

“Institutional Environment and The Organization of Advocacy NGOs in the OECD”

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INGO research in general, and contributions to this volume in particular, tend to focus on the agency of NGOs and their ability to organize campaigns, gather resources, and access decision-making in order to shape foreign policy and international regimes. This chapter takes a slightly different approach by starting from the political institutions which frame NGO advocacy. I examine national legislation within OECD countries to gauge the space available to NGOs for advocacy and thus the structures, activities, and locations of the NGOs that might emerge. Existing literature has focused on states and international organizations as the targets for advocacy NGOs campaigns, but governments also make the rules within which NGOs operate. From a collective action perspective, national legislation sets barriers to entry in the political marketplace, the costs of organization, the incentives available to attract members and financing, the organizational forms and legal identities available to advocacy groups, and strategies for advocacy. Opportunities and constraints written into national legislation affect the ability of advocacy organizations of some types to operate within a given country and affect the choice of a new location for an expanding international advocacy NGO.

This chapter investigates the scope and the specificity of national legislation regarding advocacy NGOs within the Organization for Economic Cooperation and Development (OECD) in order to answer three questions. 1) How do governments approach advocacy NGOs and what means do they use to regulate NGO operations within their jurisdiction? 2) Are there systematic patterns in national legislation which indicate a preference for (bias towards) particular types or designs for advocacy NGOs and the tactics they employ? 3) To what extent can and do

governments set the barriers to entry for advocacy NGOs and thus shape the populations of advocacy NGOs that emerge within their jurisdiction?

The reasons as to why advocacy NGOs emerge in some institutional contexts and not in others, or why advocacy NGOs adopt different organizational forms in different countries or issue areas, are not fully understood. A collective action approach to advocacy NGOs which focuses upon the incentives and constraints presented by national legislation can help to fill this gap. The gaps in our understanding about the emergence and operation of advocacy NGOs are exacerbated by an empirical problem. We lack a systematic record of national laws regarding advocacy NGOs' emergence, organizational structure, and legal identity. This chapter uses a new dataset containing national legislation on rules regarding the legal identity, rights, responsibilities, available resources, and political freedoms for advocacy NGOs in the members of the Organization for Economic Cooperation and Development (OECD). I find that different countries view advocacy NGOs very differently and thus take different approaches to regulating their activities. Governments such as Norway and Sweden see NGOs in a positive light, as groups working towards the common interest, and thus national regulations on the creation and operation of an advocacy NGO are quite friendly and impose few burdens on an organization. In countries such as Switzerland and Luxembourg NGOs are seen primarily as economic entities and thus the majority of legislation concerns taxation and accounting standards. In countries such as Hungary and Poland, NGOs have their own codes as civil society organizations and are generally nurtured and protected.

To the extent that national regulations raise barriers to entry to advocacy NGOs within a country they allow decision-makers to select for NGOs that are likely to form constructive, cooperative partnerships. States regulate advocacy NGOs to force them to reveal specific

markers of reputation and credibility. Registration and accounting rules allow governments to track the leadership, resources, activities, and contacts of advocacy NGOs and ensure that they behave in a responsible fashion. Proscribing behavior and explicitly describing procedures for dissolution provide a means to quickly and credibly punish undesirable behavior. In most countries, the minimum resources necessary to form an advocacy NGO are minimal, at least in terms of legal requirements. The costs come from the requirements to account for resources, register activities, and file documents. In all countries advocacy NGOs which break national laws, including engaging in racism or tax evasion, can be immediately disbanded and lose all legal status and rights.

This research has several interesting implications for our understanding of advocacy NGOs and patterns of their emergence and organization. First, this research addresses the relationship between governments and advocacy NGOs as interdependent actors. While their goals may diverge, they are engaged in a common policy enterprise and may find mutually beneficial collaboration possible. Government decision-makers thus seek to use national legislation to regulate the formation and operation of advocacy NGOs in order to encourage the formation of some types and deter the creation of others. The easiest way to do this is to set high barriers to entry via strict rules for gaining legal identity and access to policy-making which privilege some types and forms of organization over others. Second, as national regulations shape the population of advocacy NGOs that emerge, some types of NGO advocacy may become extinct, at least in some countries. The constraints imposed by government regulation may thus limit NGO voice and decrease the range of perspectives and issues appearing on policy agendas, even as collaboration with governments increases and advocacy NGOs seem to make headway in influencing policy-making.

Advocacy NGOs and Institutional Affinities

Literature on non-profit, non-governmental organizations in international relations well as economics and public administration agrees that not all geographic locations are equally agreeable to the operation of NGOs and that NGOs ought to prefer some locations over others. While the location of NGO operations may be dictated in part by their issue focus (local groups advocating change in local legislation will have to work locally), theories of collective action and the new economics of organization add that external institutions can have a strong effect on the ability of organizations to function in certain contexts.

Academic literature on NGOs in international relations argues that NGOs focus their advocacy efforts within liberal democratic countries while treading lightly (if at all) within authoritarian and repressive regimes, even when it is the policies of these countries they most often want to change. Risse, Ropp, and Sikkink's boomerang model and Finnemore and Sikkink's norm cascade are classic examples of thinking on advocacy NGOs. NGO activism in key Western states creates domestic pressure within liberal democracies which then put diplomatic pressure on closed regimes for norm-based policy change. (Risse, Ropp, and Sikkink 1997; Keck and Sikkink 1998; Finnemore and Sikkink 1995) Within sociology, collected volumes on global civil society and non-profits (the third sector) focus upon OECD countries, even while activism is geared towards economic and political change within developing countries. In Salamon, Sokolowski and Associates' *Global Civil Society*, 18 of 23 chapters concern OECD countries. Only in volume 2, published in 2004, do they begin looking in earnest at non-OECD countries. Anheier and Seibel's ed. *The Third Sector* (1990) has only one chapter devoted explicitly to non-OECD countries.

Advocacy NGOs' preferences for certain locations over others are variously linked to the issues they pursue, their need for financing, and the nature of domestic political institutions. The expectation that most advocacy NGOs will be located in Western, liberal democracies is based upon the freedoms and access civil society organizations are guaranteed within national constitutions and by liberal principles as well as the availability of funding from wealthy foundations. (Lipschutz, 409-413; Reimann 2006) Keck and Sikkink and Risse, Ropp, and Sikkink reiterate the expectation that advocacy NGOs, given the choice, will locate in places in which they have access to the policy making process, which depends upon both the institutional environment and shared principles and priorities. Often Middle Power liberal democratic states provide the most fodder for state partnerships and access to IGOs. This sense is supported empirically in the findings of Skjelsbaek, Feld, Boli and Thomas, and Smith and Weist. In quantitative studies of the activities of international NGOs from 1693 through 2000, all four studies find that most international NGOs are headquartered and financed within OECD countries. (Skjelsbaek 1971; Feld 1972; Boli and Thomas 1999; Smith and Weist 2005) Only in the 1960s and 1970s, have significant numbers of international NGOs added memberships, financing, and offices in first Latin America and then Asia and Africa followed by Central and Eastern Europe in the 1990s. (Boli and Thomas 1999, 32-34; Mendelson and Glenn 2002, 1-5; Reimann 2006, 51-4) As democracy spreads and globalization enables dense network linkages on a global scale, we see an increasing number of advocacy organizations active in an increasing number of locations, although with a strong preference for democracy and stability.

National Legislation and NGOs' Collective Action Problem

While the number of advocacy organizations grows as global civil society and the third sector expand, 1) advocacy organizations are not spread evenly around the world and 2) advocacy NGOs take on many different forms. (Salamon et al. 2004, 15-20) This raises questions about whether there is a link between national institutions and the advocacy organizations that result. Insights from the collective action approach to group formation and the new economics of organization help to understand the effect of institutional constraints and opportunities on ability of groups to organize and operate and thus resulting populations of NGOs.

While the collective action approach focuses on internal factors which affect the organization and operation of groups, external institutional factors matter to extent that they affect the calculations of members of a potential group (Moe 1980; Yarborough and Yarborough 1990; Baumgartner and Leech 1998). This chapter links the collective action approach with new economics of organization in order to understand how advocacy NGOs form in response to national regulations given the effects these institutions have on their ability to overcome collective action problems. I build from the central realization by Olson that not all possible groups have an equal likelihood of forming or participating in politics. Group size, strength of motivation (including the interests at stake), and the ability to offer selective incentives (or to restrict the benefits of advocacy to members of the group) all affect the ability of a group to organize and advocate. (Olson 1965) If not all interests can and will be represented within politics as a result of this problem, the natural direction of research is to parse out the lucky from unlucky. Olson concluded that private interest groups are likely to win over public interest groups, but gave fewer insights into variations among advocacy NGOs.

I argue in this chapter that there is a second set of factors at work. Reflexive, self-interested decision-makers (the targets of interest group advocacy) are aware of the collective

action problem and the biases that result for the formation of interest groups. Decision-makers thus have an incentive to use national institutions to select for certain types of groups and the representation of certain interests over others for their own reasons. But in a globalized world of transnational advocacy NGOs also have choices. They can choose where and how to operate when they create new organizations and pick institutional settings which are most favorable to their strengths and interests. National legislation regarding NGOs must thus both consider the costs to organizing and the barriers to entry that decision-makers wish to impose.

The nature of the relationship likely between governments and NGOs depends on several factors related to the degree to which each side needs and accepts the existence of the other. First, in order for there to be a positive and cooperative relationship, the government must accept institutional pluralism (and the very right of NGOs to exist as legitimate economic and political actors), a condition which is much more likely in democratic states than in authoritarian or dictatorial countries. (Coston 1998, 366-7) Second, the relationship between government and NGOs is more likely to be mutually desired, and thus more extensive, if there is a possible resource exchange between the government and the NGO. Governments may need information, expertise, services, or even material resources from NGOs, while NGOs may need institutional access, information, or material resources from the government. (Meyer 1997; Stoddard 2006) The degree to which each side needs something from the other depends upon the functions provided by the NGO (services versus advocacy) and the relative capacity of each. (Anheier 1996; Smillie 1995; Gazley and Brudney 2007) Lastly, the nature of the relationship depends on the comparative advantages of both the government and the NGO and the possible complementarity between the operations and goals of both. (Coston 1998)

Competition between a government and NGOs is more likely to result when government fears a threat from autonomous NGOs which might challenge the power and resource base of the state by offering critiques of existing government policies and practices and alternative services. Advocacy NGOs are particularly threatening by virtue of the opportunity for participation and critique that they may introduce (Hulme and Edwards 1997; Coston 1998; Salamon and Anheier 1996; Gazley and Brudney 2007) Governments fearing competition or rivalry with NGOs can use legislation to mandate reporting by NGOs and to limit NGO operations and scope of activity, which might so decrease NGO efficacy as to cause the organization to fail. (Coston 1998, 364) Governments seeking cooperation and complementarity, on the other hand, anticipate benefits from the sharing of information, resources, joint action, and co-production of services (including democracy). In these cases regulations can help to foster information flows between government and NGOs by creating formal channels of exchange and opportunities for advising, supporting the institutional development of advocacy organizations, and laying out standardized procedures to award grants and contracts. (Coston 1998, 370; Evans 1996)

Insights from the new economics of organization help to understand the effects of national legislation on collective action and advocacy. Transaction cost economics and work on the principal-agent problem can be used to understand the impact of different sets of national regulation on the cost to establish and run an NGO and thus the NGOs that result. (Salamon and Toepler 2000) Governments have mixed interests regarding the regulation of NGOs. While certain tasks can and should be delegated to NGOs, as independent actors NGOs have distinctive interests and a strong desire to use their relationship with government for their own ends. Government regulation can be used to limit NGO independence, increase the ability to monitor their activities and results, and force NGOs to reveal their preferences and goals. (Yarborough

and Yarborough 1990; Moe 1984) The more burdensome and costly it is to form an NGO given institutional restraints in national regulation, then the less likely a group is to be able to organize and provide this organization. (Ben-Ner and Van Hoomissen 1993; Salamon and Toepler 2002)

Analysis of literature on the relationships between governments and NGOs as well as the new economics of organizations reveals several key leverage points for government decision-makers in their effort to use national regulation as a means of sorting and selecting certain types and structures of non-governmental, non-profit organizations (NGOs). Regulations or legislation limiting the range of organizational forms which will be given legal identity, i.e. gain formal recognition; raising the costs of organization for less desirable types of organizations; increasing the ability of the government to punish organizations for unwanted behavior; or providing selective incentives are the primary tools decision-makers possess.

Barriers to entry

National decision-makers serve as gatekeepers not only to the policy-making process, but also to the legal system and the domestic populace of a country. (Busby 2007) As gatekeepers, decision-makers can raise several different types of barriers to entry to keep new NGOs from forming or operating (setting up a local branch) in their country. The chief barriers of entry which concern advocacy NGOs (either international or grassroots) are the available legal forms a group can take and the requirements for legal personality; the set of issues and activities which are prescribed or proscribed for NGOs in a country; and geographic restrictions on operations.

Almost all countries make a distinction between public and private benefit organizations, associations and foundations, and organizations for partisan purposes as opposed to social benefit. But the extent to which organizations are able to cross these boundaries and the freedom

of organization and action given to each category of organization can vary dramatically. The main organizational forms available for advocacy NGOs are generally some type of non-profit association or corporation, although the economic and political activities that this organization can undertake vary dramatically from country to country. The number of possible organization forms varies from country to country (from two to eight) as does the specificity with which categories are defined and the strength of the constraints imposed on the activities of different kinds of organizations. For example, in England and Wales almost anything can be an association, but there are very strict organizational and operational constraints upon the creation and operation of charities. In other countries, such as Hungary or Norway, organizations can belong to multiple categories at the same time.

The process by which an organization seeks legal identity can be as important as the criteria for being this entity. The number and complexity of steps necessary for status can increase costs and impose a barrier for some groups. The need for formal government approval as opposed to simple publication of rules of conduct also increases the power of government to select for certain kinds of organizations.

When it comes to the allowable activities of different categories of organizations, countries vary on whether they prescribe allowable activities (leaving prohibited activities implicit) or explicitly restrict certain prohibited activities but otherwise leave the field open. Differences in the legal approach to interest groups (whether the government regulates the purposes and objectives as is the approach of common law countries or the structure of the organization as is done in civil law countries) matters here. (Charities Definition Inquiry 2001, Appendix E) “Most common law and civil law countries distinguish between political activities (such as supporting or opposing candidates for public office or providing financial support to

political parties) and advocacy activities (such as lobbying for causes or working for legislative reform). Civil law countries tend not to restrict legislative activities, while common law countries tend to follow historical practices of restricting both political and legislative activities.” (Garland 1999)

National treatment of advocacy organizations (and other non-profit organizations) is not the predominant rule unlike with multinational corporations in economic transactions. In general, the registration requirements, reporting requirements, and limits on behavior are more stringent for foreign organizations than for domestic. Often governments reserve the right to allow a foreign organization to operate (or not), even if a right for nationals to assemble and associate is included within the national constitution. Increasingly this is seen in what Nelson and Dorsey (2007) call new rights advocacy as developing country NGOs find more common ground with their home governments than with international NGOs which seem to threaten local norms and interests. Developing countries are likely to find a greater level of shared interest, comfort and familiarity with the values of national NGOs. National NGOs are likely to want to reinforce this bias if they feel that their position in a global network might be weak compared to more affluent and connected foreign NGOs. (Jordan and Van Tuijl 2000) This home-organization bias provides incentives for international advocacy NGOs to use national branches for a coordinated international campaign, even if national legislation might impose tight constraints on the formation and operation of such an organization.

Costs to organize and operate

The collective action approach to advocacy NGOs points to a second concern regarding group formation. Even in places in which there are few regulatory barriers to the creation and

operation of an organization, there are still significant costs to the mobilization and maintenance of such a body. These costs may be sufficient to deter the creation of an NGO, particularly in cases in which the results of its activities take on the character of a public good, as is often the case with advocacy. (Meyer 1997; Moe 1980; Tarrow 1988) Successful advocacy for policy change often benefits a large audience, but one that has limited incentives to participate actively. National legislation can intentionally and unintentionally manipulate the costs of organization and thus provide a second mechanism to screen and select for certain types of NGOs.

As Olson argues, the smaller the group, the easier the collective action problem is to solve. Each member feels the lack of contribution of any other more sharply and is better able to identify free-riders. (Olson 1965) National legislation can thus set standards for the minimum size of an NGO which increase the size of the group and make collective action more difficult. National legislation can also set the minimum financial endowment necessary to obtain legal personality as a means to deter groups lacking well-endowed individuals or the capacity to obtain necessary government funding.

Regulation can impose costs of three other types on NGOs. The first comes in the form of the necessary knowledge and expertise to identify, understand, and comply with all of the rules which apply to non-profit, non-governmental organizations. The more legislation (and the more types of legislation) that exists, the harder it is to stay abreast, to determine which parts do and do not apply, and to fully comply. The second cost of organizing comes from having to comply with regulations. The more specific and detailed the regulation, and the more requirements there are, the higher the costs. The third cost written into national regulation comes in the form of registration and accounting rules. Registration and accounting may require paying fees to file forms, filing annual reports, and verifying income resources and expenditures as well as hiring

an external auditor. The more detailed the information that NGOs have to report, and the more often that reports need to be filed or status renewed, the higher the costs and the fewer organizations that can form.

Ability of NGOs to offer selective incentives to attract members and financing

While the small size and clear private benefits of a group can help it overcome the collective action problem, this is unlikely to be very helpful for most public interest NGOs who naturally serve large populations. Olson points to a second category of solutions to the collective action problem in the form of selective incentives to encourage members to contribute to the group. National legislation can be used to provide groups with selective incentives for their members, and can help NGOs with their finances. Tax laws can provide tax deductions for individuals and corporations who contribute to approved NGOs. The ability to deduct donations may encourage some members to contribute more to the financing of an NGOs than they might otherwise. Tax laws may also contain tax exemptions for NGOs of certain types, conducting certain activities (public interest rather than private interest, charitable rather than economic or political) in certain issue areas.

National regulations can also limit the financial resources of groups, making it more difficult to obtain the necessary funds to maintain some kinds of NGOs. National legislation generally specifies the kind of financing NGOs can attract, in what amounts, and what they can and can't do with the money. The ability of an organization to sell goods and services or collect fees in order to raise money may determine whether the NGO can afford to continue and the willingness of members to continue to contribute.

Organizational forms, selective incentives, and available strategies of advocacy

Governments can use control over the costs of organization, the types of organizations permitted, and selective incentives to make it more difficult for some organizations to form than others, thus effectively selecting for certain organizations and forcing NGOs to choose between their ideals and available options. There are three main choices for organizational identity in most countries, although all may not be legally recognized nor need legal identity. Charities or public benefit organizations provide services for those in need and in cases in which the state can't provide (welfare provision, education, health, development assistance). Affective and interest associations work for the benefit of their members, either by giving them a feel good feeling or enjoyable activity, such as sports or cultural clubs, or a private benefit, such as interest groups which work for private benefit of their members by lobbying for policy change. Civil society organizations work to build democracy and participation in democracy, and may include lobbying for public benefit, political education, fostering local community groups, and increasing the capacity of others to participate economically and politically.

Different groups need different amounts of resources and thus have distinct thresholds for organization and maintenance. Service organizations need high levels of resources to provide quality public services in sufficient amounts. These are also likely to be the most complementary. Governments may be more willing to give these organizations the freedom to act most efficiently and innovatively as well as access to financial resources. Advocacy organizations require fewer resources, but they are also the most politically threatening and thus governments may restrict access to resources and potential power. This will in turn raise the bar for the creation of advocacy organizations.

NGOs' Institutional Environment in the OECD

The second half of this chapter examines the ways in which different countries have (or have not) used these alternative means of screening and directing NGO advocacy in practice. Do countries rely on barriers to entry or manipulating the costs and benefits of alternative organization forms as a means to control NGO advocacy populations? If different states use different types of legislation, why might this be the case (and what explains this variation)? Lastly, have variations in national legislation regarding NGOs actually affected the populations of advocacy NGOs that result in these countries?

This research centers on national legislation regarding the identity, rights, access, resources, and responsibilities of an NGO. The dataset contains information on all countries in the OECD with the exception of Iceland, for which there is limited English language information (n=29). There is also no coverage of Iceland in other works on national non-profit regulations, including publications by the US International Grantmaking Project, the Council on Foundations, the European Foundation Center, the Johns Hopkins Center for Civil Society Studies, and the International Center of Not-for-Profit Law. Information on national legislation comes from national codes and reports as well as the International Center of Not-for-Profit Law and the US Library of Congress' website (<http://www.loc.gov/law/guide/nations.html>). Missing indicators were completed with information from the US International Grantmaking Project surveys of non-profit legislation for 10 members of the OECD (<http://www.usig.org/countryinfo.asp>). My analysis and interpretation of the national legislation was checked where possible against Salamon's International Guide to Non-Profit Law (1997).

Control variables concerning national economic indicators, level of democracy, and memberships in intergovernmental organizations come from the OECD, World Bank, CIA

Factbook, and the Polity IV database. Information on the number of advocacy NGOs found within each country is taken from Smith and Weist's study of transnational social movement organizations. (Smith and Weist 2005). The data collected by Smith and Weist includes the national memberships of international non-governmental organizations with the stated goals of social or political change for 144 countries in the year 2000 as recorded in the Union of International Associations Yearbook of International Associations. (Smith and Weist 2005) Transnational social movement organizations (TSMOs) as coded by Smith and Weist are "international non-governmental organizations that were explicitly formed to promote some social or political change goal." (2005, 628) While TSMOs are not identical to advocacy NGO as defined in this volume, and exclude national advocacy NGOs, this data is better fit to my purposes than the other, limited options available. The data from Smith and Weist excludes organizations that are focused exclusively on service provision or philanthropic giving as well as religious organizations and focuses on organizations with the goal of political or social change. The other available data source for cross-national statistics on national non-profits, Johns Hopkins' Center for Civil Society Studies' Comparative Nonprofit Sector Study, examines variations in the non-profit sector rather advocacy organizations per se.

Alternative explanations for where INGOs originate and locate come from sociological studies of the emergence of INGOs as a reflection of an evolving world culture. Smith and Wiest (2005) are representative of this research (also see Boli and Thomas 1999; Anheier 2001; Salamon et al. 2004) in that they examine national opportunities and resources, political openness, and the relationship between a country and the international system (and its level of integration into international organizations) as key explanations for the number of INGOs that operate in a country (or the number of INGOs in which a country has members). Their empirical

analysis includes variables for strength of democracy, level of economic development, levels of international trade and investment in a country, ratification of international treaties, and participation in international organizations. Smith and Weist find that global integration variables are the most significant determinants of the geographic spread of TSMOs, although the political involvement of a country within international regimes is more significant than its economic integration in terms of flows of trade and investment. (Smith and Weist 2005, 636-7) While explanations for INGO location do need to consider economic as well as political opportunities within a country, I argue that the particulars of national legislation and their impact on the opportunities for and costs of organizing in a given country are more significant factors than general macrotrends in economics or political integration.

Types of NGO Regulation

When it comes to regulating NGOs, governments have several options. They can formally regulate non-governmental organizations' formation and activities, they can allow such organizations free reign, or they can regulate the ability of government actors to form relationships and interact with these organizations. All members of the OECD (n=30) (with the possible exception of Iceland) have explicit regulation for the creation, minimum requirements, and operation of non-profit, non-governmental organizations. While countries may label and categorize NGOs differently, all countries have some kind of regulations pertaining to associations, foundations and/or charities.

NGO regulations comes in several different forms, including regulations on the legal identity and recognition of an organization as being a charity, foundation, association, public benefit organization, civil society organization, political party, or special interest group

(including labor unions). Governments also regulate the filing of taxes and tax exceptions, accounting practices, registration, lobbying and political campaigning, and the dissolution of NGOs. Within the OECD, NGO regulations are primarily found in the constitution (rights and freedoms of association/assembly, speech, press, and religious),¹ the civil code (often in specific codes written on civil society organizations),² administrative rules regarding access to government,³ and/or tax legislation.⁴ Figure 1 shows the types of legislation found in each member of the OECD.

INSERT FIGURE 1 REGULATION TYPES BY COUNTRY HERE

The most popular forms of NGO regulation within the OECD are registration requirements (21 of 29 countries or 72%), taxation regulations (24 of 29 countries or 83%), and accounting requirements (24 of 29 countries or 83%). Accounting requirements are applied both to service organizations and organizations engaged in political activities such as campaign contributions. Regulations on lobbying and explicit provisions regarding direct action as a tactic (as opposed to regulations on basic law and order) were the least common (less than 15% of OECD countries).

¹ For example, in the United States the first amendment of the Constitution states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. am. 1.

² For example, Belgium, Poland, Hungary, and Luxembourg have specific civil codes for associations, public benefit organizations, and foundations.

³ For example, in Austria the Rules of Procedure of the National Council (section 40 paragraph 1) and the Federal Council (section 33 paragraph 1) posit that experts representing interest groups may be invited to participate in deliberations on legislation. (Malone 2004, 7)

⁴ For example, in Canada the vast majority of regulation regarding charities is to be found in the tax code under the aegis of the Canadian Revenue Agency. (Income Tax Act (1985, c. 1 (5th Supp.)))

Advocacy, Service, Charity, and National Legislation

Even among the relatively homogenous countries of the OECD, non-profit, non-governmental organizations can take on a range of different legal identities, including association, foundation, corporation, public benefit organization, charity, and civil society organization. For the purposes of this volume, the most important variations occur in the range of issues and activities different organizational forms can undertake. In almost all countries, general form non-profits and unincorporated associations can do just about anything that they want in any issue area with the exception of activities for economic gain or the pursuit of activities or goals which violate national laws (for example the glorification of Nazism within Germany or tax evasion more generally). Even this general position varies a bit, as some countries allow even non-profits to undertake economic activities to raise funds to support the organization, although the members and managers of the organization cannot gain economically from the organization. For example, in Poland associations can engage in economic activities so long as they follow all related commercial codes, the benefits of the activities are not shared among its members, and economic activities are not the primary purpose of the association. (LOA Article 34) In Canada, NGOs cannot make a profit, but they can engage in revenue producing activities (USIG Canada, 7) While most countries limit the economic activities of NGOs to a secondary role in support of other public benefit purposes, Mexico and the Czech Republic both adopt similar legislation to Poland, and Hungarian legislation allows NGOs official recognition as nonprofit corporations (Company Law 2006).

Generally NGOs need to limit their activities and purposes in order to be legally recognized as public benefit organizations, civil society organizations, and/or charities. For example, in France and Germany associations are merely non-profit organizations and may operate for the

sole benefit of the members, while public utilities (France) or public welfare organizations (Germany) must be recognized officially as promoting a more limited set of public interest goals serving a large population of individuals.

This recognition, conferred by decree by the Conseil d'Etat, is attributed to organizations with a general interest or public utility purpose in the philanthropic, social, health, educational, scientific, cultural or regarding quality of life, environmental, protection of historical sites and monuments, and international solidarity fields. (Service-public.fr, Articles 200 and 238bis, Tax Code of France)

In Hungary and Poland, the status public benefit organization (PBO) can be added to an association, corporation, or even foundation to signify organizations that limit their activities in such a way. Australia, Canada, England, Ireland and the United States recognize organizations that engage in these kinds of activities as a particular type of legal entity, the charity. In most cases, organizations which serve public benefit purposes (or charitable purposes) self-identify, register, and receive tax-benefits.

The question is then whether PBOs and charities can engage in political activities and advocacy, of what types and to what degree? Countries' positions on this question vary. While in Hungary, even Public Benefit Organizations can nominate candidates for local elections, although they cannot engage in direct political activity at the national level (Act CLV of 1997 Section 26d), in France only declared political associations established for limited periods of time may engage in direct political activity, although there is some debate about the extent to which public utility organizations may engage in political activities in support of their public interest activities (Opinion of the Conseil d'Etat of June 13, 1978, No. 322894).

The new economics of institutions leads us to believe that the barriers to entry and the costs imposed on NGOs by regulation would increase (while the economic benefits available decrease) with an increase in the private and/or political nature of the organization. Campaigning

by political parties is more threatening to the existing government than nonpartisan advocacy by public interest organizations and thus likely to face more stringent regulation, registration, and reporting criteria. Public interest organizations do more for the government by providing public services than mutual benefit clubs (civil society organizations) and thus are likely to receive more economic rewards (grants or tax benefits).

Of the 30 members of the OECD, 29 have a legal definition for either a non-profit organization or a charity/public benefit organization (PBO). Of these 29, 14 have distinct definitions for both categories which clearly delineate organizations. Only 2 allow organizations to overlap categories. Among OECD countries only 16 explicitly allow non-profit organizations to be politically engaged and only two, Poland and the Czech Republic, allow public benefit organizations to be as politically active as non-profit associations. Another ten countries allow public interest organizations (charities or PBOs) to engage in advocacy at a lesser level, but only in support of their primary public benefit activities and often with a prohibition against engaging in partisan politics or politics on behalf of or in support of a particular party or representative.

In terms of the price that governments exact in return for allowing advocacy, of the 16 states that give legal identity to non-profit associations, half require organizations to register with the government and maintain the right to approve the organization while half do not. Of the 16 states that give legal identity to public benefit organizations or charities, 11 require registration and maintain the right to approve this. While there seems to be a difference in the treatment of the political activities of non-profit associations and public benefit organizations, it is not in the direction expected nor is it statistically significant (a Pearson chi-square test of this relationship does not pass, $Pr = 0.132$). It thus looks like governments in the OECD care more about money than political influence in tracking and legislating NGOs and thus places tighter restrictions on

charities than on advocacy organizations. There is a weakly negative relationship between the need for government registration and approval of an NGO and the number of advocacy NGOs in a country, however (corr=-0.34).

Proscribe, Prescribe, Purpose and Perception

A country's approach to the regulation of NGOs is likely to be related to its view of the purpose of NGOs and its perception of NGOs as complements or competitors to the state. A focus on NGOs as service providers tends to encourage a keen interest in controlling the accounting procedures used by the organization as well as registration or grant-making procedures which allow the government to track the performance of an organization. In the case of service organization, the government has an interest in monitoring the quality of services being provided and the efficient use of government funds in order to guarantee accountability and responsibility to its constituents. But governments can have relatively limited concerns about service providers as political animals as long as they carefully prescribe the issues and activities of these organizations and limit them to apolitical areas such as healthcare and education. Those countries that focus on prescribing what non-profits do should thus have more regulation (longer, more detailed, with more requirements) on registration, taxation, and accounting than on lobbying or campaigning.

Countries which tend to prescribe the behavior of NGOs adopt legislation which explicitly lists the kinds of activities that organizations of a certain type *can* undertake. The regulation is stated in affirmative language. For example, in Mexico:

Article 5. For the purpose of this law, the activities of civil society organizations which are subject to fomentation are the following: I. Social assistance, conform to that established in the Law about the National Social Assistance and in the General Health Law; II. Support for popular food programs; III. Civics, focusing on promoting citizen

participation in matters of public interest; IV. Juridical assistance; V. Support for the development of indigenous peoples and communities; VI. Promotion of gender equality; VII. Contribution to services for groups with different capacities; VIII. Cooperation with community development; IX. Support for the defense and promotion of human rights; X. Promotion of sports; XI. Promotion of and contribution to services for health and sanitary matters; XII. Support in the use of natural resources, protection of the environment, flora and fauna, preservation and restoration of the ecological equilibrium, as well as promotion of sustainable development at the regional and communal levels, in urban and rural areas; XIII. Educational, cultural, artistic, scientific and technological promotion and fomentation; XIV. Foment actions for the improvement of the popular economy; XV. Participation in civil protection actions; XVI. Provision of support services for the creation and strengthening of the organizations that undertake activities affected by this law, and XVII. Those determined by other laws. (Ley Federal de Fomento, Capitulo 2, Art. 5)

Those countries that primarily see NGOs as advocacy organizations, including interest groups, labor unions, and political parties, or which view NGOs as containing diverse categories of organizations each with different purposes, are likely to take a proscriptive approach. By proscribing exactly what NGOs cannot be, this approach leaves a wide range of space for innovation and flexibility in what an NGO can be and do. Countries which take a proscriptive approach (or mix proscriptive and prescriptive regulation for different types of organizations) are likely to have more regulation on campaigning and lobbying in order to select and control potentially challenging political organizations.

Countries which tend to proscribe the behavior of NGOs, on the other hand, adopt legislation which explicitly *forbids* certain practices and behaviors but says little about allowable activities. The legislation is stated in the negative rather than in the positive. In Hungary:

§ 2 (2) The right of association shall not be exercised in such a way as to violate § 2 (3) of the Constitution to constitute a criminal offence or an invitation to commit such an offence, or to prejudice the rights and liberty of others. (3) A civil society organization may be founded for the purpose of carrying out any activity consistent with the Constitution and not prohibited by law. No civil society organization shall be established for the primary purpose of economic-entrepreneurial activities. No armed organization shall be created under the right of association. [...] (1989. évi II. törvény, 2(6. §)(1-2).

Figure 2 gives the coding on this variable for all the members of the OECD.

INSERT FIGURE 2 APPROACH TO LEGISLATION IN OECD HERE

Within the OECD, the prescriptive and proscriptive approach are used equally. Eleven member states adopt a prescriptive approach to NGOs across the board, while another 11 adopt a proscriptive approach. Sixteen countries take a mixed approach, using prescriptions in laws regarding charities or public benefit organizations and using proscriptions in regards to non-profit organizations and associations more generally. There is a positive correlation between the use of prescriptive regulations and the total length of the regulation in a country (corr = 0.43), although a much weaker relationship to the number of distinct requirements that must be met (corr = 0.20). In 60% of the countries which use proscription registration with government authorities is required, while it is required in 85% of the countries which prescribe NGOs behavior (this difference is not statistically significant, however, given the sample size). In the 11 countries which take a prescriptive approach there are an average of 353 TSMOs, while in the seven countries that take a mixed approach and prescribe PBOs but proscribe associations there are an average of 381 TSMOs.

National Legislation and the Location of Advocacy NGOs

Certain literature on multinational corporations (MNCs) argues that MNCs have an incentive to locate where national regulation is the least. (Drezner 2001) If national regulations impose costs on the operation of an organization, or even bar the creation and location of organizations of a certain type from its jurisdiction, this claim has a certain logic. But do advocacy NGOs tend to go to countries with the most sparse regulatory environment? Do we see more TSMOs in

countries with fewer regulations of fewer kinds and with fewer requirements to meet and fewer constraints on activities than in countries with more regulations of more types on more types of activities imposing more restrictions on behavior? In order to answer this question, I have coded the amount of regulation in each country in the OECD using the total number of requirements to be met as well as the total number of characters in the regulations as indicators of both the scope and severity of regulation. I also factor in the number of types of regulation, as increasing the types raises the costs of monitoring and meeting regulatory demands, and the need for NGOs to register or obtain government approval, as an indicator of the ability of the government to impose barriers to entry. Appendix A OECD Regulations contains the raw numbers for each indicator. I find that Japan, Norway, Australia, Slovakia, the United States, and Korea have the most regulation, while Denmark, Switzerland, Luxembourg, Spain, Turkey, Belgium, and Ireland have the least regulation, although it is difficult to rank these completely and consistently.⁵

The empirical findings are mixed. The total amount of regulation isn't a key factor in determining the location or creation of an advocacy NGO. The correlation between the total character count of regulation and the total number of requirements advocacy NGOs must meet and the number of TSMOs within a country is in the expected direction but weak (corr = -0.0688 and -0.2968 respectively). Figure 3 Explaining Advocacy INGOs in the OECD shows visually little relationship between having the most legislation and the fewest INGOs/TSMOs or between having the least regulation and the most INGOs/TSMOs.

⁵ Rankings were found by sorting countries by variable. The rankings by variable for the most and the least among OECD members are as follows. Number of types of regulation: Japan, Norway, Australia, United States, Korea and Denmark, Spain, Belgium, Czech Republic, Ireland, New Zealand. Length of regulation: Japan, Norway, Italy, Australia, United States and Switzerland, Greece, Luxembourg, France, Turkey, Spain. Total number requirements: Japan, Australia, Slovakia, Czech Republic, United States and Denmark, Belgium, Norway, Ireland, Italy. In order to be considered as having the most or least regulation, a country could not appear in the top 6 spots on the alternative list and for the most regulation had to have a "Yes" for government approval/registration or "No" for the least regulation.

INSERT FIGURE 3 EXPLAINING ADVOCACY INGOS IN THE OECD HERE

This leaves much to be explained.

While the countries with the most legislation do not have the most INGOS and the countries with the least legislation do not have the fewest INGOS, most INGOS seem to locate in the middle, to places with middling amounts of legislation. This can be explained by several factors. First, not all locations are equally desirable. INGOS consider not only the costs to their operations imposed by national legislation, but also the resources available within that country, from individuals, foundations, and the government, that might enable their operations. Appendix B Economics of NGOs Among OECD Members demonstrates that the available sources of funding for NGOs as well as the tax benefits given to advocacy organizations (as opposed to charities or public benefit organizations) can vary widely. Using the same method as above on the data in Appendix B, I find that Ireland, Norway, Sweden, the Netherlands, and Austria provide the most economically supportive environments (based on GDP per capita, percentage of total funding which is from the government, and tax benefits), while Slovakia, Poland, Hungary, Mexico, and Korea provide the least support. These findings are not terribly surprising, and accord with past research. What is more surprising is that neither political nor economic factors at this level of generality explain the location of INGOS. The correlation between the number of advocacy INGOS within a country and economic factors is strong and positive (per capita GDP $\text{corr} = 0.5639$). But it is clear in Figure 2 that the most supportive environments, at least on the current measures, do not have the most INGOS, while the least supportive do not have the

fewest. High levels of government regulation combined with scarce economic resources do help explain the relatively low numbers of INGOs in Korea and the Slovak Republic.

Second, not all government regulations impose costs on the operation of an NGO or are intended as barriers to entry. Regulations can also ensure regular access to policy-making and government grants and contracts or tax exemptions. In fact while the relationship between the total number of requirements regarding NGOs and the number of advocacy NGOs in a country is negative (corr = -0.197), the relationship between the total length of the legislation regarding NGOs and the number of advocacy NGOs in a country is positive (corr = 0.122).

National Legislation or Globalization?

Are specific national legislations more important than general economic and political conditions in determining where advocacy NGOs will form or locate? Furthermore, does legislation matter more than national or international political and economic factors? To test this hypothesis, I run a classic regression with TSMOs as the dependent variable against the number of requirements an NGO must meet within a country, the total length of non-profit regulations, and controls for GDP per capita, IGO memberships, and level of democracy (Polity IV score). Figure 4 reports the results.

INSERT FIGURE 4 Regression Results HERE

I find that while increasing the number of requirements or the length of the regulations decreases the number of advocacy NGOs in a country, as expected, this relationship isn't significant at the 95% level. The only variables which are significant are the level of democracy

and the number of intergovernmental organizations to which a country belongs (which stands in for international integration). Increase political space and political integration and the number of advocacy organizations, not surprisingly, also increases. Interestingly enough the impact of economic resources (GDP per capita) is no more significant in determining the number of advocacy NGOs in a country than the number of requirements NGOs must meet. And lowering just regulatory requirements by just one increases the number of advocacy NGOs in the country much more than adding another dollar per capita to the economy.

These regression results indicate that examining national legislation in one lump sum isn't very telling (given the insignificance of the results). As different regulations apply to different types of organizations and activities, a greater degree of disaggregation of both regulations (types and effect on the costs of organization or benefits of membership) and INGOs is necessary. These results do indicate, however, that national legislation is as important to examine as economic resources. These conclusions are also hampered by the relatively small size of the dataset (n=29) and the limited variation between members of the OECD.

Conclusions

This chapter has clearly shown that all governments in the OECD regulate the creation, organizational form, and activities of non-profit non-governmental organizations. But how they regulate and the degree to which NGOs are regulated varies markedly, even within the relatively homogenous OECD. What is less clear at this stage is the extent to which regulations impose barriers to entry and organizational costs on advocacy NGOs, thus deterring their creation in some locations.

Empirically advocacy INGOs do not flock to the countries with the lowest levels of regulation, measured in terms of the length of the regulation and the number of requirements imposed. But nor do they flock to countries with the highest levels of regulation. This finding likely indicates that it is not raw amount of regulation, but type of regulation that shapes the costs and benefits for collective action in a particular country. Government regulation itself does not impose a high cost on NGOs, thus deterring their creation or forcing their relocation. Regulation can in fact help NGOs to overcome collective action problems by lowering the costs of creation and operation for some organization and by making available economic resources. Furthermore, the particular nature of a country—including its domestic economic and political context and resources and its strategic importance—matters. Many NGOs locate in certain places for particular reasons, for example in Germany and the United States, and are not just shopping for a low cost, high gain venue. Furthermore, this empirical analysis is limited to the OECD. There are economic resources and political space available in all of these countries for advocacy NGOs to emerge and many of the government regulations regarding advocacy NGOs are quite similar.

Countries can set different types of regulations—registration, accounting, legal identity, rights and responsibilities, taxation, and lobbying—at different levels in order to tailor them to their needs and desires. National legislation is an important factor in the collective action problem facing advocacy organization, but its effects are not monolithic. To further test the effects of national legislation on the formation and activation of advocacy organizations, and possible selection effects among the resulting NGOs, more research is needed to break NGOs into finer categories by type of advocacy and issue to see more nuanced interactions between the collective action problem of advocacy NGOs and the use of regulation by national governments.

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Figure 1 Regulation Types by Country

Country	Registration	Taxation	Accounting	Lobbying	Campaign Contributions	Direct Action
Australia	✓	✓	✓		✓	
Austria	✓		✓		✓	
Belgium		✓	✓			
Canada	✓	✓		✓	✓	
Czech Republic	✓		✓			
Denmark					✓	
Finland	✓		✓			
France		✓	✓	✓	✓	
Germany	✓	✓		✓	✓	
Greece	✓	✓				
Hungary	✓	✓	✓		✓	
Ireland		✓	✓			
Italy	✓	✓	✓			
Japan	✓	✓	✓		✓	✓
Korea	✓	✓	✓		✓	
Luxembourg	✓	✓	✓			
Mexico	✓	✓	✓		✓	
Netherlands	✓	✓	✓			
New Zealand		✓	✓			
Norway	✓	✓			✓	✓
Poland	✓	✓	✓			
Portugal	✓	✓	✓	✓		
Slovak Republic	✓	✓	✓		✓	
Spain	✓		✓			
Sweden	✓	✓	✓			
Switzerland	✓	✓	✓			
Turkey		✓	✓		✓	
United Kingdom	✓	✓	✓		✓	
United States		✓	✓	✓	✓	

Figure 2 Approach to INGOs in the OECD

Country	Proscribe	Prescribe
Australia	NPO	Charity
Austria	NPO	Charity
Belgium	✓	
Canada		✓
Czech Republic	✓	
Denmark		
Finland	✓	
France	NPO	Charity
Germany	✓	
Greece	✓	
Hungary	✓	
Ireland		✓
Italy		✓
Japan		✓
Korea		✓
Luxembourg	✓	
Mexico		✓
Netherlands	✓	
New Zealand	✓	
Norway		✓
Poland		✓
Portugal	✓	
Slovak Republic	NPO	Charity
Spain	NPO	Charity
Sweden		✓
Switzerland		
Turkey	✓	
United Kingdom		✓
United States		✓

Figure 3 Explaining Advocacy INGOS in the OECD

Country	Most Legislation	Least Legislation	Most Economic Support	Least Economic Support	Most INGOs	Fewest INGOs
Australia	✓					
Austria			✓			
Belgium		✓			4	
Canada						
Czech Republic						
Denmark		✓				
Finland						
France					1	
Germany					2	
Greece						
Hungary				✓		
Ireland		✓	✓			
Italy					6	
Japan	✓					
Korea	✓			✓		3
Luxembourg		✓				1
Mexico				✓		7
Netherlands			✓		5	
New Zealand						
Norway	✓		✓			
Poland				✓		
Portugal						
Slovak Republic	✓			✓		4
Spain		✓				
Sweden			✓			
Switzerland		✓				
Turkey		✓				2
United Kingdom					3	
United States	✓				7	

Figure 4 Regression Results

Number of TSMOs (ngocount)	Coefficient	Standard Error	P > t
Length of Regulations (totalcharcount)	-0.001	.002	0.44
Number of Requirements (totalreq)	-1.4	0.895	0.131
IGO Memberships (igocount)	8.5	1.664	0.00
GDP per capita (2000)	0.002	0.001	0.175
Polity IV Score	44.2	17.2	0.017
	$R^2 = 0.7606$		

Appendix A OECD Regulations and INGOs

Country	No. Types Regulation	Govt Approval/ Registration	Length of Regulation	Total Reqs	# INGOs
Luxembourg	3	No	6522	17	
Turkey	3	No	6988	22	161
Korea	4	Yes	16724	25	182
Slovak R	4	Yes	15949	48	183
New Zealand	2	Yes	17280	34	231
Czech R.	2	Yes	15409	47	236
Mexico	4		8223	19	260
Hungary	4	Yes	16218	35	283
Poland	3	Yes	16573	40	295
Portugal	4	Yes	9674	18	296
Ireland	2	No	10553	11	297
Japan	5	Yes	35551	72	309
Greece	4	Yes	4924	14	311
Norway	4	Yes	29879	10	317
Australia	4	Foreign	21296	49	325
Finland	2	Yes	8420	19	334
Denmark	1		8118	8	376
Austria	3	No	13706	47	376
Canada	3	Yes	12158	33	390
Sweden	3	Yes	11916	25	410
Switzerland	3	No	4706	16	420
Spain	2	No	7172	21	438
United States	4	Yes	20203	45	446
Italy	3	Yes	25055	13	461
Netherlands	3	No	12225	18	482
Belgium	2	No	16538	9	495
United Kingdom	4	Yes	12142	25	525
Germany	4	Yes	16567	21	535
France	4	No	6900	18	553

Appendix B Economics of NGOs among OECD Members

Country	Tax Benefits		GDP per capita	Funding by Source			# INGOs
	NPO	Charity /PBO		Govt Grant	Fdn	Fees	
Turkey	✓	✓	2962				161
Slovak R	✓	✓	3780	22%	23%	55%	183
Poland		✓	4455	24%	15%	60%	295
Hungary	✓	✓	4695	27%	18%	55%	283
Czech R.	✓	✓	5521	39%	14%	47%	236
Mexico	✓	✓	5934	9%	6%	85%	260
Korea		✓	10884	24%	4%	71%	182
Portugal	✓	✓	11016				296
Greece	✓	✓✓	13208				311
New Zealand	✓	✓✓	13653				231
Spain			14421	32%	19%	49%	438
Italy		✓	19269	37%	3%	61%	461
Australia		✓	20864	31%	6%	63%	325
France	✓	✓	22547	58%	8%	35%	553
Belgium	✓	✓	22623	77%	5%	19%	495
Germany	✓	✓	23114	64%	3%	32%	535
Finland			23543	36%	6%	58%	334
Canada	✓	✓	23559				390
United Kingdom		✓	24142	47%	9%	45%	525
Netherlands		✓	24179	59%	2%	39%	482
Austria			24194	50%	6%	43%	376
Ireland		✓	25313	77%	7%	16%	297
Sweden		✓	27286	29%	9%	62%	410
Denmark			29992				376
Switzerland		✓	34248				420
United States		✓	34600	31%	13%	57%	446
Japan		✓	36789	45%	3%	52%	309
Norway		✓	37472	35%	7%	58%	317
Luxembourg	✓	✓	46277				