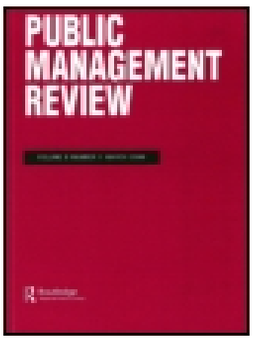

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Charity registration and reporting: a cross-jurisdictional and theoretical analysis of regulatory impact

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ABSTRACT

Governments increasingly regulate charities to restrict the number of organizations claiming taxation exemptions, reduce charities' ability to abuse state support, and detect and deter fraud. Public interest theory arguments suggest that regulation could increase philanthropy through enhancing public trust and confidence in charities. Nevertheless, public choice theory argues that regulators seek to maximize political returns, 'manage' charity-government relationships, and reduce potential regulatory capture.

We analyse charity regulatory regimes using these two regulatory theories and the relative costs and benefits of different regulatory regimes. Heeding these should reduce regulatory inefficiency and balance accountability and transparency demands against benefits charities receive from regulation.

KEYWORDS Charity accountability; regulatory theory; regulatory costs

In line with other segments of society, charities have become increasingly regulated (Cordery, Sim, and van Zijl 2017). Nevertheless, in contrast to other sectors where regulation trends towards homogeneity, Phillips and Smith (2014) note that charity regulation is currently heterogeneous, especially as charities' local foci reduce the impetus for international harmonization. However, Phillips and Smith (2014) forecast regulatory convergence, as regulators similarly seek charities to be accountable and transparent. Harmonization is expected to lead to regulatory efficiency and effectiveness, when regulators utilize common tools (reducing development costs) and regulated charities experience lower compliance costs – especially when operating cross-jurisdictionally.

Government regulation may not always be ideal (Hepburn, n.d.). Hence, jurisdictions operate co-regulatory and self-regulatory regimes (Phillips 2012; Bothwell 2001). Further, due to austerity, charity regulators receive fewer resources (Cordery, Sim, and van Zijl 2017) and yet must still act in the public interest by seeking 'the protection and benefit of the public at large' (Hantke-Domas 2003, 165). Regulators therefore balance the need for effective regulation in the public interest along with regulatory efficiency (Hepburn n.d.). For charities, regulation is efficient when its costs do not exceed the benefits they enjoy. For the public, effective regulation will

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meet the public interest (i.e. protect and benefit them). Before expecting convergence or harmonization, we must therefore analyse the regulatory environment and institutional factors which inhibit both effectiveness and efficiency (Kling 1988; Hepburn n.d.).

This research defines regulation (in line with Christensen and Lægreid 2006, 9) as 'formulating authoritative sets of rules and setting up autonomous public agencies or other mechanisms for monitoring, scrutinizing, and promoting compliance with these rules … [to control] activities that are valued by a community.' We compare and contrast explicit aspects of charity regulation (particularly filing obligations and the public availability of these filings), consider its different purposes and whether regulators share regional similarities. This research extends a theoretical model of regulation, applying it to charity regulators in eight jurisdictions and four geographically defined regions. The jurisdictions are the five chosen by Phillips (2013) with the addition of three others to allow regional contextual comparisons and to ensure a mix of old and new regulators. They are (1) two regulators operating new schemes in Asia (China and Japan) and (2) the regulators from the two most regulated jurisdictions in each of (a) Oceania (Australia and New Zealand), (b) North America (Canada and United States), and (c) the United Kingdom (England and Wales, and Scotland). Although Phillips and Smith (2014) suggest that charities' regulatory regimes are likely to coalesce, there is little understanding of why this may occur and what, apart from assumed isomorphism, may cause it to happen. We argue that the underlying regulatory drivers play a major role in shaping regulation and thus seek to expose these within a theoretical model. This also allows us to highlight regulatory actions which increase charities' relative costs.

We first review arguments for regulation before developing our analytical model. The differences and similarities between jurisdictions and regions are highlighted. In concluding, we discuss the implications of the research and identify limitations of our approach as well as opportunities for further research.

Charity regulation and theories to explain it

The rise in charity regulators is a function of the growing number and reach of third sector organizations (TSOs) in general and charities in particular. For example, (a) governments increasingly contract with charities to deliver social services (Cordery, Sim, and van Zijl 2017; Mayer and Wilson 2010); (b) governments seek charities (and other TSOs) to develop social capital within communities through, for example, encouraging the arts and cultural diversity, and improving communities' environments (Bryce 2005); and (c) citizens support charities through private and corporate philanthropy; donating time, money and goods (James 1987). Recognizing potential social good from charitable activity, governments provide state support, including income tax exemptions (typically on surpluses from trading activities and income from investments), reduced state and local taxes, and preferential access to government funds (Abramson, Salamon, and Steurle 2006; Breen, Ford, and Morgan 2009; Smith 2012). Governments often encourage philanthropy through providing taxation concessions on applicable donations.[1]

Hence, governments regulate to limit fraudulent activity in charities (Phillips 2013) (as lower levels of trust would reduce philanthropy), to restrict potential abuse of their support and to maintain the tax base (Frumkin 1998) (*e.g. by ensuring*

charities operate in the public interest rather than for the pecuniary gain of their members). Further, governments define 'charity' restrictively, limiting charities' ability to advocate against public policy or to take other political action.

Regulation is deemed to be a 'social good' in the for-profit space where '[m]arket-based regulatory instruments act to change or modify behaviour through the economic incentives facing citizens and business' (Hepburn n.d., 5). While charities operate outside of the capital market, information asymmetries in the 'market' for donations and contracts for services suggest that regulatory theory can be usefully applied to charities (Cordery, Sim, and van Zijl 2017).

Six (2013) suggests responsive regulation theory (RRT) and self-determination theory (SDT) as explanations for regulatory operations and compliance. RRT argues that trust and control are substitutes and will drive a regulator's enforcement style. On the contrary, SDT considers that regulated individuals (and by inference, companies) are motivated to comply with regulation when they are competent, engaged, and align with regulators' values (Six 2013). However, in this paper, we analyse the underlying institutional arrangements that precede such compliance, rather than regulatory practice. We use two theories driving the regulation and costs regulated entities bear: public interest theory and public choice theory (Peltzman 1976; Christensen and Lægreid 2006; Stigler 1971), as now discussed.

Public interest theory

The public interest theory of regulation asserts that regulation is necessary to protect the public at large (Hantke-Domas 2003) and to deal effectively with substantive resource distribution problems (Christensen and Lægreid 2006; Chalmers, Godfrey, and Lynch 2012). Charity regulation recognizes a donor- and funder-market (Cordery, Sim, and van Zijl 2017) which requires charities to practise good governance, accountability, and transparency (Mayer and Wilson 2010). Primarily charities act to redistribute resources from donors and funders to beneficiaries in order to repair market and government failures (Salamon 1987). Tax subsidies also redistribute resources between activities as well as from, for example, rich to poor (Fleischer 2010). Public interest regulation would seek to ensure that charities do not facilitate redistribution which contravenes the public interest.

Further, public interest theory argues that business operators prefer their private interests and that information asymmetry demands regulation to protect the public interest (Christensen and Lægreid 2006). Thus, charity regulators typically require charities to report publically, in order to encourage donors' trust and confidence (Connolly and Hyndman 2013; Phillips and Smith 2014). In addition to according benefits, regulation therefore imposes costs on the regulated, either in terms of more (or more frequent) disclosures or through direct tariffs and taxes (Hepburn n.d.).

Information asymmetry is a core reason for governments to intervene in financial accounting standard setting. For example, stock exchange regulators seek to restrict corporate opportunities to manipulate reporting, assuming this will improve market confidence and regulated entities' governance (Solomons 1978). Nevertheless, despite regulation, perceived failures in the market for accounting information have led to calls for harmonization of accounting standards worldwide (Chalmers, Godfrey, and Lynch 2012; Crawford et al. 2014). Hence, a charity regulator driven by public interest theory will seek to build public trust and confidence by requiring charities

to make public disclosures generally and financial disclosures specifically using harmonized, legitimate financial reporting standards. Such public disclosure should improve confidence in the donor- and funder-market (Cordery 2013; Cordery, Sim, and van Zijl 2017; Sinclair, Northcott, and Hooper 2014). Nevertheless, charities bear the cost of collecting and processing new information and obtaining assurance (Neely 2011).

Public interest theory specifically acknowledges market failure (Chalmers, Godfrey, and Lynch 2012; Hantke-Domas 2003); hence, regulators work to reduce the likelihood that a monopoly (or cartel) will under-provide or over-charge for a good or service. To redress market failure, governments regulate to build (or support) a market to efficiently establish prices and quality, as could happen for a donor- or funder-market (Christensen and Lægreid 2006; Stigler 1971; Irvin 2005). This includes entry restrictions. While charity cartels are less likely to occur, charity regulators will carefully analyse applications from new charities, specifically to ensure the charity meets the legal definition of a charity in that jurisdiction, including that the applicant's activities are in the public interest, they are not involved in substantive lobbying/political activity and do not exist for the pecuniary gain of their members.

De-registering or punishing miscreants are also tools of public interest regulators. Miscreants are located when, for example, a charity regulator monitors inappropriate application of charitable funds (Breen 2009; Phillips 2013; Irvin 2005) or checks for inappropriate amassing of tax-free assets by philanthropists (Frumkin 1998). Public complaints and regulators' investigations (Cordery, Sim, and van Zijl 2017) also result in charity de-registration. Charities thus incur compliance costs to gain and maintain their regulatory status, assuming that the regulatory framework beneficially creates and supports the market within which they operate.

Christensen and Lægreid (2006) further argue (under public interest theory) that the regulator should be specialized agency, autonomous from elected officials. This isolates the regulator from political influence and is likely to enhance regulatory effectiveness, despite possible coordination issues.

Public choice theory and regulatory capture

On the contrary, public choice theory (Peltzman 1976; Stigler 1971) suggests that rationally ignorant voters expect government to manage regulated entities (in this case, charities). Government regulators also collect charities' information to ensure informed public policy, seeking charities to assist government in meeting its policy outcomes. Yet, public choice theory finds that most regulation is a tool for addressing merely perceived problems, leaving unrealized its promise of serving the public interest; indeed, that sectional interests will drive regulation, rather than public interest (Conybeare 1982; Kling 1988). Hence, the costs to the regulated party/ies may be excessive in relation to the benefits they gain (Kling 1988).

Vague definitions and the broadness of the term 'public interest' further confirm public choice theory (Hantke-Domas 2003), that is that politicians, regulators, and the regulated will attempt to follow their own self-interest. Regulation may therefore fluctuate in response to partisan political whims (Christensen and Lægreid 2006), with rational regulators seeking to maximize political, rather than purely economic returns (Peltzman 1976). Such fluctuations raise regulated parties' costs. Further, few incentives exist for such regulation to be efficient, due to indifference or rational

ignorance from the taxpaying public and often complex bureaucratic structures in regulatory bureaux (Conybeare 1982).

Extrapolating the public choice argument, charity regulation may be perceived as 'good' politically, especially when government financially supports charities (through tax exemptions and contracting out). Nevertheless, applying Peltzman (1976) suggests that regulatory bureaucrats pursuing their own interests will seek to increase their power, escalate requirements for information from regulated charities, and increase charities' compliance costs without regard to public benefits. Irvin (2005) cites state regulators hoping to boost their chances of re-election by boasting of the number of convictions/miscreant charities. This is an example of Christensen and Lægreid's (2006) argument that regulation inside government can be less efficient and driven by public choice.

Public choice also describes regulated parties' lobbying that is detrimental to the public interest (even when it seeks to reduce costly regulatory demands) (Kling 1988). Extreme lobbying will lead to regulatory capture if the regulator aligns its actions with the will of regulated parties (Stigler 1971). An example of avoiding regulatory capture is the Australian Howard Government's refusal to listen to what they termed 'single-issue groups,' 'special interests,' and 'elites' when they debated charity regulation in the mid-1990s (Staples 2008, 271). Regulatory capture may mean current participants in the market successfully lobby for barriers to entry that protect them against others joining the 'industry' (Stigler 1971) or gains them higher remuneration than others (as noted by Amirkhanyan 2010).[2] Furthermore, this theory has been cited as creating incentives for lobbying on proposed accounting procedures (Watts and Zimmerman 1978), which is relevant to charities.[3] Yet, public choice theory and regulatory capture assume a coherent body of collective actors who will lobby (Conybeare 1982) such as would occur in the charity sector when it organizes itself through peak or umbrella bodies.[4]

Politicians also apply regulatory pressure when they impose personal or party preferences on registration decisions and the cost or style of regulation (Posner 1974; Barber 2012). An example from Simon (1995) is Congress' significant changes to the US Tax Reform Act 1969 which resulted in charitable gifts being diverted to charities that were less-fully regulated (and even to some entities that were not charities) and increased charities' operational costs at the expense of charitable acts. Further, Irvin (2005) explains that some US-based state regulators are revenue gathering, while others do not charge at all. Hogg (2016) uses the UK example of austerity measures diminishing the funds available to the Charity Commission in England and Wales and concerns that this will threaten its continuance and autonomy.

A regulatory model to analyse charity regulation

'Governments regulate charities in a variety of ways and through a variety of government agencies' (Mayer and Wilson 2010, 689). This structural decision is informed by the theoretical motivation to regulate and by historical jurisdictional structures (Irvine and Ryan 2013; Crawford et al. 2014) which drive costs and benefits. Kling (1988) utilizes the institutional theory of regulation to analyse costs and benefits arising under both public interest and public choice theories.[5] Figure 1 adapts his model, utilizing two continua: costs/benefits and public interest/public choice. The top half of Figure 1 depicts public interest theory ('benefits likely to help

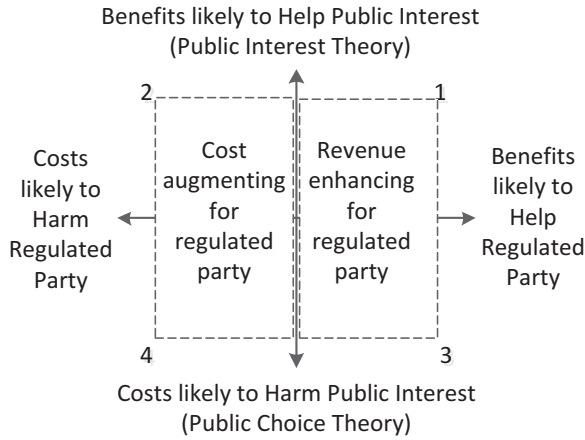

Figure 1. Adaptation of Kling's (1988) regulatory benefit and harm.

public interest') and below this public choice theory ('costs likely to harm public interest'). On the right-hand side, benefits and costs are revenue-enhancing for the regulated party – in this case, charities – ('benefits likely to help regulated party') and on the left are cost-augmenting to the regulated party ('costs likely to harm regulated party') (Kling 1988).

Extrapolating this model to the charity sector and the above discussion, we assume that charity regulation is beneficial for charities, by affording them legitimacy and encouraging a donor- and funder-market. Hence, the theoretical reasons for charity regulation that is beneficial to regulated charities *and* in the public interest (i.e. lying in quadrant 1 in Figure 1) are summarized in the middle column of Table 1 and items (a), (b), (f), and (g). (As shown in Table 1 by the arrow, the middle and right-hand columns represent continuum extremes, with actual regulatory practise likely to vary along the line.)

Partly as a response to scandals and partly to reflect regulatory 'good practice,' regulators now seek to use their powers and (where necessary) to call for regulatory amendments to demand greater compliance, more transparency, and more information on charities' impact (Phillips and Smith 2014). These actions will increase information demands on regulated charities and/or barriers to registration. Hence, barring an improvement in technology (Kling 1988), charities will incur extra costs (e.g. Neely 2011) and may perceive that these costs outweigh regulatory benefits. Thus, regulation moves to quadrant 2 – being cost-augmenting, but still in the public interest.[6]

How can a regulator ensure that even though regulation has moved to quadrant 2, it remains in the public interest (does not fall to quadrant 4)? Hantke-Domas (2003) suggests that recent public consultation enables the established regulator to ascertain the public interest (especially when it uses a mix of different consultation methods, Zhang 2010) (the extremes are described in (c) in Table 1). Further, in meeting their statutory obligations to report on how they protect the public's trust (Irvin 2005), a number of regulators undertake 'public trust and confidence surveys' to monitor public trust in charities (e.g. Horizon Research 2014; ChantLink 2013) (the extremes are described in (e) in Table 1).[7]

Table 1. Summary of factors considered for charity regulators.

Factors considered	Help the public interest	Harm the public interest
(a) Institutional form of regulator	Autonomous and not subject to the public choice whims of political influence or extreme bureaucracy[a]	Inside government, potentially subject to the public choice whims of political influence or extreme bureaucracy[a]
(b) Must charities register to obtain tax exemptions?	Entry restrictions imposed attempt to creating a (donor/funder) market or correct market imbalance (e.g. ensure only charities receive tax benefits)	Particular entities (types or activities) exempted from registering, but they may still receive charitable tax benefits
(c) Year of most recent consultation	Recent public consultation (in last 10 years)	No recent public consultation (more than 10 years)
(d) Extent of lobbying since most recent act	Low levels so that no regulatory capture occurs	High levels run the risk of regulatory capture occurring
(e) Trust and confidence survey?	Trust and confidence surveys showing that regulation is fulfilling public interest	Trust and confidence not an objective of regulation, or trust and confidence declining
(f) Must charities file regularly? (Is it publicly available?)	Registered charities must file regularly and the regulator makes information publicly available (incurring costs and benefits to filer)	Registered charities must file regularly, but information not made public (incurring only costs to filer)
(g) Type of accounting standards required to be followed?	Prescribed financial information is harmonized to legitimate (local or international) standards (least costly for filer)	Specific or new standards prescribed that are costly for filer and (public) users of information
(h) Is extra information required to be filed?	Disclosures in line with information to encourage donor/funder market and benefits filers	Politically driven decisions increase disclosures required and thus costs to filers

[a]As government is the main funder of charity regulation in each of the jurisdictions examined, the regulator operates along a continuum ranging from 'operating inside government' to 'being an independent entity outside of a government department or not under ministerial control.'

Quadrant 3 depicts regulation as revenue-enhancing for charities, but harmful to the public interest (i.e. it has been derailed by public choice theory). This occurs when the regulated party lobbies for benefits not in the public interest (the extremes are described in (d) in Table 1). Such lobbying may occur through umbrella groups. When the regulator capitulates to such lobbying, this is regulatory capture.

The final quadrant (quadrant 4) depicts cost-augmenting regulation that is also driven by public choice. This results from a regulator's politically driven decisions to increase disclosure, further restrict access, or utilize other mechanisms that are cost-augmenting to charities and harm (or do not help) the public interest (the extremes are described in (h) in Table 1).

Comparing jurisdictions

This research analyses eight different jurisdictions in four different regions (as noted in the introduction) to demonstrate regulatory factors and explain the model. Relevant literature and documents were accessed to ascertain charity regulators' similarities and differences. While the definition of a 'charitable organization' differs in each of the jurisdictions examined, in broad terms such organizations must be formed for public (not private) benefit, with their activities having to meet specifically defined (charitable) purposes. In addition, they must not be involved in substantive lobbying/political activity or exist for the pecuniary gain of their members. Table 2 summarizes regulators' characteristics.

Discussion

The summary of eight countries' regulatory regimes in Table 2 shows that charities typically must register, file returns, and be monitored by the regulator on a random basis (as presaged by Solomons 1978). Charities incur compliance costs, potentially due to benefits they receive. Table 3 assesses each regulator in relation to the extended Kling model (Figure 1 and Table 1) and this discussion first compares the operation of public interest and public choice theories and relative costs, before comparing the regional groupings.[8]

Charity regulators – public interest or public choice?

In respect of public interest items in Table 3(a), regulators in Japan, Australia, and the United Kingdom are relatively autonomous in that while they are government entities, they are independent (Japan and Australia) or non-ministerial departments (United Kingdom). In contrast, New Zealand and the North American regulators are situated in large, mature bureaucracies (government departments) and therefore will theoretically prioritize process over the public interest (Conybeare 1982).

Only entities deemed to be charities will have their application to register approved (an example of restricting entry to enable a donor- or funder-market). All charities must register to receive tax exemptions (except the very smallest unincorporated entities in England and Wales – see also Endnote 10). In most jurisdictions, row (f) recognizes that non-small charities must file financial data and the regulator makes the information freely available (except in China [due to the regulator's newness], the United States, and Canada). While the regulatory interactions are complex in each

Table 2. Charity regulator characteristics across eight jurisdictions.

Jurisdiction	(A) Institutional form and no. of charities regulated	(B) All charities registered to gain tax exemptions?	(C) Age/Most recent major consultation	(D) Lobbying since most recent act	(E) Trust and confidence survey	(F) Filing required and publicly available	(G) Financial info uses harmonized, legitimate standards	(H) Extra information required?
Asia								
China	Civil Affairs Department of the State Council Unknown	*jijinhui* (Foundations), *shehui zuzhi* (social groups), *minban fei qiye danwei* (social service organizations)	2016 Registration procedures cumbersome, with extensive documentation required (PRC 2016, Article 10–11). May need 'other important items' at government's discretion[a]	None – no consultation on current act[b]	Trust and confidence not a focus of the act	Must show charitable activities, full and efficient use of charitable assets or they will be de-registered (PRC 2016, Article 60) Not currently publicly available	Must file numerous reports (PRC 2016, Article 13). Accounting is to follow the 'unified national accounting system' (PRC 2016, Article 12)	Foundations qualified for public fund-raising must spend no less than 70% of their total revenue for charitable activities. Annual management fee <10% of annual expenditures (PRC 2016, Article 60)
Japan (PICC)	PICC is an independent government entity 9,400 (PICC 2016)	PIIA and PIIF register[c]	PIIA and PIIF (Act No. 49 of 2006, AAPI)	JACO (sector umbrella group) lobbied for the PICC's establishment. The Japan Institute of Certified Accountants lobbied for accounting changes[d]	Trust and confidence not a focus of the act	All PICs must file and data are available from PICC	From 2016 must, substantially use PICAS (partially aligned to IFRS but differ from other third sector organisations) (Deguchi 2016)	PICs must spend >50% on their charitable purposes, use charitable donations for charitable purpose and account for 'idle property' (AAPI 5 (vi), (ix))
Oceania								
Australia (ACNC)	ACNC is an independent government entity 53,000	All charities must register but religious entities exempted from filing	2012 (ACNC was threatened with dissolution but sector supported it) (Charities Act 2013)	Various umbrella bodies exist. Religious sector strongly lobbied not to be regulated	Charities rank third behind doctors and police (ChantLink 2013)	All must file non-financial information which is made publicly available by ACNC	Charities with revenue >AU $250,000 must file financial statements complying with Australian accounting standards	No. But must meet separate states' requirements for fundraising

(*Continued*)

Table 2. (Continued).

Jurisdiction	(A) Institutional form and no. of charities regulated	(B) All charities registered to gain tax exemptions?	(C) Age/Most recent major consultation	(D) Lobbying since most recent act	(E) Trust and confidence survey	(F) Filing required and publicly available	(G) Financial info uses harmonized, legitimate standards	(H) Extra information required?
New Zealand (CS)	CS is within government Department of Internal Affairs (since 2012) 27,000	All must register and file	2005 New regulatory requirements in 2013 (Charities Act 2005)	Various umbrella bodies exist. However, not active in disclosure requirements (Sinclair and Bolt 2013)	Strong trust and confidence (Cordery, Sim, and van Zijl 2017)	All must file. Data provided via 'open data' on CS website	New standards from 2015/6 years specifically designed for charities from public sector standards (Cordery, Sim, and van Zijl 2017)	No specific calculations for fundraising, etc. required
United Kingdom								
England and Wales (Charity Commission – CCEW)	Non-ministerial government department (Connolly, Hyndman, and McConville 2013) 167,000	If revenue >GBP5,000 and they are not exempted or excepted (CIOs) must registered regardless of size) (Morgan 2017)	Register since 1960 (Charities Act 2011)	NCVO and others are a strong lobbying force (Alcock 2010). Concern that CC not well resourced (Hogg 2016)	Most recent survey shows a fall from 6.7/10 to 5.7/10 due to high-profile scandals (Populus 2016)	Charities must file and CC publishes details on website	The SORP is linked to the for-profit SME accounting (FRS102)	Requirements not increased. However, fundraising income and expenditure must be provided and trustees must report on them (Breen 2012)
Scotland (OSCR)	Non-ministerial government department 24,000	All charities must register (no exemptions)	Register since 2006 (Charities and Trustee Investment Act 2005)	SCVO a strong lobbying force, e.g. they have a representative on the Independent Fundraising Standards & Adjudication Panel for Scotland	Most recent survey shows no change at 6.7/10 (OSCR 2016)	All charities must file and OSCR publishes details on website	As in England and Wales, the SORP is linked to SME accounting	Requirements not increased. No specific fundraising disclosures required

(*Continued*)

Table 2. (Continued).

Jurisdiction	(A) Institutional form and no. of charities regulated	(B) All charities registered to gain tax exemptions?	(C) Age/Most recent major consultation	(D) Lobbying since most recent act	(E) Trust and confidence survey	(F) Filing required and publicly available	(G) Financial info uses harmonized, legitimate standards	(H) Extra information required?
North America								
Canada (CRA)	CRA is the Tax Authority 86,000	All charities must register	Initial date unknown	Imagine Canada and others working towards self-regulation (Phillips 2012). Successful on stopping some disclosure bills (Phillips 2013)	Market scandal in 2009 caused new focus (Phillips 2012) No surveys since 2008 (ChantLink 2013)	All charities must file Form T3010. This is not re-published by CRA	Charities must report on activities sources of revenue and expenditure. May use public or private sector accounting standards	Charities must meet 'disbursement quota' on charitable activities and declare property not used in activities or administration in last 2 years
United States (IRS)	IRS is the Tax Authority 1,500,000	All must register as 501(c)(3) organizations, but numerous entities exempted from filing[f]	Initial date unknown	Proliferation of state and federal regulators means lobbying requires more coordination and regulatory capture unlikely to occur[g]	No surveys done	Charities with revenue >US $25,000 must file Form 990. This is not re-published by IRS (data can be bought)	Form 990 does not follow accounting standards and difficulties with completing (e.g. Hofmann and McSwain 2013)	No quota on fundraising, etc., but these details are used by Charity Navigator, etc. to market charities

PICC: Public Interest Corporation Commission; IRS: Inland Revenue Service; CRA: Canada Revenue Agency; OSCR: Office of the Scottish Charity Regulator; CS: Charities Services; ACNC: Australian Charities and Not-for-profits Commission; PIIA: Public Interest Incorporated Associations; PIIF: Public Interest Incorporated Foundations; PICAS: Public Interest Corporation Accounting Standards; CIOs: Charitable Incorporated Organizations; SORP: Statement of Recommended Practice; SME: Small and Medium Enterprises.

[a]Existing groups may apply for charitable status under the new law, with the regulator being required to make a written decision within 20 days (PRC 2016, Article 6, 10). Ordinary applications must be considered within 30 days.

[b]The Act considered here is the one deemed to be the Charity Law, rather than the Law on the Management of Overseas TSOs' Activities in Mainland China, which will be enforced in January, 2017. This latter law intends to reduce the influence of non-mainland TSOs on China's domestic affairs. It includes not only foreign TSOs, but also those established in territories including Hong Kong, Macau, and Taiwan (ICNL 2016).

[c]Japan's TSO legal system launched a single set of juridical personalities named *koeki-hojins* (Public Interest Corporations, PICs) in 1896, which were the forerunner of today's regulated charities, and include Incorporated Associations and Incorporated Foundations (Deguchi 2016; Laratta and Mason 2010). Relevant literature (Deguchi 2001; Pekkanen 2000; Pekkanen 2001; Kawashima 2006; K. W. Simon 2006) has paid more attention to the Specific Nonprofit Corporations (SNCs), partly because these organizations are often called *NPO-hojins* (NPO Corporations) not only journalistically but also in academic publications. Nevertheless, the legal context for TSOs is more complex, as specific organizational types have proliferated, with the PIC system diversifying under various special laws for School Corporations, Social Welfare Corporations and Medical Corporations. Deguchi (2016) calls these varied juridical personalities in Japan the 'Galápagos Syndrome.' To compare internationally, this paper focuses on the PICs, because the PIC is the origin of all Japanese juridical personalities and these are charities.

[d]Local government also regulates General Incorporated Associations (GIA) and General Incorporated Foundations (GIFs) which can later apply to the PICC to become PIIAs or PIIFs, respectively. Conversely, de-registered PICs become GIAs or GIFs.5 Information downloaded from the internet, 18 May 2016 from http://www.cra-arc.gc.ca/chrts-gvng/chrts/glssry-eng.html#dq.

[f]Exempted charities include (at national and state level) religious organizations, universities, non-profit hospitals, and small organizations. State requirements vary but some require disclosures on fundraising and charge $400–800 annually (Irvin 2005).

[g]However, Knauer (1996) provides an example of effective lobbying in respect of taxation disclosures.

Table 3. Summary of assessment of charity regulators' actions against factors.

Factors considered	Help the public interest	Harm the public interest
	⟵	⟶
(a) Institutional form of regulator	Japan, Australia, England and Wales, Scotland	China, New Zealand, Canada, United States
(b) Must charities register to obtain tax exemptions?	China, Japan, New Zealand, England and Wales, Scotland, Canada	Australia, United States
(c) Year of most recent consultation	Japan, Australia, New Zealand, England and Wales, Scotland, Canada	China, United States
(d) Extent of lobbying since most recent Act	China, New Zealand, United States	Japan, Australia, England and Wales, Scotland, Canada
(e) Trust and confidence survey?	Australia, New Zealand, Scotland	China, Japan, England and Wales, Canada, United States
(f) Must charities file regularly? (Is it publicly available?)	Japan, Australia, New Zealand, England and Wales, Scotland	(Also costs to filer) China, Canada, United States
(g) Type of accounting standards required to be followed?	China, Australia, England and Wales, Scotland, Canada	(Also costs to filer) Japan, New Zealand (new), Canada, and United States
(h) Is extra information required to be filed?	Japan, Australia, New Zealand, England and Wales, Scotland, United States	(Also costs to filer) China, Canada

jurisdiction, each has provisions to require de-registered charities to gift charitable assets to another (similar) charity on closure and for taxation adjustments to be made on income that is no longer exempt.

Nevertheless, (g) shows that inter-jurisdictional diversity exists in mandated financial accounting standards. Indeed, the Japanese, United Kingdom and United States regulators mandate specific formats for charity accounts preparation and presentation (being the PICAS,[9] SORP, and Form 990, respectively). Thus, individual benchmarks can be assessed (Japan) or calculated by others (United Kingdom and United States), although such benchmarks are open to manipulation (Hofmann and McSwain 2013). Financial statement preparation is likely to increase charities' costs if form filing is onerous and the accounting standards are not widely known. While in the United Kingdom the SORP is closely aligned to standards developed by the relevant local accounting standard setter for for-profit entities, the Japanese PICAS is increasingly aligned with IFRS. Nevertheless, PICAS differs from other TSO requirements and additional special financial disclosures are mandatory (Deguchi 2016). The United States' Form 990 has been criticized for not being aligned with Generally Accepted Accounting Practice (GAAP) due to its specific disclosures (Keating and Frumkin 2003). In all other cases (China, Australia, New Zealand, and Canada), charities use standards developed by the relevant local accounting standard setter. In New Zealand, these are similar to the standards developed for the public sector (and based on international standards, although they are new) and in Canada the charity's origin decides whether for-profit-based or public-sector-based standards are to be used. In Australia and China (similar to the United Kingdom), charities use standards developed for the for-profit sectors; but dissimilar to the United Kingdom, these have few amendments for charity-specific reporting. Such reporting is a new requirement in Australia.

For continued registration, Canada and Japan require charities to meet specific expenditure benchmarks, while in England and Wales and the United States,

fundraising expenditure and income is itemized, allowing extrapolation to benchmarks by interested donors or their agents (Breen 2012). New Zealand and Australia do not require this benchmarking, although each Australian state regulates fundraising separately.

Other indicators of regulation in the public interest are recent consultations and maintaining the public's trust in regulated entities (row (c) in Table 3). The United States and China are the only two jurisdictions where public consultations have not been undertaken in the last 10 years. For the former, this may be related to its maturity as a regulator, while the latter operates a socialist republic, resulting in less consultation than in a democracy.

Neither Japan nor China has stated a specific objective to increase public trust and confidence. For the United States and Canada, the operation of an active rating agency may substitute for the regulator's work. While a survey in England and Wales showed falling public trust and confidence as a reaction to recent scandals (Populus 2016), surveys in the other three countries show public trust and confidence being maintained (ChantLink 2013; Horizon Research 2014; Office of the Scottish Charity Regulator 2016). Thus, four out of the eight regulators are required to contribute to the maintenance of public trust and confidence, and recent surveys suggest that the regulator in England and Wales is struggling in this respect. We are unable to assess the remaining four.

Table 3 shows that fewer aspects of jurisdictions' regulations follow public choice theory propositions. Yet, we observe lobbying leading to regulatory capture and regulators requiring disclosures which are not made publically available (row (d)). In Canada and Japan, strong sector lobbying has effected regulatory change and, thus, may indicate regulatory capture which the regulators guard against. Some charities are exempted from filing in Australia, England and Wales, and the United States.[10] In England and Wales and the United States, this relates to decisions made some time ago which are unlikely to be changed, but there is less evidence of recent regulatory capture (except for Simon 1995 in the United States). Nevertheless, strong lobbying by Australia's religious entities almost led to the demise of the ACNC (Phillips and Smith 2014). This provides an example of public choice theory's warnings against regulatory capture. China's regulator is too new to publish charity data, and it is too early to tell if it will be made available. Charity data are not freely available in North America.

How do these arrangements reflect costs and benefits for the regulated charities? Quadrant 1 and 3 of Figure 1 include revenue-enhancing benefits. While all regulated charities bear compliance costs, these are relatively low in England and Wales, Scotland, Canada, and, to some extent, the United States (the Form 990 is not aligned with GAAP but has been relatively unchanged for a number of years).[11] Of more concern are the mandatory requirements for charities to complete specific calculations on filing, and where no allowance is made for smaller charities, as occurs in Japan and China. Such requirements are cost-augmenting for charities (i.e. place them in quadrant 2 or 4). In Australia and New Zealand, where charities must report using new accounting methods, the expense of converting may be cost-augmenting; yet, the requirements could be in the public interest. Mitigating these costs is the public availability of these disclosures and enhanced transparency. The newer regulator in Australia is working hard to gain legitimacy with its constituents despite the exemptions it has been forced to make on religious entities' filings.

Charity regulators – regional groupings?

This analysis is based on Phillips and Smith's (2014) assumption that regional similarities exist.

Asia

In both jurisdictions, the filings/registration is complex, engendering high compliance costs. These reactive processes seek to reduce the likelihood of regulatory capture. China's new charity law is effective from 2017. The regulator is within a government department and has not stated explicitly that it seeks to increase public trust and confidence or whether it will focus only on registration and monitoring. The government emphasizes national security and a 'societal public interest' that the government interprets on a discretionary basis (Yu 2017). The new regulation is likely to be driven by public choice (towards quadrant 4). If the regulator transparently publishes charity filings (as it is required to do under Article 69), it could move into quadrant 2.[12] Japan's compliance costs (particularly the financial data demanded) are high, but the regulator is an independent government entity (making it less likely to be subject to the whim of political manipulation) and charity data are publicly available. Hence, we suggest it could be in quadrant 2 of Figure 1. These two jurisdictions share regional similarities, especially as Chinese delegations often visited Japan to discuss Japan's PIC system prior to passing its legislation. Indeed, China Charity law adopted the same Chinese character of *Rending* (authorization) as the legal term of *nintei* of the Japanese law (Z. Yu, personal Communication, 13 March 2017).

Oceania

Australia and New Zealand are more likely to be in quadrant 1 or 2 of Figure 1. The newness of the ACNC means charities currently bear higher compliance costs due to new disclosure requirements, which the ACNC believes to be in the public interest. Being an independent government entity and therefore an autonomous regulator, the ACNC is engaging with the public. Further, no longer facing closure, it is working to reduce charities' compliance costs by eliminating differences in relevant state regulations. Nevertheless, the exemption from filing for religious entities, which resulted from strong lobbying, risks the ACNC risks falling below the public interest line. New Zealand's CS is within a government department, and new accounting requirements are mandated from the 2015–2016 financial year. While attempts were made to consult as fully as possible on these standards, charities currently face high compliance costs. New Zealand is likely to move into quadrant 1, but this depends on the regulator's actions and sanctions, and how its recent move into a government department changes its regulatory approach (as Christensen and Lægreid 2006 suggest that being inside government will make it less efficient). Both New Zealand and Australia have received similar trust and confidence scores from public surveys.

North America

Canada and the United States share similarities, in that public trust and confidence is not their prime motivation, the regulator is the taxation department, and they are both mature regulators. Canada's co-regulation and the actions of Imagine Canada and other umbrella groups may lead to regulatory capture and place it in quadrant 3

or 4. The United States has a similar position, as its filing requirements are not aligned with GAAP, resulting in un-standardized and unreliable reporting (Hofmann and McSwain 2013). Both cases require evidence of an absence of bureaucratic inefficiency and focus on process if these regulators are to move into public interest quadrants 1 or 4.

United Kingdom

England and Wales and Scotland are similarly strong when measured against public interest theory. They are both non-ministerial government departments. While CCEW's underlying legislation (Charities Act 2011) exempts and excepts certain groups (see Endnote 10), these are historical matters for this mature regulator. However, the concern for adequate resourcing is current (Hogg 2016), as is the drop in public trust and confidence in regulated charities (Populus 2016). The regulatory choices made in the establishment of OSCR (as a relatively new regulator under the Charities and Trustee Investment (Scotland) Act 2005) recognize the necessity not to exempt entities and also the need for the regulator to be appropriately resourced. This places it strongly in quadrant 1 of Figure 1.

There are limitations to this research. As with any theoretical model, the aggregation of data into eight categories generalizes information and reduces the context-specific nuances evident in individual jurisdictions. Further, in analysing regulation, we have considered only the main charity regulator, rather than the many other regulations that charities face, such as health and safety, or accreditations that charities may obtain for their programmes (as seen in e.g. Bedford 2015). Nevertheless, with charity regulators on the rise, there is merit in considering whether this type of regulation is in the public interest and what the costs might be. Despite different definitions of charities worldwide, this research has considered the entities that are most similar in gaining taxation exemptions and being regulated for their public benefit work. Further extending the arguments of Six (2013) to analyse regulatory compliance would be useful.

Conclusion

Charity regulation informed by public interest theory leads to mandatory financial reports to reduce information asymmetry and increase public trust and confidence in charities (Neely 2011; Sinclair, Northcott, and Hooper 2014; Cordery, Sim, and van Zijl 2017). Further, governments regulate charities in order to monitor charities receiving tax exemptions (Phillips 2013; Abramson, Salamon, and Steurle 2006; Breen, Ford, and Morgan 2009), and which they depend on to deliver social services (Hofmann and McSwain 2013). Hence, charity regulators respond to fraud and public scandals by using their powers (and where necessary calling for amended regulation) to increase their scrutiny of charities, including mandating regular reporting as one condition that will allow a charity to continue to enjoy taxation concessions and other benefits (Mayer and Wilson 2010; Frumkin 1998). However, charity regulators also face barriers, including constrained resources which limit their enforcement activities and require them to constantly seek efficiencies (Mayer and Wilson 2010; Hogg 2016). Designing appropriate regulatory requirements that are in the public interest is challenging (Hepburn, n.d.; Christensen and Lægreid 2006), and

evidence from these eight countries suggests that where trust and confidence is measured, it is static, rather than rising (e.g. Horizon Research 2014; ChantLink 2013). Potential donors may not be aware of the charity regulator, although they believe that regulation is 'good' (Hogg 2016). Analysis of regulatory institutions and trust and confidence is needed to understand if regulatory tools are effective, both in the present and in the longer term.

The model developed in this research allows us to assess the relative costs of regulation on charities. In some jurisdictions, new disclosure regimes impose higher compliance costs than charities have previously borne (e.g. Australia, New Zealand, Japan, China). Over time, charities become familiar with the new requirements and these costs should diminish if the regime is otherwise efficient; hence, charities will enjoy net benefits as donors' trust and confidence rises (as can be seen with investors in the stock market in Solomons 1978).

Yet, public choice theory also motivates charity regulation, as evidenced by the impact of lobbying and changes to legislation on politicians' whims (see examples from the United States [Simon 1995] and Australia [Phillips and Smith 2014]). Lobbying and political influence create regulatory inefficiency and harm public interest (Conybeare 1982; Kling 1988; Christensen and Lægreid 2006; Peltzman 1976; Irvin 2005; Posner 1974). Regulators should consider how best to publicly communicate regulatory quality and the comparative options, in order to continue to ensure that charity compliance costs are maintained at reasonable levels and that such regulation is in the public interest (nearer quadrant 1 of Figure 1). The charity sector also has a role, as can be seen, for example, in Canada, where it strongly influences and is involved in co-regulation (Phillips 2012), but the regulator must guard against regulatory capture (Stigler 1971). Further analyses of the benefits of charity registration and the costs of compliance with these regimes are required.

The theoretical model developed and the case studies allow us to analyse differences between eight charity regulators. Phillips and Smith (2014) suggest that convergence is a likely outcome of similar concerns for efficiency and effectiveness and confirm that charity regulators meet regularly to discuss matters of interest. Nevertheless, we show that the theoretical drivers for regulating locally, as well as lobbying and institutional arrangements, remain a barrier to international convergence. This diversity suggests that regulators may not always seek to replicate tools that others use to achieve regulatory efficiency and to reduce charities' compliance costs. Yet, the model also shows regional regulatory similarities, suggesting scope for increased regional harmonization. Further, the case studies also provide a useful reference for charities and others interested in cross-jurisdictional work.

Notes

1. For example, income tax exemptions exist for qualifying entities and activities in each of the jurisdictions studied in this research. Other tax benefits, some of which are quite complex, are also available. For example, exemption from Fringe Benefit Tax (Australia); limited concessions on Goods and Services Tax/Value Added Tax/Sales Tax (Australia, the United Kingdom, Canada, and the United States); and limited concessions on land/property tax (in each jurisdiction except China). Furthermore, in each of the jurisdictions studied, there are taxation incentives for qualifying charitable donations (either in the hands of the donor and/or the charity). By assessing, on a scale of 1–5, the extent to which the tax system supports making and receiving charitable donations locally and cross-border, the Index of

Philanthropic Freedom (Hudson Institute 2015) allows a comparison of the relative benefits to donors. Using this Index, the United States scores 5.0, Canada 4.7, Japan and NZ 4.5, Australia and the United Kingdom 4.0, and China 2.4.

2. While barriers to entry also exist in public interest theory, they protect against market failures, rather than, as in public choice theory, barriers lobbied for by regulated entities or by politicians.
3. Public choice theory also sees the regulators asking government to fix prices or to restrict complements or substitutes (Kling 1988; Stigler 1971), but these actions do not appear to be relevant to charities.
4. However, when the regulatory issue is a specific one, it may need only a group of entities in a specific sector or region to be active enough to impact the final shape of the regulation.
5. Keating and Frumkin (2003, 5) note that 'costs and benefits are unobservable and difficult to quantify;' however, a regulator must estimate these in designing appropriate regulation.
6. For example, Irvin (2005) estimates charities spend between 10 and 24 h a year on gathering and reporting extra information to their state regulator (depending on the charity's size) but she did not ascertain what benefits they gained.
7. We recognize that not all regulators have as a prime motivation the increase of public trust and confidence and therefore such a survey may not be considered.
8. As noted below, generalizations are required in order to do this and some of the nuances of regulation and regulatory activity are therefore lost. However, as with prior research, we took the regulation that affects larger charities and compared the findings in Table 2 against the theoretical model.
9. A new PICAS (Public Interest Corporation Accounting Standard) was issued by PICC in 2008. Public Interest Corporations must submit 'forms' based on financial reports prepared under PICAS.
10. In Australia and the United States, religious entities are required to register but not file financial statements/financial returns. In England and Wales, the Charities Act (2011) seeks to ensure that all charities will have a principal regulator and therefore the government is progressively reducing the exceptions previously granted to, for example, many places of worship, Scout and Guide groups and armed forces charities (i.e. excepted charities). These must now register with the CCEW if their income is more than £100,000 per annum (Morgan 2017). Excepted charities must, however, complete financial accounts in line with the Charities Act (now 2011) and have them independently examined if their revenue is greater than £25,000 (Morgan 2009).
11. While the actual time required to comply may be significant, the financial accounting requirements in these jurisdictions recognize size-driven capacity constraints are aligned with nationally recognized GAAP (except for the US as noted) and have been stable for some time.
12. However, there is concern about the vague stipulation and ambivalent attitudes to China charity law ("The Good – and Bad – About China's Charity Law" 2016).

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