law School, Newcastle University. Her research interests are in charity law and the law relating to nonprofits, particularly governance and the regulation of political activities of charities and nonprofit organizations, on which she has published widely. She is editor of *The Voluntary Sector, the State and the Law* (2000).

**Mark Sidel** is Doyle-Bascom Professor of Law and Public Affairs at the University of Wisconsin-Madison. In 2016 he is also serving as the Charles Stewart Mott Foundation Visiting Chair in Community Foundations at the Lilly Family School of Philanthropy at Indiana University. Sidel has served as president of the International Society for Third-Sector Research and as visiting professor of law at Harvard, Melbourne, Institut d'Etudes Politiques de Paris (Sciences Po), and other institutions.

## Notes on Contributors

**Susan Appe** is Assistant Professor of Public Administration at Binghamton University, New York. Her research focuses on government/nonprofit relations and the dimensions and evolution of the nonprofit sector in both developed and developing countries. She examines how government policy influences and shapes civil society and nonprofit organizations and their work in social development, and how and why nonprofit organizations form civil society networks and the implications of doing so. In addition, she researches the challenges and opportunities in nonprofit management education, particularly in the context of Latin America, and studies the development of international service learning in public affairs education. She has published articles related to government/nonprofit relations and collaborative governance and has taught several courses in arts management, public administration, and public policy. She has been awarded several research fellowships that include a Fulbright in Colombia (2006), a Fellowship at the University of Texas at Austin's RGK Center on Philanthropy and Community Service (2010), and a Rotary International Ambassadorial Scholarship in Ecuador (2010). She received her PhD in Public Administration and Policy from the Nelson A. Rockefeller College of Public Affairs and Policy at the University at Albany, State University of New York.

**Putnam Barber** is Senior Advisor at the Nancy Bell Evans Center on Nonprofits and Philanthropy at the University of Washington Evans School of Public Affairs, Seattle, and is the Book Review Editor for *Nonprofit and Voluntary Sector Quarterly*. He has taught on nonprofits in the MPA program at the University of Washington and Seattle University. He is an advisor to the American Law Institute's project to develop a volume presenting "A Restatement of the Law of Charitable Nonprofit Organizations." In addition to his work with the Nancy Bell Evans Center, Putnam has worked for many years to

build strong nonprofits and communities in his home state of Washington through service with the Evergreen State Society, Executive Alliance, and Institute of Public Service at Seattle University. He was a founding member of the board of Washington Nonprofits, an association that connects nonprofits throughout the state.

**Oonagh B. Breen** is a senior lecturer at the Sutherland School of Law, University College Dublin where she teaches NGO law. A Yale Law School graduate and a qualified barrister, her research focuses on comparative charity law regulation and governance and the development of more structured legal relationships between the state and the nonprofit sector. A former Fulbright Scholar and Government of Ireland Research Fellow, Oonagh holds an ARNOVA Emerging Scholar Award (2006) and an International Center for Not-for-Profit Law (ICNL)/Cordaid Distinguished Research Award (2008). She has been a Research Fellow at Harvard's Hauser Center for Nonprofit Organizations (2009) and an Ian Potter Foundation Fellow at the Australian Centre for Philanthropy and Nonprofit Studies (2016) and currently serves on the boards of both International Society for Third-Sector Research and ICNL. Oonagh has published extensively in the field of charity regulation both nationally and internationally and has participated actively in policy processes leading to the reform of charity law in Ireland.

**Noy Brindt** is a PhD student in the law faculty of Haifa University, Israel. His doctoral work is focused on institutional analysis of nonprofit organizations' legal frameworks. His research interests include organization law, nonprofit theories, nonprofit economic analysis, and organizations' institutionalism. Noy is an attorney at law (LLB, LLM) and an economist (BA). He works as a researcher at Van Leer Forum for Civil Society Organizations and at the Van Leer Jerusalem Institute and serves as legal advisor for nonprofit organizations.

**Alison Dunn** is an independent researcher, having recently retired from the position of Senior Lecturer at Newcastle Law School, Newcastle University. She received her PhD from Leicester University. Her research interests are in charity law and the law relating to nonprofits, particularly governance and the regulation of political activities of charities and nonprofit organizations. She has undertaken appointment panel work for the Judicial Appointments Commission in the Ministry of Justice for the first judicial appointees to the charity law tribunal for England and Wales, as well as commissioned socioeconomic research on trustee exemption clauses for the English Law Commission. She is editor of *The Voluntary Sector, the State and the Law* (2000).

**Megan M. Farwell** is a doctoral student at the University of Pennsylvania's School of Social Policy and Practice. She has collaborated on several research projects examining the third sector and has direct experience in program administration at the community, city, and county level. She holds an MPA degree and a Master of Social Work degree from the University of Washington; her thesis examined changes to nonprofit operations and service provision during the Great Recession.

**Marion R. Fremont-Smith** is a senior research fellow at the Hauser Institute for Civil Society of the Center for Public Leadership at the Harvard Kennedy School. She joined the Hauser Center for Nonprofit Organizations at Harvard, the predecessor to the institute, in 1988 and since then has conducted research on governance and accountability of nonprofit organizations. She is the author of *Governing Nonprofit Organizations: Federal and State Law and Regulation* (2004). Marion is also currently serving as Co-Reporter of the Restatement of the Law of Nonprofit Charitable Organizations of the American Law Institute. She has published two other books and numerous papers on government regulation of nonprofit organizations. Fremont-Smith's interest in nonprofit organizations began in the 1960s when she served as assistant attorney general and director of the Division of Public Charities in Massachusetts. In 1964 she joined the Boston law firm of Choate, Hall and Stewart where she specialized in tax and nonprofit law. She was elected partner in 1971, retiring in 2004. Fremont-Smith received a BA from Wellesley College in 1948 and a JD from Boston University School of Law in 1951.

**Mary Kay Gugerty** serves as the Nancy Bell Evans Professor in Nonprofit Management at the University of Washington Evans School of Public Affairs, Seattle. Her scholarship seeks to increase our understanding of how individuals and organizations engage in collective action and build institutions of collaborative governance. She currently directs research projects funded by the National Science Foundation to examine the design of nonprofit voluntary regulation programs, by the United States Agency for International Development (USAID) to investigate how community-based organizations can improve outcomes for female farmers in Tanzania, by Google to explore how nonprofits can collect decision-driven data to support program improvement, and by the International Development Research Centre (IDRC) to study the strategies and influence of think tanks in developing countries. Mary Kay is the lead editor of *Voluntary Regulation of Nonprofit and Nongovernmental Organizations: An Accountability Club Framework* (Cambridge University Press, 2010), along with numerous journal articles. She holds a PhD in

political economy and government from Harvard University, an MPA from the John F. Kennedy School of Government at Harvard, and a BA in political science and economics from Georgetown University.

**Michael D. Layton** is one of the foremost experts on philanthropy and the nonprofit sector in Mexico. He is currently an independent consultant and researcher. Prior to this, Michael was a Professor of International Relations at the Autonomous Technological Institute of Mexico, where his achievements include creating the Project on Philanthropy and Civil Society, developing Mexico's first national survey on giving and volunteering (ENAFI), and participating in the creation of *fondosalavista.mx*, Mexico's premier transparency website for foundations and nonprofits. Michael is the author and editor of numerous books and articles on the nonprofit sector in Mexico and Latin America and was a Visiting Scholar in the Center on Philanthropy and Public Policy, Sol Price School of Public Policy, University of Southern California. He earned a master's degree and a doctorate in political science from Duke University (1993, 1997), and he graduated with a bachelor's degree in philosophy from Haverford College (1982).

**Nissan Limor**, PhD, is a senior research fellow at the Institute for Law and Philanthropy, Buchmann Faculty of Law, Tel-Aviv University; a faculty member of the College for Academic Studies, Or Yehuda; and Chair of the Center of Civic Responsibility in this college. His academic work covers a variety of areas, including civil society, third-sector organizations, higher education, and economy of education. He taught previously at the Hebrew University of Jerusalem, the Paul Baerwald School of Social Work and Social Welfare, MA Program for Management of Nonprofit and Community Organizations, and at Ben-Gurion University of the Negev, Guilford Glazer School of Business and Management, MA Program for Management of Nonprofits. Nissan has written and edited six books (on nonprofit management, regulation, and auditing) and numerous articles and policy and position papers. He has also served as a Senior Research Fellow and the Head of the Van Leer Forum for Civil Society Organizations, at the Van Leer Jerusalem Institute. He is a former Director General of the Office of the President of Israel, and a former Director General of the Israeli Council for Higher Education.

**Marcelo Marchesini da Costa** is a PhD student in Public Administration and Policy at the Nelson A. Rockefeller College of Public Affairs and Policy, University at Albany, State University of New York. His research is focused on nonprofit/government relations and governance in Brazil and other Latin American countries. He has been awarded scholarships from the Latin

American Council of Social Sciences (CLACSO) and from the Brazilian research agencies CNPq and Capes. His professional experience includes several years working in Brazilian agencies in the areas of health, culture, and social development.

**Myles McGregor-Lowndes**, OAM, is Professor and Founding Director of the Australian Centre of Philanthropy and Nonprofit Studies (ACPNS). ACPNS has a multidisciplinary research focus located in the Queensland University of Technology (QUT) Business School and is known for its research in nonprofit law, governance, fundraising, and philanthropy. Myles has written extensively about nonprofit tax and regulation, nonprofit legal entities, government grants, and standard charts of accounts as a means of reducing the compliance burden. He was a member of the 2010 Productivity Commission Report on the Nonprofit Sector for the Australian Government, which made extensive recommendations for the reform of the sector. He is a founding member of the Australian Tax Office Charities Consultative Committee and the Australian Charities and Not-for-profits Commission Advisory Board and served as Chair of the Australian Council for International Development Code of Conduct Committee. In June 2003, Myles was awarded a Medal of the Order of Australia (OAM) "For service to the community by providing education and support in legal, financial and administrative matters to nonprofit organizations."

**Mark Sidel** is Doyle-Bascom Professor of Law and Public Affairs at the University of Wisconsin, Madison, and consultant for Asia at the International Center for Not-for-Profit Law (ICNL). He has served as president of the International Society for Third-Sector Research, the international academic association working to strengthen research on civil society, philanthropy, and the nonprofit sector; on the US Council on Foundations Community Foundations National Standards Board; as consultant to the Ford, Gates, and Asia foundations, Norwegian government, ICNL, US Department of Justice, US Department of State, UK Serious Organised Crime Agency, and other groups; and visiting professor at Harvard, Melbourne, Institut d'Etudes Politiques de Paris (Sciences Po), and other institutions. Earlier Sidel served with the Ford Foundation in Beijing, Hanoi, Bangkok, and New Delhi. His books include *Central-Local Relations in Asian Constitutional Systems* (forthcoming, co-edited), *Regulation of the Voluntary Sector: Freedom and Security in an Age of Uncertainty* (2010), and *Law and Society in Vietnam* (Cambridge University Press, 2008).

## Foreword

This volume meets the hopes of every author: it is authoritative, timely, and groundbreaking. Since the latter half of the twentieth century, members of the charitable sector, regulators, and scholars have been increasingly interested in the operations of the sector, its marked growth worldwide, questioning the purpose of regulation, and attempting to devise optimum systems of regulation that are geared to the needs of a specific country. In some instances, that perceived need may be to gain or keep control of the sector; in others, it may be to provide greater freedom to the sector to permit it to better meet the needs of society. To date there has been no attempt to study the interplay of state and voluntary regulation in one country, let alone the sixteen that this volume provides. Furthermore, no study has succeeded in analyzing the relationship of the size and extent of government regulation with the size and extent of self-regulation, nor considered the relationship of these two components of the regulatory framework as their respective power and influence fluctuate over time. Finally, no study has attempted to look at the extent of regulation *vis-à-vis* self-regulation as a series of waves that ebb and flow over time within specific jurisdictions as well as among others, some geographically adjacent, others aligned by the nature of their governing structure. In short, there is enough material in Chapter 1 to provide scholars with subjects for many years of research and analysis.

Among the country- and region-specific studies of regulation and self-regulation in sixteen jurisdictions, Chapter 2, on the waves of regulatory power in Britain, provides a vivid picture of the shifting powers of the chief regulators, the Charity Commissioners, over centuries – historically, the waves of regulation. The chapter contains a description of what is categorized as fairly sudden changes in the powers of the Commissioners during the last twenty years, with self-regulation expanding while the power of the Commissioners was declining and, within the last ten years, the emergence of what is described as “co-regulation.” This is a new form of cooperation between state

regulators and organizations created to provide self-regulation. The change in roles has led to a division of powers, permitting the Charity Commission to conserve resources and focus on enforcement, rather than providing advice on compliance, matters which the self-regulators will in turn provide.

Co-regulation also appears to be developing in China where the government is supporting nonstate actors to coordinate data gathering. It appears that the Israeli government may also be considering using nonprofit self-regulators for state purposes. Co-regulation is one of the subjects delineated in this study that warrants greater attention in all countries, not just those noted in the study in which government regulation has been notably strong and co-regulation appeared to be the only choice when the political will was aimed at reducing the scope of central government regulation.

“We do not yet know whether this will be a receding wave or what might be designated a tidal wave.” One of the unique contributions of the studies in this volume is the manner in which the authors address the overriding question posed in its title. And one should approach the volume with this in mind. If, in fact, the case studies do not help one to predict the answer to the question of what kind of a wave is about to reach the shore, they do indicate that one of the most important factors may be the political one. And if the political situation in a particular jurisdiction is the overriding factor determining the nature and scope of government regulation, charitable nonprofits may not be able to control outcomes. Nonetheless, the final sets of recommendations are ones that will prepare the nonprofit sector for what is to come, strengthening its responses to attempts to preempt its autonomy and thereby preventing it from carrying out its essential role in meeting the needs of society.

The authors and editors are to be commended for these groundbreaking studies. Readers will be rewarded by the insights on regulation, self-regulation, and co-regulation. In addition, the descriptions of the shifting waves of power between regulators and nonprofit organizations regarding the degree of state control of the sector within individual countries and among common geographical areas are invaluable. The concluding chapter contains suggestions for improving self-regulation. They reflect a distillation of the information gathered in the individual case studies. Even for one who might disagree with the conclusion that self-regulation is the answer to the future of all-encompassing regulation, this book is a milestone in research on the nonprofit sector, one that warrants attention and, one hopes, inspires broader and more in-depth studies of its kind.

Marion R. Fremont-Smith  
*Hauser Institute for Civil Society*  
*Harvard University*

## Acknowledgments

This project was conceived and began life in the midsummer heat of Siena, Italy, in July 2012. During a coffee break between sessions at the biennial conference of the International Society for Third-Sector Research (ISTR), the conversation of the co-editors of this book turned to the notion of regulatory cycles in the nonprofit arena. As we shared updates from each other's jurisdictions, our curiosity grew as we began to ponder whether the transitions and links we were witnessing between state regulation and self-regulation in our home countries were being replicated in other parts of the world and, if so, how these changes between regulatory forms could be explained or perhaps even predicted. The ebb and flow of what was to become the *Regulatory Waves* project that started at ISTR was to continue over the following four years as we invited nonprofit scholars in eleven other jurisdictions to come on this journey of discovery with us.

We are indebted to ISTR for providing us with the reflective space to start this conversation in Siena and then in allowing us to present two sessions of workshop papers at the 2014 conference in Muenster, Germany, and a progress update on the work at the ISTR Latin American Regional Conference in Puerto Rico in 2015. We are equally grateful to the Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA) for facilitating conference sessions on the *Regulatory Waves* project at its annual conferences in Hartford, Connecticut, in 2013 and Denver, Colorado, in 2014. The value of international collaborative forums such as ISTR and ARNOVA should not be underestimated in their bringing together nonprofit lawyers and academics from many disciplines and allowing a natural sharing of learning to occur. For us, these academic gatherings provided an opportunity to convene our team of collaborators, allowing us to keep the momentum going. They also introduced us to new scholars who, intrigued by our research question, came to our workshops, joined our ranks, and subsequently became valued members of our team as this project took shape.

We are extremely grateful not only to the contributors to this volume but to our many unnamed but much appreciated colleagues in both ISTR and ARNOVA who attended our sessions, plied us with constructive and critical questions, and continued to support us in the completion of this project long after the conference banners had been taken down and the circus had left town for another year.

We also gratefully acknowledge support from our universities and other institutions. In this regard, Oonagh Breen's attendance at ISTR and ARNOVA meetings was made possible by the generous support of both University College Dublin (UCD) Seed Funding and UCD Sutherland School of Law research awards. Alison Dunn's attendance at ISTR and ARNOVA meetings was made possible by generous funding support from Newcastle Law School, Newcastle University, and the funding attached to her Vice Chancellor's Distinguished Teaching Award (2013). Mark Sidel's participation at the ISTR and ARNOVA meetings and research in China and Vietnam was made possible by generous support from the University of Wisconsin-Madison, University of Wisconsin Law School, International Center for Not-for-Profit Law (ICNL), United Nations Development Programme (UNDP), and the Luce Foundation (via a grant to Indiana University).

We are honored that one of the founding figures in nonprofit law, Marion Fremont-Smith, graciously agreed to write the Foreword to this volume. Marion's long career focusing on the regulation and governance of nonprofit organizations and her expertise not just in US regulation but also her abiding interest in Asian and Anglo/Irish nonprofit regulatory regimes made her a perfect choice. We thank her sincerely for her kind comments.

We are grateful for the interest in this project and the strong support provided by Matt Gallaway, Finola O'Sullivan, and the exceptional law team at Cambridge University Press. We offer our sincere thanks, too, to the peer referees who reviewed our book proposal and made excellent constructive suggestions.

We hope that this work will provide a solid foundation from which to continue the important task of theorizing the regulation of the nonprofit sphere. We believe that the insights into the interactions between state regulation and self-regulation of nonprofit organizations in this work provide a useful basis for reexamining the nature and longer-term policy implications of such regulatory waves not just in the area of nonprofit law but in the broader area of regulatory governance more generally. We look forward to continuing this conversation with policymakers, academics, and stakeholder organizations in both the nonprofit sphere and beyond.

Oonagh B. Breen  
Alison Dunn  
Mark Sidel

## Contents

<i>Notes on Contributors</i>	page vii
<i>Foreword</i> by Marion R. Fremont-Smith	xiii
<i>Acknowledgments</i>	xv
<b>1 Regulatory Waves: An Introduction</b>	<b>1</b>
<i>Oonagh B. Breen, Alison Dunn, and Mark Sidel</i>	
<b>2 Eddies and Tides: Statutory Regulation, Co-Regulation, and Self-Regulation in Charity Law in Britain</b>	<b>21</b>
<i>Alison Dunn</i>	
<b>3 Waiting for the Big Wave: A Fifty-Year Retrospective on the Ebb and Flow of Irish Charity Regulation</b>	<b>45</b>
<i>Oonagh B. Breen</i>	
<b>4 Shifting Patterns of State Regulation and NGO Self-Regulation in Sub-Saharan Africa</b>	<b>69</b>
<i>Mary Kay Gugerty</i>	
<b>5 State Regulation and the Emergence of Self-Regulation in the Chinese and Vietnamese Nonprofit and Philanthropic Sectors</b>	<b>92</b>
<i>Mark Sidel</i>	
<b>6 The Regulation and Self-Regulation of Civil Sector Organizations in Israel</b>	<b>113</b>
<i>Nissan Limor and Noy Brindt</i>	
<b>7 Regulation and Self-Regulation in the Mexican Nonprofit Sector</b>	<b>132</b>
<i>Michael D. Layton</i>	
<b>8 Waves of Nonprofit Regulation and Self-Regulation in Latin America: Evidence and Trends from Brazil and Ecuador</b>	<b>154</b>
<i>Susan Appe and Marcelo Marchesini da Costa</i>	

9	<b>Australia: Co-Production, Self-Regulation and Co-Regulation</b>	176
	<i>Myles McGregor-Lowndes</i>	
10	<b>The Relationships between State and Nonstate Interventions in Charitable Solicitation Law in the United States</b>	199
	<i>Putnam Barber and Megan M. Farwell</i>	
11	<b>Regulatory Waves: A Conclusion</b>	221
	<i>Alison Dunn, Oonagh B. Breen, and Mark Sidel</i>	
	<i>Index</i>	245

# Regulatory Waves

## *An Introduction*

OONAGH B. BREEN, ALISON DUNN, AND MARK SIDEL

### 1.1 INTRODUCTION

The same water – a different wave.

What matters is that it is a wave.

What matters is that the wave will return.

What matters is that it will always return different.

What matters most of all: however different the returning wave,  
it will always return as a wave of the sea.<sup>1</sup>

Regulatory intervention in the nonprofit sphere tends to come in waves. Such intervention often takes the form of statutory regulation and, in recent decades, frequently includes self-regulatory initiatives as well. In more recent years, combinations of self-regulation and statutory regulation – sometimes referred to as “hybrid” or “co-regulation” – have also begun to emerge. Academic scholarship has tended to focus on these forms of regulation as distinct entities, examining their strengths and weaknesses in the context of individual models of regulatory governance.<sup>2</sup> To date, however, there has been no scholarly attempt to undertake an examination of both kinds of nonprofit regulatory frameworks with a view to discerning the contributing factors that might cause a state to switch between one form of regulatory regime (for example, statutory regulation) and another (for instance, self-regulation or co-regulation), or to combine them. Neither has there been a comparative analysis of the possible environmental factors that inform or perhaps influence the frequency, timing, or degree of switching between nonprofit regulatory regime types, nor how they influence each other in practice.

<sup>1</sup> Marina Tsvetaeva, “Poets with History and Poets without History,” (1934), first published as “Pesnici sa istorijom i pesnici bez istorije,” *Ruski Arhiv* 26–27 (1934): 104–142.

<sup>2</sup> Mary Kay Gugerty and Aseem Prakash eds., *Voluntary Regulation of NGOs and Nonprofits: An Accountability Club Framework* (Cambridge: Cambridge University Press, 2010).

A short word on terminology, as used in this book, is perhaps merited here. Statutory regulation is concerned with a government-driven process resulting in either primary or secondary legislation giving effect to the regulatory goals. The regulation, developed with or without nonprofit sector input, applies universally to those entities covered by the legislation. In the case of non-statutory regulation, the sector rather than the state takes up the role of developer and enforcer of the regulatory regime. The democratic nature of nonstatutory regimes depends on the sector's composition and its commitment to collective action. Once initiated, unlike statutory regulation, non-statutory regimes are normally dependent on voluntary adherence and compliance. Enforcement and sanction imposition generally lack state imprimatur and may be dependent on a contractual enforcement basis. Between the polar ideals of pure statutory and nonstatutory regulatory regimes lies the emerging sphere of co-regulation or hybrid regulation. This regulatory form tends to be developed by or on behalf of the sector (like self-regulation) but with the active funding or participation of the state (like statutory regulation). While compliance and enforcement in the first instance lie with the sector, co-regulation is often viewed as complementary or supplementary to statutory regulation such that ineffective enforcement of co-regulation may result in the triggering of the state's default power to regulate statutorily.

This book explores whether there is an underlying relationship between statutory and nonstatutory regulation models in the context of nonprofit regulatory frameworks and sets out to investigate the extent to which the nature of the regulatory conversations occurring in sixteen jurisdictions inform the resulting regulatory models, influences, and regulatory relationships. By delving into the regulatory narrative and analyzing the factors that inform the interaction between statutory and nonstatutory regimes, we seek to glean a better understanding of the catalysts for regulatory change. Exploration of the country narratives at hand allows us to highlight the common trends emerging in these country case studies. Drawing on these shared experiences, we can begin to articulate policy principles that may assist decision makers to choose the best options for effective facilitation and management of the third sector from among the array of regulatory tools on offer.

This work posits that there is an ongoing causal relationship existing between statutory and nonstatutory regulation of the nonprofit sector. As with the ebb and flow of the tide, so with the ebb and flow of statutory and nonstatutory regulation; in some cases, one form growing in strength as the other lessens its hold over the sector, or the two co-existing in some uneasy or easy form. An initial hypothesis might be to view the relationship between regulatory forms as a zero sum game. When statutory regulation is in the