

DOMESTICATING CIVIL SOCIETY:  
HOW AND WHY GOVERNMENTS USE LAWS TO REGULATE CSOS

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August 3<sup>rd</sup>, 2020

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Domesticating Civil Society:

How and Why Governments Use Laws to Regulate CSOs

A single topic unifies my dissertation chapters: how and why do governments regulate civil society organizations (CSOs)? Three sets of research questions engage this topic using a multi-method research design. My first set is descriptive: what exists in the range of legal provisions governments use to regulate CSOs and how often do governments enact these provisions? In the second set of questions, I examine policy adoption, asking: under what conditions do governments enact various CSO regulation? Then, to what extent are these legal institutions path dependent—meaning, shaped by current laws and institutions—and to what extent are they affected by international factors and influences? And why do nondemocratic governments enact permissive provisions more frequently than restrictive ones? Finally, the third set of questions examines enforcement, asking under what conditions do governments enforce these provisions? Do *de facto* rules always match *de jure* rules, and if not, why not?

My dissertation speaks to what human rights defenders identify as a growing number of governments enacting new, restrictive CSO laws—a trend referred to as the “closing space” phenomenon. This pattern is concerning, and we cannot afford to misunderstand it. The conventional explanation is that governments use these CSO laws to maintain power by rattling social cohesion and weakening democratic opposition. Discourse within the literature suggests that democracies pass permissive laws that protect the freedom of association, while autocracies and hybrid regimes pass restrictive laws that hinder voluntary association. What is more, the traditional argument frames these laws as a relatively new phenomenon beginning in the late twentieth century. Yet closely examining primary legal sources reveals a puzzling, non-trivial

number of exceptions to these rules. One type of exception is that nondemocratic regimes frequently enact permissive provisions. Another type is that CSO laws are not new and often predate a country's independence. If these legal institutions are neither categorically restrictive nor necessarily new as we once thought, why do governments enact them, and how do they enforce them to regulate CSOs?

My theory argues that a government uses both CSO laws and regulatory enforcement actions to maintain political control and to expand legitimacy among its citizenry and the international community. A government whose grip on power is secure uses legal rules to provide CSOs with greater operational space that directly and indirectly bolsters its legitimacy. When a regime's grip on control is fragile, the government manipulates legal rules and enforcement actions to observe civil society and control CSOs. This theory applies to all regime types and levels of development.

I test my theory using five methods and four datasets. Among the data analyzed is a novel dataset created by systematically and holistically coding 285 laws enacted by 17 countries between 1872 and 2019. Twelve are East African countries; the remaining cases are the Permanent Members of the UN Security Council. A single-country case study of Kenya completes my research design. Using site-intensive methods, I collected archived government records and interviewed elected officials, bureaucrats, and CSO regulators. Qualitative analysis triangulates my findings to identify causal processes. My primary findings are that the legal institutions that regulate CSOs, what I introduce as "CSO regulatory regimes," are neither new nor categorically restrictive. Regulatory regimes are instead historically informed, rewritten at different moments in different ways, and enforced inconsistently for political expediency. In its simplest form, my argument is that governments tactically alter their regulatory regime's

contents and enforcement as part of a broader strategy to increase their legitimacy and control. Governments maintain the status quo—both written rules and enforcement actions—as long as the current regulatory regime achieves the government’s aims. When change is necessary, governments alter enforcement actions, enact new provisions and enforce them as written, or enact provisions with the intention of sabotaging their enforcement.

Enacting or not enacting a particular CSO law does not guarantee civil society’s environment will open or close. To truly understand whether a law “helps” or “hinders,” we must know the law’s contents and see how the government enforces it. I consider these matters as I explore how and why governments use CSO laws to domesticate civil society.

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## —Chapter I—

### REGULATING THE FREEDOM TO VOLUNTARILY ASSOCIATE

For the first time in nearly 20 years, the majority of countries in the world are autocracies, and undemocratic regimes now govern more than half of all human life.<sup>1</sup> Existing conceptualizations of the state-society relationship focus on civil society's ability to act as a bulwark against the state. Civil society and the state are independent entities, pushing against each other in a zero-sum game: an unstoppable force versus an immovable object. In this framework, a slowly backsliding political world signals that civil society is losing its strength as the positive force for change that we think and hope it is (de Tocqueville, 1840a; Smith, 1973; E. Ostrom, 1990; Putnam, 1993; Linz & Stepan, 1996; Mutunga, 1999; Skocpol & Fiorina, 1999). The global proliferation of autocracies must be the outcome of autocratic states growing independently stronger, or of bulwarks—civil societies—becoming independently weaker. If autocrats are suddenly more powerful, what has stripped civil society of its capacity to be an effective defense against the state? What has robbed it of its power to protect civil liberties? Is civil society failing us?

I argue that civil society is not an unstoppable, independent force, but is defined in scope and efficacy by the legal institution the state enacts and enforces. In the way a farmer builds a greenhouse to grow plants, CSO laws create the architecture in which civil society exists and the space in which civil society organizations (CSOs) operate. Like plants in a greenhouse, civil society's ability to bear fruit and contribute to positive sociopolitical outcomes is profoundly

<sup>1</sup> According to Lührmann et al. (2020, p. 13), 92 of 179 countries in the world are now autocracies, and those countries are home to 54% of the world's population.

shaped by the legal institutions that structure its activity. In short, civil society thrives when the institutional environment favors it. More concretely, CSO laws have the potential to either bolster or upend democratic transitions and good governance because of the laws that provide positive and negative rights to CSOs. Organizations use those rights to establish themselves, work with and challenge government, and provide the organizational space in which individuals may associate freely. Removing such rights diminishes their ability to contribute to positive sociopolitical outcomes directly. Then, as a secondary effect, a weakened civil society limits opportunities for citizens to understand the “science of association” and learn how to overcome the weakness of individuals in democratic societies (de Tocqueville, 1840b, p. 902) and develop the political capacity necessary to engage society and make democracy a viable way of life (V. Ostrom, 1973, pp. 106-107; 1997, pp. 272-273).

Emphasizing the shaping influence of legal institutions on civil society allows us to carefully consider one factor driving global democratic backsliding: governments enact restrictive laws to weaken civil society and undermine the bulwark. This argument is what scholars and practitioners refer to as the “closing space” or “shrinking space” phenomena. It occurs when governments enact and enforce CSO laws to maintain power and control by monitoring and repressing CSOs within their borders (Wiktorowicz, 2000; Carothers, 2006; Gershman & Allen, 2006; Christensen & Weinstein, 2013; Swiney, 2019). Discourse within the literature suggests that democracies pass permissive laws that protect the freedom of association and help CSOs (World Bank, 1997; Kiai, 2012), while autocracies and hybrid regimes pass restrictive laws that hinder voluntary association (Gyimah-Boadi, 1998; Mendelson, 2015; Wolff & Poppe, 2015; Tripp, 2017). According to this view, restrictive laws and coercive enforcement actions are unlikely in open, democratic societies, but are more likely in repressive, authoritarian

settings. The research and limited data that exists accords with this conventional explanation. Yet there are a puzzling, non-trivial number of exceptions to this rule, in which nondemocratic regimes enact permissive provisions. For example, in 1979, the Soviet Union as a communist ideocracy enacted provisions giving “public organizations” a tax exemption and allowed those charitable organizations to engage in “economic activities” unrelated to the charitable mission.<sup>2</sup> Turning to Kenya for another example, in the final years of his one-party autocracy, President Moi enacted Kenya’s Non-Governmental Organization Co-ordination Act, 1990. The government amended the law numerous times, but its original version contained multiple permissive provisions, including not requiring CSOs to obtain additional licenses or permits before conducting operations (§ 12(3)); providing the ability to appeal and dispute any decision made by the regulator (§ 19); creating the “Kenya National Council for Voluntary Agencies” as a collective forum and self-regulator (§ 23); and establishing strong oversight of the regulator’s activities (§§ 4, 6, 30, 31).

These exceptions to the proposed rule—the puzzle of nondemocratic regimes enacting permissive provisions for CSOs—raise two pressing questions. First, why do governments of all types enact restrictive or permissive CSO laws? And more specifically, why would nondemocratic governments enact permissive provisions? Most CSO laws, regardless of the political regime type that enacted them, fuse numerous permissive legal provisions with restrictive ones. The idea that democracies always pass permissive laws, while autocracies always pass restrictive ones, oversimplifies why and how governments use regulation to the point of distortion. A strict democracy-autocracy conceptualization also neglects to consider the

<sup>2</sup> About Income Tax on Co-operative and Public Organizations (§ 1).

endurable semi-authoritarian regimes that govern “gray-zone countries” (Carothers, 2002, p. 19; Levitsky & Way, 2010). Hybrid regimes may use permissive laws to tactically manipulate civil society as part of a quest for legitimacy within a broader strategy to maintain control and power. Of course, full-scale authoritarian regimes that have successfully eliminated democratic rule and openly violate political rights and civil liberties (Levitsky & Way, 2002) may also choose to use this tactic.

The second pressing question asks, under what conditions do governments enforce these provisions? Law-in-the-book does not always match law-in-action (Pound, 1910, p. 12).<sup>3</sup> The actual effect and intention of CSO laws may not be understood until we know how a government chooses to enforce them. Particularly, restrictive provisions may not be enforced as quickly or to the extent that we may fear, and permissive provisions may never be enforced because the government enacted them with disingenuous intent.

To answer these questions, I make four arguments. First, CSO laws in all political contexts contain provisions that both help and hinder CSOs. These legal institutions, what I have referred to as CSO regulatory regimes, fuse permissive and restrictive provisions to regulate CSOs. Second, path dependency shapes regulatory regimes through a process of institutional development. In moments of institutional change, preexisting rules make some changes more likely, and other changes less likely. Third, international influence, path dependency, and local politics explain the institutional development of regulatory regimes. Fourth, rules-in-form do not necessarily match rules-in-use. A government’s enforcement actions may deviate from the

<sup>3</sup> The same distinction is also made using terms rules-in-form versus rule-in-use, *de jure* versus *de facto*, and legal rules versus working rules.



provisions that exist in the *de jure* regulatory regime. This deviation is not necessarily malicious. It only hinders civil society when permissive provisions are under-enforced, and certain restrictive ones are over-enforced. In the final analysis, it is this *de facto* regulatory regime that affects CSOs and society, and those effects initiate future institutional change.

## **Why CSOs are Important, and What Governments are Doing About Them**

### *Conceptualizing Necessary Terms*

Before I elaborate the four arguments, it is necessary to establish definitions for several key terms that I use throughout my writing: civil society, CSOs, and CSO Regulatory Regimes.

Civil society is a rich concept that many disciplines have found tremendously productive when studying many topics, including democratization, governance, and political behavior. In 1821, Hegel defined civil society broadly as that which fulfills the system of needs that exists between the family and the state (Hegel & Wood, 1991, p. xviii). Inspired by Dewey (1927), Habermas (1962 [1989]), and Gramsci (1971), scholars have conceptualized civil society as a public forum in which citizens voluntarily interact, debate, build social capital, and pursue numerous forms of political and social behaviors. I adopt Warren's definition of *civil society* as "the domain of society organized through associative media" that is separate from both legally empowered bureaucracy and market transactions mediated by money (Warren, 2001; 2011, p. 377). Politically, civil society supports democratic transitions and consolidation, provides a space for people to demand greater rights and better constitutions, and assists society in developing the political capacity necessary to engage government (de Tocqueville, 1840a; V. Ostrom, 1973 [2008]; Linz & Stepan, 1978; Mutunga, 1999). Socially, civil society is the sphere in which persons voluntarily associate. These interactions shape political behavior and attitudes towards

voluntary organizations and develop interpersonal networks of norms, trust, and reciprocity that affect governance (Putnam, 1993; Fukuyama, 1995; Skocpol & Fiorina, 1999; Putnam, 2000; Howard, 2003; Skocpol, 2003). Economically, civil society is the space where individuals overcome market and government failures to provide local solutions to unmet needs (de Tocqueville, 1840a; V. Ostrom & Ostrom, 1971; Weisbrod, 1977; Hansmann, 1980; Weisbrod, 1988; Hansmann, 2003). In this capacity, civil society allows individuals to support museums, libraries, and cathedrals. These cultural symbols allow citizens to reinvigorate their passions, expand their knowledge, and celebrate their faith without the government's approval or support (Young, 1983; Rose-Ackerman, 1996; Frumkin, 2002).

Civil society is related to but distinct from CSOs. I define *civil society organizations* as private, self-governed organizations, established on the principle of voluntary association for purposes other than political control and economic profits. This definition excludes political parties and entities organized to raise and retain profits. The definition includes advocacy organizations, professional associations, and religious congregations. My definition does not require CSOs to be politically active, prosocial, or even socially desirable. The definition resembles what Madison referred to as "factions" in Federalist Papers, No. 10:

"By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse or passion, or of interest, adverse to the rights of other citizens or to the permanent and aggregate interest of the community."  
(Madison, 1787 [1961], p. 72)

CSOs can exist informally, without registration with a government, but are legal in most countries. CSO laws in many countries contain provisions that incentivize informal CSOs to incorporate as legal entities. Once registered, CSOs often enjoy many privileges, such as tax-exemption and the ability to own property. Scholars generally refer to legally registered CSOs as

nonprofits if they operate in the Global North, and non-governmental organizations (NGOs) if they work in the Global South. However, there is no steadfast rule, and analysts use many terms—ranging from BINGOs representing big and international organizations (Vakil, 1997) to GINGOs representing smaller grassroots groups started by amateurs (Appe & Schnable, 2019; Schnable, 2021)—to identify these formally registered organizations that operate in the non-market, non-governmental arena.

Terms such as “civil society organization,” “nonprofit,” and “non-governmental organization” are generally synonymous and interchangeable. In essence, each organizational type is private rather than public, held together by voluntary association rather than economic gain or political control, and self-governed, making it an autonomous actor rather than an appendage of government. When studying the laws that regulate civil society and its organizations, “CSO” allows for a degree of conceptual extension and comparability that alternative terms cannot achieve.<sup>4</sup> To talk about the collection of instruments that governments use to regulate CSOs, I use the term CSO regulatory regime. I conceptualize *CSO regulatory regimes* in terms of five key elements: first and foremost, they are overt legal rules; second, they are not limited to single statutes and can contain multiple laws and regulatory policies; third, they are holistic and include all legal provisions that affect CSOs; fourth, they are institutions with long histories that vary over time; and fifth, government agencies enforce them. Combining these

<sup>4</sup> The number of legal definitions and CSO-subtypes increases as the number of countries studied expands. The CSO laws for the six East African Community countries contain 42 legal definitions of private, self-governed organizations established on the principle of voluntary association, for purposes other than political control and economic profits ([Appendix Table 1A](#)). Thus, the choice to study *NGO* laws—or *charitable trusts* laws, *society* laws, or *501(c)(3)* laws for that matter—is a decision to study only one CSO legal form. That choice may be desirable for some research, but here it would omit all other civil society actors and lead to an uneven and misleading historical, legal, and political analysis.

five elements yields the following definition: CSO regulatory regimes are legal institutions of multiple laws that fuse restrictive and permissive legal rules—or “provisions”—to constrain and incentivize CSOs’ behavior. I refine this definition slightly further. A *de jure* CSO regulatory regime is the formal rules-in-form that governments develop through a process of institutional change. The enforcement of those rules, by contrast, is the *de facto* CSO regulatory regime that CSOs experience on a day-to-day basis.

### *Why Governments Regulate CSOs*

Setting the political context to the side for the moment, Young describes CSOs as having complementary, supplementary, or adversarial relationships with governments (2000, 2006). The relationship is complementary when CSOs are engaged in public service provision in partnership with governments; supplementary when CSOs remedy social dislocations left unresolved by unresponsive governments; and adversarial when they advocate for social change or are regulated by governments.<sup>5</sup> Economic theory underpins most of these relationships, and from that perspective, regulation is the development of institutions to facilitate exchange and minimize

<sup>5</sup> The *complementary model* emerges when high transaction costs make governments partner with local, private organizations to deliver public service goods. This model matches the critical features of interdependence theory (Salamon, 1987, p. 43; 1995; 2002, p. 21) and the theory of coproduction (Parks et al., 1981, p. 1002; McGinnis, 1999, p. 382). The critical feature among these is that technological, economic, and institutional factors are present to allow CSOs to work with the government and provide public service goods. *Supplementary models* occur when governments cannot provide public service goods and markets will not provide them (Weisbrod, 1977). The critical feature in this model is that CSOs provide public service goods but lack a full-throated government partner and underwriter. Using a panel dataset of 172 countries between 1980-2017, Shimek (2020, pp. 12, 17) finds a positive relationship between CSOs and increased public good provision. That relationship exemplifies the positive effects of the complementary and supplementary models. The *adversarial model* calls for a more in-depth explanation. CSOs in the form of public- and private-interest advocacy organizations and coalitions regularly engage governments to lobby for new policies or to stop enforcing current ones. Yet, governments can be adversarial towards CSOs as well. Such adversarial tactics can manifest as overt shows of power such as the specific events of “Bloody Sunday” on the Edmund Pettus Bridge in Alabama (March 1965) and the violent “Tiananmen Square Massacre” in Beijing (June 1989). Or, their adversary can manifest on paper as laws that are clear, properly scoped, and necessary for democracy, applied to specific legal types of CSO.

transaction costs. Young's models are valuable for their ability to transcend contexts, study change over time, and analyze regulatory variation by sectors within a country. Still, these models do not consider the context in which the government-CSO relationships unfold.

Bratton (1989b) provides an alternative framework that focuses on politics, rather than economics, to explain a government's posture towards CSOs in the Global South. The government-CSO relationship becomes strained when CSOs provide public service goods that the government relies on for its justification for holding power. However, a CSO's supplementary role in a weak or failed state is insufficient to provoke governmental blowback on its own. Bratton proposes that a government's confidence in its grip on power determines the operating space given to CSOs. Conflict in the government-CSO relationship is inversely related to a government's confidence in its grip on power (p. 576). Governments use four strategies to regulate CSOs. Two lower-conflict strategies are monitoring and coordination. Monitoring requires CSOs to register with the government as a legal entity so that the government can gain information on civil society actors (p. 577), and coordination occurs when the government intervenes to orchestrate and synchronize the activities of many diverse and independent CSOs (p. 578). Higher-conflict strategies are cooptation and dissolution. Cooptation happens when a "superordinate agency" captures a CSO and directs its activities (p. 579). Dissolution includes all forms of overt government actions that range from impeding operational activities of autonomous CSOs to shuttering voluntary associations altogether (p. 579).

Combining Young's economic-centric models with Bratton's politics-based theory offers a more complete picture of when and how governments regulate CSOs. If a government is unthreatened by civil society, we expect a low-conflict relationship that uses monitoring and coordination to facilitate CSOs' complementary, supplementary, and adversarial relationships

with governments. It is important not to conflate “low-conflict” with “democratic” because some nondemocratic governments have shown it is possible to domesticate civil society (e.g., Spires, 2011). The more fragile the government’s political control, the more prominently conflict defines the government-CSO relationship. No government-CSO relationship is unidirectional or permanent, and as “new policies create new politics” (Schattschneider, 1935, p. 288) governments will change the laws that regulate CSOs.

### **Four Pillars of The Argument**

In this dissertation, my primary argument is that governments tactically alter their CSO regulatory regime’s contents and enforcement as part of a broader strategy to increase their legitimacy and control. Governments maintain the status quo—both written rules and enforcement actions—as long as the current regulatory regime achieves the government’s aims. Four empirical and theoretical foundations support this argument. First, CSO laws in all political contexts contain provisions that both help and hinder CSOs. The CSO regulatory regime fuses permissive and restrictive provisions into a single legal institution. Second, regulatory regimes are shaped by a path-dependent process of institutional development domestically. They are not new and, in some cases, predate a country’s independence. Third, international influence also directly affects institutional change within these legal institutions. This means international influence works alongside path dependency and local politics to shape the institutional development of regulatory regimes. Finally, the *de jure* regulatory regime may contain a different set of rules than regulators enforce. This deviation is not random, and governments have reason to produce this deviation intentionally. I discuss each of these before presenting my theoretical argument in the next section.

### *Janus-Faced CSO laws: Permissive and Restrictive Legal Provisions Both Exist*

Scholars, practitioners, and human rights advocates warn that nondemocratic governments enact restrictive legal provisions to minimize and repress civil society. This is a concerning development, and we cannot afford to misunderstand it. Studying only the enactment of restrictive provisions misses the larger and more concerning pattern that permissive and restrictive provisions exist together, and they cooccur where least expected. Research in this new body of literature is quickly evolving, however, and has moved from studying a very narrow set of restrictive provisions limiting CSOs' access to foreign assistance (Christensen & Weinstein, 2013; Rutzen, 2015; Reddy, 2018; Bromley, Schofer, & Longhofer, 2019) to now including provisions restricting CSOs' ability to self-govern, register, and operate (Maru, 2017; DeMattee, 2019b; Musila, 2019; Bakke, Mitchell, & Smidt, 2020; Glasius, Schalk, & De Lange, 2020). Not only has most research focused only on restrictive provisions (cf. World Bank, 1997; Lorch & Bunk, 2017; DeMattee, 2019b), but most analyses have studied only laws enacted by nondemocratic governments (cf. Swiney, 2019).

Unfortunately, unlike data on constitutions (Elkins, Ginsburg, & Melton, 2009, 2014b), international commitments to safeguarding human rights (United Nations Office of Legal Affairs, 2018), and *de facto* civil liberties (e.g., Freedom House, 2018), data on CSO laws are difficult to find and even harder to analyze. The dearth of information has led researchers to rely on secondary data collected by credible sources, such as the International Center for Not-for-Profit Law or ICNL, USAID's NGO Sustainability Index, the World Movement for Democracy, and Global Integrity (Christensen & Weinstein, 2013; Glasius et al., 2020), and country reports from the US Department of State, Bureau of Democracy, Human Rights, and Labor (Bakke et

al., 2020).<sup>6</sup> Reliance on secondary sources has been a data-windfall for researchers, but there are concerns. Secondary sources do not claim to code laws systematically, holistically, or historically. Indeed, many of these sources only report on select restrictive elements of these laws. This narrow scope has limited theory-building to the data available to test it—i.e., restrictive provisions identified by secondary sources. It also means that theory-testing has used censored data that omits the permissive provisions enacted alongside restrictive ones.

The systematic and holistic coding of primary sources reveals new insights that challenge the conventional explanation that regime type is sufficient to explain how and why governments regulate CSOs. Two of my empirical chapters demonstrate this insufficiency and why a better conceptualization of CSO laws is necessary. In [Chapter Three](#), I use a global data set of 139 countries that enacted restrictive foreign funding provisions between 1993 in 2012. The data appear to suggest that regime type correlates with enactment; yet the data also show several cases that violate the conventional explanation and show that democracies and hybrid regimes *also* enact restrictive foreign funding provisions. I argue that these governments are not, upon closer inspection, passing the same laws. Even among a narrow set of restrictive foreign funding provisions, some rules are unequivocally more restrictive than others—e.g., Oman (2000) categorically prohibiting foreign funding, versus Pakistan (2003) or Uruguay (2004) merely requiring ex-post notification or accounting requirements. As the second analysis in Chapter

<sup>6</sup> In one of the most widely cited articles in the literature, the authors used secondary data from “the International Center for Non-Profit Law; country reports from the US State Department Bureau of Democracy, Human Rights, and Labor; the World Movement for Democracy; the NGO Regulation Network; Civicus; the International Center for Civil Society Law; USAID’s NGO Sustainability Index; country reports from United States International Grantmaking; reports by Amnesty International, Freedom House, and Human Rights Watch; and country-specific academic and policy sources” and found that among 153 countries, only 39 had passed a CSO law containing a restrictive financial provision (Dupuy, Ron, & Prakash, 2016, pp. 303-304).



Three shows, assuming all restrictive laws and legal provisions are the same increases the Type-I and Type-II errors. More accurate classifications are needed.

My findings in Chapter Three show the need for better data on CSO laws, and I accept that challenge in [Chapter Four](#). I begin that chapter with a review of the research studying CSO laws. That process produces a broad typology of provisions that makes the systematic study of CSO laws across contexts more feasible. While it is true that restrictive provisions exist that limit foreign support of CSOs or restrict organizations' operational activities, other provisions facilitate the accountability and transparency of CSOs, guarantee the right to self-regulate and appeal regulatory decisions, and hold both CSOs and regulators accountable to citizens and governments.

In their CSO law research, analysts discuss 58 types of legal provisions. These legal provisions exist in four mutually exclusive subgroups that create a matrix typology of legal provisions. I transform this typology into a 58-item coding protocol to systematically code 285 laws from 17 countries. The data shows these legal institutions are neither new nor represented by a single law. Instead, and contrary to conventional approaches, these legal institutions are frequently inherited from colonial governments, and contain both permissive and restrictive provisions. The data illustrates that since 1980, it is more than twice as common for governments to enact institutional change that takes the shape of new permissive provisions rather than restrictive ones. The data also suggests that the bundles of new permissive provisions are twice as large as restrictive ones.

### *Timeworn Institutions: Path Dependency Affects CSO laws*

CSO regulatory regimes are not new. In many postcolonial countries, these legal institutions are inherited from colonial powers at independence and slowly altered over time.<sup>7</sup> This observation challenges the conventional approach that presumes institutional change is an unconstrained process of “lawmaking in the wild.” But as I illustrate in great detail in Chapter Four, the regulatory regimes in place today are the product of a long, slow, and muddled process of incremental institutional change. Path dependency affects regulatory regimes in two ways. The first is that governments make commitments that can constrain future choices. Specifically, a government’s commitment to safeguarding civil liberties and political rights, and the constitutional rules that strengthen such commitments, establish limits on the types of provisions a government can enact. The institutional development of regulatory regimes, moreover, is also shaped by the laws that already exist. As the legal corpus shows, when institutional change occurs, it very frequently alters the legal provisions within the preexisting regulatory regime rather than rewriting it anew.

International commitments that safeguard civil and political rights and the guarantees that bolster those commitments are examples of “constitutional rules” (Buchanan & Tullock, 1961; Brennan & Buchanan, 1985; E. Ostrom, 2005). These rules define the process for how governments make laws—e.g., from where bills originate, what is needed to override an executive’s veto, etc.—and constrain the contents of ordinary legislation. By ratifying the International Covenant on Civil and Political Rights, for example, governments make an international commitment that any law regulating voluntary association will meet a three-part

<sup>7</sup> I thank a highly reputable legal expert in East Africa for initially suggesting this idea to me.

test: (1) prescribed by law and use sufficiently precise and accessible language; (2) established to meet legitimate aims specified by Article 22(2) to include “national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others”; (3) be “necessary for democracy” to meet a pressing social need in a proportional manner. In Chapter Three, I show that countries that have made a global commitment to safeguard civil and political rights and whose constitutional rules demand those commitments be honored are less likely to pass restrictive provisions. What is more, this institutional arrangement has shown itself to be incredibly robust across different statistical models and datasets.

The CSO laws that comprise my legal corpus are examples of “collective-choice rules” made by representative institutions following the processes that constitutional rules prescribe (E. Ostrom, 2005, p. 58). Research on CSO laws often discusses the long histories of regulatory regimes and acknowledges that laws add, amend, and replace each other over time (Salamon & Toepler, 1997; Mayhew, 2005; Bloodgood, Tremblay-Boire, & Prakash, 2014, p. 723; Dupuy, Ron, & Prakash, 2015; Breen, Dunn, & Sidel, 2017; Maru, 2017; DeMattee, 2019b, pp. 11-13; Musila, 2019; Toepler, Pape, & Benevolenski, 2019). Yet scholars have been unable to include these preexisting collective-choice rules in their analyses. Theoretically, historical institutionalism and institutional analysis tell us that our default position should be to assume preexisting institutions are relevant until they are proven insignificant (Lindblom, 1959; Pierson, 1993, 2000, 2003; Mahoney & Thelen, 2010). Methodologically, failing to account for these preexisting institutions leaves analysis susceptible to omitted variable bias.

In [Chapter Five](#), I very clearly detail that preexisting collective-choice rules are more than just a control variable. In moments of institutional change, preexisting rules make some types of

changes more likely, and other changes less likely. This guided institutional development constrains and steers lawmaking. Whenever the government considers an institutional change, the regulatory regime's current rules take on one of four relationships with new rules: complementary, if current rules make the institutional change more likely; substitutive, if the current rules make the change less likely; contingent, if the preexisting rule is necessary for the change to occur; and finally, independent, if there is no relationship (Mahajan & Peterson, 1985). Using my original dataset that codes permissive and restrictive provisions in 285 laws, I find that the permissiveness of the current regulatory regime has a substitutive relationship with future permissive expansions and a complementary relationship with future restrictive expansions. There are separate explanations for these relationships. The substitutive relationship suggests that once a regulatory regime is sufficiently permissive, the government no longer adds additional permissive provisions. The opposite is true for the complementary relationship. Here, lawmakers use institutional change to either cull permissive provisions or counterbalance them with restrictive ones. I discuss these processes thoroughly in Chapter Five.

#### *International Influences: Diffusion of CSO laws*

Third, I identify another factor that affects the institutional development of CSO regulatory regimes: international influences. Prior research studying CSO laws shows mixed results concerning foreign influence on domestic lawmaking. This is partly attributable to the way analysts have conceptualized foreign influence. Some may consider an international commitment to safeguarding civil and political rights an international influence on lawmaking. I assert that this is a self-imposed institutional constraint. Other analyses measure international influence as the amount of foreign assistance a country receives. This measure is promising as long as

analyses can account for the sources of the funds. Totaling all foreign aid received discards all information on donors and immediately blunts the once-promising measure.<sup>8</sup> Research finds mixed support on the importance of geographic adjacency and proximity—sometimes referred to as “neighborhood effects”—when event history analyses study when jurisdictions enact a law (e.g., Reddy, 2018; DeMattee, 2019a; Glasius et al., 2020).

A more rigorous approach to studying international influence considers the precise mechanisms of influence. Policy diffusion theory studies the inter-jurisdictional processes by which the adoption of a policy in one jurisdiction influences the adoption decision of another jurisdiction (Strang, 1991, p. 325; Simmons, Dobbin, & Garrett, 2006, p. 787; Berry & Berry, 2014, p. 308). There are three broad processes of policy diffusion—learning, competition, and emulation (Gilardi, 2015)—and the shared trait of all processes is that laggard governments considering adoption first evaluate information from leaders who have already adopted a similar policy. Learning is a pragmatic form of information evaluation that focuses on the policy and its outcomes. Policies are likely to diffuse if they create more positive results or fewer negative ones. For example, if a government aims to increase (or decrease) the number of CSOs registered in its country, it first looks to foreign jurisdictions to learn what policies have worked best, then enacts them at home.

The competition process evaluates policy according to what maximizes a jurisdiction’s resources; it is simply a resource-motivated version of the pragmatic evaluation of information. Assuming the aim is to increase foreign assistance, the competition process predicts that a

<sup>8</sup> Analyses that operationalize foreign assistance in this way show foreign aid is an unreliable predictor of enactment, even among analyses using similar data (e.g., Dupuy et al., 2016; DeMattee, 2019a).

jurisdiction first learns which provisions seem to increase foreign assistance (or those that jeopardize it), then enacts them.

Emulation is a sociological form of information evaluation that focuses on the leader government that adopted the policy, rather than the policy or its objective consequences. Governments vary in terms of their democratic principles and political ideology. They can be bastions of liberalism, authoritarian exemplars, and anything in between. When countries are not independently powerful, enacting restrictive provisions may require protection from a foreign ally that can dull the threats and attenuate the costs of international blowback (Christensen & Weinstein, 2013). The suggestion that governments emulate strong international allies is sound, but analysts have not yet tested global leaders' importance beyond comparative case studies.

Rigorously analyzing the diffusion processes was central to my research design and methods. As I detail in [Chapters Two](#) and Five, monadic country-year observations are ill-suited for testing policy diffusion. To properly account for international influence, I transform my original monadic data into dyadic data that includes 13,843 directed-dyad-year observations (1950-2018). This dyadic data allows me to rigorously assess the effect of international influence on institutional change while controlling for historical and domestic factors. Chapter Five uses this data to show that the learning and emulation processes of policy diffusion are associated with the institutional development of regulatory regimes in East Africa. I do not find that common colonial history is a relevant factor regarding institutional change.

#### *Legal Rules vs. Working Rules: Solving the Puzzle as to Why They Differ*

My discussion to this point has focused primarily on the CSO laws as they appear on paper, and not how CSOs experience them in their day-to-day activities. Laws do not enforce

themselves, and rarely have scholars studying CSO laws discussed the implications of the legal-rules versus working-rules difference (cf. DeMattee & Swiney, 2020). Yet acknowledging this difference is critical to the full understanding of CSO regulatory regimes, because scholars have identified the inconsistent, subnational enforcement of permissive and restrictive provisions in contexts such as China, Ethiopia, North Korea, and Russia (S. Snyder, 2007; Spires, 2011; Cunningham, 2018; Toepler et al., 2019). This legal-rules versus working-rules differential is perhaps the least studied yet most essential item in the research studying CSO laws. Emphasizing enforcement provides one explanation to the puzzle that nondemocracies enact permissive provisions: governments tactically alter their enforcement as part of a broader strategy to increase legitimacy and control.

Legitimacy theory originates from Weber's (1919) three-part typology of charismatic, traditional, and rational-legal legitimacy found in all political systems. He argued that charismatic and traditional legitimacy were not durable; a functioning state bureaucracy dominated legitimacy in the rational-legal form. Scholars have used legitimacy to describe concepts at different levels of analysis within societies. At the systems level, legitimacy is analogous to "system affect" and "diffuse support" and describes the citizenry's general evaluation of the political system (Lipset, 1960; Almond & Verba, 1963; Easton, 1965, 1975). When used to evaluate particular government actors and policies, legitimacy is tantamount to "specific support" (Easton, 1965), "effectiveness" (Lipset, 1960), and "incumbent affect" (Almond & Verba, 1963). Gaining or losing legitimacy is a dynamic process at both levels (Bratton & Mattes, 2001; Mishler & Rose, 2001; Mattes & Bratton, 2007).

Legitimacy is central to CSO law research because, as we discussed earlier, scholars predict that a government gives CSOs greater operating space when it enjoys strong legitimacy

and is confident in its grip on power (Bratton, 1989b; Brass, 2012a, 2016). The loss of legitimacy and control is central to the “closing space” argument that predicts governments enact restrictive provisions. This logic presupposes governments are honest actors: if they are legitimate and in control, then they enact and enforce permissive provisions; if their legitimacy is fragile and their control in jeopardy, then they pass and enact restrictive provisions. I build on this logic and consider the possibility that governments enact provisions that they never enforce.

Lorch and Bunk (2017, pp. 989-991) masterfully review and theorize that laws governing CSOs are part of a broader strategy to expand a regime’s legitimacy, control, and power. Six tactics contribute to the government’s strategy through direct or indirect legitimization or through manipulation.<sup>9</sup> The first direct tactic (*Tactic #1*) uses permissive provisions to strengthen the regime’s democratic façade. Here, permissive provisions give the impression of democratic qualities to domestic and international onlookers, which increases diffuse support for the current regime. The other direct tactic (*Tactic #2*) engages CSOs on social matters to demonstrate responsiveness. Permissive provisions allow for the controlled growth of CSOs that the government meets with when it wants to claim to represent society’s concerns, which increases responsiveness legitimacy.

<sup>9</sup> Prior research shows these tactics are used in contexts such as the Middle East and North Africa (Wiktorowicz, 2000; Dimitrovova, 2010), Southeast Asia (Lorch, 2006; Giersdorf & Croissant, 2011), Sub-Saharan Africa (Tripp, 2001; Brass, 2016; Lorch & Bunk, 2017), and many other authoritarian and hybrid regimes around the world (Lewis, 2013; Froissart, 2014; Teets, 2014; Benevolenski & Toepler, 2017; Toepler et al., 2019; Toepler, Zimmer, Fröhlich, & Obuch, 2020).



Next are two tactics that indirectly add to the regime’s legitimacy. The first (*Tactic #3*) uses permissive provisions to increase compliance. Here, permissive provisions increase compliance that gives credibility to the regulatory regime and the regulators. The intention is to turn specific support for the legal institution into diffuse support that legitimizes the government’s authority to govern. The other (*Tactic #4*) uses CSOs’ service provision to increase the government’s output of public service goods. By enacting certain permissive provisions, governments engineer the growth of particular types of CSOs, specifically service-oriented ones. Enlisting CSOs in service provision increases the regime’s output legitimacy.

The final tactics are manipulative. The first (*Tactic #5*) uses permissive provisions to ensnare CSOs “in a web of bureaucratic practices and legal codes” (Wiktorowicz, 2000, p. 43) that increases the regime’s control through administrative power. Permissive provisions increase voluntary compliance, and the manipulation is that CSOs willingly surrender information that makes these autonomous organizations observable. With increased administrative power, the government can monitor, control, and prevent collective action. The final tactic (*Tactic #6*) uses permissive provisions to attract international assistance that expands the regime’s resource base. Permissive provisions promote foreign assistance to local CSOs. The manipulation happens when the provisions legally require international assistance to flow through specific locations—e.g., escrow at government ministries—allowing the regime to use those funds to increase its influence and resource base.

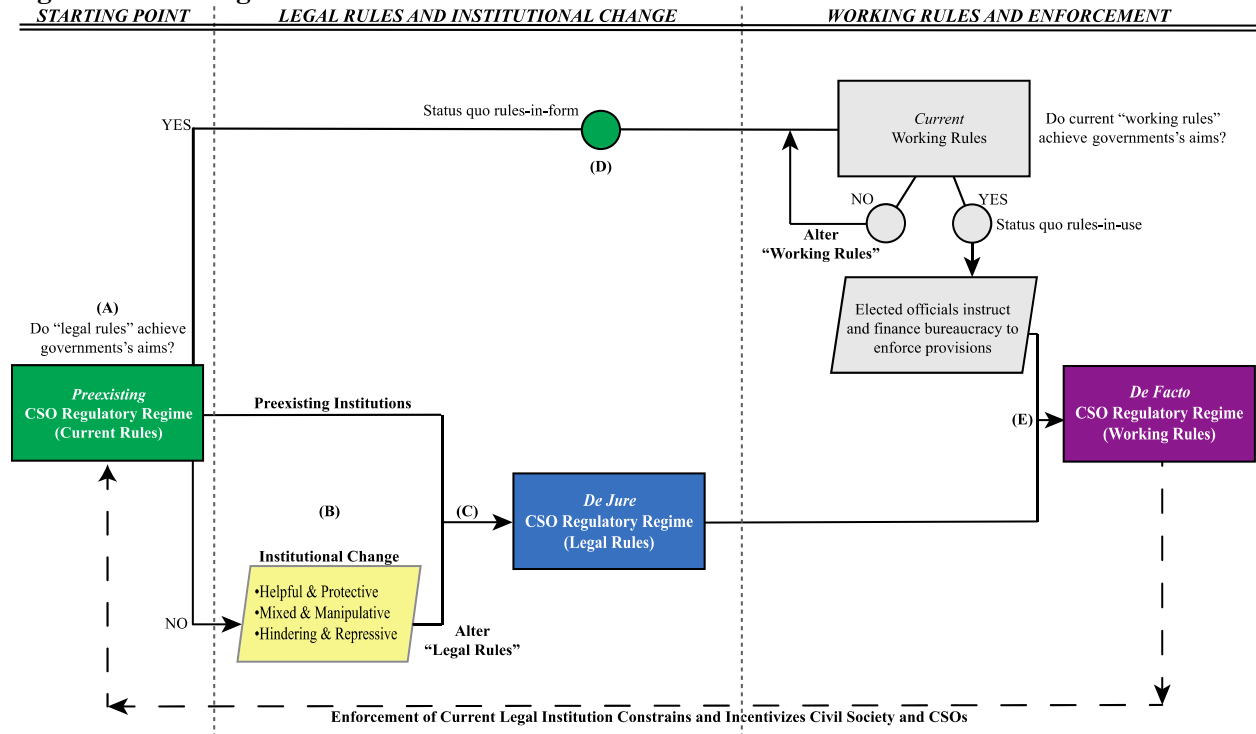
I apply Lorch and Bunk’s theory to interview and archival data in [Chapter Seven](#) and find that each tactic appears to have been used by a case study government, that of Kenya, as it has altered its regulatory regime over time. As I detail in the chapter, Kenyan elected officials, bureaucrats, and regulators concurred that the government has used—and is using—permissive

CSO laws to legitimize itself and maintain control. The participants provided responses that support the tactics discussed above. The three most salient tactics are: enacting (but not enforcing) permissive provisions to bolster the democratic façade (*Tactic #1*), meeting with civil society stakeholders to demonstrate responsiveness (*Tactic #2*), and using CSO regulators to collect the information necessary to expand administrative power, then handing that power to massively resourced national security apparatus (*Tactic #5*). Together, these findings show that governments can use legitimization tactics collectively, separately, or episodically to increase their legitimacy and control.

### **A Summary of the Argument**

To understand the puzzling variation in CSO regulatory regimes across different types of governments, we must consider four different factors that characterize these legal institutions: (1) they fuse permissive and restrictive provisions; (2) path dependency shapes their development; (3) international influence affects institutional change; and (4) enforcement conditions the degree to which working rules resemble legal rules. I combine these four arguments into a causal theory that predicts the conditions under which governments enact and enforce specific types of CSO laws. The degree to which a government is confident in its hold on power is central to my argument. My theory has five parts, as represented in my causal diagram (Figure 1.1). Horizontally, the figure has three self-defining sections that correspond with the discussion that follows. Table 1.1 provides additional information to understand the causal diagram, including variables relevant to the argument's different components, and predictions on the likelihood that different provisions will be enacted and enforced in different political regime types.

**Figure 1.1 The Argument**



to maintain political control and expand its legitimacy among its citizenry and the international community. If the current legal rules do not sufficiently meet the government’s aims, the process moves down the diagram towards the letter **(B)**. At this stage, the government seeks to enact institutional change that will alter the composition of the legal rules. This process literally rewrites the *de jure* CSO regulatory regime. Several factors determine the types of provisions the government enacts. The first is the political system of power in which the government operates. All else being equal, the legislative process will look different and yield a different output if the actors are a democratic society with a system of checks and balances, a semi-authoritarian that must stand for reelection in the future, or a full-scale authoritarian with a lifelong appointment and unchecked authority. Democratic rules are not the determining factor

that predicts the types of provisions a government enacts, but rather a distal factor that describes the political context in which lawmaking occurs.

More proximate factors are the structural constraints facing the government. These constraints include pledges made to the international community when committing to protect political rights and civil liberties or promising to make certain policy changes to receive foreign assistance from international donors. During the Cold War, many governments worldwide adopted a “non-alignment” policy that they used strategically to avoid international pressure. But after the Cold War, international donors could demand greater concessions for their foreign aid.

The most proximate factor in determining the contours of a regulatory regime is how the government perceives its control and legitimacy. This factor is closely related to the relationship Bratton (1989b, p. 576) introduced to argue that the way the government perceives CSOs’ activities as affecting its power is critically consequential to the type of strategy it uses to regulate the sector: “where leaders are confident of their grip on power, they will not fear [CSOs]. The more fragile a government’s sense of political legitimacy, the less permissive it is likely to be toward [CSOs].” Depending on this evaluation, the government draws from four strategies to regulate CSOs: monitor, coordinate, coopt, and dissolve. Bratton’s argument predicts that conflict in the government-CSO relationship is inversely related to the government’s confidence in its grip on power, and notes “relations are likely to blow erratically hot and cold” depending on whether the government perceives national sovereignty or state security are at stake (1989b, p. 585). Governments have varying grips on power within the same regime type; thus, regime type is insufficient to explain why a government enacts its regulations.

My theory applies to the institutional development of regulatory regimes in all political and economic contexts. Democratic rules and structural constraints provide the political context in

which the government evaluates its options on the types of legal provisions to enact. When their grip on control is weak, governments alter legal rules and working rules to observe and control civil society. By contrast, governments whose grip on power is strong use the regulatory regime to provide CSOs with greater operational space. Different permutations of these factors produce any of the following changes: enact only permissive provisions (helpful change), enact only restrictive provisions (hindering change), or enact a combination of permissive and restrictive provisions (mixed and manipulative change). Whatever type of incremental change governments enact combines with preexisting institutions—letter (C)—in the long, slow, and muddled process of institutional development that updates and rewrites the rules in the *de jure* regulatory regime. Enforcement is not part of the *de jure* regulatory regime.

Returning to the beginning of the causal diagram, if the current legal rules sufficiently achieve the government’s aims, then no institutional change is required, and the process moves to up the diagram towards the letter (D). Laws do not enforce themselves, and elected officials within government direct, fund, and oversee the bureaucracy’s enforcement of legal rules. Several factors contribute to the rules-in-use deviating from the rules-in-form, such as the government’s policy priorities, the agency’s expertise and resources, and bureaucrats’ willingness to enforce laws impartially. Taking these factors as given, my argument is that the government can use enforcement as an opportunity to figuratively rewrite the laws and create a *de facto* regulatory regime—letter (E)—and enforce provisions as it desires. This may mean

**Table 1.1 The Argument's Variables and Predicted Outcomes**

	<b>Legal Rules and Institutional Change</b>	<b>Working Rules and Enforcement</b>
<b>Response Variables</b>	<ul style="list-style-type: none"> <li>• Enacts a law that contains a restrictive financial provision (Ch. 3).</li> <li>• Enacts particular restrictive financial provision (Ch. 3).</li> <li>• Enacts multiple permissive and restrictive provisions (Ch. 4 and 5).</li> </ul>	<ul style="list-style-type: none"> <li>• Enforcement and why working rules deviate from the legal rules (Ch. 7).</li> </ul>
<b>Independent Variables</b>	<ul style="list-style-type: none"> <li>• Preexisting Institutions: international commitments to safeguard human rights (Ch. 3 and 5), current laws (Ch. 4 and 5), colonial institutions (Ch. 5).</li> <li>• Government's grip on control and power: foreign aid and electoral contestation (Ch. 4), strength of autocratic institutions (Ch. 5), and international diffusion processes of learning and emulation (Ch. 5).</li> </ul>	<ul style="list-style-type: none"> <li>• Legitimization Tactics: using laws to give the impression of democracy, enticing compliance so that regulator and laws seem credible, establishing administrative power, output legitimacy, and responsiveness legitimacy (Ch. 7).</li> </ul>
<b>Democratic Regimes</b>	<p>Enacts Permissive Provisions—Highly likely, the democratic rules broadly protect political rights and civil liberties, allied with western democracies, control and legitimacy achieved by maintaining democratic institutions. Unlikely if sufficiently permissive.</p> <p>Enacts Restrictive Provisions—Unlikely but possible. Restrictive provisions likely properly scoped and necessary for democracy or passed in moments of hysteria and later repealed.</p>	<p>Enforces Permissive Provisions—Highly likely and conforms with the conventional explanation. Enforcement is Predictable, impartial, and follows the rules of law.</p> <p>Enforces Restrictive Provisions—Likely, but enforcement actions do not overreach. Restrictive provisions later repealed or amended if unconstitutional.</p>
<b>Hybrid Regimes</b>	<p>Enacts Permissive Provisions—Likely, even weakened democratic rules expect the regime to protect rights and liberties, appease western democracies and international organizations, and allow the regime to legitimize itself to onlookers.</p> <p>Enacts Restrictive Provisions—Likely, but not the heavy-handed coercive type. May learn from other nondemocratic regimes. Restrictive provisions allow the regime to observe and possibly control some CSOs that would work to delegitimize the regime.</p>	<p>Enforces Permissive Provisions—Selectively and may be manipulated to advance specific aims—e.g., supporting service provision and hindering claims-making. Enforcement gives laws credibility and regime legitimacy.</p> <p>Enforces Restrictive Provisions—Unpredictable and manipulated to advance the regime's interest. Enforcement actions may overreach without interference if the judiciary is coopted.</p>
<b>Authoritarian Regimes</b>	<p>Enacts Permissive Provisions—Unnecessary but possible. Democratic rules eliminated, and the government openly violates political rights and civil liberties. Quest for legitimacy is second to maintaining control.</p> <p>Enacts Restrictive Provisions—Highly likely and conforms with the conventional explanation. Unlikely if sufficiently restrictive.</p>	<p>Enforces Permissive Provisions—Unnecessary but possible, and not guaranteed to continue. The rule of law is weak because the regime has successfully eliminated democratic rules and openly violates rights and liberties.</p> <p>Enforces Restrictive Provisions—Swift, decisive, and unchallengeable. Due process unlikely.</p>

following the rule of law and impartially enforcing the regulatory regime. It may also manifest as enforcement that strays from what is reasonable and becomes the malicious over-enforcement of restrictive provisions. It could be the case that permissive provisions are under-enforced, meaning enforcement is selective or nonexistent. In the end, it is the enforcement of the current legal institution that constrains and incentivizes CSOs' behavior. I predict this *de facto* regulatory regime remains unchanged—both its written rules and enforcement actions—as long as it sufficiently achieves the government's aims. When it no longer does, the government will choose to alter the legal rules or the working rules.

### **A Roadmap for the Chapter Ahead**

This chapter has discussed relevant theories, proposed research questions, and presented a new argument for why and how governments regulate CSOs. [Chapter Two](#) discusses my mixed-methods research design and explains the process I followed to collect, translate, and code 285 laws from 17 countries. The ADICO syntax was central to that effort, and I review it in detail for those unfamiliar with that method of institutional analysis. My empirical chapters follow. These vary in their level of analysis, research methods, and contributions to theory-testing and theory-building. These differences allow each chapter to make unique contributions to my unifying question: how and why do governments regulate CSOs?

[Chapter Three](#) is my first empirical chapter and is one of three with a comparative, cross-national scope. It uses separate analyses to make two key contributions. The first analysis builds on current theory to introduce institutional variables, specifically preexisting institutions. A country's international commitment to safeguarding civil and political rights is one preexisting institution. I operationalize this concept as whether a government ratified the International

Covenant on Civil and Political Rights, a critical international human rights treaty that commits its parties to promote human rights and fundamental freedoms (Henkin, 2000; Donnelly, 2013). A pledge to safeguard human rights means little if governments can choose to ignore it, but certain constitutional rules condition whether governments must honor its international commitment. These constitutional rules exist as another preexisting institution. From an institutional analysis perspective, the strength of an international commitment depends on whether constitutional rules strengthen those commitments. The second analysis disaggregates law types to explore nuanced relationships. Given reports of the growing number of laws restricting civil society around the world (e.g., CIVICUS, 2018; Amnesty International, 2019; Musila, 2019), it is empirically expedient and sometimes necessary to classify all laws as equally restrictive and presume marginal and unimportant differences. I challenge this presumption and test the degree to which it holds. I do so by organizing laws restricting foreign funding into three qualitatively different groups that fall along a continuum from highly- to minimally-restrictive. The resulting statistical analyses show that the same sets of factors rarely predict the enactment of different law types, which means presuming conceptual equivalence across legal provisions produces Type-I and Type-II errors.

Chapter Three uses a preexisting dataset covering 138 countries. That data is strong because it covers a wide range of countries, but it is limited in the number and type of legal provisions considered. In Chapters Four and Five, I correct those deficiencies by coding 285 primary legal sources to create an original dataset capable of testing my research questions about CSO regulatory regimes in their entirety. [Chapter Four](#) introduces key concepts and presents a matrix typology of CSO legal provisions. The second part of the chapter uses the ADICO syntax to transform the typology into a 58-item coding protocol to code my legal corpus and produce an



original dataset. I conclude the chapter with a descriptive analysis of the legal corpus enacted by 17 countries. Two primary insights from the chapter are that when institutional change occurs, it is more likely to take the form of permissive expansions. Two, permissive expansions are generally twice as large as restrictive ones.

[Chapter Five](#) uses this original data to study the institutional development of regulatory regimes. The analysis applies a directed-dyad event history analysis to the legal corpus discussed in Chapters Two and Four to test new explanations for why these legal institutions vary. The results make several original contributions. First, the greater entrenchment of autocratic institutions positively correlates with governments enacting permissive provisions. Conventional explanations have not considered this possibility, and I explore several causal process explanations for why it occurs (see Chapter Seven). The remaining contributions show that path dependency steers institutional development and identifies two pathways by which international influence affects institutional change. Beginning with preexisting institutions, I find evidence of a substitutive relationship that shows governments add fewer permissive provisions when current institutions are sufficiently permissive. I also see a complementary relationship where highly permissive preexisting institutions lead governments to add specific types of restrictive provisions. Turning to policy diffusion, my analyses suggest governments learn from each other, but that the relationship varies depending on the type of institutional change that occurs. A learning process of policy diffusions appears strongest when explaining permissive expansions. By contrast, the emulation process of policy diffusion only appears relevant to restrictive expansions. A common colonial history does not seem to predict institutional change when conceptualized as a time-invariant factor.

Chapters Six and Seven probe the causal processes behind the statistical associations identified in Chapter Five. [Chapter Six](#) is a historical overview of the Kenyan case. It provides a very general history of Kenya that sets the political context in which the government altered the regulatory regime. I combine prior research and two sources of primary data to show that Kenyan presidents have altered legal rules and working rules to create the government-CSO relationship they want. [Chapter Seven](#) is my fifth empirical analysis and uses a controlled comparison of four CSO regulators in Kenya. Three of these have existed since independence; the fourth was added in the early 1990s. My analysis uses interview data collected from asking Kenyan government officials why Kenyan CSO laws exist and how they enforce them. The interview data identifies causal process explanations for how and why Kenya altered its regulatory regime.

The conclusion reviews all findings, discusses implications, and identifies areas for future research. A hefty appendix includes supplementary information for each chapter and the repositories from which I collected primary sources. It also includes a bibliography of the 285 laws coded as part of this dissertation.

Voluntary association is a fundamental human right that allows people to associate peacefully, or not be compelled to associate, if that is their choice (§20 of the Universal Declaration of Human Rights, 1948). Constitutions, international commitments, and statutes comprise the legal institutions that protect this right. Together they create the space in which civil society and CSOs thrive just as a greenhouse protects seedlings as they grow. Possessing a greenhouse does not guarantee success, however. Seedlings can wither and pests can run amuck if the farmer poorly constructs the greenhouse, neglects its maintenance, borrows the wrong designs, or fails to correctly use the structure. Similarly, when a government enacts a law that

affects voluntary association, we know not whether it is good or bad or whether it helps or hinders. Enacting or not enacting a particular law does not guarantee civil society's environment will open or close. To know such things, we must understand the law's contents before declaring it "good" or "bad." Then we must understand how the government enforces it before deciding whether it "helps" or "hinders" citizens' rights and liberties. I engage each of these considerations in the following chapters to understand how and why governments regulate CSOs.

## —Chapter II—

### RESEARCH DESIGN: MULTIPLE FORMS OF DATA & ANALYSES

In this chapter, I discuss the comparative approach that I use to study how and why governments regulate CSOs. My comparisons are of three types. The first are between-country analyses that explore the types of CSO laws that countries enact. The second type of comparisons are historical, between-country analyses that give history and preexisting institutions serious considerations. Finally, the third type are historical, within-country analyses that use a sub-national comparison. The research begins with a broad perspective that focuses as the chapters progress. I start with a global cross-national study ([Chapter Three](#)), narrow to cross-national regional comparisons with a long observation period (Chapters [Four](#) and [Five](#)), and conclude with a detailed controlled comparison of government regulators in a single country (Chapters [Six](#) and [Seven](#)). My findings in earlier chapters inform the analyses in subsequent chapters. In this chapter, I focus exclusively on the case selection for my cross-national study, my process for collecting and coding legal texts, and the analytical narrative of my primary case: Kenya. Subsequent chapters discuss precise research questions and explain the methods I use to collect and analyze the data necessary to address those particular inquiries.

#### **Cross-National Comparisons: Strengths and Weaknesses of a Global Dataset**

To understand why and how governments regulate CSOs, I begin by examining the variation in the types of legal provisions governments enact. Most existing research examines the conditions under which governments enact a legal provision restricting CSOs' foreign financial support. In Chapter Three, I study whether the risk factors that predict enacting new laws vary across legal provisions and if preexisting institutions constrain future lawmaking. To execute the

study, I replicate the data used in prior studies and then complexify and add to it to better understand the nuance in these legal institutions. I begin by replicating data used in existing research (Christensen & Weinstein, 2013; Dupuy et al., 2016; Reddy, 2018; Bromley et al., 2019). This data relies exclusively on secondary sources—e.g., country reports or legal summaries—for the raw information to create a global country-year dataset that covers 138 countries between 1993-2012. Next, I disaggregate the response variable into three conceptually distinct types: prohibitive provisions, red-tape provisions, and notification provisions. Then, I add constitutional provisions and ratification of human rights treaties as key preexisting institutions. Relative to existing studies, I show that legal provisions that appear different in content also have different causal factors, and preexisting institutions affect the enactment of legal provisions.

I was not entirely satisfied with the level of detail afforded by this type of analysis, however. First, the data operationalizes the legal institution concept as either *0* (country lacks legal provisions) or *1* (country has legal provisions). Operationalizing legal institutions in this binary manner is imprecise because these concepts can contain many laws, and each law can contain various provisions. Second, the data omits several essential types of legal institutions. The data excludes constitutions and international treaties, ignores permissive provisions, and omits consideration of non-financial policy types. Finally, the data omits CSO laws passed before the secondary data started its coverage. These limitations lead to a “lawmaking in the wild” assumption that fails to account for the preexisting legal provisions. To overcome these deficiencies, I created an original dataset from primary sources that I discuss next.

## Cross-National Comparisons: Identifying a Regional 17-Country Sample

Chapters Four and Five study the legal provisions governments use to regulate CSOs and how those legal institutions change over time. To answer these questions with historic and domestic explanations, I needed data on which laws were active, which legal provisions current laws contained, and the legal changes the government made. To satisfactorily test international explanations, I required a primary group of core countries and a peripheral group that represents the core's politically relevant dyads. These analyses called on me to move beyond simply “whether a law existed,” and required inventorying the legal provisions present in each country in each year. Developing this “thick analysis” (Brady & Collier, 2010, p. 355) and rich knowledge of cases demanded that I trade breadth for depth. My sample includes 17 countries, which is similar in quantity to edited volumes that have made significant contributions to this research area.<sup>1</sup>

Laws are highly accessible primary sources because they are public documents that can be collected, translated, and systematically coded. To sufficiently account for preexisting institutions and not succumb to the “lawmaking in the wild” fallacy, I coded the legal texts for my cases' entire statehood, including laws that regulated a jurisdiction during its colonial occupation and were kept by new governments at independence.<sup>2</sup> Expanding the observation

<sup>1</sup> *The International Guide to Nonprofit Law* (Salamon & Toepler, 1997) enlists the expertise of national legal experts to carefully review laws in 22 countries. While the legal analyses follow a shared outline, the summaries do not leave room for systematic comparison. In *Regulatory Waves* (Breen et al., 2017), *scholars and subject-matter experts discuss 15 “country narratives” of self-regulation policies of nonprofit sectors around the world. The editors and authors admirably unpack the history and politics of each case study, but they do not systematically compare cases. See Appendix Table 2A for more information.*

<sup>2</sup> I thank a highly reputable legal expert in East Africa for this idea. My research finds a similar legal reality holds for countries that experience dissolution—e.g., Section II Article 2 of The Constitution of the Russian Federation states: “Laws and other legal acts in effect on the territory of the Russian Federation until the enactment of this Constitution are enforced in so far as they do not contravene the Constitution of the Russian Federation.”

period in this way allowed me to capture institutional creation and institutional change. I resolved the “conceptual equivalence” fallacy by systematically coding all laws with a broad coding protocol, which I discuss in detail in [Chapter Four](#).

To create the coding protocol, I first developed a typology of 58 legal provisions that, when viewed through a theoretical lens that identifies provisions as either permissive or restrictive, creates a matrix typology of the legal provisions that comprise CSO regulatory regimes. By *CSO regulatory regimes*, I mean the various laws that combine with constitutional protections to create carefully institutionalized regulatory systems that govern CSO activity. Then, I transformed the matrix typology into the ADICO syntax (Crawford & Ostrom, 1995; S. E. S. Crawford & E. Ostrom, 2005), which produced a 58-item coding protocol that I used to systematically inventory the legal provisions of 285 laws enacted between 1872 and 2019.

The CSO regulatory regime concept is a national-level concept that persists even as the laws that comprise it change. I could study it as a single indicator, or disaggregate into its elemental subgroups—i.e., governance, formation, operations, and resources provisions. My data’s 979 country-year observations (1950 and 2018) allowed me to effectively study how regulatory regimes change over time and test domestic and historical factors associated with institutional development. Despite the data’s long history and careful coding, monadic country-year observations are ill-suited for testing whether one country’s laws affect another’s. To account for international factors, I transformed the monadic data into dyadic data that includes 13,843 directed-dyad-year observations (1950-2018). This dyadic data allowed me to rigorously test if international, historical, and domestic factors predict when and how governments change the legal institutions that regulate CSOs in their borders.

*Primary Group: Six East African Community Countries*

I chose the East African Community (EAC) as the core group of countries to study for theoretical and practical reasons. The EAC is an intergovernmental organization of six member states—Burundi, Kenya, Rwanda, South Sudan, Uganda, and Tanzania—unified by The Treaty for the Establishment of the East African Community.<sup>3</sup> EAC members have nominal variation in their colonial histories and legal systems. Five members gained independence from two different European powers, while the sixth earned independence from Sudan. The colonial occupation had a profound impact on these colonies and strongly correlate with current legal systems in use today (Klerman, Mahoney, Spamann, & Weinstein, 2011; Berinzon & Briggs, 2019). Kenya, Tanzania, and Uganda were colonized by the British and have legal systems that mix customary law with the English common law tradition. Common law systems assign the preeminent position to “judge-made rules” (Head, 2011, p. 19), as opposed to legislation, where judges use legal precedent to guide their present decision.

Burundi and Rwanda, by contrast, merge the civil law legal system of their Belgian colonizer with customary laws. Civil law legal systems, in a Roman tradition, stress the idea that the state is supreme, and citizens are obedient to it. This system generally chooses a systematic codification of laws that makes statutory law superior to case law and minimizes judge-made precedential authority (Apple & Deyling, 1995; Head, 2011). Joireman (2001, pp. 582-583, 592)

<sup>3</sup> The treaty was signed on November 30<sup>th</sup> 1999 and entered into force on July 7<sup>th</sup> 2000 following its ratification by the original three Partner States - Kenya, Tanzania and Uganda. The Republic of Rwanda and the Republic of Burundi acceded to the EAC Treaty on June 18<sup>th</sup> 2007 and became full Members of the Community with effect from July 1<sup>st</sup> 2007. The Republic of South Sudan acceded to the Treaty on April 15<sup>th</sup> 2016 and became a full Member on 15 August 2016. The vision of EAC is to be a prosperous, competitive, secure, stable and politically united East Africa and pursues four pillars of regional integration: customs union, common market, monetary union, political federation (retrieved March 20<sup>th</sup>, 2020 from <https://www.eac.int/>).



finds that African countries with a common law system are generally better at providing the rule of law—as measured by the strength of the court system, lower corruption, and greater civil liberties—than those with civil law institutions.

**Table 2.1: Categorizing Countries by Legal System Classifications**

	<b>European Legal Culture</b>	<b>Mixed Legal Systems</b>	<b>Rule by Law</b>	<b>Weak Law in Transition</b>
<b>Common Law</b>	United Kingdom	United States		
<b>Civil Law</b>	France			Central Africa Republic, Russia
<b>Mixed Legal System</b>		Kenya <sup>1</sup> , Malawi <sup>1</sup> , South Sudan <sup>2</sup> , Tanzania <sup>1</sup> , Uganda <sup>1</sup> , Zambia <sup>1</sup>	Burundi <sup>3</sup> , China <sup>3</sup> , DRC <sup>3</sup> , Ethiopia <sup>3</sup> , Mozambique <sup>3</sup> , Rwanda <sup>3</sup>	

<sup>1</sup> Mixed Legal System is Common law/Customary law. Kenya also incorporates Muslim law (Source JuriGlobe).

<sup>2</sup> Not classified by either source. Classification presumably matches Sudan's, which was colonized by the British.

<sup>3</sup> Mixed Civil/Customary (Source JuriGlobe). JuriGlobe is a research center of comparative law faculty at the University of Ottawa ([www.juriglobe.ca/](http://www.juriglobe.ca/)).

Table 2.1 shows the categorization of EAC members and the 12 other countries in the sample using two different taxonomies. Rows categorize countries according to the taxonomy developed by research faculty of comparative law at the University of Ottawa. Columns represent a similar taxonomy derived from an inductive method that clusters countries into groups depending on their similarities across 15 variables (Siems, 2016, pp. 586, 595-597). The European legal culture cluster includes groups from any legal tradition whose strong institutions produced high values on the 15 indicators used in the analysis. The mixed legal systems cluster includes countries that merge some common law features with civil law or secular legal traditions. The rule by law cluster includes many nondemocratic countries and some countries with Islamic law systems. Finally, the weak law in transition cluster contains democratizing countries with mediocre and imperfect legal institutions.

Their static legal systems aside, the EAC countries are representative of Africa and low- and middle-income countries across several metrics that vary over time. Table 2.2 shows

indicators for all countries in my sample measuring the extent to which each case achieves a liberal democracy (political), the pervasiveness of social group exclusion (social), and GDP per capita (economic). Higher values for each indicator correlate with shading and indicate fuller liberal democracy achievement, more substantial social group exclusion, and higher GDP per capita. Although the small group imperfectly represents all countries, it satisfactorily represents Sub-Saharan Africa and the Global South more broadly.

Then, on practical grounds, the cases received their independence relatively recently—Burundi 1962 (German control 1885 ceded to Belgium 1919), Kenya 1963 (British control 1888), Rwanda 1962 (German control 1885 ceded to Belgium 1919), South Sudan 2011 (Sudanese independence from Britain 1956), Tanzania 1961 (German control 1885 ceded to Britain 1919), Uganda 1962 (British control 1894). And most of these countries publish their legal texts in English, which decreases the resources necessary to code the laws for their entire statehood.

#### *Peripheral Group: Six Neighboring East African Countries*

My sample also includes a peripheral group of peer neighbors and global hegemony whose proximity and politics might influence institutional change within the core group through policy diffusion. Countries adjacent to the EAC and the five Permanent Members of the U.N. Security Council (P5) constitute this peripheral group. I include the EAC's neighbors in the sample.<sup>4</sup> These six countries are geographically contiguous to at least one EAC member, which allows me to control for a rudimentary conceptualization of “geographic” proximity. Half of the cases have

<sup>4</sup> Funding limitations did not allow me the opportunity to translate and code five laws enacted by Sudan, I was unable to find laws enacted by Somalia.

a contiguous colonial history with EAC members, making them “historically” proximate as well. The European powers that colonized EAC countries colonized three countries in this neighboring group. In contrast, three other powers colonized the remaining territories: Central African Republic 1960 (French control 1894), Democratic Republic of the Congo 1960 (Belgian King Leopold II personal rule via Congo Free State 1885 annexed by Belgium 1908), Ethiopia 1941 (Italian control 1936), Malawi 1964 (British control 1889), Mozambique 1975 (Portugal control 1498), and Zambia 1964 (British control 1889).

Geographic and colonial contiguity are invariant factors with theoretical and conceptual importance (Simmons & Elkins, 2004; Quackenbush, 2006; MacLean, 2010; Berinzon & Briggs, 2019). Changing political, social, and economic conditions in countries creates temporal variation that causes two countries to become more (or less) “politically,” “socially,” or “economically” proximate. The average country-year measures for the political, social, and economic indicators are similar, on average, for each African country group during the observation period. The ranges of these indicators are also similar across groups. In EAC countries, average liberal democracy ranges 0.25 points (min = 0.07, max = 0.32), while in neighboring African countries the range is a slightly smaller 0.19 points (min = 0.07, max = 0.26). The range of social group exclusion in the EAC is a narrower 0.51 points (0.37 to 0.88) compared to neighboring countries where the range is 0.58 points (0.31 to 0.89). GDP per capita, meanwhile, spans more than \$1,100 (\$967 to \$2,076) in the EAC, and over \$1,200 (\$669 to \$1,880) in neighboring African countries.

### *Peripheral Group: Five Permanent Members of the U.N. Security Council*

China, France, Russia, the UK, and the USA represent global hegemon and complete the peripheral group. Data for this cohort allows me to test the effect of global hegemon on the institutional development of CSO laws in East Africa. Collectively, these countries appropriately represent global leaders for two reasons. One is that their P5 status gives these countries a privileged role in global affairs that is invariant and unrivaled.<sup>5</sup> As a group of 15 countries, the Security Council disproportionately determines global affairs on issues such as multilateral sanctions and military action. This opportunity to sway global affairs makes the Security Council's remaining ten seats highly coveted (Malone, 2000) and lucrative with member countries receiving more aid and favorable treatment from World Bank, United States, and United Nations (Ilyana Kuziemko & Eric Werker, 2006; Dreher, Sturm, & Vreeland, 2009). Scholars use Security Council membership as an exogenous measure of "a country's geopolitical importance" (Besley & Persson, 2011, p. 1432) and labeled the elite P5 as "disproportionately powerful" (Langmore & Farrall, 2016, p. 59). Indeed, for the past 75 years, no other group of countries has been able to shape world events so dramatically and consistently as the P5.

Their political heterogeneity is the second reason why the P5 appropriately represent global hegemon. The P5's vetoes suggest there are two factions within it. According to the United

<sup>5</sup> Germany was a significant factor in the colonization of Africa. Otto von Bismark convened the Berlin Conference (1884-1885) that initiated the scramble for Africa, and Germany itself colonized large regions in present-day East Africa that it relinquished to Belgium at the end of WWI. Recently, Germany's economic and political capacities make it a critical leader within the European Union and globally. Although I hope to include Germany in my future and believe it to be a necessary case for any similar research studying Eastern Europe, I exclude it here because it is difficult to defend the assertion that it was global leader in the period preceding its 1990 unification.

Nations Security Council Veto List,<sup>6</sup> P5 members have cast 255 veto votes on 207 occasions since February 1946. While the number of vetoes ranges considerably, all countries have at least once individually vetoed an agenda item. The compelling pattern is that among the 20% of agenda items where more than one veto is cast, never have western democracies and eastern autocracies vetoed together. Stated differently, while most vetoes are individual, coalition vetoes appear to be the coordinated product of either democracies or autocracies. Though the P5 vary in critical ways, these geopolitically powerful countries are, on average, more democratic, less exclusionary, and richer than African countries (see Table 2.2).

Their permanent membership on the Security Council aside, the P5 countries are relevant to the politics of East Africa and the Global South more broadly. Historians credit France with inventing liberalism and its current characterization for people who are “freedom-loving, generous, and civic-minded, and who understood their connectedness to others and their duties to the common good” (Rosenblatt, 2018, pp. 3,40). Although France did not colonize East Africa, it did successfully and illiberally colonize parts of North, West, and Equatorial Africa as well as other territories around the world. In the 1980s, France actively promoted *rayonnement* (spread) of French culture and language. It targeted former Belgian colonies—i.e., Burundi, Rwanda, and the Democratic Republic of the Congo—with aid to support *la francophonie* (French cultural nationalism) (Schraeder, Hook, & Taylor, 1998, pp. 301, 317-318).

<sup>6</sup> Data last updated March 17th, 2020 from <https://research.un.org/en/docs/sc/quick>. The data show the number vetoes cast by each country are: China 14, France 16, Russia/USSR 115, UK 29, and USA 81.

**Table 2.2: Political, Social, and Economic Indicators (between- and within-case variation)**

	Political <sup>A</sup>			Social <sup>B</sup>			Economic <sup>C</sup>		
<u>EAC Countries</u>	Mean	Median	StDev	Mean	Median	StDev	Mean	Median	StDev
Burundi	0.12	0.12	0.05	0.68	0.73	0.12	1,028	1,011	185
Kenya	0.19	0.15	0.10	0.69	0.68	0.09	2,076	2,078	407
Rwanda	0.14	0.15	0.03	0.74	0.79	0.08	967	917	284
South Sudan	0.07	0.06	0.02	0.88	0.90	0.05	-	-	-
Tanzania	0.32	0.28	0.09	0.37	0.35	0.07	1,721	1,795	485
Uganda	0.18	0.21	0.10	0.65	0.65	0.09	1,263	1,223	294
<i>Group Average</i>	<i>0.17</i>	<i>0.16</i>		<i>0.67</i>	<i>0.68</i>		<i>1,411</i>	<i>1,405</i>	
<u>East African Neighbors</u>									
Central African Republic	0.13	0.12	0.08	0.84	0.84	0.03	1,076	1,065	233
Dem. Rep. of the Congo	0.08	0.05	0.05	0.75	0.77	0.04	1,319	1,530	658
Ethiopia	0.07	0.04	0.05	0.89	0.88	0.03	953	979	227
Malawi	0.22	0.10	0.16	0.57	0.59	0.14	1,020	1,031	99
Mozambique	0.21	0.31	0.14	0.51	0.36	0.28	669	581	229
Zambia	0.26	0.21	0.12	0.31	0.24	0.20	1,880	1,719	698
<i>Group Average</i>	<i>0.16</i>	<i>0.14</i>		<i>0.64</i>	<i>0.61</i>		<i>1,153</i>	<i>1,151</i>	
<u>P5 U.N. Security Council</u>									
China	0.04	0.05	0.01	0.56	0.43	0.20	3,787	2,509	3,319
France	0.76	0.78	0.06	0.15	0.12	0.05	24,672	23,348	8,249
Russia	0.11	0.08	0.09	0.35	0.47	0.16	15,146	15,960	4,769
United Kingdom	0.76	0.76	0.03	0.16	0.16	0.04	24,781	23,075	9,050
United States	0.74	0.79	0.10	0.19	0.16	0.12	35,778	35,865	10,980
<i>Group Average</i>	<i>0.48</i>	<i>0.49</i>		<i>0.28</i>	<i>0.27</i>		<i>20,833</i>	<i>20,151</i>	
<u>Referent Groups</u>									
SSA <sup>1</sup>	0.20	0.15	0.08	0.58	0.59	0.08	3,051	2,683	934
LDC <sup>1</sup>	0.18	0.13	0.07	0.62	0.65	0.07	1,599	1,554	278
World <sup>1</sup>	0.32	0.30	0.08	0.46	0.48	0.08	10,291	9,307	4,183

<sup>A</sup> *Liberal Democracy Index* measures the extent to which liberal democracy is achieved. The indicator measures achievement as an interval scale from low to high (0 to 1) for years 1960 thru 2019. <sup>B</sup> *Exclusion by Social Group* measures the extent to which individuals are denied access to services or participation in governed spaces based on their identity or belonging to a particular group. The indicator measures exclusion as an interval scale from low to high (0 to 1) for years 1960 thru 2018. <sup>C</sup> *GDP per capita* measures gross domestic production on a per capita basis for years 1960 thru 2016. <sup>1</sup> Referent groups are Sub-Saharan Africa (SSA), Least Developed Countries (LDC), and World. Source Varieties of Democracy (V-Dem v.10).

Neither Russia nor China had African colonies, but both had embassies in these countries at independence and busily provided African states with alternative examples to the democratic and

capitalist models on display in France, Britain, and America (Attwood, 1967, pp. 154-155). Many African societies claimed a national ideology located between Marxism-Leninism and Western liberalism, known as *African socialism*. But many “merely paid lip service to the ideology” and only a few countries—led by Tanzania’s *Ujamaa* (family hood)—earnestly implemented it (Nyerere, 1969; Samuel Alfayo Nyanchoga & Muchoki, 2010, pp. 84-85).

On international matters, many African countries adopted a non-alignment policy to navigate the bipolarity of Cold War geopolitics and affirm a country’s independence and sovereignty (Orwa, 1994). The collapse of the Soviet Union led China to alter its foreign policy to check on America’s sole hegemonic status (Kragelund, 2008). Since then, its increasing involvement on the continent is undeniable. The Forum of China-Africa Cooperation (FOCAC, Beijing October 2000) marked the beginning of the remarkable escalation in Chinese-African relations. As Nicholas Cheeseman (2015, pp. 137-138) notes, by 2003 Chinese-African arms sales rivaled any European country; by 2006, China traded more with Africa than any other economic partner (except the United States); and in 2013, Chinese-African trade doubled 2006-levels and was more than twice the trade between Africa and the United States.

### **Kenya: A Typical Case and Valuable Subnational Controlled Comparison**

In addition to research questions about the legal institutions governments use to regulate CSOs that I can answer using large-N statistical techniques, I conducted in-depth research on one country, Kenya. This single-case study allowed me to explore different research questions and generate hypotheses about the enforcement of these CSO regulatory regimes. Historically, I investigated the conditions under which different presidential administrations enforced the same legal institution differently. Sub-nationally and comparatively, I explored the factors that led

some regulators to successfully enforce laws while others fail. And behaviorally, I identified possible causal processes that led individuals to enforce legal provisions differently.

### *Situating Kenya Among its Peers*

Kenya is an important case to study because it is representative of a broader set of Sub-Saharan Africa (SSA) and Least Developed Countries (LDC) (Brass, 2016, p. 21). I consider Kenya a “typical case” because it exemplifies typical values across multiple indicators in my cross-national sample, which makes it useful for hypothesis testing (Gerring & Seawright, 2007, pp. 89, 91-97). Table 2.2 shows Kenya’s Liberal Democracy Index nearly matches the mean, median, and variation of the SSA and LDC referent categories. And while social exclusion is more pronounced in Kenya than those referent categories, the country’s GDP per capita is squarely between the two referent categories. The United Nations Development Programme and its Human Development Index (HDI)<sup>7</sup> provides a fourth perspective of Kenya’s standing relative to other countries globally. The HDI consistently ranks Kenya in the upper-tier of the bottom-quartile of countries: 24th percentile (1990), 20th percentile (2000), 23rd percentile (2010), 22nd percentile (2018).<sup>8</sup>

<sup>7</sup> HDI is a composite index measuring average achievement in three basic dimensions of human development—a long and healthy life, knowledge, and a decent standard of living. Available at <http://hdr.undp.org/>. Data retrieved June 4, 2020.

<sup>8</sup> In 1990, Kenya was in the 24th percentile and followed Guatemala and Vietnam (107th and 108th ranks) and led Morocco and Ghana (110th and 11th) among 144 countries. Kenya’s HDI score (0.47) was above the SSA referent group (0.40) but below the developing country average (0.52). A decade later in 2000, Kenya fell to the 20th percentile and followed Zimbabwe and Pakistan (137th and 138th ranks) and led Nepal and Mauritania (140th and 141st) of 174 countries. At that time, its score (0.45) was above SSA (0.42) but below the average developing country (0.57). Then in 2010, Kenya ranked in the 23rd percentile behind Laos and Cambodia (142nd and 143rd) and ahead of Zambia and Nepal (145th and 146th) of 188 countries. Kenya’s score (0.53) increased but remained between SSA (0.50) and developing countries (0.64) averages. Most recently, in 2018, Kenya ranked in the 22nd percentile behind Myanmar and Cambodia (145th and 146th) and ahead of Nepal and Angola (148th and 149th) of 189 countries. Its score (0.58) continued to lead SSA (0.54) and trail the average developing country (0.69).



Another indicator of its representativeness is the number of years other countries have a political regime similar to Kenya's (Table 2.3 data from V-Dem, p. 266). The data in Table 2.3 suggests Kenya is the only country in the sample that spends the entire observation period as the

**Table 2.3: Regime Type Classified According to Access to Political Power and Liberal Principles**

	<b>Closed Autocracy</b>	<b>Electoral Autocracy</b>	<b>Electoral Democracy</b>	<b>Liberal Democracy</b>
<b>EAC Countries</b>	Burundi (1962-83, 1988-92, 1996-04); Rwanda (1974-02); South Sudan (2011-19); Tanzania (1961); Uganda (1962, 1966-79, 1985-89, 1994-95)	Kenya (1963-2019); Burundi (1984-87, 1993-94, 2005-19); Rwanda (1962-73, 2003-19); Tanzania (1962-95, 2001-06, 2013, 2016-19); Uganda (1963-65, 1980-84, 1990-93, 1996-2019)	Tanzania (1996-00, 2007-12, 2014-15)	
<b>East African Neighbors</b>	Central African Republic (1964-86, 2004); DRC (1965-05); Ethiopia (1941-93)	Central African Republic (1960-63, 1987-03, 2005-19); DRC (1960-64, 2006-19); Ethiopia (1994-19); Malawi (1964-94, 1999-08, 2019); Mozambique (1994-96, 1998-04, 2009-19); Zambia (1964-99, 2002-05, 2014-19)	Malawi (1995-98, 2009-18); Mozambique (1997, 2005-08); Zambia (2000-01, 2006-13)	
<b>P5 Members</b>	China (1900-1917, 1921-2019); France (1940-46); Russia (1900-90)	China (1918-1920); Russia (1991, 1994-2019); USA (1900-1920)	France (1900-39); Russia (1992-93); UK (1900-1918); USA (1921-1968)	France (1947-2019); UK (1919-2019); USA (1969-2019)

*Closed autocracy* defined as no multiparty elections for the chief executive or the legislature. *Electoral autocracy* defined as de-jure multiparty elections for the chief executive and the legislature but failing to achieve that elections are free and fair, or de-facto multiparty, or a minimum level of Dahl's institutional prerequisites of polyarchy. *Electoral democracy* defined as de-facto free and fair multiparty elections and a minimum level of Dahl's institutional prerequisites for polyarchy. But either access to justice, or transparent law enforcement, or liberal principles of respect for personal liberties, rule of law, and judicial as well as legislative constraints on the executive are not satisfied. *Liberal democracy* defined as De-facto free and fair multiparty elections and a minimum level of Dahl's institutional prerequisites for polyarchy are guaranteed as well as access to justice, transparent law enforcement and the liberal principles of respect for personal liberties, rule of law, and judicial as well as legislative constraints on the executive are satisfied. Mozambique not coded 1975-1993. Source Varieties of Democracy (V-Dem v.10) Regimes of the World Indicator (v2x\_regime).

same political regime type. Analysts often disagree on regime type classifications, and Kenya is no exception. Kailitz (2013), for example, views Kenya as an electoral autocracy (1963-81,

1992-01), a one-party autocracy (1982-91), and a liberal democracy (2002-10). The Autocratic Regime Dataset (Geddes, Wright, & Frantz, 2014) marks it as a party-based autocracy (1963-02) and then a democracy (2003-10). These classifications reach agreement that Kenya had a single-party system under Kenyatta and Moi (*de facto* 1963-81 and 1992-01; *de jure* 1982-91), and then a multiparty liberal democracy under Kibaki (approximately 2002-2010). Kenya, therefore, is typical of East African cases that spend considerable portions of their independence transiting the political regime continuum.

Comparative data on civil society is sparse, but an ambitious project led by John Hopkins University provides an opportunity to assess Kenya relative to and 35 other countries at one point in time (Salamon & Sokolowski, 2004). The John Hopkins project surveyed France, the UK, and the USA among its 16 developed countries. For developing countries, it included Argentina, Colombia, India, Mexico, South Africa, South Korea, and three East African countries among its 15 developing countries. The rest of the John Hopkins sample includes five transitioning countries. The project collected data from Uganda in 1998, and Kenya and Tanzania in 2000. Collectively, these authors use the comparative, cross-section data to describe Kenyan civil society as “similar to other developing countries” (Kanyinga, Mitullah, Odhiambo, Sokolowski, & Salamon, 2004, p. 97), Tanzania’s civil society as “relatively larger than other developing countries” (Kiondo, Ndumbaro, Sokolowski, & Salamon, 2004, p. 128), and civil society in Uganda as “above average” (Nyangabyaki, Kibikyo, Barya, Sokolowski, & Salamon, 2004, p. 142).

## *Scaling Down and Applying Site-Intensive Methods*

In addition to its representativeness as a typical case, Kenya has a bureaucratic framework that allows me to access a powerful sub-national, comparative research design. Kenya uses four government agencies to regulate CSOs that operate nationally (Makanda, 2008, p. 189).<sup>9</sup> Scaling down to study these regulators allows me to compare observations matched along contextual factors—e.g., culture, history, socioeconomic, politics—while also allowing those factors to vary over time (R. Snyder, 2001). *A priori*, comparing these “most-similar cases” is useful for both exploratory (hypothesis generation) and confirmatory (hypotheses testing) purposes (Gerring & Seawright, 2007, pp. 89, 131-139). Three of these regulators predate Kenya’s independence. The State Law Office contains the Registrar of Societies and the Registrar of Companies. The former regulates “societies” according to the Societies Act (Cap. 108) and the latter “companies limited by guaranteed” according to the Companies Act (Cap. 486). Next, the Trustees (Perpetual Succession Act) (Cap. 164) charges the massive Ministry of Lands with the duty to regulate “charitable trusts.” Finally, the Non-Governmental Organizations Co-ordination Board, or simply the “NGOs Board,” is a state corporation established by the Non-Governmental Organizations Co-ordination Act (No. 19 of 1990) to regulate and “national non-governmental organizations” and “international non-governmental organizations.”<sup>10</sup>

<sup>9</sup> I exclude cooperative societies and grassroots organizations because the former operate with an economic purpose and the latter only work at the community level (Maru, 2017, p. 43). Community-based organizations (CBOs) fall outside my scope for three reasons: (1) unlike other CSO legal forms in Kenya, CBOs operate only within single counties, (2) they may exist to generate private profits for members (3) there does not appear to be a Kenyan statute that regulates them. See [Chapter Six](#) for further discussion.

<sup>10</sup> Unlike other Kenyan regulators, the NGOs Board has reported to seven different executive officials since its inception. According to Kenya’s official Estimates of Recurrent Expenditure, until 1998, the NGOs Board was part of the Office of the President. From 1999 thru 2002 it was part of the Office of the Vice-President and Ministry of Home Affairs, Heritage, and Sports. In 2003, the NGOs Board was part of the Ministry of Home Affairs, which was absorbed into the Office of the Vice-President and Ministry of Home Affairs in 2004. From 2006 to 2012 the NGOs

I use site-intensive methods (Kapiszewski, MacLean, & Read, 2015) to collect original data for this controlled comparison.<sup>11</sup> In-depth interviews act as one site-intensive method and allow me to understand the enforcement and compliance of Kenyan CSO laws. I analyze interview data collected from elected leaders and bureaucrats with current or former ties with the Government of Kenya. Archival methods collect preexisting source materials from Kenya's four regulators, its Library of Parliament, and other repositories.<sup>12</sup> [Chapters Six](#) discusses the Kenyan case and data collection process more fully; [Chapter Seven](#) carefully analyzes the interview and archival data.

### **Assembling an International Legal Corpus**

After selecting my sample, I collected the legal documents that comprise each country's CSO regulatory regime. Constitutions, international treaties, and ordinary legislation comprise these legal institutions because they cumulatively affect political outcomes (Kiser & Ostrom, 1982). Constitutions and treaties are "constitutional rules" that determine how a government creates a law and provides the judiciary with the calculus to judge its fairness (Buchanan & Tullock, 1961; Brennan & Buchanan, 1985; E. Ostrom, 2005). By contrast, laws are "collective-choice rules" made by representative institutions following the processes that "constitutional rules" prescribe (E. Ostrom, 2005, p. 58). Constitutional rules may be superior to collective-

Board was part of the Ministry of State for National Heritage (and Culture), then relocated to the Ministry of Devolution and Planning in 2013 which was renamed the State Department for Planning in 2014. Finally, in 2017, the NGOs Board was moved to the State Department for Interior.

<sup>11</sup> Kenya requires researchers to affiliate with a local institution and obtain a Research Clearance Permit in addition to university IRB. NACOSTI Permit No. NACOSTI/P/18/65047/23638 dated July 13<sup>th</sup> 2018, and Indiana University Protocol No. 1805354074 dated June 5<sup>th</sup>, 2018.

<sup>12</sup> Data collected from several private archives and government repositories at the Kenyan Auditor General, Bureau of Statistics, Hansards Office of Parliament, Kenyan Law Reform Commission, Ombudsman, Public Service Commission, and the National Treasury.

choice rules, but laws affect the day-to-day activities of people and organizations more closely. Information for constitutions and treaties is readily available<sup>13</sup> and makes evaluating those constitutional rules straightforward. Accessing information on CSO laws is far more complicated and is perhaps the most significant barrier to studying these collective-choice rules.

A law's content—i.e., its legal provisions—determines whether it is constitutional or unconstitutional, liberal or illiberal, permissive or restrictive. When an appropriate lens, such as constitutional rules or applicable theory, evaluates the laws, then the process is reliable and replicable. The 1966 International Covenant on Civil and Political Rights (ICCPR), which is considered the principal treaty in the area of international human rights (Henkin, 2000; ICNL, 2009; Kiai, 2012; Donnelly, 2013; ICNL, 2015), is one such appropriate lens. As I discuss more thoroughly in Chapter Three, international lawyers have used Article 22(2) to establish the three-part test to evaluate CSO laws (U.N. Human Rights Committee, 2006, 2007, 2015).<sup>14</sup> The three-part test, or a similar diagnostic tool, allows researchers to evaluate legal provisions across countries consistently. For example, analysts applying the three-part test to two laws from different countries, but with the same content, *should* reach the same evaluative conclusion. I use a similar approach to evaluate the legal provisions of 285 laws passed by 17 countries between 1872 and 2019 (see Chapter Four). But instead of the three-part test, I apply a 58-item coding protocol developed from a review of the literature studying CSO laws. Qualitative methods

<sup>13</sup> Ratification status for international treaties is available through the United Nations Office of Legal Affairs, the Comparative Constitutions Project systematically codes the constitutions for all countries from 1789 forward (Elkins et al., 2009; Elkins, Ginsburg, & Melton, 2014a).

<sup>14</sup> International law's three-part test draws on Article 22(2) of the International Covenant on Civil and Political Rights. The threshold is that all laws regulating voluntary association must be: (1) prescribed by law and use sufficiently precise and accessible language; (2) established to meet legitimate aims specified by Article 22(2) to include "national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others"; (3) be "necessary for democracy" so as to meet a pressing social need in a proportional manner.

allowed me to produce an original country-year dataset that covers more time than any prior study in this research area, and successfully operationalizes the legal institution as the multidimensional concepts they are. These data allow me to speak confidently about the legal institutions that governments have and the legal provisions they contain.

#### *Data Preparation: Collecting and Translating an International Legal Corpus*

I collected primary source materials in the form of legal texts from 25 legal research collections. Most of my legal corpus comes from repositories organizing data for either specific or multiple countries—e.g., the Uganda Legal Information Institute and the International Center for Not-for-Profit Law. Though many repositories were open access, some required paid subscriptions or the ability to read non-English languages—e.g., Westlaw China and the Consultant Plus legal databases. The [Appendix](#) describes these online collections. I collected missing primary sources by contacting analysts who published legal summaries that discussed CSO laws. Although my search for primary sources was thorough, it may not be perfect.<sup>15</sup>

As I collected laws, I indexed them in a manner that allowed me to avoid collecting redundant files and assisted me in identifying missing versions.<sup>16</sup> The legal corpus contains laws written in six languages—Amharic, Chinese, English, French, Portuguese, Russian—and translations into English followed one of two processes. The first used a cloud-based API to translate laws into English while maintaining the original formatting. I then hired native language speakers to improve accuracy by editing the automated translations while side-by-side

<sup>15</sup> Missingness may not be random, which may raise concerns about bias in the sample that may threaten inference. Anticipating these concerns, I correct for missingness in two ways: (1) through a careful research design, and (2) by quantifying how much bias would have to be due to the non-random sample to invalidate inference. As part of my analysis in Chapter Four, the [Appendix Table 4A](#) contains a discussion of measurement validity.

<sup>16</sup> Indexing used the following format: Country/Law/Year/Version/Language

referencing the original text. This preferred process was quick and decreased translation costs by over 80%. I used a traditional—and also slower and costlier—process when the API did not support the original language, or the document was not machine-readable. Here, native language speakers translated legal documents directly into English. All five native language speakers were North American doctoral students at three research universities.

**Table 2.4: Summary of International Legal Corpus**

	<b>EAC Members</b>	<b>Full Sample</b>
Number of Countries	6	17
Laws Coded	72	285
Laws Coded per Country (avg.)	12.0	16.8
Range (years)	1888 to 2019	1872 to 2019
Total Pages	4,737 (~65 pages/law)	22,863 (~80 pages/law)
Number of Sections (avg.)	81.9	99.3
Number of Schedules (avg.)	2.5	2.1
Delay between Assent and Commencement (avg.)	29.5 days	64.9 days
New, Non-Amending Statutes	21 of 72 (29%)	82 of 285 (28%)

The legal corpus includes 285 laws enacted by 17 countries between 1872 and 2019. Table 2.4 summarizes the corpus for the EAC countries and the full sample with a bibliography of all 285 coded laws in the [Appendix](#). Systematically coding the laws required over 567 person-hours. The process began by reading a law and identifying the portions of the text that appeared relevant to the coding protocol. I conducted this initial reading and identification exclusively in electronic form. I then reread the document giving increased attention to the relevant portions. During this second reading, I referenced the text in electronic form and I used a hardcopy coding sheet to cite which blocks of text—e.g., article, section, and paragraph numbers—discussed each item in the coding protocol. Coding sheets also captured metadata, including length (number of sections and schedules), whether a preamble justified its existence, if the law added, amended, or removed a preexisting law, and finally assentation and commencement dates. By default, I coded laws as active until another legal document provided information on its repeal, replacement, or

amendment. Each coding sheet represents a piece of a regulatory regime and provides information regarding which provisions the law adds to the legal institution and for what years.

I followed this systematic process and coded one country at a time. This focus allowed me to familiarize myself with a country's legal writing style. Further, I coded laws in the order that they contributed to the country's legal institution, but I coded all amended versions of a law before moving to the next. Like acclimating to a country's writing style, consecutively coding the amended versions of each law allowed me to familiarize myself with the legal jargon particular to one law. This sequencing technique caused me to be more alert to changes in the text from one version to another. After coding a country's entire legal corpus, I transformed hardcopy coding sheets into digitized data using a Qualtrics survey to minimize errors during digitization. The survey collected metadata for each statute including length (e.g., number of sections), critical dates (e.g., when the government enacted/passed, enforced/commenced, and replaced/amended the legislation), and how it changed the legal institution (e.g., whether it added, replaced, or amended other statutes). The final result is a rectangular dataset where each row represents a coding sheet, and each column is a field from the coding sheet.

### **Institutional Analysis: The Grammar of Institutions**

This final section reviews the ADICO syntax and explains how I used it to transform the matrix typology (illustrated in full detail in [Chapter Four](#)) into a 58-item coding protocol. Institutionalists often cite the grammar of institutions—often referred to as the ADICO syntax—to differentiate three types of institutional statements: rules, norms, and shared strategies. But as S. E. S. Crawford and E. Ostrom (2005, p. 140) explain, the ADICO syntax is a powerful tool of comparative institutional analysis because “regardless of how institutional statements are



expressed in natural language, they can be rewritten or summarized in the ADICO format” and allows analysts to “compare the institutional statements in use in a variety of settings.” By facilitating a rigorous comparison of laws from different countries over a long period, the ADICO syntax helps produce the original data necessary to study why and how governments regulate CSOs. In this work specifically, I use the ADICO syntax to transform the legal provisions that scholars discuss in research and standardize them into a 58-item coding protocol that I then use to inventory my legal corpus (see Chapter Four).

### *Reviewing the ADICO Syntax*

An institutional statement rewritten using the syntax is a concatenation of five components: [ATTRIBUTE][DEONTIC][AIM][CONDITIONS][OR ELSE]. Only if all five components are present is an institutional statement a *rule*. If statements are missing an institutionally assigned consequence for not following a rule (**O**) then it is a *norm*. If statements also omit an obligation on behavior (**D**) then it is a *shared strategy*.

- (A) *attribute* identifies to whom the institutional statement applies, and if no attributes are named then the default assumption is all members of the group;
- (D) *deontic* identifies the expectation of behavior identified by the qualifiers ‘may’ (permitted), ‘must’ (obliged), and ‘must not’ (forbidden);
- (I) *aim*, specifies the particular action or outcome prescribed, or actions or outcomes that are forbidden;
- (C) *conditions*, explain when and where the institutional statement applies, and if no conditions exist then the default assumption is it applies to all persons, at all times and all places, under all circumstances;
- (O) *or else*, institutionally assigned sanction for noncompliance. This component must have three qualifications: (i) sanctioning provision is the result of an explicit collective-choice decision that separate from any internal or social penalty, (ii) be backed by at least one other institutional statement that if noncompliance occurs changes the DEONTIC assigned to some AIM for at least one actor, and (iii) affect the constraints and opportunities of actors responsible for monitoring the conformance of offenders (S. E. S. Crawford & E. Ostrom, 2005, pp. 149-152, 298).

**Table 2.5: Examples of Institutional Statements Rewritten in the ADICO Syntax**

	Example 1: <i>If you use the microwave, you must clean up your own mess!</i>	Example 2: <i>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.</i>	Example 3: <i>Any society which is aggrieved by the Registrar's refusal to register it, or by his cancelling or suspending its registration under section 12 of this Act, may, with a period of twenty-one days, or such extended period as the Minister in any particular case may allow, from the date of the refusal, cancellation or suspension, appeal to the Minister against the refusal, cancellation or suspension, and, where the society does so and is not a society of one of the kinds specified in paragraphs (i), (ii) and (iii) of the proviso to section 4(1) of this Act, it shall not, pending the decision to appeal, be an unlawful society, notwithstanding the said section 4(1).</i>
(A)	"all microwave users"	"the United States government"	"registered societies and individuals wishing to register a society"
(D)	"must" / "forbidden to not"	"must not" / "forbidden to"	"may"
(I)	"clean the mess you made in the microwave"	"enact legislation favoring any one religion, limit expressing ideas through speech or press, gathering as private voluntary associations or as groups to protest, practicing religious beliefs."	"appeal a decision refusing to register an informal CSO or affecting the legal status of a registered society"
(C)	"all users under all circumstances"	"all U.S. governments and their entities under all circumstances"	"within 21 days of receiving the decision"
(Q)	-omission implies norm-	"the law conflicts with the Constitution and the law is challengeable/null per the Supremacy Clause of the Constitution of the United States (Article VI, Clause 2)"	"accept the Minister's original decision"

Example 1 used by Crawford and Ostrom (2005, p. 139). Example 2 is the First Amendment (Amendment I) to the United States Constitution. Example 3 is § 15 the *Societies Act 1968* (Kenya) that was later amended by *Statute Law (Repeals and Miscellaneous Amendments) Act, 1997* (pages 897-899).

Table 2.5 contains examples of institutional statements in their natural language and rewritten in the ADICO syntax. The simple example regulates the behavior of a shared microwave, the one in the middle is the First Amendment to the United States Constitution. Both explicitly identify to whom the statements apply, set expectations of behavior, and discuss particular actions or outcomes. Neither identifies conditions under which they apply; therefore, the default assumption is they apply to all members under all circumstances. And while both

omit an explicit sanction for noncompliance, only the first is reduced to a norm. A strict interpretation of the syntax might conclude the First Amendment is a norm if one did not know it was part of a broader legal institution. It is a rule because other rules back it—e.g., the Supremacy Clause (Article VI, Clause 2)—that allows unconstitutional legislation to be challenged or voided.

Many laws contain legal language requiring action that was the opposite of the rules in the coding protocol. This means the legalese addressed the same action or outcome (A/M) as the coding protocol but with an inverted expected behavior (DEONTIC). The ADICO syntax adeptly handles these situations that might otherwise frustrate simpler coding instruments. Institutional statements easily transform into their negation by manipulating the DEONTIC operator. As Crawford and Ostrom (2005, p. 143) explain, the three DEONTIC operators—permitted/may, obliged/must, forbidden/must not—have interdefinability and if one is taken as the initial starting point, or the primitive, then the others can be defined in terms of that primitive.<sup>17</sup> This typically

<sup>17</sup> Crawford and Ostrom (2005, p. 143) explain the DEONTIC operators are interdefinable and if one is taken as the initial starting point, or the primitive, then the others can be defined in terms of that primitive. For example, let us use P as a primitive, initial starting point. If referring to a permitted action [a<sub>i</sub>], then [P][a<sub>i</sub>] would be read: *an actor may do a<sub>i</sub>*. The statement that an act is forbidden [F][a<sub>i</sub>] can be restated using P as the primitive as [~P][a<sub>i</sub>]. Because [F][a<sub>i</sub>] and [~P][a<sub>i</sub>] are equivalent, both would be read: *an actor may not do a<sub>i</sub>*. On the other hand, if the negation of an action [~a<sub>i</sub>] is forbidden, one is obliged to take the action. The statement that an act must be done, [O][a<sub>i</sub>], can be defined as [~P][~a<sub>i</sub>] and be read as: *an actor may not not do a<sub>i</sub>*. If an action is obligatory, one is not permitted to not do [a<sub>i</sub>]. Alternatively, F can be the primitive. Then, P can be defined as [~F][a<sub>i</sub>] and O can be defined as [F][~a<sub>i</sub>]. With O as the primitive, P can be defined as [~O][a<sub>i</sub> or ~a<sub>i</sub>], while F can be defined as [O][~a<sub>i</sub>]. This same interdefinability exists for prescriptions that refer to outcomes instead of actions. Any prescriptions with a DEONTIC assigned to some OUTCOME, o<sub>i</sub>, can be restated using either of the other two DEONTIC operators:

- [P] = permitted/may; [F] = forbidden/may not; [O] = obliged/must
- [~P] = ~permitted/may not/forbidden; [~F] = ~forbidden/may/permitted; [~O] = ~obliged/may/needn't
- [P][a<sub>i</sub>] is read as: *an actor may do a<sub>i</sub>*.
- [F][a<sub>i</sub>] is read as *an actor is forbidden to do a<sub>i</sub>*, and is equivalent to [~P][a<sub>i</sub>] *an actor may not do a<sub>i</sub>*.
- [O][a<sub>i</sub>] *an actor is obliged to do a<sub>i</sub>*, is equivalent to [~P][~a<sub>i</sub>] *an actor may not not do a<sub>i</sub>*.
- [P][a<sub>i</sub>] is equivalent to [~F][a<sub>i</sub>] *an actor is not forbidden to do a<sub>i</sub>*.
- [F][a<sub>i</sub>] is equivalent to [O][~a<sub>i</sub>] *an actor is obliged to not do a<sub>i</sub>*.

involves taking the negation ( $\sim$ ) of the operator. For example,  $\sim$ [permitted/may] is equivalent to [forbidden/may not]. Negating the *DEONTIC* operator in this way flips the sign on the assigned value in the coding protocol:  $\sim$ [-*I*] is equivalent to +*I*, and  $\sim$ [+*I*] becomes -*I*.

The third example in Table 2.5 demonstrates how effortlessly the ADICO syntax avoids coding conflicts using a negated *DEONTIC*. The example in Table 2.5 cites Kenya's Societies Act (§ 15, 1968), which gives a particular CSO legal form the ability to appeal registration decisions handed down to it from the regulator. The article's legalese is 114 words long and contains all five components of the ADICO syntax. This example relates to the coding-protocol item read as *all CSOs are forbidden to appeal a registration denial or a deregistration order after such a decision has been communicated or else face a noncompliance sanction*.<sup>18</sup> In simpler words, the coding-protocol item is a restrictive provision that denies CSOs the ability to appeal a regulator's unfavorable decision. Numerically, this restrictive provision carries a value of -*I*. This situation would frustrate simpler coding protocols for the following reasons. First, the Societies Act § 15 is a permissive provision that gives CSOs the right to appeal. Second, the coding protocol is specifically coding for a restrictive provision that denies CSOs the right to appeal. Thus, a rigid coding protocol may code this as 0 or N/A because the restrictive provision in the coding protocol does not appear in the law. Yet, Article 15 unquestionably contains language related to appealing deregistration decisions. The ADICO syntax is unphased by legal language that does not perfectly match the protocol item. In this case, Article 15's explicit positive right to appeal these decisions simply negates the *DEONTIC* operator and flips the sign

<sup>18</sup> The protocol item appears in the AIDCO syntax as: [CSOs][Forbidden][appeal registration denial or deregistration order][after such a decision has been communicated][or else face noncompliance sanction].

of the coded value this way: ~[-I] becomes +I. The negated DEONTIC momentarily causes the protocol item to appear as:

[CSOs][~F][appeal registration denial or deregistration order][after such a decision has been communicated][or else face noncompliance sanction].<sup>19</sup>

### *ADICO Syntax as a Method: Examples from Recent Research*

The usefulness of institutional statements is widely recognized, but the direct application of the ADICO syntax in empirical research is generally limited to analyses of fewer than a dozen documents. Basurto, Kingsley, McQueen, Smith, and Weible (2010) studied only four regulatory documents governing aquaculture practice in Colorado and found those documents contained 346 institutional statements. Then, to study the composition of policy change, Weible and Carter (2015) used the syntax to compare Colorado's 1977 and 2006 smoking bans, which included 38 and 62 institutional statements, respectively. Additional applications have studied five climate change laws in Japan and the Republic of Korea (Mi Sun & Yeo-Chang, 2013), compared ten city charters for statements structuring mayoral powers (Feiock et al., 2016), surveyed the United Way Worldwide's global membership rules (Siddiki & Lupton, 2016), and been used to understand the behavior of individuals participating in ecological restoration in Chicago and cyclists competing in the Tour de France (Fink & Smith, 2012; Watkins & Westphal, 2016).

Though the volume of institutional statements generated by these studies is massive, the rigor of the syntax leads to intercoder reliability scores that typically range between 85-95% across studies (Siddiki, Weible, Basurto, & Calanni, 2011, p. 91). It is worth noting that this convergence is among studies using an inductive, open-ended approach. I argue it is reasonable

<sup>19</sup> This ADICO syntax can be read as *all CSOs are not forbidden to appeal a registration denial or a deregistration order after such a decision has been communicated or else face a noncompliance sanction.*

to expect that a semi-structured protocol that codes for a predetermined set of statements will have at least similar and perhaps higher intercoder reliability. In summary, researchers attest that the “strength of [the ADICO syntax] approach is the systematic and explicit recognition that institutional statements can be coded as small, single units of observation and aggregated into broader units of analysis” and argue “Crawford and Ostrom’s grammatical syntax can serve as a useful analytical tool to understand complex policy issues” (Basurto et al., 2010, p. 536).

#### *ADICO Syntax as a Method: Application to CSO Laws*

In Chapter Four, I detail the three-step process that created the matrix-typology that is the primary input for my coding protocol. In that process, I first reviewed research studying CSO laws and identified that analysts discuss over 50 different legal provisions. Next, I organized those provisions into four broad subgroups: governance, formation, operations, and resources provisions. Lastly, I used theory to identify each legal provision as either permissive or restrictive. This theory-driven identification dichotomized the mutually exclusive subgroups and created a matrix typology of 58 legal provisions analysts discuss when studying CSO laws. Then, the ADICO syntax standardized those provisions to develop a disciplined 58-item protocol that I used to code the legal corpus systematically.

My choice to use “CSO” as the ATTRIBUTE is intentional as it identifies to whom the institutional statement applies and avoids definitional conflicts. To be concrete, replacing the term with “NGOs” or “501(c)(4)s” would considerably narrow the coding protocol’s scope and steer it away from legal entities relevant to this study. And replacing it with a broader term—e.g., “organizations”—would stretch its scope and lead the protocol to consider legal provisions relating to “businesses” and “political parties.”

**Table 2.6: Standardizing Natural Language Legal Provisions with the ADICO Syntax**

Provision in Scholarship	Provision in Natural Language	Provision in ADICO Syntax
“In 2008, Jordan enacted a new Law of Societies that requires any NGO seeking to receive foreign funding to obtain approval from the Jordanian cabinet and inform officials of the funding source, amount, and intended purpose” (Carothers and Brechenmacher 2014: 8).	Ex-ante approval from the government required for foreign funding is restrictive.	[CSOs][must][acquire one-time approval to receive foreign funding that is separate from formal registration][if the law is enacted][or else it cannot receive those resources without facing penalty for noncompliance].  (-I = restrictive)
“Foreign funding prohibited [in Oman]” (Dupuy, Ron, and Prakash 2016: Table 2).	Prohibiting foreign funding is restrictive.	[CSOs][forbidden to][receive any foreign funding under any circumstances][if the law is enacted][or else face penalty for noncompliance]  (-I = restrictive)
“Explicit [financial] transparency requirements can provide additional assurance that organizations are operating in a way that is consistent with public expectations” (Salamon and Toepler 2000: 6). “Reporting requirements [required in Bhutan, Burundi, Indonesia, Pakistan, Sierra Leone, Uganda,]” (Dupuy, Ron, and Prakash 2016: Table 2).	Requiring organizations to be financially transparent so that profiteers do not abuse the legal form is permissive.	[CSOs][must][report their finances for public access][if the law is enacted][or else face penalty for non-compliance].  (+I = permissive)

Table 2.6 demonstrates the process for standardizing three legal provisions into the ADICO syntax for use in the coding protocol. The first two rows are straightforward, but the final row shows the methodological value of the ADICO syntax. Salamon and Toepler (2000a, p. 6) discuss financial transparency as permissive provisions used as a means to protect CSOs and society from abusing the legal form’s tax privileges. Dupuy and colleagues (2016, p. 311), by contrast, discuss “reporting requirements” as one of the many illiberal restrictive provisions governments use to restrict foreign aid. The same coding-protocol item handles both versions of the reporting requirement due to the specificity of the particular action or outcome prescribed, or the A/M. When reporting requirements are for public access, then the legal provision is

permissive. But when the reporting requirement exists but does not explicitly grant the public access to those financial, then the legal provision is restrictive.



### —Chapter III—

## COVENANTS, CONSTITUTIONS, AND DISTINCT LAW TYPES: A CROSS-NATIONAL & GLOBAL ANALYSIS<sup>1</sup>

To understand how and why governments regulate CSOs, we must understand the conditions under which governments change their CSO regulatory regimes—specifically, which factors reliably predict enactment across countries. Existing work has begun to do this by focusing on regime type and electoral contestation as factors associated with governments enacting legal provisions restricting foreign funding to CSOs. Thirty-nine countries enacted restrictive foreign financing laws between 1993 and 2012 (Dupuy et al., 2016). Figure 3.1 shows the countries that have enacted restrictive foreign funding laws relative to their levels of democracy and freedom. The data show a strong correlation between authoritarianism and enactment, which accords with the conventional argument that authoritarian regimes are more likely to restrict CSOs than are democracies. Yet, the data also show several cases that violate the conventional explanation: democracies and hybrid regimes enact these laws.

This figure raises two questions. First, it appears regime type is strongly associated with CSO foreign funding restrictions, but what particular legal institutions affect enacting these provisions? This institutional context is crucial because it represents factors—separate from regime type—that accelerate or decelerate the enactment of illiberal legal provisions. In this chapter, I show that when controlling for other factors, countries that have made global commitments to safeguard civil and political human rights and whose constitutional rules

<sup>1</sup> An earlier version of this chapter was published in 2019 as: “Covenants, Constitutions, and Distinct Law Types: Investigating Governments’ Restrictions on CSOs Using an Institutional Approach” in *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations* 30 (6):1229-55.

demand those commitments be honored are less likely to enact restrictive provisions. This chapter examines this issue globally, looking at restrictions across almost 140 countries.

**Figure 3.1: Enactment of “More Restrictive” Foreign Funding Laws**

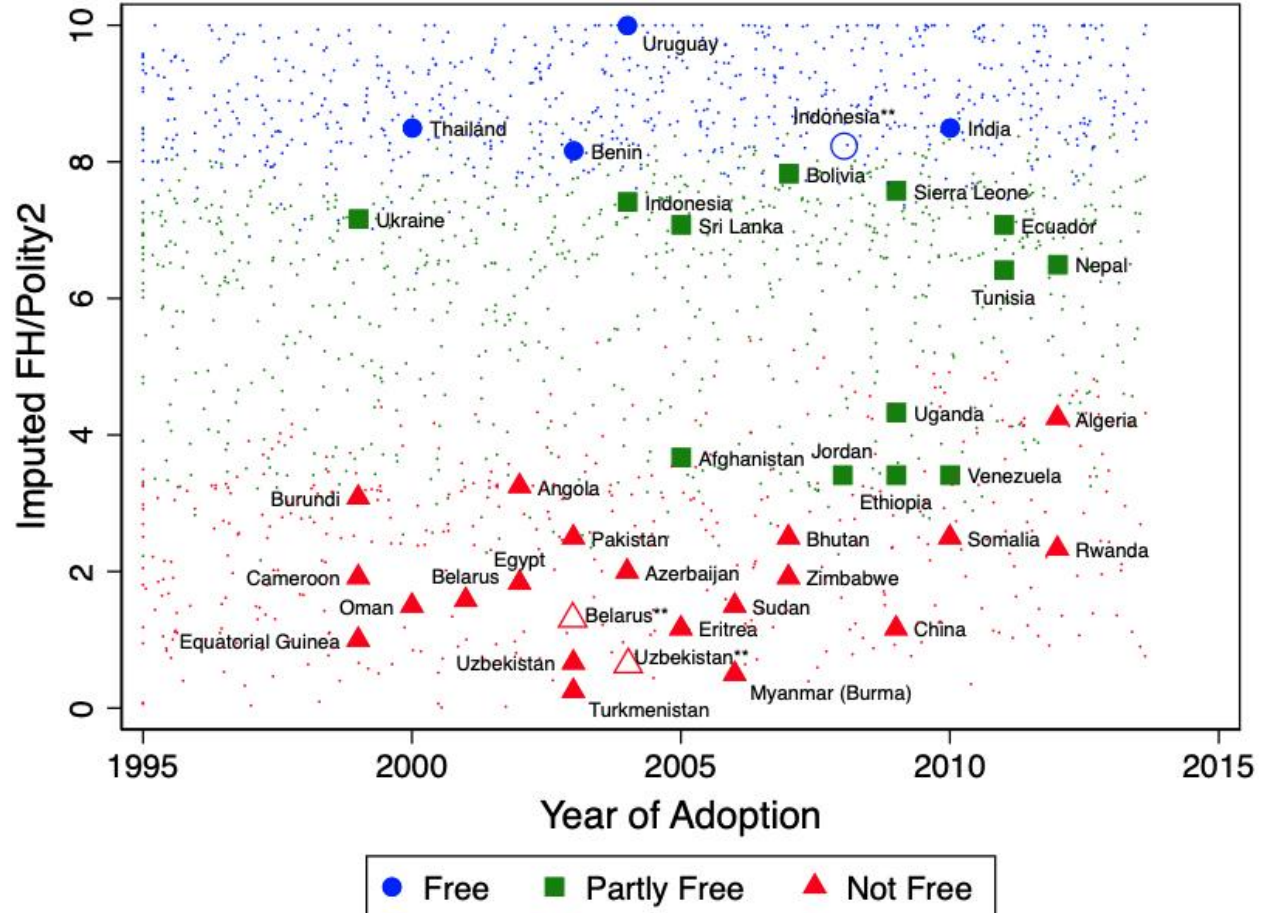


Figure shows the enactment of restrictive foreign funding laws by year (x-axis) and level of democracy (y-axis). Solid shapes identify the year a country enacts its restrictive law, and hollow shapes identify countries that enacted a second law during the analysis period—i.e., Belarus (2001,2003), Indonesia (2004, 2008), Uzbekistan (2003, 2004). Background shows country-year values of nearly 100 additional countries that did not enact laws. Sources “Hands Off My Regime!” (Dupuy et al. 2016: Table 1); Values of Democracy (V-Dem); Freedom House.

Second, the observation that countries of all regime types and freedom levels enact funding restrictions calls in to question whether these provisions are actually all the same and if a sounder conceptualization is to disaggregate the category logically. Thus, in addition to examining the possibilities of institutional path dependencies, this chapter also challenges the notion that all foreign funding restrictions are equivalent. I argue that laws that are unequivocally more or less

restrictive—such as Oman (2000) categorically prohibiting foreign funding versus Pakistan (2003) or Uruguay (2004) merely requiring ex-post notification or accounting requirements—are conceptually different and therefore are enacted under different circumstances. I demonstrate this is the case by showing the legal provisions that restrict CSOs differently are predicted by different factors. This finding informs subsequent chapters, in that it beckons the need to disaggregate CSO laws into their elemental legal provisions to understand CSO regulatory regimes and their complexity in full. Together, these findings inform my typology of provisions developed in [Chapter Four](#) and the analyses of a regional set of countries and global hegemony in [Chapter Five](#).

To preview, this chapter asks first, do preexisting institutions affect the enactment of restrictive laws? Second, do the political factors that predict the enactment of highly-restrictive laws also predict the enactment of moderately- and minimally-restrictive ones? I examine these questions using a form of event history analysis known as competing risk models (CRMs) to gain refined estimates on how different factors—such as the level of democracy, ideology with superpowers in the United Nations, preexisting institutions, and organized civil society activity—relate to the enactment of particular laws. The models analyze a sample of 138 countries between 1993-2012, of which 37 enacted laws identified as highly-, moderately-, or minimally-restrictive.<sup>2</sup>

<sup>2</sup> Belize and Vietnam are not analyzed because they are not coded in several datasets. These countries adopted laws in 2003 and 2009, respectively.

## Path Dependence in the Enactment of Regulations Affecting CSOs

Under what conditions do preexisting international commitments to safeguard human rights impend governments' attempts to enact CSO laws with illiberal and restrictive legal provisions? To answer this question, I scrutinize the institutions that most directly represent these concepts because regime type alone is insufficient.

Differences in constitutions, international commitments to safeguard civil and political rights, and domestic laws affect *de facto* civil liberties and the organizational ecology of CSOs (Salamon & Toepler, 1997; World Bank, 1997; Hathaway, 2002; Elkins et al., 2009). From an institutional analysis perspective, constitutions are the ultimate preexisting institution because they structure the terms and conditions of governance and establish the boundaries of government activity (Buchanan & Tullock, 1961; V. Ostrom, 1997) and inform our understanding of how predatory states develop a credible commitment and the state capacity necessary to undertake protective and productive roles for society (Buchanan, 1975; Boettke & Candela, 2019). Constitutions sit atop a multi-level rulemaking process that determines the creation of laws and working rules that affect decision making (Brennan & Buchanan, 1985; E. Ostrom, 2005; Cole, 2017). Relevant examples are systems of checks and balances, whether ratification of international treaties constrains domestic lawmaking, and power bestowed to the executive. At the same time, constitutions affect individuals by creating and maintaining a sense of shared identity (Pitkin, 1987; Murphy, 1993; Mutunga, 1999; Breslin, 2009), protecting and enforcing property rights conducive to development (North & Weingast, 1989), and constitutionalism that guarantees a state's commitment to "a set of inviolable principles" such as freedom of association and religion (Elkins et al., 2014b, p. 38). Studying constitutional differences provides insight into the constraints on lawmaking and the importance of preexisting

rules. Although constitutional-level rules change slower than collective-choice or operational-rules (E. Ostrom & Ostrom, 2004), scholarship on the topic finds the average life expectancy of constitutions is only 19 years with a “decline in constitutional life spans after World War II” (Elkins et al., 2014b, p. 131).

At the international level, the 1966 International Covenant on Civil and Political Rights (ICCPR) is considered the principal treaty in the area of international human rights (Henkin, 2000; ICNL, 2009; Kiai, 2012; Donnelly, 2013; ICNL, 2015).<sup>3</sup> The ICCPR safeguards the civil and political rights of citizens in the majority of countries in the world, with new signatories ratifying the agreement each year (United Nations Office of Legal Affairs, 2018). Article 22(2) outlines the limited conditions under which restrictions on association are permissible with similar language appearing in several subsequent regional treaties such as Article 16(2) of the American Convention on Human Rights (1969), Article 11 of the African Charter on Human and Peoples’ Rights (1981), and Article 11 of the European Convention on Human Rights (2010).

International law uses Article 22(2) to establish legal criteria to evaluate the legitimacy of laws affecting voluntary association (U.N. Human Rights Committee, 2006, 2007, 2015). A three-part test sets a threshold that all rules regulating voluntary association must be:

1. Prescribed by law that uses sufficiently precise and accessible language;
2. Established to meet legitimate aims specified by Article 22(2) to include “national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others”; and
3. “Necessary for democracy” in that they meet a pressing social need in a proportional manner.

<sup>3</sup> The ICCPR protects freedoms of expression and belief (Articles 18, 19, 27), rights to associate and organize (Articles 1, 18, 21, 22), rule of law and human rights (Articles 6, 7, 9, 14, 15, 16, 17, 25, 26), and personal autonomy and economic rights (Articles 1, 3, 8, 12, 22, 23, 25).

In general, the three-part test suggests that states may regulate (prescribe by law) CSOs to perform specific actions in the interests of transparency and accountability (legitimate aims) if such requirements are properly scoped to prevent real dangers to democracy (necessary for democracy).

Ratification of the ICCPR provides information concerning when a country makes an international commitment to safeguard human rights—i.e., when the pledge becomes a preexisting institution. But the strength of that international commitment depends on the status constitutional rules give such international commitments. Thus, the preexisting institution is most influential when a constitution elevates the ICCPR's obligations above ordinary legislation. Table 3.1 shows the year each country enacted its restrictive law (Law Enacted). It also displays the year it enacted its law, whether a country has made a commitment to safeguard civil and political rights (Guards Human Rights), and if constitutional rules bolster that commitment by awarding it a status superior to ordinary legislation (Constitutional Commitment). Of these 39 countries, 25 ratified the ICCPR before the start of the observation period, and nine ratified during the observation period. But two of those countries, Indonesia and Pakistan, ratified the covenant after enacting restrictive laws. In total, 33 countries enacted laws in an institutional context that either had no preexisting commitments to promote civil and political rights or had no constitutional rules enforcing ICCR ratification.

**Table 3.1: Enactments, International Commitments to Guard Rights, & Constitutional Guarantees**

	Guards				Guards		
	Law Enacted	Human Rights	Constitutional Commitment		Law Enacted	Human Rights	Constitutional Commitment
Bhutan	2007	No	No	Egypt	2002	1982	No
China	2009	No <sup>1</sup>	No	Somalia	2010	1990	No
Myanmar	2006	No	No	Sri Lanka	2005	1980	No
Oman	2000	No	No	Sudan	2006	1986	No
				Thailand	2000	1996	No
				Tunisia	2011	1969	No*
Indonesia	2004+	2006	No	TKM	2003	1997	No
Pakistan	2003	2010 <sup>2</sup>	No	Somalia	2010	1990	No
				Uganda	2009	1995	No
				Ukraine	1999	1973	No
Afghanistan	2005	1983	No*	Uruguay	2004	1970	No
Angola	2002	1992	No	Uzbekistan	2003+	1995	No
Belarus	2001+	1973	No	Venezuela	2010	1978 <sup>2</sup>	No
Belize	2003	1996 <sup>2</sup>	No	Vietnam	2009	1982	No
Bolivia	2007	1982	No	Zimbabwe	2007	1991	No
Burundi	1999	1990	No				
GNQ	1999	1987	No	Algeria	2012	1989	Yes*
Eritrea	2005	2002	No	Azerbaijan	2004	1992	Yes*
Ethiopia	2009	1993	No	Benin	2003	1992	Yes
India	2010	1979	No	Cameroon	1999	1984	Yes*
Jordan	2008	1975	No	Ecuador	2011	1969	Yes*
Nepal	2012	1991	No	Rwanda	2012	1975	Yes*
Sierra Leone	2009	1996	No				

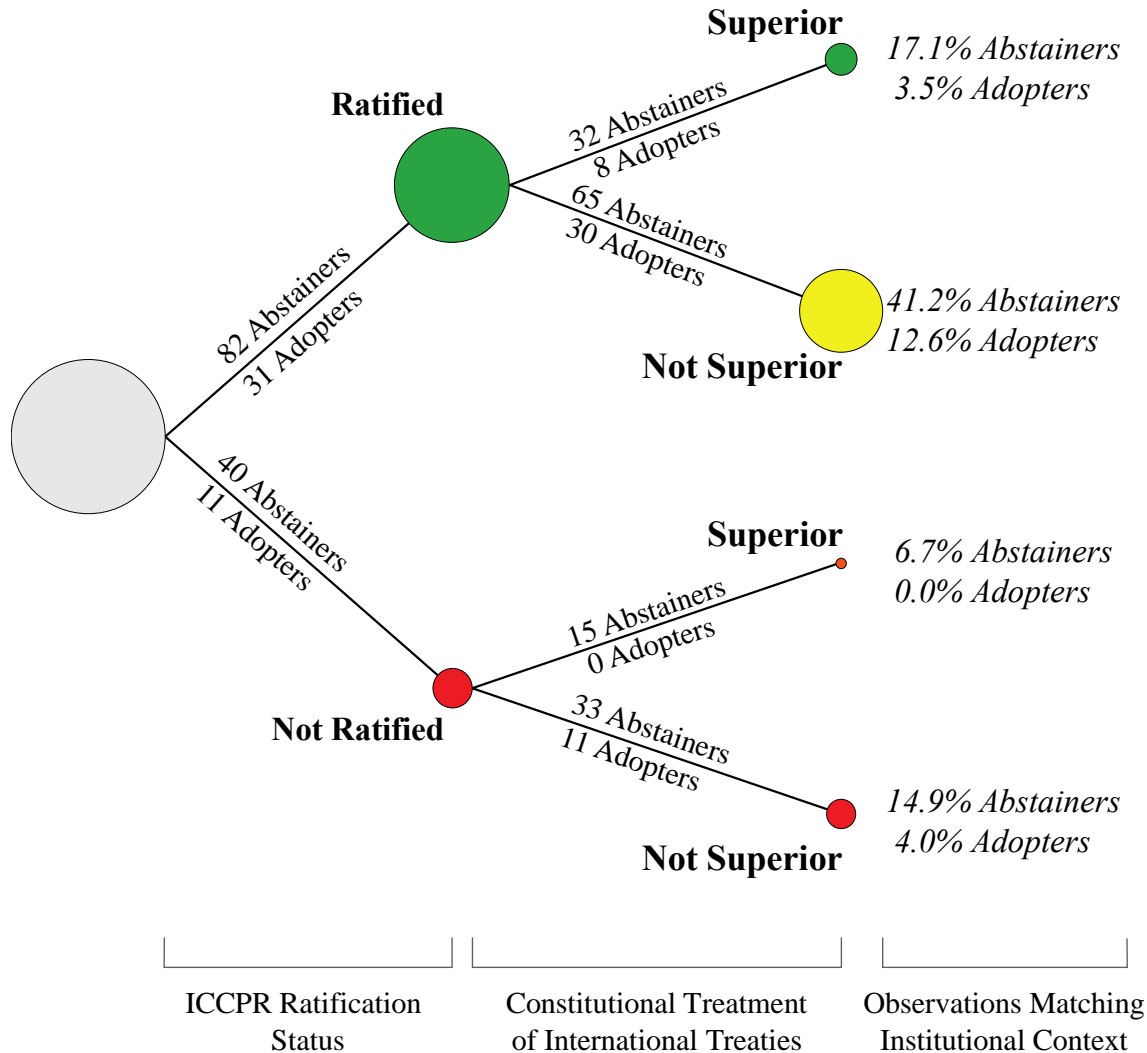
Table organizes countries into four groups and then sorts alphabetically with Equatorial Guinea (GNQ) and Turkmenistan (TKM) shortened for space. Bhutan begins a group that never ratified the ICCPR and did not possess constitutional rules making international treaties superior to ordinary legislation at the time of enactment. Indonesia and Pakistan ratified the ICCPR after enacting their restrictive law. Afghanistan is the first of 27 countries that ratified the ICCPR before enacting a restrictive law. For this group, enactment occurred under constitutional rules that did not give international treaties an elevated status. Algeria is one of six countries that ratified the ICCPR and enacted restrictive laws under a set of constitutional rules that privilege international treaties. Although 39 countries enacted restrictive laws, the models analyze only 37 because Belize and Vietnam are not coded in several datasets. Models analyze only initial enactments of the three countries that enacted multiple laws during the analysis period—Belarus (2001 & 2003), Indonesia (2004 & 2008), Uzbekistan (2003 & 2004). Sources Dupuy et al. (2016: Table 1); UN Office of Legal Affairs; Comparative Constitutions Projects; UN Treaty Collection. <sup>1</sup> Signatory but has not ratified the ICCPR and therefore not committed to safeguarding human rights. <sup>2</sup> Reservation made upon ratification. + Denotes countries that enacted a similar law in subsequent years. \* Denotes variation in the country's constitutional rule regarding treaties before the enactment of the law.

Countries that abstained from enactment also changed their institutional contexts during the observation period. Of the 101 countries that did not enact restrictive laws, 23 altered their constitutional rules regarding international treaties, and 44 ratified the ICCPR during the analysis period. Figure 3.2 summarizes the institutional context for all countries in the sample. *Abstainers* designate countries that do not enact a law while *adopters* identify those that eventually do. The



integer values express the number of countries that sort into the given institutional context for at least one year. Percentage values denote the proportion of country-year observations that match the institutional context. The top branch of Figure 3.2 is the institutional arrangement that

**Figure 3.2: Frequencies of Institutional Contexts**



Integer values express the number of countries that sort into the given institutional context for at least one year during the analysis period (138 countries, 1993-2012). It is possible for a single country to represent multiple institutional contexts because ratification status and constitutional rules vary within countries over time. Circle sizes signify the proportion of country-year observations that match the given institutional context. The area of the four circles on the right is the same as the two in the center, and the one on the left. Sources Dupuy et al. (2016, Table 1); United Nations Office of Legal Affairs; Comparative Constitutions Projects; United Nations Treaty Collection.

maximizes the effect of the preexisting institutions. The next highest branch is less constraining because ratification exists alongside constitutional rules that give lawmakers the option to follow



or ignore the ICCPR's commitments. When the ICCPR is not ratified (Figure 3.2, bottom branches), the constitutional rules concerning international treaties are inactive because ICCPR ratification is absent.

Constitutions and international treaties are preexisting institutions that shape the institutional context that affects lawmaking in several ways. Principally, the enactment of laws or policies is commonly an exercise of incremental change rather than significant reordering (Lindblom, 1959; Pierson, 2000). Next, preexisting policies provide society with the opportunity to form opinions about policy as well as gives lawmakers and bureaucrats experience in implementing and adapting objectives to local conditions and preferences (Lowi, 1964, 1972; Pierson, 1993, 1994). Finally, understanding policy enactment as part of a link in a historical process of institutional change means the enacted law or policy has one of four relationships with preexisting institutions: independent, complementary, contingent, or substitute (Mahajan & Peterson, 1985). Analytical frameworks of institutional analysis underscore the importance of history and show that one period's policy outcome shapes the rules of future political action arena (E. Ostrom, 1990; E. Ostrom & Cox, 2010; E. Ostrom, 2011; Cole, Epstein, & McGinnis, 2014; McGinnis & Ostrom, 2014).

For this analysis, constitutions both define the processes of lawmaking and determine the degree to which prior commitments constrain future legislation. The former are the rules of rulemaking, and the latter are preexisting institutions. The ICCPR is an international treaty whose parties accept additional commitments to promote civil and political rights. Once ratified, the treaty both modifies current institutions and constrains future attempts to alter the CSO regulatory regime. But the strength of the ICCPR's international commitments as a preexisting institution depends on constitutional rules. Some constitutions fail to discuss treaties altogether,

some give treaties a status that is less than or equal to domestic legislation, and others explicitly grant them a status that is superior to ordinary laws. Two institutional hypotheses follow:

**HIA:** Making an international commitment to guard civil and political rights decreases the probability of enacting a restrictive CSO law.

**HIB:** Countries are least likely to enact a restrictive law when (A) a government is bound by its international commitment to guard civil and political rights *and* (B) constitutional rules guarantee international commitments by making them superior to ordinary legislation.

### **Are All Restrictions on Foreign Aid to CSOs the Same?**

Many recent studies focus on legal provisions that restrict access to financial resources, even though they are just one of several elements of CSO regulatory regimes (Kiai, Stern, Simons, Anderson, & Kaguongo, 2017; DeMattee, 2019b). Because more data exists on these provisions globally, I also focus only on them in this chapter. Legal experts identify various tactics of philanthropic protectionism that restrict the flow of resources to CSOs (Rutzen, 2015) such as requiring prior governmental approval, capping the total amount of international funding, requiring burdensome reporting, and mandating the routing of foreign funds through state-controlled financial institutions.

With so many provisions restricting foreign aid to CSOs, it is empirically expedient and sometimes necessary to classify all laws under the same monolithic group—“restrictive laws”—which suggests there exist only slight differences among them. This practice may be a misstep for theoretical and conceptual reasons. Law and policy differences are central to theories that explain the enactment and effects of regulation.<sup>4</sup> Conceptualizing these more precisely can

<sup>4</sup> Policy differences have theoretical implications for the politics and policies streams of the Multiple Stream Approach (Kingdon, 1984) where various policies compete in the policy stream, and only proposals that successfully match the national mood, and the politics of policymaking get considered during the policy window (Zahariadis, 2014). Through

advance our understanding of the laws that restrict CSOs. Here, I show it is possible to consistently categorize distinct law types. Figure 3.3 organizes restrictions on CSOs' ability to access foreign funding from *prohibitive* (highly-restrictive, left) to *notification* (minimally-restrictive, right). The figure provides examples of provisions discussed by scholars (bottom row).

An ordering logic grounded in access to foreign funding is not useful for conceptualizing other legal provisions that affect CSOs. For instance, I find analysts regularly discuss four broad subgroups of legal provisions: governance, formation, operations, and resources (DeMattee, 2019b). These subgroups include over 50 distinct provisions including whether organizations must meet a defined membership or financial threshold before they can register (e.g., Maru, 2017, p. 56), or if the government has the discretion to intervene and dissolve an organization unilaterally (e.g., Mayhew, 2005, pp. 745-746). The breadth of these legal provisions requires alternative logics to accommodate consistency in our conceptualizations. International law provides one alternative. Here, the three-part test organizes law types from highly-restrictive and *illegitimate* to minimally-restrictive and *contestable* (Figure 3.3, second row). Transaction costs are another conceptualization logic (Salamon & Toepler, 2000a, 2012). Laws that impose debilitating transaction costs are *predatory* (highly-restrictive), while less restrictive laws may be

the theoretical lens of Punctuated Equilibrium Theory (Baumgartner & Jones, 1991, 1993), strong, established interests in the policy subsystem make enactment of substantial policy changes less likely. Only in disequilibrium are entrenched players unable to railroad massive policy changes. In the Advocacy Coalitions Framework (Sabatier, 1988; Sabatier & Jenkins-Smith, 1993; Sabatier & Weible, 2007), policies that are an affront to a coalition's belief systems are met with stiff resistance whereas minor changes may be the result of a cross-coalitional learning or the negotiated outcome of the dialogue with policymakers. While the above theories predict differences in policies affect policymaking, policy differences are shown to have different effects on public and elite opinion and the social construction of target groups (Ingram & Schneider, 1990, 1991; Schneider, Ingram, & deLeon, 2014) and affect the extent to which targeted groups participate in politics (Pierson, 1993; Mettler & Soss, 2004; MacLean, 2011).

either *inefficient* or *prescriptive*. The three logics use different criteria but produce a consistent categorization of restrictions on CSOs' ability to access foreign funding.

**Figure 3.3: Continuum of Restrictive Laws, Regulations, and Policies**

Ordering Logics	Highly	Moderately	Minimally
Restrictions on CSOs' ability to access foreign funding.	<i>Prohibitive Laws</i> Contain strong language forbidding certain organizational activities.	<i>Red-tape Laws</i> Erect ex-ante conditions organizations must meet before receiving funds.	<i>Notification Laws</i> Impose ex-post instructions for what organizations must do after receiving foreign funding.
Illegitimacy according to international law's three-part test (Article 22(2) of the ICCPR).	<i>Illegitimate Laws</i> Inaccessible or vague, fails to meet legitimate aims, or overreaches while declaring to meet a pressing social need.	<i>Unnecessary Laws</i> Precise and accessible, but does not meet legitimate aims, or is unnecessary for democracy.	<i>Contestable Laws</i> Precise and attempts to meet legitimate aims, but the approach is challengeable as "disproportional" in its attempt to protect voluntary association.
Transaction costs imposed on CSOs (Salamon and Toepfer 2000; 2012).	<i>Predatory Laws</i> Make the day-to-day operation of a CSO overly difficult or impossible.	<i>Inefficient Laws</i> Procedural hurdles create uncertainty and waste scarce resources, but still allow CSOs to operate at suboptimal levels.	<i>Prescriptive Laws</i> Required actions drain organizational resources but are predictable and can be part of a decision-making process.
<i>Provisions limiting access to foreign funding according to analysts. Provisions sorted from highly- to minimally-restrictive.</i>	<ul style="list-style-type: none"> <li>•Foreign funding prohibited;</li> <li>•Certain CSOs forbidden to receive foreign funds;</li> <li>•CSOs cannot operate in a sector if they received foreign funds;</li> <li>•Restrictions on the source of funds;</li> <li>•Stigmatization of foreign funding;</li> <li>•Restrictions on use of funds.</li> </ul>	<ul style="list-style-type: none"> <li>•CSO allows the government to monitor financing agreements and contracts;</li> <li>•Must route money through government financial institution;</li> <li>•CSOs must be approved to receive funds;</li> <li>•One-time approval for all future transactions;</li> <li>•Government approval is necessary for each transaction.</li> </ul>	<ul style="list-style-type: none"> <li>•Caps on funding;</li> <li>•Must not exceed threshold of budget spent on overhead;</li> <li>•Must pay taxes on unrelated business activities;</li> <li>•Must provide an annual report of financial flows;</li> <li>•CSOs must follow reporting requirements;</li> <li>•Taxation of foreign funding.</li> </ul>

Sources Salamon and Toepfer (1997); World Bank (1997); Kameri-Mbote (2002); Mayhew (2005); Gershman and Allen (2006); Tiwana and Belay (2010); Christensen and Weinstein (2013); Hodenfield and Pegus (2013); Carothers and Brechenmacher (2014); Rutzen (2015); Wolff and Poppe (2015); Chikoto-Schultz and Uzochukwu (2016); Dupuy et al. (2016); Appe and Marchesini da Costa (2017); Dupuy and Prakash (2017); Gugerty (2017); Maru (2017); Sidel (2017); Cunningham (2018).

Readers may disagree with the ordering of these provisions along the continuums of restrictiveness, illegitimacy, or transaction costs. And others may still propose more useful categorizations as prior attempts to classify laws, policies, and regulations have shown (e.g., Lowi, 1964, 1972; Gormley, 1986; Salamon, 2002). The significant point on which I hope many agree is that the broad category of restrictive laws is not monolithic, and theory predicts these differences have consequences for research analyzing enactment.

Two sets of hypotheses follow. One tests the conceptual equivalence of laws, and the other evaluates their conceptual distinctness. If laws are conceptually equivalent, then the factors that predict enactment for one type of law should also predict the enactment of other laws. This means the factors believed to be positively associated with the enactment of restrictive laws—e.g., foreign aid flows, competitive elections, and the degree to which CSOs seek to topple the existing political system—should predict the enactment of different laws similarly as indicated by the variables' sign, effect size, and significance. Likewise, factors believed to be negatively associated with the enactment of restrictive laws—e.g., higher levels of democracy—should also be generally consistent in their sign, size, and significance. Four conceptual-equivalence hypotheses follow:

**H2A:** Higher levels of overseas development aid increase the probability of enacting restrictive laws, and that relationship is generally similar for all restrictive law types.

**H2B:** The context of electoral competition increases the probability of enacting restrictive laws, and that relationship is generally similar for all restrictive law types.

**H2C:** Higher levels of organized opposition by CSOs to the current political system increases the probability of enacting restrictive laws, and that relationship is generally similar for all restrictive law types.

**H2D:** Higher levels of democracy decrease the probability of enacting restrictive laws, and that relationship is generally similar for all restrictive law types.

The second set of conceptual hypotheses proposes the predictive power of individual factors varies across law types. At least four types of variation may exist that signal conceptual distinctness. First, a factor can increase the probability of enacting highly-restrictive laws, but the effect wanes for less restrictive types. Research discusses Russia as possessing highly-restrictive CSO laws (Benevolenski & Toepler, 2017; Toepler et al., 2019), therefore, a shared ideology with Russia—as measured by voting alignment in the UN General Assembly—should increase the probability of enacting highly-restrictive laws.

Second, a factor may decrease the probability of enacting highly-restrictive laws but also increase the probability of enacting minimally-restrictive ones. Although CSOs may lobby to dissuade lawmakers from enacting laws that harm the sector's organizational ecology, this relationship is likely too weak to identify in the data because lawmakers likely excluded CSOs when such laws are under consideration. CSOs may support minimally-restrictive laws, however, to establish 'reasonable regulation' that promotes trust, accountability, and transparency. Therefore, greater participation by CSOs in the lawmaking process increases the probability of enacting minimally-restrictive.

Third, a factor may decrease the probability of enacting highly-restrictive laws, but the effect wanes for less restrictive types. The institutional arrangement of treaties and constitutions discussed in *HIB* is expected to exhibit this behavior because, according to international law's three-part test, countries can prescribe by law actions in the interests of legitimate aims if such requirements are properly scoped and necessary for democracy. The presence of this particular institutional arrangement decreases the probability of enacting rightly-restrictive laws that do not meet the three-part test.

Finally, a factor may increase the probability of enacting minimally-restrictive laws, but be unrelated to the enactment of more restrictive types. Research discusses the United States as possessing a legal approach that supports CSOs (Salamon & Toepler, 1997; Barber & Farwell, 2017), but its tax code contains provisions that may be characterized as minimally-restrictive. For example, its laws require CSOs to file tax forms if they wish to be formal tax-exempt organizations, and 501(c)(3)s must pay taxes revenue earned through activities that are unrelated to their charitable mission. Therefore, shared ideology with the United States—as measured by

voting alignment in the UN General Assembly—increases the probability of enacting minimally-restrictive laws. Four conceptual-distinctness hypotheses follow:

**H3A:** Greater voting alignment with Russia in the UN General Assembly increases the probability of enacting highly-restrictive laws.

**H3B:** Greater participation by CSOs in the lawmaking process increases the probability of enacting minimally-restrictive laws.

**H3C:** The institutional arrangement that minimizes the probability of enactment is one that (A) a government is bound by its international commitment to guard civil and political rights *and* (B) constitutional rules guarantee international commitments by making them superior to ordinary legislation, decreases the probability of enacting highly-restrictive laws, but this relationship wanes or vanishes for moderately- and minimally-restrictive types.

**H3D:** Greater voting alignment with the US in the UN General Assembly increases the probability of enacting minimally-restrictive laws.

## Methods & Data

This study uses competing risk models (CRMs), which are a type of event history analysis that assesses the degree to which explanatory variables have consistent or inconsistent relationships with different type-specific outcomes (for review see Jones, 1994; Box-Steffensmeier & Jones, 2004a, pp. 155-182; Allison, 2014, pp. 53-66). A logit model acts as the primary modeling strategy, and two additional methods act as robustness checks. The first is a Cox proportional hazards model (Cox, 1972, 1975). This model is appropriate because preliminary testing showed the proportional-hazards assumption holds for some laws but not others, which requires the incorporation of time-varying coefficients. The second robustness check concerns rare events. The data show that 37 of 138 countries enacted a law between 1993 and 2012. For some, these laws represent only 37 country-year ‘events’ among nearly 2,400 ‘non-events’ (approximately 1.5%), making them rare events because there are “dozens to thousands of times fewer ones [than zeros]” (King & Zeng, 2001, p. 138). When statistical

software corrections are unavailable,<sup>5</sup> methodologists prescribe specific data collection and sampling strategies to minimize bias (King & Zeng, 2001, pp. 141-143).<sup>6</sup>

### *Dependent Variables*

The dependent variable is the enactment of a law that restricts foreign aid to CSOs. In the first analysis, the variable is coded as 0 and changes to 1 if a country<sub>*i*</sub> enacts the law at time *t*. This pooled approach is typical for most of the literature on this topic, and I use it here to test the institutional hypotheses (*H1A* and *H1B*). Three countries enacted multiple laws during the analysis period,<sup>7</sup> but specifications here analyze only initial enactments. While losing these country-year observations that occur before these subsequent enactments is statistically inefficient, doing so allows for consistent estimation of factors that predict the enactment of initial laws without having to model the effects of initial enactments on later enactments.

In the CRM analyses, the coding of the dependent variable depends on the law type. Testing the conceptual hypotheses (*H2A-D* and *H3A-D*) requires recoding the dependent variable for each CRM. In these models, the content of enacted laws determines their values.<sup>8</sup> *Prohibitive Laws* are highly-restrictive and contain strong language regarding what organizations cannot do.<sup>9</sup>

<sup>5</sup> Statistical software corrections—such as *relogit* or *firthlogit* in Stata 15—for analyzing rare events with logistic regressions are not yet available for panel data or analyzes requiring clustered standard errors.

<sup>6</sup> This involves first collecting all the ‘events’ and an equal number of randomly selected ‘non-events,’ and continuing to add randomly sampled non-events and stop when the confidence intervals are sufficiently small for the substantive purposes at hand. In the rare events analysis, countries that adopt laws appear in all analyses (482 country-year observations).

<sup>7</sup> Belarus (2001, 2003); Indonesia (2004, 2008); and Uzbekistan (2003, 2004).

<sup>8</sup> Legal content provided by Dupuy et al. (2016, p. Appendix Table 3).

<sup>9</sup> The variable takes the value of 1 if at least one of the following nine provisions exist: “*certain organizations are prohibited from receiving foreign funding*”; “*certain types of organizations are prohibited from receiving foreign funding*”; “*foreign funded organizations prohibited from carrying out particular activities*”; “*foreign funding can be used only for certain purposes*”; “*foreign funding prohibited*”; “*foreign funding prohibited for certain activities*”; “*foreign-funded NGOs prohibited from working on certain issue areas*”; “*foreign-funded organizations prohibited from carrying out particular activities*”; “*use of foreign funding prohibited for particular activities.*”



The coding protocol identified laws as prohibitive/highly-restrictive if the description of the legal restriction included forms of the qualifier “prohibited.” The dependent variable equals *1* if a country enacts a law that year and that law is coded as prohibitive, *0* if a country enacts a law in that year, but the law is not prohibitive, and *0* if the country does not enact a law in that year.

Coding for red-tape and notification laws follows the same protocol. *Red-tape Laws* are moderately-restrictive and communicate ex-ante conditions that organizations must meet before receiving funds.<sup>10</sup> The protocol coded laws as red-tape/moderately-restrictive if the description of the law included variations on terms “restrictions on,” “required to,” and “approval for.” This category also includes laws that require “government monitoring of contracts” (i.e., Ecuador 2011) because foreign funding is allowed given the ex-ante condition. The variable equals *1* if a country enacts a law that year and that law is a red-tape type, and *0* otherwise. *Notification Laws* are minimally-restrictive and include instructions for what organizations must do after receiving foreign funding.<sup>11</sup> The protocol uses terms such as “notification,” “reporting,” and “taxation” to code notification/minimally-restrictive laws. The variable equals *1* if a country enacts a law in that year and that law is a notification type, and *0* otherwise.

<sup>10</sup> The variable equals *1* if at least one of the following twelve provisions exist: “government approval for foreign funding”; “government approval required for particular uses of foreign funding”; “government may cap the amount”; “government monitoring of NGO contracts financed with foreign funding”; “government restrictions on use and source”; “government restrictions on whether foreign funding can be received”; “other restrictions on use of foreign funding”; “requirements for how organizations can receive foreign funding”; “restrictions on certain types of organizations receiving foreign funding”; “restrictions on receipt and use of foreign funding”; “restrictions on sources from which foreign funding can be acquired”; “restrictions on use of foreign funding”.

<sup>11</sup> The variable equals *1* if at least one of the following six provisions exist: “foreign funds are taxed”; “government notification of foreign funding required”; “organizations must report source of revenues”; “reporting and accounting requirements”; “reporting and accounting requirements for foreign funding”; “reporting requirements”.

## *Independent Variables*

This analysis uses the Varieties of Democracy Project (V-Dem) that provides data for 201 countries from 1789-2018 (Coppedge et al., 2018), to include as many countries as possible in the analysis. Data are added from other sources as necessary. The UN Office of Legal Affairs and the *Comparative Constitutions Project* (CCP) provide data to test hypotheses **H1A** and **H1B**, which assess the path dependence of restrictive legal provisions. The former provides information on a country's support for human rights, specifically whether and when a country ratifies the ICCPR. For each country-year observation, *International Commitment to Guard Civil and Political Rights* (*Commitment to Guard Human Rights* for short) is operationalized as *1* if the country ratified the ICCPR human rights treaty, and *0* if it did not. The CCP provides constitutional texts for 214 independent countries from 1789 thru 2013 (Elkins et al., 2014b). *Constitutional Rules Strengthen International Commitments* (*Constitution Bolsters Commitments* for short) is operationalized as *1* for all constitutional systems that explicitly states international treaties are superior to ordinary legislation. The variable equals *0* if the constitution does not mention international treaties or gives them a status equal or inferior status to ordinary legislation. *Executive Power* measures the powers given to the country's chief executive and follows the working paper on the constitutional boundaries of executive lawmaking (Elkins, Ginsburg, & Melton, 2012; Elkins et al., 2014b). The variable ranges from *0-7* with higher values indicating more constitutional powers entrusted to the chief executive.<sup>12</sup> Analyses do not lag institutional variables because they frame the institutional context in the current year.

<sup>12</sup> Operationally, the additive index increases by 1 for each of the following binary variables present in the constitutional system as identified by CCP: (i) power to initiate legislation (coded *1* if head of state, head of government, or government can initiate legislation); (ii) power to issue decrees (coded *1* if head of state or head of

The models lag all control variables discussed below. *Electoral Competition* measures whether elections to fill chief executive offices and the legislative body are characterized by uncertainty, meaning that the elections are, in principle, sufficiently free to enable the opposition to gain power (Coppedge et al., 2018, p. 299). The variable equals *I* when electoral competition exists. This operationalization differs from others that use the National Elections Across Democracy and Autocracy (NELDA) dataset (Hyde & Marinov, 2012), which provides information on all national elections from 1945-2012. The NELDA dataset does not contain information for years that did not experience national elections. Thus, I use the V-Dem variable to achieve a consistent measure of electoral competition for election and non-election years.

The World Development Indicators (World Bank, 2018) provide country-year data for population, GDP (constant 2010 US\$), and the net official development assistance received (constant 2014 US\$). Following the practice of prior scholarship, this analysis removes countries with GDP per capita exceeding \$12,615 throughout the observation period (Dupuy et al., 2016, p. 9). Net ODA is divided by the total population to normalize ODA on a per capita basis. Zero and negative ODA per capita values are set to \$0.01 before transforming the variable with a natural log function to achieve a normal distribution. Multiplying  $\ln(\text{Net ODA per capita})$  and

government can issue decrees); (iii) power to declare emergencies (coded *I* if head of state, head of government, or government can declare emergencies); (iv) power to propose amendments (coded *I* if head of state, head of government, or government can propose amendments to the constitution); (v) power veto legislation (coded *0* if no vetoes are possible or can be overridden by a plurality or majority in the legislature; coded *I* if vetoes are possible but require at least 3/5 supermajority of the legislature to override veto); (vi) power to challenge the constitutionality of legislation (coded *I* if head of state, head of government, or government can challenge the constitutionality of legislation); (vii) power to dissolve the legislature (coded *I* if head of state, head of government, or government can dissolve the legislature).

*Electoral Competition* produces an interaction term that recent research finds relevant for explaining the enactment of restrictive laws (Dupuy et al., 2016).<sup>13</sup>

The *Yearbook of International Organizations* (Union of International Associations) is often used to measure the vitality of civil society with a country. That data only includes information for intergovernmental and international non-government organizations. Scholarship finds both local and international non-state actors can affect politics in developing countries by merely providing the necessary infrastructure to establish civil society (Stremlau, 1987; Brown, Brown, & Desposato, 2008), providing charitable service without political motivations (Frantz, 1987; Brass, 2012b), and serving as a catalyst for policy change in an international system (Kajese, 1987; Keck & Sikkink, 1999). This suggests the role and character of CSOs, from both local and international origins, matter more than merely the number of non-state actors in attendance. Two variables control for the degree to which CSOs influence lawmaking. *CSO Routinely Consulted*, measures the degree to which policymakers consult major CSOs with higher values representing more meaningful consultation (Coppedge et al., 2018, p. 176). *CSOs are Anti-System* measures the level of organized opposition to the current political system with higher values representing more muscular anti-system activity (Ibid, p. 178). Both variables were initially collected using

<sup>13</sup> Dupuy et al. (2016, p. 304) argue “governments assess the implication of international influences through the lens of domestic politics. Government concerns about foreign aid will be magnified during periods of intense political challenge.” The authors identify these intense political challenges as competitive elections measured with “three indicators from the NELDA dataset: (1) whether the opposition was allowed to participate [NELDA3 variable], (2) whether more than one political party was legal [NELDA4], and (3) whether the electoral ballot displayed a choice of candidates [NELDA5]. If the answer was ‘yes’ to all three, we coded this binary variable as ‘1’. If not, we coded it as ‘0’” (p. 308). However, the NELDA dataset (Hyde & Marinov, 2012) only includes observations for years in which election events occurred. Thus, using NELDA imposes a fourth indicator: whether an election occurred. As an example, every United States election since 1946 meets the three-part criteria above, but the USA only appears in the NELDA dataset during presidential and midterm elections (i.e., even years). This means the measure conflates (A) “countries that undergo an uncompetitive election” with (B) “countries that did not have an election.” The conflation overcounts the number of un-competitive elections.

ordinal intervals and then converted to a continuous interval using a Bayesian item response theory measurement model (Ibid.).

The Polity2 indicator represents the balance of autocratic and democratic authority in any particular regime context (Marshall, Gurr, & Jaggers, 2017, p. 17). Scholars commonly use this indicator to control for regime type in cross-national analyses, to limit studies to cases with specific profiles of democratic quality, or proxy variables of theoretical interest such as institutional effectiveness (Hellwig & Samuels, 2008; Bauerle Danzman, Winecoff, & Oatley, 2017; Baldwin, Carley, & Nicholson-Crotty, 2019). Unfortunately, the data are only available for countries whose populations exceeded 5000,000 in 2006 (Marshall et al., 2017). This population cutoff omits small countries such as Belize, which enacted its law in 2003 but only had a population of approximately 300,000 in 2006. This analysis instead uses *Imputed FH/Polity2* to control for regime type to include as many countries as possible. The variable uses Freedom House Political Rights and Civil Liberties values, and the original Polity2 variable to impute values for countries where Polity data are missing (Coppedge et al., 2018, p. 290). The scale ranges from the least democratic (0) to most democratic (10), and methodologists find it has better validity and reliability than its component indicators (Hadenius & Teorell, 2005).

Researchers use UN voting behavior in numerous ways, including to construct measures of policy preference similarity between two states (T. L. Chapman, 2009) and test whether foreign aid is a reward for UN votes (Morgan, 2018). This analysis uses votes in the UN's multidimensional issue space to triangulate a measure of government ideology that is comparable across time. *UN votes with the USA (%)* and *UN votes with Russia (%)* are continuous variables of all votes during a particular session. The variables range from 0-100 with higher values indicating greater alignment with the superpower (Voeten, 2013; Bailey, Strezhnev, & Voeten,

2017). The correlation between these variables is approximately -0.46. A third variable, *Regional Diffusion*, controls for policy diffusion across borders. The variable represents the percentage of states within a country's World Development Indicators regional group (World Bank, 2018) that enacted the law type studied as the outcome.

The Political Terror Scale (PTS) provides data for *PTS Average*, which measures local political terror and unrest (Gibney et al., 2017). PTS provides three separate indicators coded from annual human rights reports published by Amnesty International, Human Rights Watch, and the US Department of State. Each variable is measured on a 5-point scale with higher values indicating higher levels of abuse and physical integrity rights violations. In this analysis, the control variable averages all PTS scores available for each country in the given year.

Research shows states' decisions to violate human rights is negatively related to their judicial effectiveness, which is the primary enforcement mechanism of legal obligations at home and abroad (Powell & Staton, 2009). *Rule of Law Index* measures the degree to which laws are fairly enforced and to what extent the actions of government officials comply with the law. The index is a latent variable that methodologists show is superior to using a single indicator or averaging several measures (Linzer & Staton, 2015) and uses a Bayesian factor analysis of 15 indicators (Coppedge et al., 2018, pp. 235-236). The variable *Time* represents the number of years a country has gone without enacting a law since entering the dataset. To maintain a consistent sample, countries always leave the dataset the year they enact any law. But the value of the dependent variable for those countries varies according to the competing risk model used. The appendix contains a table with descriptive statistics for all variables ([Appendix Table 3A](#)). The top panel summarizes dependent variables for the 138 cases while the bottom panel summarizes all variables for the 2,398 country-year observations.

## Results

Results for the first set of hypotheses show that the institutional arrangement that minimizes the enactment of restrictive laws is one where a government has made an international commitment to safeguarding civil and political rights *and* whose constitutional rules guarantee that global commitment will be honored by making it superior to ordinary legislation. Competing risk models related to the second set of hypotheses demonstrate that the factors that predict the enactment of one law type do not necessarily predict the enactment of a different type. For example, minimally restrictive laws correlate with higher levels of CSOs consultation, whereas moderately restrictive ones are predicted by high executive power and context with electoral competition. Findings also show laws are more distinct than equivalent. An interpretation of these results follows.<sup>14</sup>

### *Results of Institutional Hypotheses using Event History Analysis*

Table 3.2 shows the results of an event history analysis using logistical regression to test the institutional hypotheses: first, that the international commitment to safeguarding civil and political rights decreases the probability of enacting restrictive laws (*H1A*). Second, that the institutional arrangement that minimizes the probability of enactment is one in which a

<sup>14</sup> The discussion of results follow recommended practice and uses marginal effects at the means (AMEs) to summarize practical implications of independent and linked interaction variables (Long, 1997; Cameron & Trivedi, 2005; Hanmer & Ozan Kalkan, 2013; Greenland, 2017; Amrhein, Greenland, & McShane, 2019; Amrhein, Trafimow, & Greenland, 2019; Wasserstein, Schirm, & Lazar, 2019). This is done because logit models produce coefficients that are difficult to interpret or depend on specific values that are inconsistent across cases. The logit models used here produce coefficients that represent the direction of the variable's effect on the probability of enactment but are difficult to interpret or odds ratios whose substantive meanings depends on the specific value of the odds before they change (Long & Freese, 2014, pp. 228-235). AMEs are direct, interpretable measures that compute the marginal change of the factor across all cases in the sample and then calculates an average size of the effect in the sample (Long & Freese, 2014). The implication for the reader is that numeric values discussed may not appear in the accompanying regression tables; therefore, results report p-values of two-tailed hypothesis tests so readers may assess significance themselves.

government makes an international commitment to safeguarding civil and political rights *and* whose constitutional rules guarantee international commitments are honored by making them superior to ordinary legislation (*H1B*). The baseline specification (model 1) suggests contexts with higher values of electoral competition and increased voting alignment with Russia increase the probability of enacting restrictive laws. In contrast, higher levels of democracy decrease the probability of enactment. Model 2 introduces the international commitment as an independent variable and executive power as a control variable. The data suggest that ratification has no apparent relationship with enacting restrictive laws. This finding is contrary to the first institutional hypothesis that predicts ratification decreases the probability of enactment (*H1A*). However, model 2 omits constitutional rules that condition the status of international treaties. Subsequent models (3-5) analyze constitutional differences in various ways. These latter models show that constitutional rules that constrain governments and force them to honor international commitments decrease the predicted probability of enacting a restrictive law.

The interaction term specified in model 5 tests the second institutional hypothesis (*H2A*) that argues the institutional arrangement that minimizes the probability a country enacts a restrictive law is one where constitutional rules elevate ICCPR ratification commitments above ordinary legislation. The interaction term and the main effect have a strong relationship with the predicted outcome. Given ICCPR ratification by the average country in the sample, a discrete change in its constitutional rules to privilege international commitments decreases the probability of enactment by one-half a percentage point ( $-0.005, p = 0.01$ ). Though the magnitude might seem small, the effect is larger than both a standard deviation increase in the level of democracy within a country ( $-0.002, p < 0.01$ ), and entering a context of electoral competition ( $0.003, p = 0.08$ ).



**Table 3.2: Pooled Event History Analysis (EHA) with Logistic Regression**

	(1)	(2)	(3)	(4)	(5)
	Baseline	International Commitment	Constitutional Rules	Institutions	Interaction
<b>(DV: Enacts any law)</b>					
Commitment to Guard Human Rights Constitution Bolsters Commitments		0.71		0.59	0.37
Commitment x Constitutional Rules			-1.46**	-1.41**	-14.24***
					12.99***
Electoral Competition <sup>a</sup>	1.72*	1.96**	1.71*	1.72*	1.72*
ln(ODA/cap) <sup>a</sup>	0.07	0.06	0.10	0.09	0.10
ln(ODAcap) x ElectComp <sup>a</sup>	-0.14	-0.10	-0.16	-0.15	-0.15
CSO Routinely Consulted <sup>a</sup>	0.35	0.28	0.27	0.25	0.26
CSOs are Anti-System <sup>a</sup>	-0.14	-0.17	-0.12	-0.13	-0.11
Imputed FH/Polity2 <sup>a</sup>	-0.54***	-0.66***	-0.53***	-0.57***	-0.56***
UN votes with USA (%) <sup>a</sup>	-0.03	-0.03	-0.01	-0.01	-0.01
UN votes with RUS (%) <sup>a</sup>	0.04*	0.04+	0.04*	0.04*	0.04*
Observations	2398	2398	2398	2398	2398
AIC	350.46	345.89	338.76	339.42	339.78
BIC	425.63	432.63	425.50	431.94	438.08
Degrees of Freedom	12	14	14	15	16
Failure Events	37	37	37	37	37
Countries in Sample	138	138	138	138	138

+ p<0.10, \* p<0.05, \*\* p<0.01, \*\*\* p<0.001

<sup>a</sup> Denotes one-year lag on variables

Models ran with Stata 15 with cluster-robust standard errors grouped by unique country IDs. Some controls omitted. See [Appendix](#) for the full table.

The data show the effect of this institutional arrangement varies by context. For an otherwise average country with ICCPR ratification, the average estimated effect of constitutional rules that privilege international commitments is 2.5 percentage points larger when states are a standard deviation below the mean level of democracy ( $-0.026$ ,  $p = 0.01$ ) than when states are one standard deviation above the mean ( $-0.001$ ,  $p = 0.08$ ), the difference is significant at the 0.03 level. For the average country, the average effect of this institutional arrangement is one percentage point larger when political competition is present ( $-0.013$ ,  $p = 0.01$ ) than when absent ( $-0.003$ ,  $p = 0.03$ ), the difference is significant at the 0.07 level.

Figure 3.4 shows the effect of preexisting institutions in different contexts. For the average country, possessing constitutional rules that make international commitments superior to ordinary legislation generally decreases the probability of enacting restrictive laws for all levels

of executive power (Figure 3.4, left panel) and net ODA per capita (Figure 3.4, right panel). Comparing the effect when executive power is low (2) versus high (6) in an otherwise average country, the data suggests the decrease in predicted probability is smaller for lower levels of executive power ( $-0.004$ ,  $p = 0.01$ ) than higher ones ( $-0.012$ ,  $p = 0.03$ ). The difference is significant at the 0.07 level. However, the average effect of preexisting institutions is only slightly smaller when the natural log of net ODA per capita is 0 (\$1 per capita) compared to 6 (\$403 per capita). The difference is not significant ( $p = 0.78$ ).

**Figure 3.4: The Effect of Constitutional Rules on Enacting Restrictive Laws**

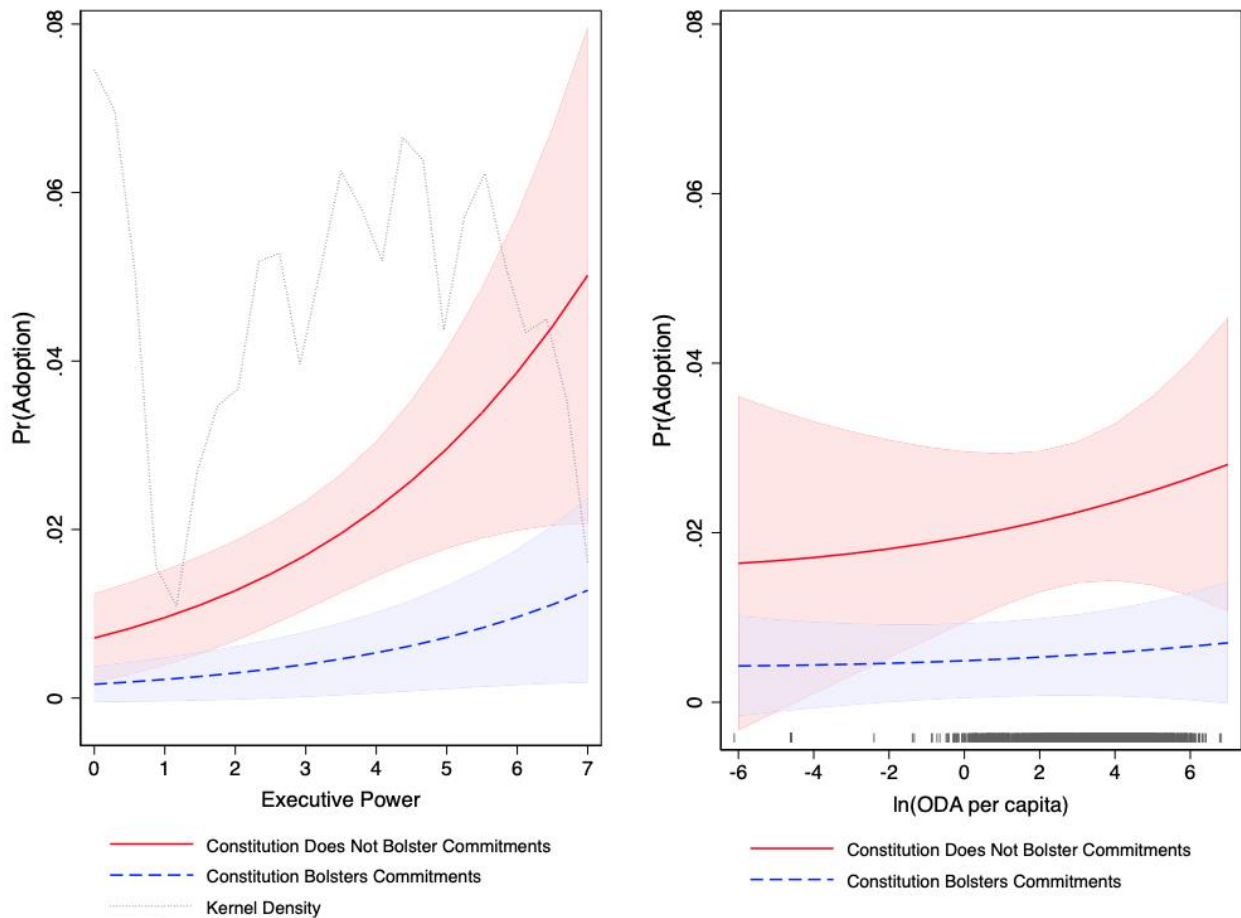


Figure shows the average marginal effect (with 95% confidence intervals) of the discrete change of constitutional rules that elevate international treaties above ordinary legislation. Thin gray lines show the distribution of observations across the dataspace using kernel density (Executive Power, left panel) and a rug plot (ODA per capita, right panel).

These results support the second institutional hypothesis (**H1B**) that the institutional arrangement that minimizes the probability a country enacts a restrictive law is one where ICCPR ratification exists alongside constitutional rules that elevate international treaties above ordinary legislation. Robustness checks support these findings. The average effect size for this institutional arrangement varies across context, but its impact appears strongest in settings described as undemocratic, politically competitive, or possessing a strong constitutional executive.

#### *Results of Conceptual Hypotheses using Competing Risk Models (CRMs)*

CRMs indicate whether the risk factors that predict the enactment of laws varies across different law types. Table 3.3 shows the results of the logit primary modeling strategy, and the appendix contains the full regression tables ([Appendix Tables 3B.1-3B.3](#)). Models recode dependent variables, but the specification and sample remain the same. ‘Pooled Laws’ (model 1) presumes laws are the same and analyzes them as a monolithic group. Models 2-4 disaggregate this monolithic group to assess equivalence (hypotheses **H2A-D**) and distinctness (hypotheses **H3A-D**). The ‘Prohibitive Laws Only’ model shows the factors that predict the enactment of highly-restrictive laws containing strong language regarding what organizations cannot do. In column three, the ‘Red-Tape Laws Only’ model identifies the factors that predict the enactment of moderately-restrictive laws that erect ex-ante conditions for what organizations must do before receiving foreign funding. Finally, ‘Notification Laws Only’ reveals factors associated with the enactment of minimally-restrictive laws that prescribe actions that organizations must take after receiving foreign funding.

**Table 3.3: Competing Risk Model (CRM) with Logistic Regression**

	(1) Pooled Laws	(2) Prohibitive Laws Only	(3) Red-Tape Laws Only	(4) Notification Laws Only
<b>(DV: Enacts specific law)</b>				
Commitment to Guard Human Rights	0.37	0.33	0.49	-0.36
Constitution Bolsters Commitments	-14.24***	-14.13***	-15.03***	-13.74***
Commitment x Constitutional Rules	12.99***	12.57***	13.86***	13.23***
Electoral Competition <sup>a</sup>	1.72*	1.92	1.93*	1.53
ln(ODA/cap) <sup>a</sup>	0.10	-0.09	0.09	0.14
ln(ODAcap) x ElectComp <sup>a</sup>	-0.15	-0.01	-0.14	-0.14
CSO Routinely Consulted <sup>a</sup>	0.26	-0.31	0.21	1.25**
CSOs are Anti-System <sup>a</sup>	-0.11	0.01	-0.05	-0.33
Imputed FH/Polity2 <sup>a</sup>	-0.56***	-0.35	-0.58***	-0.62**
UN votes with USA (%) <sup>a</sup>	-0.01	-0.06	-0.01	-0.01
UN votes with RUS (%) <sup>a</sup>	0.04*	0.02	0.04	0.08**
Observations	2398	2398	2398	2398
AIC	339.78	141.53	284.52	184.09
BIC	438.08	239.83	382.82	282.39
Degrees of Freedom	16	16	16	16
Failure Events	37	10	29	15
Countries in Sample	138	138	138	138

+ p<0.10, \* p<0.05, \*\* p<0.01, \*\*\* p<0.001

<sup>a</sup> Denotes one-year lag on variables

Models ran with Stata 15 with cluster-robust standard errors grouped by unique country IDs. Some controls omitted, see Appendix for full table

In comparing the pooled logit results to the competing risk estimates, it is clear that the two approaches produce different results regarding the relationship a factor has on the enactment of law types. In general, the coefficients' signs in the pooled model are the same as those in the CRMs. The pooled results cannot differentiate among law types and so represent an 'average' or 'dampened' effect. The CRMs show more refined estimates on how a type-specific covariate relates to a particular law type. The pooled model produces false positives (Type I errors) or false negatives (Type II errors) when coefficients are type-specific hazards that correlate with the enactment of only one law type. The CRMs' nuanced results identify these spurious results. For example, the pooled model's emphasis on electoral competition is a false positive because the type-specific hazard positively correlates with the enactment of red-tape laws only ( $p < 0.05$ ). The data show no relationship for the enactment of other law types. The pooled model's rejection

of CSO consultation's significance is a false negative because the coefficient positively correlates with the enactment of notification laws ( $p < 0.01$ ). I continue this exercise to assess the conceptual equivalence and distinctness of law types.

### *Assessing Conceptual Equivalence*

Table 3.4 organizes data to evaluate the equivalence and distinctness of law types. The top panel contains the conceptual-equivalence hypotheses (**H2A-D**), and the bottom includes the conceptual-distinctness hypotheses (**H3A-D**). Each row consists of the hypothesis followed by the average marginal effect of a discrete change in the factor for each law type. [Appendix Table 3C](#) is an expanded table that combines this information with data from the robustness checks.

If factors predict enactment of different law types in generally consistent ways, then such patterns signal laws are conceptually equivalent and are perhaps best analyzed as a monolithic group. If this is the case, factors associated with the enactment of restrictive laws should predict the enactment of different law types in similar ways as indicated by the variables' sign, effect size, and significance. The data does not support the hypothesis that ODA per capita is a significant, positive, and consistent predictor of restrictive laws (**H2A**). The analyses found no evidence suggesting a statistical relationship between a standard deviation increase in ODA per capita and the enactment of any law type. Robustness checks confirm this finding.

The data partially support the hypothesis that the context of electoral competition increases the probability of enacting restrictive laws. Although the factor has a statistically significant coefficient in all pooled models, CRMs show the presence of electoral competition robustly predicts the enactment of moderately-restrictive, red-tape laws only. For the average country in the sample, a context of electoral competition increases the probability of enacting red-tape laws

by less than one percentage points in the primary modeling strategy (0.002,  $p = 0.07$ ) and almost one percentage point in the rare-events robustness check (0.009,  $p = 0.14$ ). Electoral competition weakly predicts the enactment of highly- and minimally-restrictive laws. Hypothesis **H2B** is unsupported because electoral competition is not a significant, positive, and consistent predictor of all restrictive laws.

**Table 3.4: Assessing Conceptual Equivalence & Distinctness**

	Prohibitive Laws Only	Red-Tape Laws Only	Notification Laws Only
<b>Panel A: Conceptual-equivalence Hypotheses</b>			
<i>H2A: ODA per capita positively correlated with enactment.</i>	-0.000 ( $p=0.330$ )	0.000 ( $p=0.881$ )	0.000 ( $p=0.462$ )
<i>H2B: Electoral competition positively correlated with enactment.</i>	0.001 ( $p=0.400$ )	<b>0.002</b> ( $p=0.071$ )	0.001 ( $p=0.338$ )
<i>H2C: CSOs are anti-system positively correlated with enactment.</i>	0.000 ( $p=0.986$ )	-0.000 ( $p=0.783$ )	-0.000 ( $p=0.281$ )
<i>H2D: Level of democracy negatively correlated with enactment.</i>	-0.000 ( $p=0.234$ )	<b>-0.001</b> ( $p=0.001$ )	<b>-0.001</b> ( $p=0.079$ )
<b>Panel B: Conceptual-distinctness Hypotheses</b>			
<i>H3A: Voting alignment with Russia positively correlated with enacting prohibitive laws.</i>	0.000 ( $p=0.592$ )	0.001 ( $p=0.233$ )	<b>0.001</b> ( $p=0.019$ )
<i>H3B: CSO consultation positively correlated with enacting notification laws.</i>	-0.000 ( $p=0.432$ )	0.000 ( $p=0.544$ )	<b>0.002</b> ( $p=0.004$ )
<i>H3C: International commitment and constitutional guarantees negatively correlated with enacting prohibitive laws. Relationship wanes for less restrictive types.</i>	<b>-0.000</b> ( $p=0.147$ )	<b>-0.004</b> ( $p=0.028$ )	<b>-0.001</b> ( $p=0.518$ )
<i>H3D: Voting alignment with USA positively correlated with enacting notification laws.</i>	-0.001 ( $p=0.162$ )	-0.000 ( $p=0.773$ )	-0.000 ( $p=0.730$ )

Primary modeling strategy only. See [Appendix](#) for full table. **Bold text** represents statistically significant factors ( $p < 0.10$ ) in either main effects or interaction effects. See regression tables for additional information. Shaded cells identify statistically significant discrete marginal effects at the  $p < 0.10$  and  $p < 0.20$  levels. Discrete changes are 0 to 1 in binary variables and a standard deviation increase in continuous variables. Average marginal effects accompanied by p-values for readers to evaluate statistical significance on their own. Predictions computed in Stata 15 using `mchange` to reflect interaction terms (Long & Freese, 2014).

If factors predict enactment of different law types in generally consistent ways, then such patterns signal laws are conceptually equivalent and are perhaps best analyzed as a monolithic group. If this is the case, factors associated with the enactment of restrictive laws should predict the enactment of different law types in similar ways as indicated by the variables' sign, effect size, and significance. The data does not support the hypothesis that ODA per capita is a significant, positive, and consistent predictor of restrictive laws (**H2A**). The analyses found no evidence suggesting a statistical relationship between a standard deviation increase in ODA per capita and the enactment of any law type. Robustness checks confirm this finding.

The data partially support the hypothesis that the context of electoral competition increases the probability of enacting restrictive laws. Although the factor has a statistically significant coefficient in all pooled models, CRMs show the presence of electoral competition robustly predicts the enactment of moderately-restrictive, red-tape laws only. For the average country in the sample, a context of electoral competition increases the probability of enacting red-tape laws by less than one percentage points in the primary modeling strategy (0.002,  $p = 0.07$ ) and almost one percentage point in the rare-events robustness check (0.009,  $p = 0.14$ ). Electoral competition weakly predicts the enactment of highly- and minimally-restrictive laws. Hypothesis **H2B** is unsupported because electoral competition is not a significant, positive, and consistent predictor of all restrictive laws.

The data does not support the claim that CSOs' organized opposition to the current political system is a significant, positive, and consistent predictor of restrictive laws. The CRMs find no relationship between a standard deviation increase in CSOs' organized opposition to the current political system and the enactment of any restrictive law. Therefore, **H2C** is not supported.

The data finds evidence that higher levels of democracy decrease the probability of enacting restrictive laws. The factor is generally significant and always negative. However, the CRMs show that for the average country, the change in the predicted probability caused by a standard deviation increase in democracy is consistent for only two types of laws in only one modeling strategy: in the primary modeling strategy, a discrete change decreases the predicted probabilities of enacting red-tape ( $-0.001, p < 0.01$ ) and notification ( $-0.001, p < 0.10$ ) laws by the same amount. The Cox model robustness check shows the average marginal effect of a positive discrete change is insignificant across the types of laws. This statistical insignificance may be because the democracy-enactment relationship varies over time. According to the Cox model with time-varying coefficients ([Appendix Table 3B.2](#)), the level of democracy has a significant correlation with highly-restrictive, prohibitive laws only. The factor's main effect is negative ( $p < 0.05$ ), and its time-varying component is positive ( $p < 0.05$ ). These estimates suggest the level of democracy as an enactment deterrent declines over time.<sup>15</sup> This time-varying relationship is inconsistent across law types, however. The hypothesis that higher levels of democracy decrease

<sup>15</sup> According to the Cox model with time-varying coefficients (Table 3.2), the level of democracy has a negative sign for all types of laws but is statistically significant for highly-restrictive laws only ( $-3.05, p < 0.05$ ). A standard deviation increase in the level of democracy (approximately 2.85 points on a 10-point scale) at the beginning of the observation period, while all other variables are held constant yields a hazard ratio equal to  $\exp(-3.05 \times 2.85) = 0.0001$ . Thus, the rate of enactment decreases by  $(100\% - 0.01\%) = 99.99\%$  with a standard deviation increase in democracy at the beginning of the observation period. The time-varying component of the level of democracy has a positive sign for all types of laws but is statistically significant for highly-restrictive laws only ( $0.18, p < 0.05$ ). This suggests the level of democracy as a deterrent for adopting highly-restrictive declines with every unit of time. A standard deviation increase in the level of democracy at year 10 of the observation period, while all other variables are held constant yields a hazard ratio equal to  $\exp(-3.05 \times 2.85 + 0.18 \times 2.85 \times 10) = 0.0283$ . Thus, the rate of enactment decreases by  $(100\% - 2.89\%) = 97.11\%$ . While holding all other variables constant, this discrete change at year 20 yields a hazard ratio equal to  $\exp(-3.05 \times 2.85 + 0.18 \times 2.85 \times 20) = 4.79$ , which increases the rate of enactment by  $(479\% - 100\%) = 379\%$ . Holding all else equal, a positive and discrete change in democracy causes a decrease in the rate of enactment by 99.99% at the beginning of the observation period, 97% in year 10, and increases the rate of enactment by over 350% in year 20.



the probability of enacting restrictive laws in a manner that is consistent for all types of restrictive laws (*H2D*) is unsupported.

### *Assessing Conceptual Distinctness*

If the predictive power of individual factors varies across law types, then the laws are conceptually distinct and best analyzed in a disaggregated manner. The pooled models suggest greater voting alignment with Russia in the UN General Assembly increases the probability of enacting restrictive laws. This relationship appears unique to only one law type, but not the type predicted. For the average country, a positive discrete change in voting alignment with Russia produces an average marginal effect that is significant for predicting minimally-restrictive, notification laws only. The Cox model robustness check shows the average marginal effect of a positive discrete change is insignificant across law types. Like other factors, this statistical insignificance may be because the factor's effect varies over time. According to the Cox model with time-varying coefficients (Appendix Table 3B.2), voting alignment with Russia correlates with highly-restrictive, prohibitive laws only. The factor's main effect is positive ( $p < 0.01$ ), and its time-varying component is negative ( $p < 0.01$ ). These estimates suggest the impact of voting alignment with Russia as an enactment propellant declines over time.<sup>16</sup> Together these findings

<sup>16</sup> According to the Cox model with time-varying coefficients (Table 3.2), voting alignment with Russia has a positive and statistically significant relationship with highly-restrictive laws (0.22,  $p < 0.01$ ). A standard deviation increase in the voting alignment with Russia (approximately 11.75 points on a 100-point scale) at the beginning of the observation period, while all other variables are held constant yields a hazard ratio equal to  $\exp(0.22 * 11.75) = 13.26$ . Thus, the rate of enactment increases by 1226% with a standard deviation increase in voting alignment with Russia at the beginning of the observation period. The time-varying component has a negative and statistically significant relationship for highly-restrictive laws only (0.18,  $p < 0.05$ ). This suggests the voting alignment with Russia is a propellant for enactment for highly-restrictive laws declines with every unit of time. A standard deviation in the factor, while all other variables are held constant yields a hazard ratio equal to  $\exp(0.22 * 11.75 + -0.02 * 11.75 * 10) = 1.264$ . Thus, the rate of enactment increases by 26.4%. While holding all other variables constant, this discrete change at year 20 yields a hazard ratio equal to  $\exp(0.22 * 11.75 + -0.02 * 11.75 * 20) = 0.1206$ , which decreases the rate of enactment by  $(100\% - 12.06\%) = 87.93\%$ . Holding all else equal, a positive and discrete change in voting alignment with Russia increases the

partially support the hypothesis that increased voting alignment with Russia increases the probability of enacting only one law type (**H3A**), but the hypothesis incorrectly predicted the law type.

Data show that for the average country, a positive discrete change in CSO participation produces an average marginal effect that is significant for predicting minimally-restrictive, notification laws. Depending on the modeling strategy, a discrete change increases the predicted probabilities of enacting notification laws by less than one percentage point in two of the three modeling strategies ( $p < 0.05$ ). This relationship suggests increased CSO participation in lawmaking may coincide with a push for reasonable regulation from within the sector. Notably, the same discrete change produces an average marginal effect that decreases the predicted probability of enacting prohibitive laws. That relationship conforms to theory but lacks statistical evidence ( $p > 0.20$ ). In support of hypothesis **H3B**, the data show increased participation by CSOs in the lawmaking process increases the probability of enacting notification laws only.

The data finds an international commitment to safeguarding civil and political rights combined with constitutional rules guaranteeing those commitments decreases the probability of enacting restrictive laws. Table 3.4 shows this relationship is not unique to any one law type. Contrary to hypothesis **H3C**, the effect is not strongest for highly-restrictive laws and then wanes for less restrictive ones. Instead, the data show that in the average country, the preexisting institution decreases the predicted probability of enacting moderately-restrictive, red-tape laws by less than one percentage point in two of the three modeling strategies ( $p < 0.05$ , [Appendix](#)

rate of enactment by more than 1000% at the beginning of the observation period, 26% at year 10, and decreases the rate of enactment by 88% at year 20.

[Table 3C](#)). This institutional context has smaller effects for prohibitive and notification laws, but these relationships have weaker statistical evidence in those models. For the final hypothesis, the data does not support the claim that greater voting alignment with the US in the UN General Assembly decreases the probability of enacting highly-restrictive, prohibitive laws. Instead, the analysis finds the no relationship and *H3D* is not supported.

The above eight hypotheses carefully examined factors' type-specific relationships to assess whether qualitatively different laws are conceptually equivalent or distinct. A signal of conceptual equivalence occurs when factors predict enactment in ways generally consistent across law types. Such patterns would imply—but not prove—conceptual equivalence and support pooling various law types into a monolithic group. Of the four factors examined, only electoral competition and level of democracy showed robust signs of a relationship with enactment. The data show the relationship between these two factors and enactment varies in effect size—as measured by both regression coefficients and average marginal effects—and significance across law types. Thus, the analysis is unable to produce reliable evidence supporting the argument that restrictive laws are conceptually equivalent.

Not only do these null results fail to demonstrate restrictive laws are a monolithic group, but the findings provide additional support to the argument that restrictive laws are conceptually distinct. The case for conceptual distinctness relies on the relationship between individual factors and enactment to vary across law types. Several factors portray this behavior and deserve mention: electoral competition, voting alignment with Russia, and CSO participation in lawmaking have robust relationships with only one type of law. These relationships are consistent within a particular law type and across robustness checks, regression coefficients, and average marginal effects.

The remaining variables—level of democracy and preexisting institutions—predict multiple types of laws with varying degrees of success. Looking at the factors’ regression coefficients is the minimal approach. Here, while holding all else constant, the factors predict enactment for red-tape and notification laws reasonably well, but only preexisting institutions robustly predict enactment of prohibitive laws. A stricter approach uses average marginal effects. This shows that for the average country, the average effect of a discrete change in democracy or preexisting institutions robustly predicts one and perhaps two law types depending on the significance threshold used. In total, the evidence from five of the eight factors examined implies the laws that restrict foreign aid to CSOs are conceptually distinct and should be analyzed and conceptualized accordingly.

## **Discussion**

This analysis makes two original contributions. First, the study incorporates two types of preexisting institutions that constrain lawmaking: countries’ international commitment to guard civil and political rights, and the constitutional rules that strengthen those international commitments. I find the institutional arrangement that minimizes the probability a government enacts a restrictive law is one where the country has made an international commitment to safeguarding civil and political rights backed by constitutional rules that constrain lawmaking in such a way that ordinary legislation must honor that international commitment. This critical finding calls for a turn to history when analyzing the institutional development of the laws and policies that regulate civil society around the world.

Second, current work tends to analyze the laws that restrict CSOs as a monolithic group and has not yet conceptualized them as distinct law types. I find that disaggregating law types reveals

counterintuitive and overlooked relationships. For example, the positive relationships that voting alignment with Russia and CSO consultation have with increasing the probability of enacting minimally-restrictive, notification laws. The mechanisms behind these associations are beyond the scope of this chapter, but become the focus of my analysis in [Chapters Four](#) and Five.

Researchers often invoke the Russian and Chinese cases as the most visible examples of regimes that use laws to minimize civil society (Toepler et al., 2020, p. 2). Thus, as a government's decisions on international matters align with Russia's, we may expect an increased probability that the country enacts harsh, Putin-style laws as a result of policy diffusion through learning, coercion, or emulation processes. This analysis shows that this is not the case; instead, the data show a positive correlation between voting alignment with Russia and the enactment of minimally-restrictive, notification laws. This finding may seem peculiar, but a focus on institutions offers two possible explanations. One explanation is that CSO regulatory regimes are legal institutions that change incrementally over time. Thus, the enactment of minimally-restrictive laws is not necessarily an endpoint but may instead be a waypoint or entry-point towards a more "bureaucratically illiberal" regulatory regime that uses laws and policies to raise the transaction costs for CSOs to emerge and operate (DeMattee, 2019b, p. 10). I investigate this path dependency explanation in [Chapters Five](#).

Another explanation is that describing the Russian case as entirely closed to civil society may be a mischaracterization of its government-CSO relationship. Such a conclusion fails to account for the complicated relationship between formal legal rules and social norms to produce what Cole (2017, p. 6) and others call "working rules." While laws may closely resemble working rules in some contexts, in other settings, informal rules and social norms amend legal rules to produce working rules. A regulatory regime may have one set of friendlier working rules for

apolitical CSOs that provide services complementary or supplementary to the government while at the same time enforcing a harsher set of working rules to crackdown on CSOs that are politically inconvenient. This pattern of differential enforcement exists as “the Russian government’s divergent positions towards civil society” (Salamon, Benevolenski, & Jakobson, 2015; Benevolenski & Toepler, 2017, p. 64; Toepler et al., 2019; Toepler et al., 2020) with additional patterns identified in Burundi (Popplewell, 2018) and Kenya (Chapters Six and Seven).

This differential enforcement explanation matches work discussing “the Russian government’s divergent positions towards civil society” (Salamon et al., 2015; Benevolenski & Toepler, 2017, p. 64; Toepler et al., 2019; Toepler et al., 2020). This is congruent with research on dictators’ decision-making studied as both a tradeoff between suppressing rivals and delivering public services (Woldense, 2018) and the rational use of their tools of office to gather information that prolongs their stay in power and maximizes their gains from office (Sartori, 1976; Wintrobe, 1998; Malesky & Schuler, 2011; Smyth & Turovsky, 2018).<sup>17</sup> Forthcoming work on the Russian case suggests this is a possibility and identifies CSO laws are one of several strategies regimes use to gather information about political opponents’ public support and resources (Smyth, 2019, pp. 17-21).

An entirely different set of explanations seem to drive the positive relationship between the enactment of minimally-restrictive laws and consultation with CSOs. The magnitude of this relationship is substantial. A standard deviation increase in voting alignment with Russia is

<sup>17</sup> The dictators dilemma of comparative politics stresses undemocratic leaders use their tools of office—such as elections, laws, and policy implementation—to gather information that prolongs their stay in power and maximizes their gains from office.

roughly half the size of the same discrete change in CSO consultation. Not only does the effect size deserve attention, but the sign on the coefficient itself challenges received wisdom: why would a political opportunity structure open to CSOs also be one that, *ceteris paribus*, propels the enactment of restrictive laws? One explanation is that CSOs successfully pull lawmakers away from highly- or moderately-restrictive bills and negotiate agreement around minimally-restrictive laws. Although supported by theory, this explanation lacks supporting evidence in this data because neither the prohibitive nor red-tape models show CSO consultation to be negative and significant.

An alternative account asserts these minimally-restrictive, notification laws might not be as undesirable as analysts interpret them to be. Notification laws may be attempts to minimize patterns of wrongdoing within the sector (Gibelman & Gelman, 2004) or correct the dualism foreign funding causes among domestic CSOs (Chahim & Prakash, 2013; Pallas, Anderson, & Sidel, 2018, p. 259). Perhaps these notification laws are a type of “reasonable regulation” that CSOs support to enjoy the privileges that accompany registration as a nonprofit or religious legal entity. And given the ballooning of development NGOs beginning in the early-1990s (Anheier & Salamon, 1998; Reimann, 2006; Cammett & MacLean, 2014; Schnable, 2015), CSOs’ support for minimally-restrictive laws may be an attempt to cull “briefcase NGOs” from the sector while at the same time earn regulatory legitimacy (Popplewell, 2018) and show themselves as transparent and accountable to citizens, donors, and governments (Arhin, Kumi, & Adam, 2018). There is increasing evidence steering research away from the caricature of CSO laws that suggests they are new, homogenous, and enacted by dictatorial regimes to prolong their stay in power. Instead, they are legal institutions with long histories; amalgamations of laws that fuse

liberal and illiberal provisions; regulatory regimes erected and altered by governments regardless of regime type.

## **Conclusion**

Scholars offer many reasons why countries enact laws that restrict foreign funding to CSOs. Despite the growing body of work on this topic, scholars have not studied the institutional context of lawmaking, nor has research investigated how factors' relationships with enactment vary across law types. This paper has explored these understudied areas to explain the conditions that propel or deter the enactment of laws that restrict CSOs. It has made both theoretical and conceptual contributions in the process.

The first analysis introduced institutional variables to further our understanding of the factors that predict the enactment of restrictive laws. The argument focused on preexisting institutions to explain the changing constraints lawmakers face. An international commitment to safeguarding civil and political rights—represented by the ratification of the International Covenant on Civil and Political Rights (ICCPR), which legal scholars consider the principal treaty guarding civil and political rights (Henkin, 2000; Hathaway, 2002; ICNL, 2009; Kiai, 2012; Donnelly, 2013; ICNL, 2015)—should have a strong and negative association with the enactment of laws that impinge on voluntary association. Yet, the analyses here show that pledging to safeguard human rights is not a sufficient condition. Incorporating constitutional rules into the analysis explains why international commitments such as ratifying the ICCPR do not individually stifle efforts to enact restrictive laws. Constitutions condition the degree to which international commitments constrain lawmaking. Thus, the effect of ICCPR ratification—i.e., the international commitment safeguarding human rights—as a preexisting institution that



constrains lawmaking is most effective when constitutional rules give such international obligations a status that is superior to ordinary legislation. Although the average effect size for this institutional arrangement varies across context, its impact appears most effective in settings described as undemocratic, politically competitive, or possessing a strong constitutional executive.

Next, while researchers and practitioners discuss many types of laws that regulate CSOs, most empirical studies analyze them as a monolithic group. The second analysis showed several benefits to disaggregating law types. First, analyses that pool laws may unknowingly overstate factors' relevance in enacting restrictive laws. The pooled models identified several factors thought to propel or deter the enactment of restrictive laws. However, after disaggregating laws, the analyses showed these factors robustly predicted only *one* law type: electoral competition positively correlates with the enactment of moderately-restrictive laws, higher levels of democracy negatively correlates with moderately-restrictive laws, and greater voting alignment with Russia in the UN positively correlates with minimally-restrictive laws. Pooling laws also risks understating or overlooking the relevance of a particular factor. The pooled models rejected the importance of CSO consultation in all instances. Only after conceptualizing laws as distinct did we identify nuanced relationships such as greater participation by CSOs in the lawmaking process positively correlates with the enactment of minimally-restrictive laws.

These findings call on researchers to give increased attention to institutions and conceptualizations when studying the enactment of laws that restrict CSOs. Constitutions and history matter and analysts should consider these and other important factors when analyzing the laws that restrict CSOs. Findings also urge researchers not to oversimplify or ignore the differences among laws or else risk overstating or overlooking key relationships. Analysts should

instead embrace legal differences and use them as analytical leverage in empirical research and theory building. Going forward, research studying the laws, policies, and regulations of civil society should pay increased attention to political institutions, preexisting laws and policies, and fundamental policy differences.

## —Chapter IV—

### CREATING BETTER DATA: CODING AND DESCRIPTIVELY ANALYZING AN INTERNATIONAL LEGAL CORPUS<sup>1</sup>

Using a global dataset of 138 countries, findings in Chapter Three showed that existing institutions constrain lawmaking and confirmed that within a type of legal provision, particular provisions are different and should not be lumped together arbitrarily. The findings also show that political regime types are inconsistently and only partially associated with enacting the restrictive provisions studied. What is more, given that a number of democratic and free countries enacted these provisions suggests the possibility that some CSO laws may actually benefit society and help CSOs. These findings, along with the observation that existing CSO law research tends to focus entirely on restrictive financial provisions and relies heavily on secondary sources, combine to highlight the need for longer and more carefully coded data on CSO laws.

In this chapter, I address this need for better data in two ways. First, I propose a broad typology of provisions intended to make the systematic study of CSO laws and policies across contexts more possible. I do this by reviewing 21 research publications that study CSO regulatory regimes and coding the types of legal provisions analysts discuss in each. In so doing, I argue for the need to recognize that CSO regulatory regimes contain many varieties of legal provisions and are never wholly permissive or categorically restrictive. While it is true that restrictive laws exist that limit foreign support of CSOs or restrict organizations' operational activities, other regulatory requirements facilitate the legitimacy and transparency of CSOs,

<sup>1</sup> An earlier version of this chapter was published in 2019 as: "Toward a Coherent Framework: A Typology and Conceptualization of CSO Regulatory Regimes" in *Nonprofit Policy Forum* 9 (4):1-17.

guarantee the right to self-regulate and appeal regulatory decisions, and hold both CSOs and regulators accountable to citizens and governments. I find that in addition to the financial, or resource, related regulations examined in Chapter Three, there are in fact four policy subgroups that merit consideration: *governance, formation, operations, and resources*, which I explain in depth. Within each subgroup are provisions from each side of the restrictive-permissive continuum. Combining these points results in a matrix typology of 58 legal provisions that researchers have identified as regulating CSOs.

Second, I use the matrix typology to code primary sources and generate an original dataset. I create this better data by using the typology as a coding protocol to inventory the legal provisions of 285 laws from 17 countries. This process captures the institutional development of regulatory regimes over time and at different levels of analysis. This approach recognizes that regulatory regimes are like other institutions: they develop incrementally through a long, slow, and muddled process of institutional change. I show that regulatory regimes are neither new nor represented by a single law. Instead, and contrary to conventional thinking, I find that these legal institutions are timeworn and are frequently inherited from colonial governments, that both democratic and authoritarian regimes erect and maintain them, and that permissive legal provisions comprise the majority of these rules-in-form.

## **Methods**

To create my typology, I reviewed a non-random assortment of secondary sources, intentionally selected for diversity in authorship, geographic focus, and methods. I chose sources from a review of literature across a wide range of disciplines, including specialized publications in nonprofit law, policy, and global affairs. I added sources to the sample until the data set

reached saturation on the types of provisions discussed. Ultimately, the sample consists of a diverse assortment of book chapters, peer-reviewed articles, and professional reports produced by analysts from around the world. These works examine regulatory regimes in Asia, Africa, Latin America, North America, and Western Europe. They include in-depth case studies, extensive cross-national statistical analyses, comparative historical analyses, expert legal reviews, and descriptive accounts connecting real-world events to policy changes. While they vary in scope and level of detail, each contributes toward a systematic conceptualization of CSO regulatory regimes.

I used an inductive approach. I carefully read each source to identify as many types of provisions as are in use around the world. I copied these provisions directly from the secondary sources and categorized them by type. In total, I inventoried 71 unique provisions discussed by the authors. Next, I used an iterative process to recategorize these provisions into the fewest number possible. Once I had organized provisions by type, I rewrote the provisions into a generalizable institutional syntax<sup>2</sup> and merged these 71 unique provisions into 58 based on the rights and obligations they gave CSOs.<sup>3</sup> This transformation proved a necessary and valuable step. It not only made the number of provisions discussed by analysts manageable but also

<sup>2</sup> For a comprehensive explanation of institutional (or ADICO) syntax read “A Grammar of Institutions” by Sue Crawford and Elinor Ostrom in *Understanding Institutional Diversity* (E. Ostrom 2005). Or, see [Chapter Two](#).

<sup>3</sup> A brief note on the terminology used throughout this article. First, regarding organization types: these regulations identify a broad array of legal entities—e.g., cooperative societies, NGOs, resident societies, foreign charities (Maru, 2017; Cunningham, 2018). These legal forms are subtypes of civil society organizations, which I define as voluntary associations that exist between the family and the state not operated for profit (see Chapter One). The organizations are generally legal entities but may also include informal groups. While they are typically private, non-profit-distributing, self-governing bodies organized for public benefit, CSOs also include mutual benefit organizations, religious groups, and advocacy organizations.

translated laws from their natural language into institutional statements that allow for comparability across contexts.

I discuss various top-down, command-and-control legal instruments. Utmost among them are written constitutions, which I consider superior to the laws of a country, even though constitutions and legislation are not always as consequential as presumed (Elkins et al., 2009, p. 48). Laws are legal rules coproduced by the legislature and the executive. Constitutions and laws contain numerous written provisions, or what I sometimes refer to as “institutional statements”: which through their shared nature describe opportunities and constraints that create expectations about actors’ activities by prescribing, permitting, or advising behavior or outcomes (S. Crawford & E. Ostrom, 2005, pp. 137-138, 140). Therefore, in a nested architecture, various provisions comprise laws, and multiple laws combine with constitutional protections<sup>4</sup> to create the regulatory regimes that structure and incentivize CSO behavior. Ultimately, the typology and conceptualization discussed below show different combinations of provisions exist, which I argue are explanatory factors available as leverage in an analysis.

### **A Typology of CSO Regulatory Regimes**

It is first necessary to emphasize a characteristic of these legal provisions: that to varying degrees, each either helps or hinders CSOs. But focusing on a particular provision risks missing the forest for the trees. I find that the CSO laws that comprise CSO regulatory regimes contain various provisions from both sides of the permissive-restrictive continuum. This means that to understand the institutional development of regulatory regimes, one must know what the current

<sup>4</sup> My appreciation to the reviewers who rightly explain constitutional protections both guarantee freedoms and also set limits on governmental practices.

legal institution is, and which provisions are added (or removed). Knowing the precise content of a country's regulatory regime may not be sufficient, however, because laws do not implement themselves. Thus, knowing the rules-in-form is a necessary first step in assessing whether the government is acting within the scope of the law, overreaching in its enforcement actions, or underperforming in the services it is required to provide citizens.

The coherent framework that I propose classifies and tallies the legal provisions that comprise regulatory regimes.<sup>5</sup> Labeling a provision as either permissive or restrictive can be controversial. If we focus only on the organization, we might classify any provision that requires CSOs to do "something" as restricting CSOs. Such an approach would classify provisions requiring that formal organizations register with the government as "restrictive," irrespective of the simplicity of the process or the tax advantages that accompany registration. Alternatively, focusing on the state might classify any provision as "permissive" as long as representative institutions created it. These organization- and state-centric positions may overemphasize certain actors or processes when determining what is restrictive or permissive.

The moderate approach applied here assumes reasonable and impartial enforcement of provisions and then uses theory to predict the effect those provisions have on society and the voluntary sector as compared to not having the provision. Using a standard classification (Anheier, 2005), I consider demand-side theories of trust in nonprofits (Hansmann, 1980) followed by supply-side theories that explain the emergence of nonprofits (Young, 1983;

<sup>5</sup> Such an exercise may lose precision and is undoubtedly imperfect. Nevertheless, there is a precedent for such a device in the social sciences. One example of this positive/negative classification and tallying is the Polity IV indicator of democratic well-being, which is merely a country's institutionalized autocracy score subtracted from its institutionalized democracy score (Marshall et al., 2017). Similarly, regulatory regimes are an aggregation of restrictive and permissive provisions.

Frumkin, 2002). I classify provisions as either restrictive or permissive using a two-step process. First, a provision is permissive if its reasonable and impartial enforcement improves trust, accountability, or resolves “voluntary failures” (Salamon, 1987, pp. 38-42; Edwards & Hulme, 1996). Classification advances to the second stage if there is no clear demand-side prediction. Here, a provision is restrictive if its reasonable and impartial enforcement limits organizational autonomy or stifles organizational emergence.

I conceptualize provisions in terms of five key elements: their source, their predicted effect on society’s demand for CSOs, whether they protect society and democratic interests, whether they bestow rights, and their effect on individual participation. These elements allow me to conceptualize two types of provisions.

I begin by with permissive provisions, which I conceptualize using the above key elements. First, the source of permissive provisions is a law. Second, when enforced, theory predicts they increase society’s demand for CSOs. Provisions that meet legitimate aims such as facilitating transparency and accountability, and protecting the freedom to associate (and the freedom not to associate) are permissive. Third, societal and democratic interests outweigh organizational convenience. Permissive provisions can be onerous from an organizational perspective--e.g., requiring bylaws before registration and financial filings to maintain tax-exempt status. Limiting organizational autonomy or requiring CSOs to perform some activity may also be permissive if those provisions support legitimate aims that protect society and democracy. Fourth, permissive provisions provide CSOs rights that oblige government action (positive rights) or inaction (negative rights). Fifth, they empower individuals to associate in groups, establish new CSOs, and support existing organizations. Combining these elements yields the following definition: *permissive provisions* are legal provisions that improve organizational pluralism by



increasing society's trust in (or demand for) CSOs, that provide CSOs with positive and negative rights, or that encourage individuals to participate in CSOs.

The key feature is that permissive provisions, when reasonably and impartially enforced, build trust for CSOs among the public and prevent unscrupulous actors from abusing the legal form for private gain. These policies encourage the development of a country's voluntary sector, allow CSOs to self-regulate and appeal regulators' decisions, provide legal rights and protections, permit access to funds, and incentivize private donations.

I conceptualize restrictive provisions in terms of these same key elements. First, restrictive provisions are prescribed by law. Second, when enforced, theory predicts they decrease society's demand for CSOs because the provisions allow the government to intimidate and harass CSOs. Third, they restrict organizational autonomy without achieving legitimate aims that protect society and democracy. Fourth, restrictive provisions empower the government to make demands of CSOs without reasonable cause or make decisions affecting individual organizations without due process and appeal. Fifth, they discourage individuals from joining, establishing, and supporting CSOs. Combining these elements yields the following definition: *restrictive provisions* are legal provisions that erode society's trust in (or demand for) CSOs, that unnecessarily limit organizational autonomy and deny CSOs the right to due process, or that discourage individuals from participating in CSOs.

In the vernacular of transaction cost economics (Williamson, 1981), restrictive provisions increase transaction costs and make it more costly to operate and create such organizations (Salamon & Toepler, 2000b, p. 7). In extreme instances, these provisions legalize corrosive state action, impose excessive burdens, restrict the freedom to associate, limit pluralism and stoke intolerance, and remove legal protections and due process. Some provisions are arguably less

concerning, but theory still leads me to categorize them as restrictive. Prohibiting CSOs from self-regulating, requiring a minimum number of members before an informal group can formally register, mandating CSOs adopt a certain organizational structure, and capping executive's compensation are examples of restrictive provisions because they do not clearly protect society or expand organizational pluralism.

Despite the dichotomy presented here, it may be possible to have a flourishing—if not entirely admirable—array of CSOs within a regulatory regime described as restrictive. Likewise, a *de jure* permissive regulatory regime is not guaranteed to sow a vibrant civil society that generates positive democratic values among citizens.

### **Elements of the Institutional Context**

Matrix typologies allow for the intersection of multiple mutually-exclusive organizing principles (Gerring, 2012a). The restrictive-permissive dichotomy is the first of two organizing principles. The second arranges provisions into four subgroups that comprise the institutional context of regulatory regimes. These mutually exclusive categories stipulate how provisions are made and enforced (*governance*); define the types of CSOs that can exist and the procedures for their emergence (*formation*); establish if and how a CSO obtains permission to conduct activities (*operations*); and outlines how to record and report financial and non-financial assets (*resources*).

#### *Governance Provisions*

Governance provisions structure the amendment and enforcement of provisions contained in other subgroups. These provisions create and empower institutional actors such as government agencies, private self-regulators, and dispute resolution forums that affect CSOs externally. Laws

that restrict constitutionally protected freedoms—such as the right to associate—are governance provisions because they relate to constitutional provisions that supersede legislative laws and policies. In effect, this category is superior to others because governance provisions control the creation, enforcement, and amendment of other regulatory provisions. Table 4.1 organizes the 12 governance provisions identified in the sample. The footnotes show examples of restrictive and permissive governance provisions<sup>6</sup> quoted from the studies reviewed.

### *Formation Provisions*

Formation provisions are primarily concerned with the legal status and processes of voluntary associations that choose to incorporate as formalized CSOs. Whether informal associations must incorporate with a government sponsor is also a formation provision. These provisions stipulate the requirements for registration (e.g., membership, financial capital), how the registration process unfolds, and whether registrations expire. As a legal matter, the status of a CSO and the decision to become a formal organization may determine which provisions apply to it (e.g., lobbying, tax-deductible donations). As a political matter, these policies have a legitimizing effect on organizations, and failure to secure/renew the proper status might lead to decreased assets from donors and suspicion from citizens. There are 14 formation provisions, including both permissive and restrictive types.<sup>7</sup>

<sup>6</sup> Governance Examples: Restrictive “[The Ecuadorian Presidential Executive Decree No. 982 (2008)] Registry of Civil Society Organizations (RUOSC) was a first attempt by the Ecuadorian government to standardize and centralize information on nonprofit organization and was woven into the process of an organization’s legal formation” (Ape and Marchesini da Costa 2017: 166); Permissive “[Uganda’s Non-Governmental Organizations Act (2016)] introduced [CSOs’] right to appeal to the District Non-Governmental Monitoring Committee, the [National Bureau for NGOs], or the Adjudication Committee. In addition, an aggrieved person may invoke Article 42 of the 1995 Constitution which guarantees the right to be treated fairly and justly and the right to apply to a court of law in respect of any administrative decision taken against that person” (Maru 2017: 61).

<sup>7</sup> Formation Examples: Restrictive “Eritrea, Proclamation No. 145/2005 requires that local CSOs engaged in relief and/or rehabilitation work must have ‘at their disposal in Eritrea one million US dollars or its equivalent in convertible

### *Operations Provisions*

Operations provisions regulate how CSOs deploy assets in pursuit of organizational goals. These provisions stipulate issue areas and establish what CSOs can or cannot do. Legal definitions and funding sources often define this operational space. For example, American 501(c)(3)s are limited in their ability to lobby, while nonprofit 501(c)(4)s have no such restriction. These provisions also outline whether and how CSOs must receive permission to conduct operations. The highest burden appears to be provisions that require CSOs to obtain a permit to perform specific projects, but less burdensome is the requirement that CSOs obtain a license to perform a general task repeatedly. These provisions communicate what (if any) reporting CSOs must make available and to whom. Existing literature discusses 14 operational provisions,<sup>8</sup> but coding primary sources identified two additional provisions: a restrictive provision requiring CSOs to acquire an operations authorization after formally registering, and a permissive provision forbidding government agencies to mandate an operating license in addition to formal registration.

### *Resources Provisions*

Resources provisions govern the financial and non-financial assets of CSOs. Some studies consider only provisions that regulate if and how CSOs can receive foreign funding, or what

currency.’ This amount is approximately 15,000 average monthly per capita GDP in Eritrea” (Rutzen 2015: 17); Permissive “[CSOs in Nigeria] must be registered or incorporated under the Companies and Allied Matters Act (CAMA Act) of 1990, if they wish to enjoy the benefits of having a legal personality, or the limited tax advantages that may be available to them...if a CSO’s registration request is denied, it can challenge this decision with the Corporate Affairs Commission (CAC)” (Chikoto-Schultz and Uzochukwu 2016: 148).

<sup>8</sup> Operations Examples: Restrictive “[Restrictive policies] increase the discretionary supervisory power of government authorities and enable an arbitrary interference in the internal affairs of organizations, [and] restrictions that concern certain ‘sensitive’ activities (for instance, political activities, or human rights advocacy)” (Wolff and Poppe 2015: 6); Permissive “Cambodia appears to have no explicit [project] approval procedure other than the initial approval of the activity field of [CSOs] at registration and the requirement to submit annual reports” (Mayhew 2005: 741).

Rutzen (2015) refers to as “philanthropic protectionism.” While foreign funding restrictions have been the focus of numerous scholarly studies and reports, the 16 resources provisions include other restrictive and permissive provisions.<sup>9</sup> They include provisions that prohibit specific legal forms from engaging in fundraising altogether and others that permit CSOs to raise funds through business activities unrelated to their charitable missions. This subgroup regulates taxable activities, whether a CSO receives a tax-exemption, whether individuals who donate receive a tax deduction, and other similar matters. These provisions also discuss requirements for auditing and financial reporting, ownership of non-financial resources such as property and equipment, and expectations for working with local partners.

The sources reviewed studied many provisions in different contexts. It is worth noting two understudied topics in the sample: penalties for noncompliance, and the enforcement of the policy. Penalties are especially relevant because they structure the incentives that CSOs face in their decision-making (Rowe, 1989; S. Crawford & E. Ostrom, 2005, p. 152). The most discussed provision in the sample, which requires CSOs to submit annual reports of financial flows, carries a penalty for noncompliance that ranges from written warnings and graduated sanctions for repeat offenders, to immediate deregistration of CSOs. The topic of enforcement and the political factors that affect the government’s enforcement of policies and CSOs’ compliance with legal provisions are equally crucial to the research agenda.

<sup>9</sup> Resources Examples: Restrictive “In 2008 Jordan enacted a new Law of Societies that requires any NGO seeking to receive foreign funding to obtain approval from the Jordanian cabinet and inform officials of the funding source, amount, and intended purpose...The Venezuelan National Assembly in December 2010 passed the Law for the Defense of Political Sovereignty and National Self-Determination, which explicitly prohibits NGOs that ‘defend political rights’ or ‘monitor the performance of public bodies’ from receiving any income from foreign sources” (Carothers and Brechenmacher 2014: 8); Permissive “Explicit [financial] transparency requirements can provide additional assurance that organizations are operating in a way that is consistent with public expectations” (Salamon and Toepler 2000: 6).

### *Creating a Matrix Typology*

Intersecting the restrictive-permissive dichotomy with the four subgroups creates the matrix typology of CSO regulatory regimes (Tables 4.1 thru 4.4). The matrix typology includes an equal number of restrictive and permissive provisions and shows the frequency each provision appears in the research reviewed. Each column dichotomizes provisions as either illiberal and restrictive (left) or liberal and permissive (right). Columns correspond to the numeric values I assign to each institutional statement ( $-1$  = restrictive,  $+1$  = permissive) when aggregating the legal provisions into a cumulative index. Provisions appear as institutional statements with essential components of the institutional syntax identified using brackets. All provisions take the form of “regulative rules” that include all elements of the ADICO syntax<sup>10</sup> because it is reasonable to assume that legal provisions have institutionally assigned sanctions for noncompliance or are backed by other rules that levy consequences to offenders. The values in parentheses represent tallies in the research-publication sample. They are not indicative of rigor or depth of analysis, nor do they measure the prevalence of any provision in the real world. For example, noting Swedish law does not recognize charitable donations as tax-deductible (Salamon & Toepler, 1997, p. 298) is sufficient to qualify a study as discussing this particular resources provision.

The matrix typology and the coding protocol creates data that demonstrates a tension between “law as language” and “law as data.” I fully agree with those who argue there is something unquantifiable about laws and legal texts, but I do not take a maximalist position in defending that argument. I do, however, share the concern that some analyses cherry-pick

<sup>10</sup> The ADICO syntax is a tool of institutional analysis developed by (Crawford & Ostrom, 1995; 2005). See Chapter Two for complete discussion.

specific legal provisions and omit laws that are essential components of a country's regulatory regime. In Chapter Two, I reviewed the qualitative method that I used to responsibly transform legal language into quantifiable data. That process involved thoroughly reading and systematically coding only primary sources. Furthermore, the approach sought to be as holistic as possible and included every law that showed itself relevant to the country's regulatory regime. Although the transformation from language to data was imperfect, it was as thorough, systematic, and complete as I could make it. I will add that it was also necessary. To my knowledge, none have attempted to thoroughly inventory the contents of the CSO laws that comprise regulatory regimes. Relying on existing research to create the matrix typology and the coding protocol made the quantification of the legal corpus possible. My future work will revisit this legal corpus and coding strategy.<sup>11</sup>

Analysts studying CSO laws discuss 12 types of governance provisions, which I rewrite and present as institutional statements in Table 4.1. All provisions appeared in the 285-law corpus, but only three are so common as to appear in more than 100 laws. These high-frequency provisions discuss the creation of a regulator (157 laws, 55%), assign sanctions for noncompliance (137 laws, 48%), and identify whether regulators can unilaterally create new rules (106 laws, 37%). The least common provisions are those that discuss the government-led creation of a CSO self-regulation forum (12 laws, 4%), whether the government can use a special

<sup>11</sup> My future work will improve clarity and quantitatively evaluate fidelity and robustness. A codebook will carefully detail each item in the coding protocol and include examples of each provision and explanations for the coded value. Next, I will use the codebook to train others to code parts of the legal corpus. Intercoder reliability will assess the fidelity of my qualitative coding for all items in the coding protocol. Finally, various techniques will judge robustness. One technique uses an exclusion strategy to assess if there is a systematic bias in the coding. This technique assesses robustness before the data are used in an analysis. A postestimation assessment measures the robustness of inference and determines the threat to inference from bias and confounding variables.

process to pass new CSO laws (2 laws, 1%), and whether the government is the only actor capable of creating new CSOs (1 law, 0%).

**Table 4.1: Governance Provisions Rewritten with the ADICO Syntax**

Restrictive Provision	Permissive Provision
[Government][O][create or appoint agency to implement and enforce the law][if the law is enacted][or else it is negligent] (14)	[Agency][O][clearly explain penalty for particular offenses, or explain a ‘general penalty’ for offenses where no penalty is expressly provided][under all circumstances][or else it is negligent] (8)
[CSOs][O][accept restricted freedoms on certain matters][if the law is enacted][or else face noncompliance sanction] (10)	[Government][O][create or empower a dispute resolution forum] such as a court [if the law is enacted][or else it is negligent] (6)
[Government][P][create or empower cabinet minister to make new rules regulating CSOs on certain matters][if the law is enacted][or else leave the regulatory regime unchanged] (5)	[CSOs][P][self-regulate through associations][if the law is enacted][or else choose not to be self-regulated] (6)
[Agency][P][publish information about CSO, or seize property and documents][with or without reasonable cause after law’s commencement][or else choose other tactics to receive CSOs’ information] (4)	[Government and agency][O][create or empower self-regulation forum for CSO self-governance][if the law is enacted][or else it is negligent] (5)
[Government][P][use unorthodox process to pass new CSO laws][if the law is enacted][or else follow normal pathway to change regulatory regime] (3)	[CSO self-regulatory body][P][create a code of conduct] to license, supervise, or sanction members if such actions are warranted [if the law is enacted][or else use other legal means of self-regulation] (4)
[CSOs][F][create new CSOs] because only the state may do so [under all circumstances][or else face noncompliance sanction] (3)	[Agency][F][regulate CSOs without oversight] such as an oversight board of CSO participants, a nomination & approval process, or clear accountability to elected officials [if the law is enacted][or else it is overstepping its authority] (3)

DEONTIC operators: [P]=permitted/may; [F]=forbidden/may not; [O]=obliged/must. The syntax concatenates five components: [ATTRIBUTE][DEONTIC][AIM][CONDITIONS][OR ELSE]. ATTRIBUTE identifies to whom the statement applies, and if no attributes are named then the default assumption is all members of the group; DEONTIC identifies the expected behavior may/permitted/[P], must/obliged/[O]; must not/forbidden/[F]; AIM, specifies the particular action or outcome prescribed or forbidden; CONDITIONS, explains when and where the statement applies, the default assumes all persons under all circumstances; (OR ELSE) institutional sanction for noncompliance.

My review of the literature revealed 14 formation provisions (Table 4.2). All appeared in the legal corpus, with four appearing in more than 100 laws. These high-frequency provisions discuss precise legal definitions (211 laws, 74%), outline the process for revoking, suspending, terminating, or dissolving CSOs (136 laws, 48%), specify whether self-governing documents such as bylaws are necessary for registration (136 laws, 48%), and stipulate if voluntary associations can remain informal or if they must register as formal legal entities (102 laws, 36%).



The low-frequency provisions discuss protections against burdensome registration processes (41 laws, 14%), whether CSOs must demonstrate that they possess certain resources (18 laws, 6%), and if a government agency partnership is a prerequisite for registration (6 laws, 2%).

**Table 4.2: Formation Provisions Rewritten with the ADICO Syntax**

Restrictive Provision	Permissive Provision
[CSOs][F][operate as informal, voluntary associations] and instead must register with the government [if the law is enacted][or else face noncompliance sanction] (14)	[Agency][O][follow explicit process concerning revoking, suspending, terminating, or dissolving CSO's permit, registration, or legal standing][if the law is enacted][or else it is negligent] (14)
[CSOs][F][appeal registration denial or deregistration order][after such a decision has been communicated][or else face noncompliance sanction] (7)	[Agency][O][explain precise legal definitions of CSOs that it regulates][if the law is enacted][or else it is negligent] (11)
[CSOs][O][reregister or otherwise apply for continuation of the organization][on a certain day, after a fixed duration, or following meaningful changes to the organization] such as renaming the society, amending its constitution, or becoming a branch of another organization [or else face noncompliance sanction] (7)	[Agency][F][reject registration for reasons other than those explicitly stated][if the law is enacted][or else it is overstepping its authority] (9)
[CSOs][O][identify minimum number of founders or members][if the law is enacted][or else the CSO is ineligible for registration or reregistration] (5)	[Agency][F][make registration unnecessarily complex or burdensome][if the law is enacted][or else it is overstepping its authority] (8)
[CSOs][O][demonstrate minimum capital requirements] such as financial, non-financial, or expertise [if the law is enacted][or else it is ineligible for registration or reregistration] (5)	[Agency][O][review and make registration decisions within specified time period][if an application has been submitted as prescribed][or else it is negligent] (7)
[CSOs][O][have government agency partner] such as a sponsorship or memo of understanding [if the law is enacted][or else the CSO is ineligible for registration or reregistration] (3)	[CSOs][O][produce governing document for self-management] such as bylaws minimally prescribed in policy [if they seek to be a formal organization][or else face noncompliance sanction] (5)
[CSOs][O][pay processing/application fee in addition to an application that must be completed as prescribed][if the law is enacted][or else the registration or reregistration application will not be reviewed] (3)	[Agency][O][provide written explanation of registration and reregistration decision] such as certificate of approval or justification for refusal [after a CSO has applied as prescribed][or else it is negligent] (2)

DEONTIC operators: [P]=permitted/may; [F]=forbidden/may not; [O]=obliged/must. The syntax concatenates five components: [ATTRIBUTE][DEONTIC][A/M][CONDITIONS][OR ELSE].

All 18 operations provisions appeared in the corpus. Three appeared over 100 times, and only one appeared once. These include legal language controlling CSOs' administrative matters such as name changes and leadership appointments (164 laws, 58%), directing external operations (111 laws, 39%), and mandating the condictions under which CSOs must surrender

property, plant, and equipment to the government (101 laws, 35%). Only one law discussed whether CSOs are forbidden to engage in specified activities if they receive foreign funding. The low-frequency provisions include those that relate to operating licenses that permit a CSO to repeatedly engage in a particular activity (17 laws, 6%), whether certain operational activities can use foreign funds (6 laws, 2%), and whether the CSO must not engage in certain activities if it exceeds a certain threshold of money from foreign sources (1 law, 0%).

**Table 4.3: Operations Provisions Rewritten with the ADICO Syntax**

Restrictive Provision	Permissive Provision
[CSOs][O][obtain government permission, “permits”, for individual projects][if the law is enacted][or else face penalty for non-compliance] (10)	[CSOs][O][produce summary of operations and activities for public access][if the law is enacted][or else face penalty for non-compliance] (11)
[CSOs][O][comply with agency’s interference regarding external operations or prescribed coordination][when instructions are communicated with or without reasonable cause][or else face penalty for noncompliance] (10)	[CSOs][F][pursue certain operational activities due to their legal type and irrespective of other matters] such as when the activity is incongruent with the legal type [if the law is enacted][or else face penalty for noncompliance] (11)
[CSOs][F][exceed specific threshold of budget spent on overhead] such as a certain percentage of budgets spent on administrative costs [if the law is enacted][or else face penalty for noncompliance] (7)	[CSOs][O][obtain a license to perform a general activity repeatedly] as opposed to obtaining a permit each time it plans to perform the activity [if the law is enacted][or else face penalty for noncompliance] (9)
[CSOs][F][engage in specified activities][if it receives foreign funds that exceed a threshold][or else face penalty for non-compliance] (7)	[Agency][O][have reasonable cause and follow explicit rules when conducting inspections of CSOs] such as requesting specific documentation or investigating offenses [if the law is enacted][or else it is overstepping its authority] (8)
[CSOs][O][obtain operational approvals—i.e., general licenses or individual permits—from multiple government units] such as multiple agencies, administrative jurisdictions, or a combination of both [if the law is enacted][or else face penalty for noncompliance] (3)	[CSO][P][use foreign funds for certain activities because its legal definition either expressly permits it or does not explicitly prohibit it][if the law is enacted][or else choose not to accept the funds] (7)
[CSOs][O][follow prescribed rules regarding internal administrative matters and/or activities][if the law is enacted][or else face penalty for non-compliance] (3)	[CSO][P][conduct activities without notifying local governments][if the law is enacted][or else notify government or not conduct activities] (5)
[CSOs][O][surrender project assets to government][after it is completed or CSO is dissolved][or else face penalty for non-compliance] (1)	[Agency][F][hold CSOs to different requirements for staff than other employers][if the law is enacted][or else it is overstepping its authority] (4)
[CSOs][O][acquire approval to operate separate from formal registration][after commencement of law][or else face penalty for non-compliance]	[Agency][F][require CSOs to renew operational approvals][if CSOs’ activities are generally unchanged and they are registered][or else it is overstepping its authority]

DEONTIC operators: [P]=permitted/may; [F]=forbidden/may not; [O]=obliged/must. The syntax concatenates five components: [ATTRIBUTE][DEONTIC][AIM][CONDITIONS][OR ELSE].

**Table 4.4: Resources Provisions Rewritten with the ADICO Syntax**

Restrictive Provision	Permissive Provision
[CSOs][O][acquire one-time approval to receive foreign funding that is separate from formal registration][if the law is enacted][or else it cannot receive those resources without facing penalty for noncompliance] (10)	[CSOs][O][report their finances for public access][if the law is enacted][or else face penalty for non-compliance] (15)
[CSOs][F][receive more than a specified threshold of foreign funding] such as a fixed value or percentage of its budget [if the law is enacted][or else face penalty for noncompliance] (9)	[Private entities][P][take a tax deduction for supporting certain CSOs according to their legal type] such as donations to 501(c)(3)s but not contributions to political parties [if the law is enacted][or else choose not to take the deduction] (9)
[CSOs][O][acquire government approval for each financial transaction or project][if the law is enacted][or else it cannot receive those resources without facing penalty for noncompliance] (7)	[Government][O][ensure CSOs enjoy all rights of their legal type] such as a preferential treatment on property, sales, or payroll taxes [if the law is enacted][or else it is negligent in its duties] (9)
[CSOs][O][use certain depository institutions] such as government banks [if the law is enacted][or else face penalty for non-compliance] (7)	[CSOs][P][engage in unrelated business activities] such as revenue generation [if the law is enacted][or else choose not to pursue those activities] (4)
[CSOs][O][provide information on its financial matters] such as financing agreements, contracts, or employee salaries [when the regulating agency requests][or else face penalty for noncompliance] (7)	[CSOs][P][engage in legal fundraising for financial and non-financial resources] such as donations, mission-related business, foreign funding, loans, and government contracts [if the law is enacted][or else choose not to pursue those activities] (4)
[CSOs][F][receive foreign funding from certain sources] such as foreign governments or private sponsors explicitly stated [if the law is enacted][or else face penalty for noncompliance] (5)	[CSOs][O][pay taxes on unrelated business activities] such as revenue earned on sales of products/services unrelated to their charitable mission [if the law is enacted][or else face penalty for noncompliance] (2)
[CSOs][O][pay taxes on foreign funding]when similar funding from domestic sources would not be taxed [if the law is enacted][or else face penalty for noncompliance] (5)	[CSOs][P][appeal decisions disadvantaging their positioning on financial and non-financial matters] such as orders regarding fines, taxes, foreign funding, and ownership of property [after such decisions are communicated][or else accept the decision] (1)
[CSOs][F][receive any foreign funding under any circumstances][if the law is enacted][or else face penalty for non-compliance] (4)	[International CSOs][F][crowd-out local CSO from funding opportunities] such as winning grants or not partnering with domestic CSOs [when funding opportunities are announced][or else face penalty for noncompliance] (1)

DEONTIC operators: [P]=permitted/may; [F]=forbidden/may not; [O]=obliged/must. The syntax concatenates five components: [ATTRIBUTE][DEONTIC][A/M][CONDITIONS][OR ELSE].

Existing research discusses 16 different resources provisions (Table 4.4). Four of these appeared in the legal corpus over 100 times. High-frequency provisions are those that discuss whether CSOs can pursue fundraising activities (151 laws, 53%), enjoy special privileges (132 laws, 46%), publicly report their finances (118 laws, 41%), and if these organizations can engage in unrelated business activities to raise revenue that is reinvested in the organization (102 law,

36%). The resources provisions that appear the least frequently in the legal corpus are those that require government approval for each foreign transaction (7 laws, 3%) and those prohibiting foreign funding from specific sources (2 laws, 1%). The laws in the legal corpus contain no legal provisions taxing foreign funding or structuring access to financing that would benefit local CSOs.

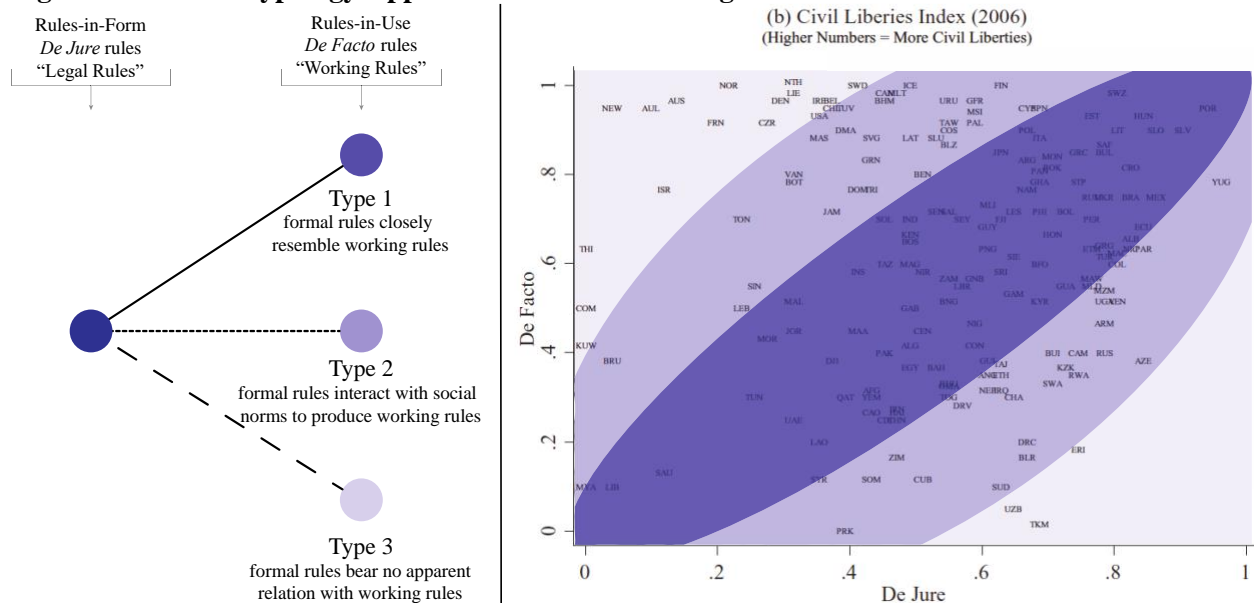
### **“Working Rules”: The Risk of Overemphasizing Rules-in-Form**

The coding protocol creates a novel and robust dataset by carefully and systematically inventorying the legal provisions of a large legal corpus. These data are also limited, however, because they do not capture the difference between the rules-in-form that are confined to the four corners of legal text versus the rules-in-use that the government and civil society experience during day-to-day activities. I recognize the consequences of this *de jure* and *de facto* distinction and assert its threat to inference is smaller in analyses studying the enactment of legal provisions and more problematic in studies exploring enforcement and compliance. Accordingly, I conduct the analysis in this chapter, along with those in Chapters Three and Five, with the assumption that rules-in-form match rules-in-use. I do not carry the assumption into [Chapter Seven](#), where I use a controlled comparison to study the implementation and enforcement of Kenya’s regulatory regime.

As many have identified, rules do not enforce themselves, and rules in the book do not always mirror rules in action (Pound, 1910; Commons, 1924; V. Ostrom, 1976; E. Ostrom, 2005; McGinnis, 2011). Cole (2017, pp. 11-16), working in the Ostroms’ tradition of institutional analysis, provides the necessary terminology to explain these observed differentials using a three-part typology that distinguishes “legal rules” (*de jure*) from “working rules” (*de facto*).

According to Cole, there are three types of rules. Type 1 working rules include formal legal rules that closely resemble working rules. Type 2 working rules are those where legal rules interact with social norms to produce working rules that deviate from legal rules. Then, Type 3 working rules are those where legal rules share no apparent relation with *de facto* working rules. The following figure attempts to visually depict Cole’s typology (left panel) and apply it to an example comparing constitutional rights (*de jure*) and civil liberties (*de facto*) (right panel).

**Figure 4.1: Cole’s Typology Applied to Constitutional Rights and *De Facto* Civil Liberties**



Adapted from “Laws, Norms, and the Institutional Analysis and Development Framework” (Cole, 2017, pp. 11-16) and *The Endurance of National Constitutions* (Elkins, Ginsburg and Melton 2009:54, Figure 3.3(b)). Shaded areas arbitrarily assigned to depict Cole’s typology among *de jure* constitutional rights and *de facto* civil liberties.

The scatterplot in Figure 4.1 shows measures of civil liberties enshrined in constitutions (x-axis) and civil liberties experienced by citizens (y-axis). Higher numbers indicate greater civil liberties in both directions. The shading represents Cole’s working rules. Type 1 working rules, where formal rules closely resemble working rules, are countries where constitutional protections closely approximate civil liberties. In these countries, there is a strong, positive correlation between *de jure* and *de facto*. Type 2 rules, where formal rules interact with social norms to

produce working rules, are countries in the moderately shaded area. In these cases, the correlation between *de jure* and *de facto* is positive but noisier than Type 1 rules. Type 3 rules, where formal rules share no apparent relation with working rules, are in the lightly shaded periphery. Notice that deviating from legal rules is not necessarily bad. Some deviations signal “outperforming” legal rules, such as New Zealand and Australia (top-left), where *de facto* civil liberties exceed *de jure* civil rights. The opposite is also true, and some countries “underperform” the rights enshrined in their constitutions—e.g., Eritrea and Turkmenistan (bottom-right).

Rarely have scholars studying CSO laws discussed the implications of the legal-rules versus working-rules difference (cf. DeMattee & Swiney, 2020). Yet, acknowledging Cole’s typology is relevant to the study of regulatory regimes because scholars have identified the inconsistent, subnational enforcement of permissive and restrictive rules in countries such as Ethiopia, North Korea, and Russia (S. Snyder, 2007; Cunningham, 2018; Toepler et al., 2019), but theory for explaining inconsistent enforcement and compliance does not yet exist. This legal-rules versus working-rules differential is perhaps the least studied yet most important agenda in the research program studying CSO laws and policies. This task of theory-building is at the center of my analysis in Chapter Seven.

### **Operationalizing a Coded Legal Corpus**

In [Chapter Two](#), I discussed collecting, translating, and coding a legal corpus of 285 laws enacted by 17 countries between 1872 and 2019. A critical step in that process was using the ADICO syntax to transform the matrix typology mentioned above into a 58-item coding protocol. With coding complete, the data exist as a rectangular dataset where each row represents a version of a statute in a particular country, and each column is a field from the coding sheet

that inventoried that version's contents. I use a deductive approach to construct indicators following *a priori* decision rules (Gerring, 2012b, p. 172). The rules are that if the law contains a particular restrictive provision, I code the provision as *-1*. If the law does not discuss the restrictive provision, I code the provision as absent (*N/A*). If the law contains the negation of the restrictive provision, I code the provision as *+1*. The rules do not use *0* for any outcome because present, absent, and negation represent all possible coding outcomes. A symmetrical set of rules codes permissive provisions: present *+1*; absent *N/A*; negation *-1*. From there, it is possible to quantify several aggregate scores that are clear, explicit, and replicable.<sup>12</sup>

- *Law-level Score*<sup>13</sup>—sum all nonzero values of a given law. Aggregation produces an integer value between -58 (i.e., all provisions present and all permissive provisions in negation) and +58 (i.e., all provisions present and all restrictive provisions in negation). This summative index allows analysts to compare laws coarsely.
- *Country-year-provision Score*—average nonzero counts of a given provision from all laws actively contributing to the country's regulatory regime in the given year. Averaging equally weights all laws and creates a country-year-provision value (possibly non-integer) between -1 and +1. Averaging is preferred to summation so as not to overcount countries with many laws active at once. The coding protocol does not contain *0* values, and the only way for a country-year-provision value to be zero is if a country's regulatory regime contains an equal number of -1s and +1s for that provision. It is possible to

<sup>12</sup> The [Appendix](#) contains a discussion of measurement validity that some readers may find valuable.

<sup>13</sup> The aggregation formula equally weighs all provisions because there is no theoretical expectation that leads to an alternative weighting scheme. Researchers have used similar equally-weighted indexes to estimate constitutional boundaries of executive lawmaking and immigrant policy in American states (J. Nicholson-Crotty & Nicholson-Crotty, 2011; Elkins et al., 2012, 2014b).



calculate country-year-provision values for any legal provision in the coding protocol.

This precision allows analysts to compare between and within cases the presence of each provision (or constellations of provisions).

- *Country-year-regime Score*—sum all country-year-provision scores for all provisions (or within subgroup for a subgroup score). Aggregation results in a value (possibly non-integer) between -58 and +58. The summative index allows analysts to compare regulatory regimes cross-nationally or over time.

### **Illustrating the Institutional Development of CSO Laws in 17 Countries**

Several interesting empirical questions emerge from conceptualizing CSO regulatory regimes more precisely. Most pressing is the argument that the government-led crackdown of civil society is happening primarily through the enactment of laws, not the removal of policy (Carothers, 2006; Gershman & Allen, 2006; Carothers & Brechenmacher, 2014; Rutzen, 2015; Dupuy et al., 2016). This suggests regulatory regimes are changing by becoming bigger and more restrictive. The degree to which this is true is a falsifiable, empirical question that can be studied systematically. I demonstrate how this can be done using my regulatory regime concept and operationalizing it by applying my coding protocol to my 285-law legal corpus.

Because this conceptualization can bore into a regulatory regime's underlying subgroups, research can assess the sequence, tempo, and distance each subgroup changes and moves through the two-dimensional space. I find regulatory regimes very rarely change in a stepwise, discrete manner and instead develop through a long, slow, and muddled processes. As I illustrate in the following sections, knowing what a regulatory regime looks like today is a strong predictor of what it will look like tomorrow.



The following analyses focus primarily on the East African Community (EAC) countries, but I also discuss neighboring African countries and the P5 members. The most granular level of measurement is the legal provision, which is equivalent to the institutional statements in the coding protocol (Tables 4.1 thru 4.4). The level of analysis is always the country, but the units of observation can encompass the entire regulatory regime or be as specific as a subgroup or particular provision. My descriptive analyses begin at the most aggregate—i.e., the number of active laws—and gradually narrow to discuss the data at smaller units of observation.

To preview my main descriptive findings, my analysis shows that regulatory regimes are not new, and governments have changed these complex legal institutions since statehood. Indeed, most of these legal institutions predate a country's independence and are inherited from colonial powers. Second, as expected, laws imprecisely measure regulatory regimes because they vary widely and contain very different permutations of legal provisions. Indeed, in each year since 1960, the regulatory regimes studied here include, on average, nearly 20 of the 58 legal provisions contained in the coding protocol. Next, a “net” measure that subtracts the stock of restrictive provisions from the stock of permissive ones is also blunt and imprecise because it produces a muddled middle where multiple combinations of restrictive and permissive stocks produce identical “net” measures. Fourth, my data show that the four provision subgroups change at different speeds and that governments have regularly enacted permissive expansions over time. Finally, the data suggest the most effective approach to evaluate the institutional change in regulatory regimes is to analyze the subgroup. Analyzing the data at this level indicates that governments add permissive provisions more than twice as frequently than restrictive ones. What is more, when governments add more permissive provisions to the

regulatory regime, those bundles are, on average, more than two times larger than the bundles of restrictive provisions that governments add.

*Changing Legal Institutions: Active CSO Laws*

Figure 4.2 shows the number of active laws within the EAC has steadily increased over time. Thin lines represent the number of laws in EAC member countries, and thick lines represent averages for the EAC (solid), neighboring African countries (dotted), and the P5

**Figure 4.2: Increasing Number of Active Laws (1960 to 2018)**

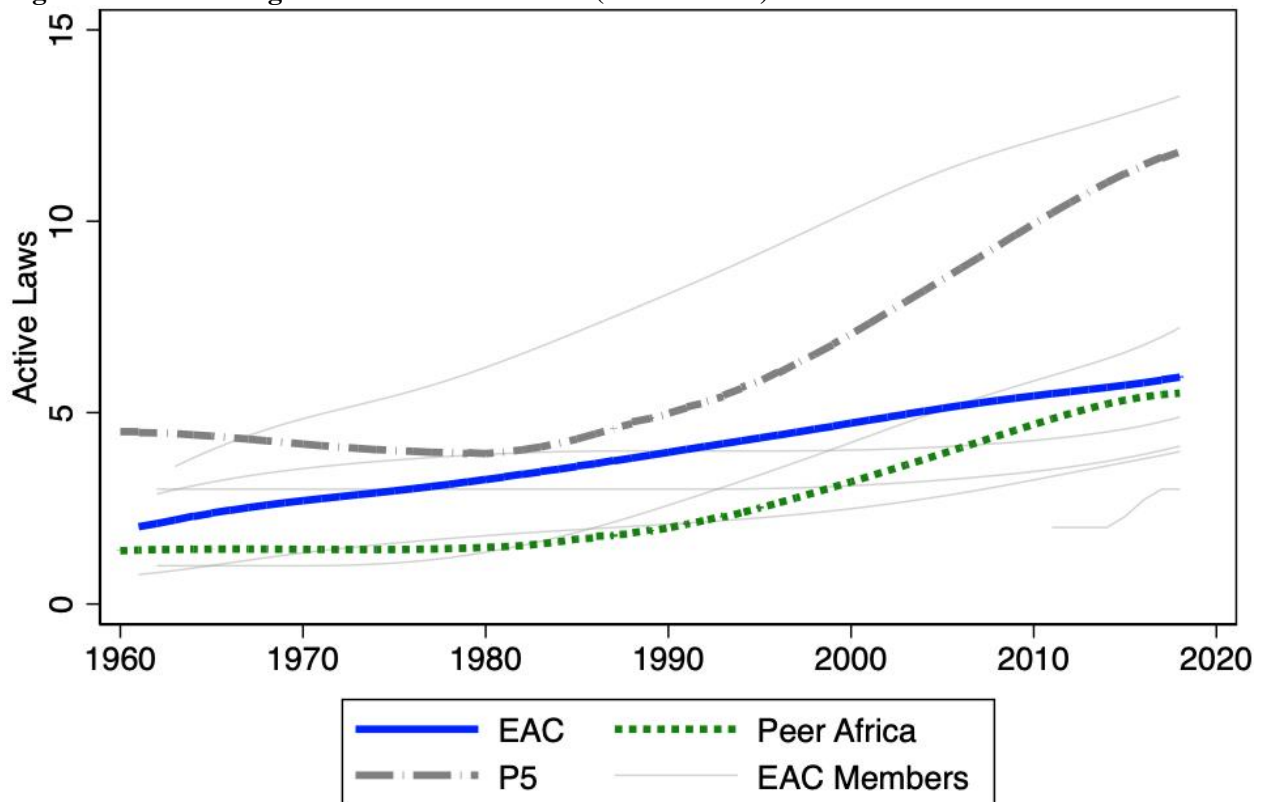


Figure shows the number of laws actively contributing to each country’s CSO regulatory regime. Thin lines represent the six EAC member countries, and thick lines sample average for the sample’s three groups: EAC, neighboring African countries (Peer Africa), and the Permanent Members of the U.N. Security Council (P5). Lowess functions smooth lines to ease interpretation of the 60-year period. Sources are original data created by qualitatively coding primary source documents (i.e., laws) from 17 countries.

(dashed). The trend of a steadily increasing number of laws appears to apply to other African countries and P5 members. EAC countries averaged almost three laws per country in the year of

their independence. The group ended the observation period averaging over six laws each and averaged four active laws per country throughout the nearly 60-year period. Kenya has the highest number of active laws (13 from 2013 onward), while Tanzania and Uganda each had only one law early in their history. Combining this data with that from Chapter Three confirms that regulatory regimes almost always contain preexisting institutions. Data from other countries generally support this: of the data's 919 country-year observations beginning in 1960, over 89% (820) have at least one active law.<sup>14</sup> Therefore, analyzing these legal institutions as empty policy spaces is an unsupported assumption and may produce spurious findings.

These histories also suggest current regulatory regimes are, at least in part, a continuation of colonial institutions inherited at independence. Tanzania was the first EAC member to secure its independence (1961). At that moment, the Societies Ordinance (enacted 1954; amended 1957, 1962, 1963, 1969) comprised the Tanzania regulatory regime until new laws joined it in 1973. Uganda and Kenya experienced similar colonial inheritances (see [Statute Coding Bibliography](#) in Appendix). In 1962, Burundi and Rwanda secured their independence with three Nineteenth-Century Belgian laws shaping their regulatory regimes. Belgian authorities enacted these laws between 1888 and 1902, a period during which German East Africa controlled the territories.<sup>15</sup> After its defeat in WWI, Germany ceded control of its African territories to Belgium. At that moment, the Belgian mandate expanded and regulated these territories until their independence.

<sup>14</sup> This percentage increases to over 93% when I exclude the years before which the Russian and Chinese legal databases provide coverage.

<sup>15</sup> German control (approx. 1885 to 1919), Belgian King Leopold II exercised personal rule over the Congo Free State (approx. 1885 to 1908), and his government enacted several decrees to regulate civil society that remained part of the Belgian mandate (approx. 1908 to 1962). Then, after Germany's defeat in WWI, it ceded to Belgium control of its African territories. At that moment in 1919, the Belgian mandate regulated Burundi and Rwanda until their independence in 1962.

Rwanda eventually repealed the decree with its statute Relating to Non-Profit Making Organizations (Law No. 20/2000 § 45). Burundi's laws contain no such provisions and the decree, *Institutions. Associations Scientifiques, Religieuses, Philanthropiques, etc.* (28 décembre 1888), appears to still contribute to the Burundian regulatory regime.

Countries neighboring the EAC averaged slightly more than one law early in the observation window and ended the period averaging over five. The group averaged over 2.5 active laws per country throughout the period. Ethiopia has the highest number of active laws (at least 11 from 2003 onward) while the Central African Republic and Mozambique did not enact their first CSO law until 2004 and 1991, respectively.

The data suggests P5 members average more active laws than either group of African countries. In 1960, France and the United States each had two active laws, and the United Kingdom had nine. When legal databases started covering Russia (1979) and China (1980), each country had only one active law. Over the remaining four decades, most P5 members gradually added laws to their regulatory regimes. They ended the period averaging 14 active laws per country in 2018. The United States, however, has never exceeded two active laws for the duration of its legal institution that began with the Tariff Act of 1894. This low volume does not mean an early ossification of the American regulatory system. The legal corpus contains more than two dozen statutes that incrementally changed America's regulatory regime for over a century. Most of these changes are friendly, permissive expansions that changed the tax code, which swelled from 89 pages in 1913, to 879 in 1986. Others, such as the Internal Security Act of 1950 (amended 1968, 1971; fully repealed 1993), hindered voluntary associations that the government—and specifically the Subversive Activities Control Board (“the Board”)—believed were motivated by the world Communist movement.

### *Provision Types: Changing Stocks of Restrictive & Permissive Provisions*

The number of active laws in a country is just one measurement of the government's attitude toward civil society. Its imprecision is evident, so perhaps a more useful measure is one that explores the contents of laws. Figure 4.3 (left panel) shows the counts of restrictive and permissive provisions for every country-year observation in the sample. The different shapes represent different country groupings, and the diagonal reference line identifies locations where counts of restrictive and permissive provisions are equal. Values above the reference indicate permissive provisions outnumber restrictive ones. The data show that the 17 countries in the sample generate over 100 unique combinations of restrictive and permissive counts, which is another indication that institutional change regularly occurs. The average permissive count (11.5) is almost double the average restrictive count (6.5), which explains why most observations are above the reference line. Kenya 1963 is the closest country-year value to those average values. Illustrating the data in this way reinforces two central arguments of my dissertation: one, a call on scholars to conceptualize CSO regulatory regimes as legal institutions of multiple laws fusing many restrictive and permissive legal provisions; two, a reminder that these legal institutions have long histories.

Figure 4.3 shows the same data for a restricted sample of EAC countries at three points in time: the year they achieved independence, 1990, and 2018 (right panel). The differences between these decades-long observations further demonstrate that preexisting institutions and a process of institutional change characterize these legal institutions. At independence, four EAC members had more permissive provisions than restrictive ones. Uganda and Tanzania are the exceptions. At independence, their regulatory regimes were overweight restrictive provisions. Over time, all EAC members changed the composition of their restrictive and permissive stocks.

It appears Tanzania is the only member to add permissive provisions, and South Sudan the only member to expand its restrictive stock while shrinking its permissive one. The remaining

**Figure 4.3: Changing Stocks of Restrictive and Permissive Provisions (1945 to 2018)**

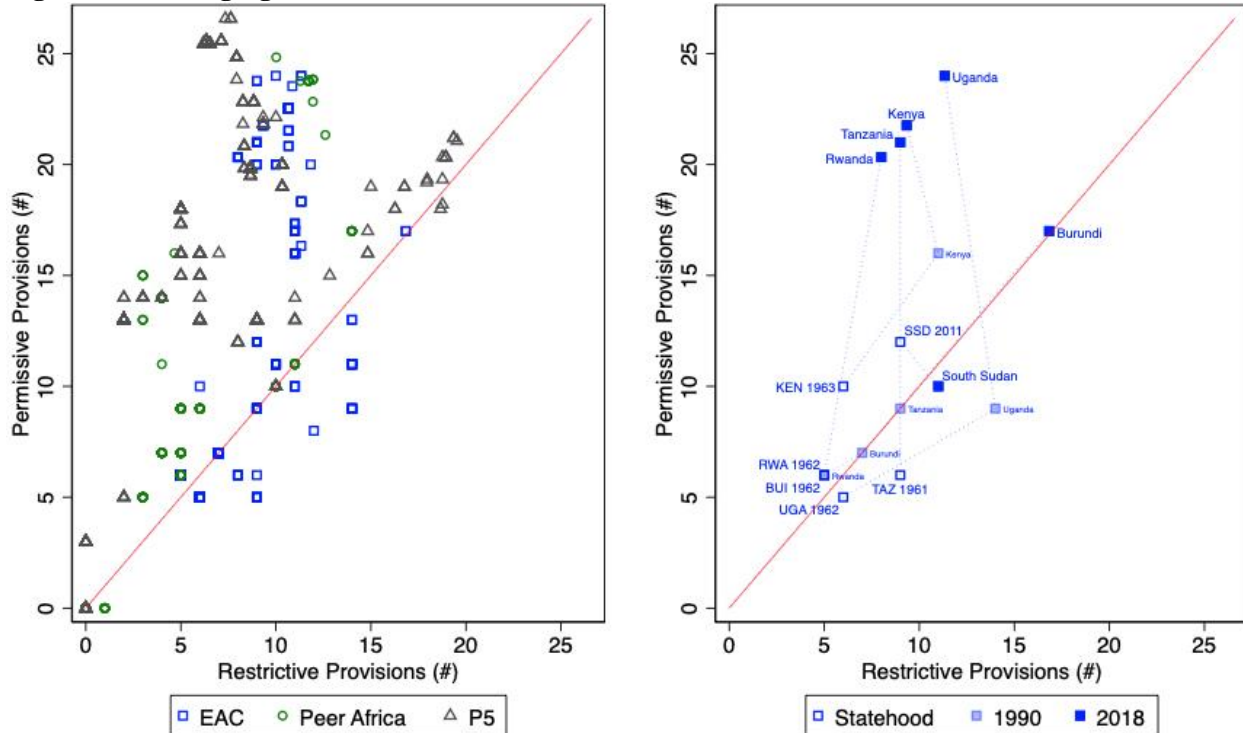


Figure shows country-year counts of restrictive provisions (x-axis) and permissive provisions (y-axis). Left panel shows data for the full sample (1945 thru 2018). Shapes represent EAC members (squares), neighboring African countries (circles), and the Permanent Members of the U.N. Security Council (triangles). Right panel highlights EAC member countries at three points in time: statehood, 1990, and 2018. Diagonal reference lines represent equal counts of restrictive and permissive provisions.

members increased both stocks. Kenya, Rwanda, and Uganda began in approximately the same location at independence and added similar amounts of restrictive and permissive provisions to their regulatory regimes. In general, their additions appear to overweight permissive provisions. Burundi, in sharp contrast to other EAC members, aggressively added to both provision types and currently has some of the largest stocks in the sample.

### Subgroup Variation: Expanding Subgroups

Unpacking regulatory regime to the subgroup level provides even further information. The following figure shows the percentage of coding protocol items that existed in the country's regulatory regime in a given year. I refer to this percentage as "density," which appropriately suggests that higher values represent subgroups with more legal provisions. For example, a country-year value of 1 indicates maximum density: the country's active laws contain legal language matching all items in the coding protocol for that subgroup. The indicator is a percentage, which standardizes comparison across subgroups with an unequal number of coding protocol items.

**Figure 4.4a: Changing Compositions of Regulatory Regime Subgroups (1960 to 2018)**

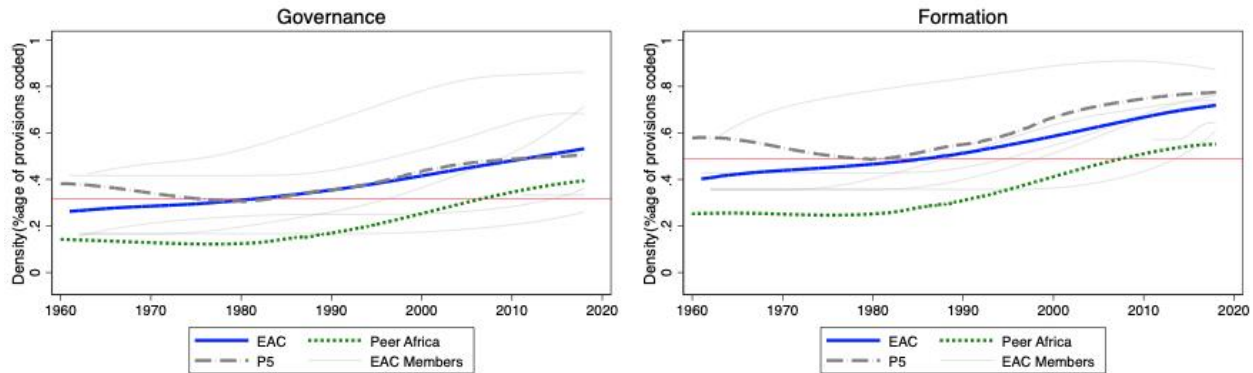


Figure shows density of coding protocol items present in each country's regulatory regime. Density is a percentage of all institutional statements in the subgroup. Panels represent subgroups: Governance (left, 12 provisions) and Formation (right, 14 provisions). Figure 4.4b contains remaining subgroups. Thin lines represent EAC member countries, and thick lines averages for the EAC (solid), neighboring African countries (dotted), and the Permanent Members of the U.N. Security Council (dashed). Horizontal reference lines represent average density for each subgroup calculated for all country-year observations. Lowess functions smooth lines to ease interpretation of the 60-year period.

Panels in Figures 4.4 show the changing density of each subgroup in the regulatory regime. Thin lines represent EAC members, and thick lines represent averages for the EAC (solid), neighboring African countries (dotted), and the P5 (dashed). Horizontal reference lines represent the average density calculated for all country-year observations from 1960. The governance



subgroup (Figure 4.4a, left panel) has 12 items in the coding protocol (see also Table 4.1). The average density in the governance subgroup for the regulatory regimes is 0.32. This value means that, since 1960, the average regulatory regime contained nearly four governance provisions.<sup>16</sup> The positive slope of all lines in the subgroup suggests governments have added new governance provisions to their regulatory regimes over the observation period. The formation subgroup (Figure 4.4a, right panel) has 14 items in the coding protocol. The average density is approximately 0.50, which is markedly higher than the governance subgroup. On average, the regulatory regime contained legal language matching seven of the formation provisions in the coding protocol.

**Figure 4.4b: Changing Compositions of Regulatory Regime Subgroups (1960 to 2018)**

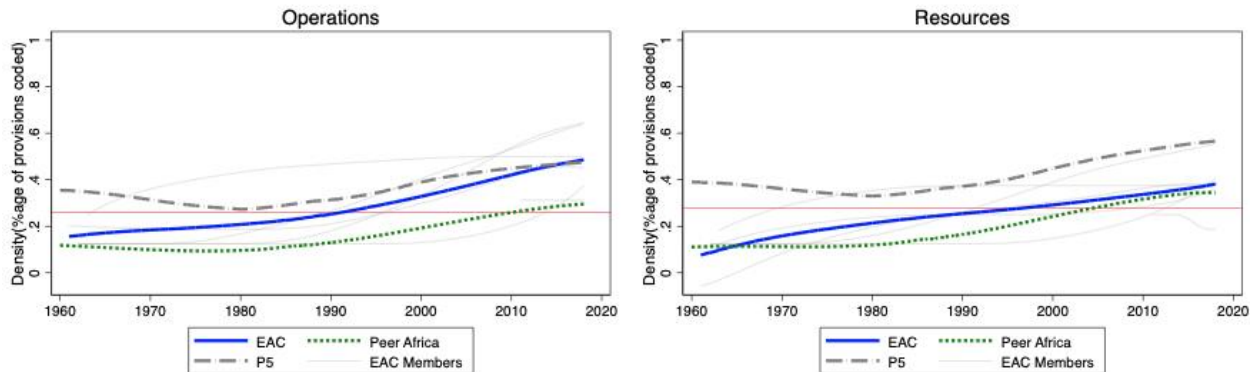


Figure shows density of coding protocol items present in each country's regulatory regime. Density is a percentage of all institutional statements in the subgroup. Panels represent subgroups: Operations (left, 16 provisions), Resources (right, 16 provisions). Figure 4.4a contains remaining subgroups. Thin lines represent EAC member countries, and thick lines averages for the EAC (solid), neighboring African countries (dotted), and the Permanent Members of the U.N. Security Council (dashed). Horizontal reference lines represent average density for each subgroup calculated for all country-year observations. Lowess functions smooth lines to ease interpretation of the 60-year period.

Similarly, the average density for the operations and resources subgroups is 0.26 and 0.28, respectively. The values are represented by the horizontal lines in Figure 4.4b. The coding protocol contains 16 provisions for each subgroup, which means that regulatory regimes contain

<sup>16</sup> There are 12 governance provisions and the average density for the subgroup is 0.32. Thus,  $12 \times 0.32 = 3.84$ .



about four operations and resources provisions each. Combining the average values for each subgroup leads to a straightforward interpretation suggesting that since 1960, the 17 regulatory regimes studied here contain, on average, nearly 20 unique provisions across the four subgroups. Over time, this average has increased from 15 unique provisions in 1970, to 17 in 1990, to 29 in 2018.

The panels show interesting subnational variation between and within subgroups that higher levels of aggregation hide. Formation provisions are consistently the most represented subgroup in the sample. This is logical because formation provisions discuss the legal status and processes by which informal voluntary associations incorporate as formal legal entities. Thus, for laws to affect particular CSOs, laws must also be created (or updated) to specify distinct legal definitions, explain registration processes and requirements, describe rejection and appeal protocols, etc. (see Table 4.2). Governance provisions are the second most represented subgroup. In 1960, the average EAC country had higher densities of governance provisions (almost 30%) than operations or resource provisions. It took three decades of institutional change before operations and resource densities reached that 30% benchmark. The EAC added provisions in the other subgroups over the period, and by 1990 each had surpassed the subgroup's average density. These patterns of incremental institutional change and subnational variation inform my analyses in the next chapter.

The EAC, neighboring African, and P5 countries appear to travel unique developmental paths, and each path consistently represents institutional change. The average EAC country seems to pursue consistent and moderate institutional change over the nearly 60-year period. The solid and mostly straight line in each panel supports this, but the thin lines representing EAC members show institutional change varies considerably between countries. The dotted line

representing neighboring African countries shows little institutional change before 1980, after which the developmental path consistently and moderately increases. Differences in colonial institutions may be one possible explanation for this delay. The EAC has more former British colonies among them than neighboring countries, which raises the possibility that different mechanisms connected with colonial institutions may expedite institutional change. For example, British colonial institutions may have established a practice of frequently changing legal institutions, or a shared colonial history causes policy innovations to quickly diffuse among a network of countries with the same colonial history.

The average P5 density was high in 1960, declined until 1980, promptly rebounded to set new highs in the early-1990s, and continues to add provisions in each subgroup. This path of institutional change is consistent and positive in these global hegemony starting in 1980, about the same time when the coverage of Russian and Chinese legal databases begins. These trends will inform the analyses of Chapter Five, where I examine policy diffusion from P5 countries to East Africa.

The density indicator also suggests the sample may contain leader and laggard groups. For most years, the average P5 country has higher densities in each subgroup. While the EAC closes this gap in the governance and operations subgroups in 1980 and 2018, respectively, the average neighboring African country continually lags the P5 in all subgroups. In the late-1990s, however, neighboring countries seemed to accelerate the development of resource provisions, and by the end of the observation period, those countries closely resembled the EAC. These leader-laggard positions are purely suggestive when used with group averages. Assigning these roles to specific countries, as I do in the next chapter, is much more appropriate.

### *Subgroup Variation: Changing Permissiveness*

The regulatory regimes we see today are legal institutions with long histories. While many appear inherited from colonial powers, all have incrementally changed at different points in different ways. The EAC's six regulatory regimes contain, on average, over 20 various provisions pulled from four provision subgroups. They have included as few as 11 to as many as 38 provisions (or densities between 0.19 to 0.66). While there are many indications that regulatory regimes are getting bigger, it does not necessarily mean they are getting "badder" nor "better." The density measure usefully scales-down to assess regulatory regimes' changing compositions. Yet, similar to counting the number of active laws (e.g., Figure 4.2), the indicator bluntly measures institutional change and fails to account for the changing quality of the regime. It is my assessment that the best analytical approach is to measure and analyze CSO regulatory regimes in a manner that (1) scales-down to the subgroup level to capture the variation that is lost by merely counting laws, and (2) maintain the restrictive-permissive dichotomy so as to avoid the muddled middle of simple "net" measures. I discuss such a proposal here and use it my analyses in Chapter Five.

The permissiveness of any regulatory regime, or any of its subgroups, is the degree to which the legal institution creates an enabling environment that encourages civil society to grow and thrive. If a government develops a regulatory regime to protect and help civil society, then its subgroups should contain fewer restrictive provisions and more permissive ones. Regulatory regimes undergo *permissive expansions* if governments add permissive provisions or remove restrictive ones. The opposite is also true. *Restrictive expansions* occur when governments add restrictive provisions or remove permissive ones.

Next, I compare the sample’s permissiveness across subgroups while also conducting within-country comparisons at two points in time—1980 and 2018—for all 17 countries<sup>17</sup> (Figure 4.5). The referent year is 1980 because it is the first year both Russian and Chinese legal databases covered laws. Of the five EAC members that existed in 1980, most had favorable permissiveness scores in all subgroups. Though Burundi, Rwanda, Tanzania, and Uganda all had net-restrictive governance provisions, only two had an additional subgroup where restrictive provisions outnumbered permissive ones. In 1980, Tanzania had a net-restrictive formation subgroup, while Uganda had a net-restrictive operations subgroup. In the decades that followed, the five EAC countries changed their regulatory regimes to benefit civil society.

Because each country’s regulatory regime contains four subgroups, there are four times as many country-subgroup combinations as there are regulatory regimes. Between 1980 and 2018, 75% of the EAC’s country-subgroup combinations became more permissive, and only 20% became more restrictive (formation subgroup Burundi; operations subgroup Burundi, Rwanda, Uganda). These percentages are somewhat surprising because this is the period when the “closing space” phenomena emerged, and governments began passing laws restricting the civic space. In 2018, all six EAC members had a net-permissive resources subgroup, and four had favorable permissiveness scores for their governance and formation subgroups. The operations subgroup, meanwhile, is net-permissive for only Tanzania and Kenya, which both implemented permissive expansions. The four remaining EAC members all have a net-restrictive operations subgroup. These countries represent four of the least permissive operations subgroups in 2018.

<sup>17</sup> Except South Sudan, which earned its independence from Sudan on July 9<sup>th</sup>, 2011, and was formally admitted to the United Nations on July 14<sup>th</sup>, 2011.

**Figure 4.5: Changing Permissiveness within Subgroups**

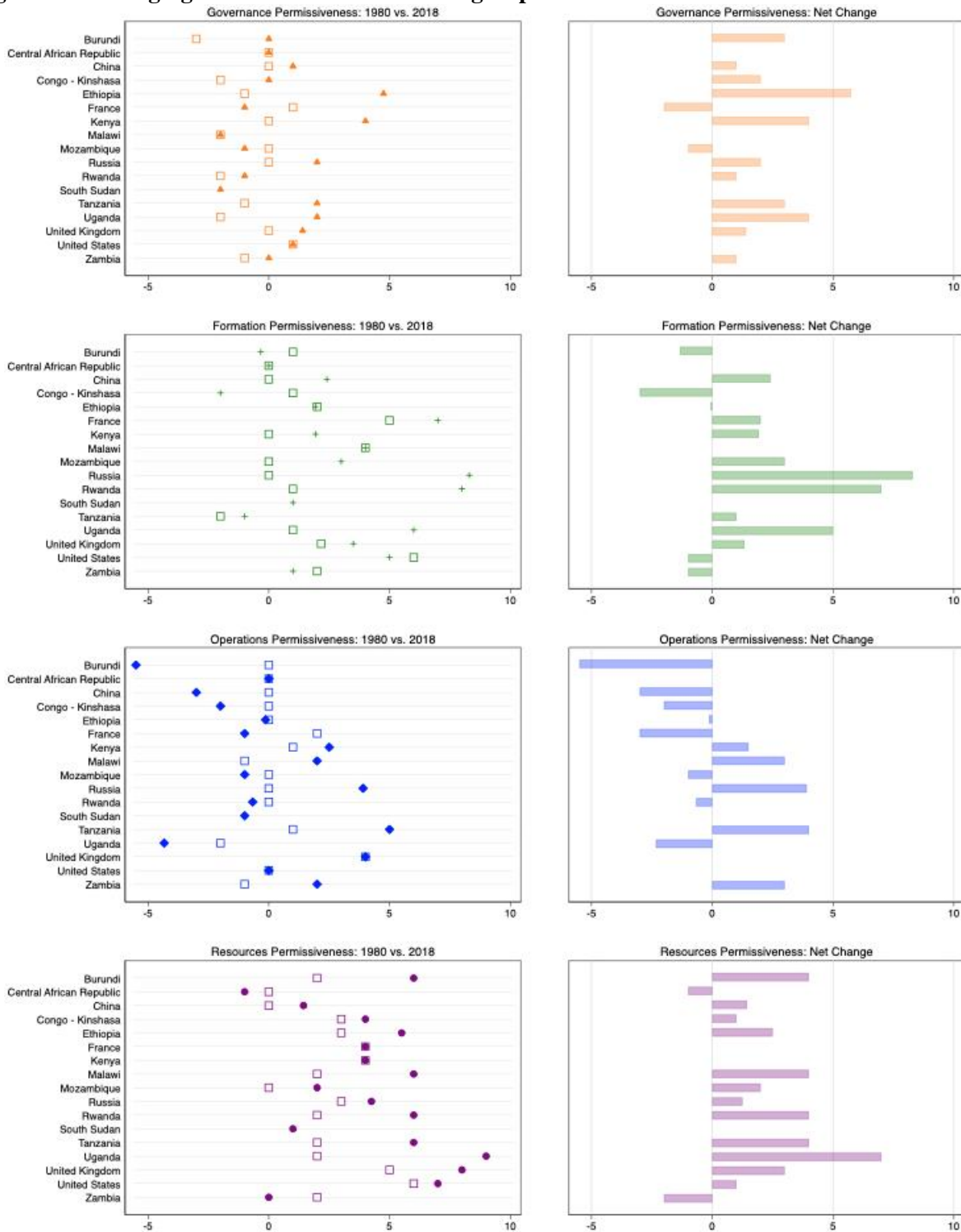


Figure shows the changing permissiveness of each subgroup. Left column compares permissiveness in 1980 (hollow figures) to 2018 (solid shapes). Missing shapes indicate no provisions of that type in the given year. Right column graphs the net change in 1980 and 2018 values. Positive values indicate permissive expansions, while negative values indicate restrictive ones.

Next is a broader discussion of all countries in the sample. In 1980, the resources subgroup had the most countries with net-permissive environments, represented by the large proportion of hollow figures with positive values (Figure 4.5 bottom panel). The United States and the United Kingdom were the most permissive of these 13 countries. Three countries had neutral environments, but none had a net-restrictive resource subgroup. The formation subgroup had the second most net-permissive environments. The United States, France, and Malawi led these ten countries. Only one country, Tanzania, had a net-restrictive formation subgroup. The data show the 1980s operations subgroups are mixed. While there are slightly more net-permissive environments than net-restrictive ones, nine countries had neutral operations subgroups. Eight net-restrictive governance subgroups outnumbered two net-permissive ones. Burundi, DRC, Rwanda, Malawi, and Uganda were the most restrictive, while France and the United States represented the only net-permissive environments.

The regulatory regimes that existed in 1980 each contained subgroups in which institutional change occurred over a nearly 40-year period. By 2018, the greatest number of net-permissive environments were resources subgroups (15), formation subgroups (13), governance subgroups (8), and operations subgroups (6). The most net-restrictive environments mirrored these: operations (9), governance (5), formation (3), and resources (1). Figure 4.5 (left panel) represents institutional change as gaps between hollow figures (1980 values) and solid shapes (2018 values). Solid shapes to the right of hollow figures indicate permissive expansions, and wider gaps suggest greater expansions. The horizontal bar chart (Figure 4.5, right panel) communicates the same information and standardizes the referent value to zero. Of the 64 country-subgroup combinations that existed in 1980 and 2018, 17 (27%) experienced restrictive expansions, but over twice as many (37 or 58%) underwent permissive expansions. Only ten, or roughly 15%,

experienced no net change. Again, the data challenge the central thesis of the “closing space” argument that suggests governments pass restrictive laws to minimize civil society. It is the case that restrictive provisions emerge, but that is not the whole story. Indeed, permissive expansions occur more frequently than restrictive ones, and they often happen in places where we least expect: in semi-authoritarian and authoritarian regimes. This shows the conventional explanation that “democracies enact liberal laws while nondemocracies enact illiberal ones” is incorrect.

I submit that the conventional explanation is inaccurate because its theorizing and empirical investigation have only considered restrictive provisions. In simpler words, conventional wisdom is inaccurate because its theory and analyses are incomplete. The data show restrictive expansions are not only less frequent but also smaller than permissive expansions. Restrictive expansions ranged from -0.07 points (Ethiopia, formation subgroup) to -5.5 points (Burundi, operations subgroup), and changed permissiveness by an average -1.77 points. Permissive expansions, meanwhile, ranged from 1 point (China, DRC, Rwanda, Tanzania, United States, Zambia in various subgroups) to 8.3 points (Russia, formation subgroup), and changed permissiveness by an average +2.99 points.

Descriptive inference suggests three findings that I apply in my analyses in Chapter Five. One, institutional change began early and occurred frequently. Two, when institutional change occurs, governments add more permissive provisions than restrictive ones. And three, the majority of observed institutional change occurs within nondemocratic political regimes. This discussion and descriptive analysis has introduced the analytical value of subgroups and, at several points, emphasized the importance of preexisting institutions and institutional change. The primary takeaways are that these regulatory regimes are old and appear to change frequently

through the addition of restrictive and, more commonly, permissive legal provisions. But as the data also shows, institutional change varies by country.

## **Conclusion**

Recent global affairs and political developments have led governments, practitioners, and social scientists to give renewed attention to the regulatory systems that oversee the activity of civil society organizations, or what I call *CSO regulatory regimes*. While this is a relevant and timely subject, academic research in this area has existed for decades (Brass, Longhofer, Robinson, & Schnable, 2018), and the contributions of this chapter owe a particular debt to the existing work of scholars and analysts. I divided this chapter into two halves. In the chapter's early sections, I conceptualize these legal institutions for the first time and then theorize how different ideal-type affect civil society. The remainder of the chapter applied those concepts to a legal corpus of 285 laws from 17 countries to produce an original dataset that is more capable of studying CSO laws than any to have come before it. These concepts, theories, and original data provide new opportunities to answer questions regarding why and how countries regulate CSOs.

Reviewing existing research led to the creation of a mixed typology of the provisions that comprise regulatory regimes. The first dimension of the typology organizes provisions as either restrictive or permissive. *Restrictive* provisions can deteriorate society's trust in CSOs and thus decrease demand for them, or they can repress and intimidate organizations and thus decrease their supply. *Permissive* provisions, on the other hand, protect society and thus increase demand for CSOs, or create and preserve CSOs and thereby increase their long-run supply. The second dimension of the framework consists of four policy subgroups. These mutually exclusive categories stipulate how provisions get made and enforced (*governance*); define the types of



CSOs that can exist and the procedures for their emergence (*formation*); establish if and how CSOs obtain permission to conduct activities (*operations*); and outlines how financial and non-financial assets get recorded and reported (*resources*). A matrix typology organizes the types of provisions analyzed by scholars and presents them in the form of “institutional statements” (S. Crawford & E. Ostrom, 2005) for generalizability across contexts.

I argue CSO regulatory regimes are best understood legal institutions with multiple dimensions and long histories. Thus, the study of the development of regulatory regimes requires various approaches including but not limited to institutional change through incremental adjustment (Lindblom, 1959), endurance (Weingast, 1996), and extended time horizons that account for path-dependency, thresholds, and causal chains (Pierson, 1993, 2000, 2003).

The ADICO syntax, a tool of institutional analysis, allowed me to transform the matrix typology into a coding protocol capable of rigorously coding laws from 17 countries. By systematically coding laws and inventorying their legal provisions, I was able to identify and measure institutional change within the sample’s 17 legal institutions. Two descriptive findings lay the groundwork for the analysis in the next chapter. First, the number of active laws within countries has steadily increased over time. The qualitative analysis finds that nearly all countries have always had laws regulating this policy space since before their independences. In many cases, colonial powers initially erected the regulatory regimes that new governments inherited at independence. The implication of this is that existing research may have severely biased its findings by omitting these preexisting institutions. Second, these legal institutions demonstrate substantial within-country variation over time and at single moments in time. National level measures—e.g., counts of active laws or stocks of provision—appear to hide significant variation within the policy space (see Figures 4.4 and 4.5). Combining these two descriptive findings

suggests that subsequent analyses must account for preexisting institutions and use indicators that measure variation at the subgroup level. These insights directly inform the analysis conducted in my next chapter.

—Chapter V—

CSO LAWS IN EAST AFRICA: A CROSS-NATIONAL & REGIONAL COMPARATIVE  
ANALYSIS

[Chapter Three](#) showed preexisting institutions contribute to the development of CSO regulatory regimes and that legal provisions are different from each other. That analysis was limited, however, because it analyzed only a narrow range of restrictive resources provisions and omitted all legal provisions enacted before 1993. To overcome those data deficiencies, I made a strong turn toward history and narrowed my country sample to produce a novel dataset that I descriptively analyzed in the previous chapter. [Chapter Four](#) illustrated that regulatory regimes have long histories and contain multiple laws that fuse various permissive and restrictive provisions into one legal institution. That analysis showed that the legal provisions in regulatory regimes frequently change over time and suggests national-level measures—e.g., the number of active laws or a net measure of permissiveness or restrictiveness—mask this variation. What is more, the descriptive data suggest that permissive provisions are not reserved for democratic regimes and that a non-trivial number of nondemocratic countries have enacted permissive provisions. Indeed, since 1980, the data suggests it is more than twice as common for institutional change to take the shape of new “permissive” provisions rather than “restrictive” ones. The data also suggests that permissive expansions are not only more frequent but are also twice as large as restrictive expansions. This means that analyses that focus exclusively on the enactment of restrictive provisions ignore the type of institutional change that the data suggests is both bigger and more routine: new permissive expansions.

This new understanding of civil society laws and CSO regulatory regimes raises the stakes for researchers and practitioners. Now, to understand how and why governments regulate CSOs,

we must understand the conditions under which governments choose to enact permissive or restrictive expansions. Specifically, this means knowing which factors predict the direction and size of institutional change. The insights from Chapter Four lead me to alter my analysis in three meaningful ways. First, I now use two response variables: one measures restrictive changes and the other permissive ones. Second, I replace binary response variables with continuous ones. Rather than treating all change as the same (binary) or arbitrarily clumping different sizes together (counts), continuous response variables accurately measure the direction and magnitude of the year-over-year change to the regulatory regime.<sup>1</sup> Third, the current legal provisions in all four subgroups join international commitments and constitutions as preexisting intuitions.<sup>2</sup> The latter represent preexisting constitutional rules, while current provisions represent preexisting collective-choice rules embodied in laws (Buchanan & Tullock, 1961; Brennan & Buchanan, 1985; E. Ostrom, 2005).

To preview, this chapter conducts three interrelated analyses exploring the factors that lead governments to add permissive or restrictive rules to their regulatory regime. The analysis asks first, do nondemocratic regimes with autocratic institutions enact permissive provisions? Second, do laws currently on the books predict the types of new legal provisions that governments enact? If so, does that relationship change concerning new permissive and restrictive provisions? Third, when governments enact new legal provisions, are these changes associated with the circumstances and ideologies in other jurisdictions, namely neighboring African countries and

<sup>1</sup> See Appendix [Figure 5A](#) for histograms of response variables.

<sup>2</sup> I discussed these four subgroups in [Chapter Four](#). To recap, these mutually exclusive categories contain 58 provisions that stipulate how provisions are made and enforced (*governance*); define the types of CSOs that can exist and the procedures for their emergence (*formation*); establish if and how a CSO obtains permission to conduct activities (*operations*); and outlines how to record and report financial and non-financial assets (*resources*).

global hegemons? I examine these questions using a novel dataset that represents institutional change—i.e., permissive and restrictive expansions—in East African Community (EAC) countries between 1980-2016. I analyze this data with a directed-dyad event history analysis approach, which allows me to control for the unequal levels of influence that neighboring countries and global hegemons have on EAC members. The response variables represent institutional change only within the EAC; the data and modeling choice account for institutional change within the peripheral group.

### **Theoretical Perspectives: Why Do Governments Enact Some Provisions and Not Others**

#### *Explanation One: Regime Type Predicts Institutional Change*

A growing literature argues that undemocratic governments use CSO laws as a tool of repression. This “closing space” literature suggests governments protect their hold on political power by enacting restrictive legal provisions that reconfigure CSO regulatory regimes and weaken civil society (Carothers, 2006; Christensen & Weinstein, 2013; Carothers & Brechenmacher, 2014; Dupuy et al., 2016). This line of research leads to the conventional explanation that authoritarian regimes enact restrictive legal rules. And assuming the argument is symmetrical, the “closing space” literature suggests that democratic regimes enact permissive provisions.<sup>3</sup> Yet, the analysis in Chapter Four showed that in a sample of 17 countries—few of which approach the definition of democratic regimes (see [Table 2.3](#))—permissive provisions are quite common in the regulatory regimes authoritarian and hybrid regimes erect and maintain.

<sup>3</sup> There are many examples supporting this conventional explanation, several of which I identify in [Chapter One](#).

This pattern challenges the conventional explanation that has focused primarily on the restrictive provisions.

Lorch and Bunk (2017, pp. 989-991) offer a convincing explanation for the non-trivial number of exceptions to the “closing space” argument. They theorize a government manipulates its regulatory regime as part of a broader campaign to legitimize the regime and prolong its control. The effect is that democratic and nondemocratic governments reach the same *de jure* outcome—i.e., enacting permissive provisions—but do so for different reasons. Democratic regimes generally lead governments to enact legal rules that broadly protect rights and liberties and implement those rules impartially. Nondemocratic regimes, by contrast, enact permissive expansions to manipulate CSOs into directly and indirectly legitimizing the political regime. These manipulative tactics include “[using] civil society as a democratic façade” where permissive legal provisions and a growing the number of CSOs in the country shows the world flashes of democratic attributes (Kailitz, 2013; Lewis, 2013; Lorch & Bunk, 2017, p. 990). Another tactic entails “making [CSOs] play by the rules” and crafting regulatory regimes in such a way that they entice CSO compliance, which indirectly legitimizes the regime and directly gives the government administrative power (Wiktorowicz, 2000; Froissart, 2014; Lorch & Bunk, 2017, p. 990). A third manipulation tactic, which the authors refer to as “using civil society as a strategy to increase output legitimation,” encourages service-oriented CSOs to deliver public service goods and support the government’s policy priorities (Lorch & Bunk, 2017, p. 991). Supporting evidence of this third tactic is found in China, Kenya, Morocco, North Korea, Peru, and Russia (S. Snyder, 2007; Dimitrovova, 2010; Spires, 2011; Brass, 2016; Benevolenski & Toepler, 2017; Nelson-Nuñez, 2019). A lone political regime hypothesis follows:

**HI:** Nondemocratic regimes with a stronger grip on power enact more permissive provisions.

*Explanation Two: Institutional Change is a Path-Dependent Process*

Robust analytical frameworks of institutional analysis underscore the importance of history and show that one period's policy outcome shapes the rules of future political action arenas (E. Ostrom, 1990; E. Ostrom & Cox, 2010; E. Ostrom, 2011; Cole et al., 2014; McGinnis & Ostrom, 2014). These preexisting institutions take the form of constitutions, international commitments embodied in treaties, legislation, and regulatory rules. Research on CSO laws often discuss the long histories of CSO regulatory regimes and acknowledge that laws add, amend, and replace each other over time (Salamon & Toepler, 1997; Mayhew, 2005; Bloodgood et al., 2014, p. 723; Dupuy et al., 2015; Breen et al., 2017; Maru, 2017; DeMattee, 2019b, pp. 11-13; Musila, 2019; Toepler et al., 2019). Yet, scholars rarely include preexisting institutions in their empirical analyses choosing instead to analyze lawmaking as if it occurs "in the wild." But this trend is beginning to change.

As I showed in [Chapter Three](#), CSO law research benefits from looking up to constitutions and the past to preexisting institutions. That research showed that given a constitutional context that privileges treaties above ordinary legislation, an international commitment to safeguard human rights retards the expansion of restrictive provisions. Unfortunately, the limited statistical analyses studying CSO laws have not yet controlled for preexisting collective-choice rules (Chaudhry, 2016; Dupuy et al., 2016, pp. 5-8; Reddy, 2018; Bromley et al., 2019; DeMattee, 2019a; Swiney, 2019; Bakke et al., 2020). This analytical decision is driven, at least to some degree, by the limited availability of data systematically inventorying the contents of laws in

different countries. The data collection and coding procedures discussed in Chapters Two and Four are a direct response to this limited data problem.

Theorizing and analyzing new CSO laws under the ad hoc assumption that they are independent of preexisting institutions is incongruent with longstanding literature analyzing institutional development and rule change. Institutional theory does not preclude the possibility of large institutional change. Still, theories of path dependence suggest that policy enactment is less an exercise of significant reordering and more a process of incremental adjustment (Lindblom, 1959). And separate from whether institutional change is massive or incremental, institutional development rarely happens *tabula rasa* in an empty institutional space. Preexisting institutions are analytically relevant because preceding steps in a particular direction induce further movement in the same direction even when the initial step “originated by historical accident” (Pierson, 2000, p. 264). Failing to account for these preexisting institutions leaves analysis susceptible to omitted variable bias. In simpler terms, historical institutionalism and institutional analysis tell us that preexisting institutions are relevant until they are proven insignificant.

The descriptive analysis in Chapter Four showed that preexisting legal rules appear throughout the legal corpus, and theory tells us those rules almost certainly affect the institutional change that shapes *de jure* regulatory regimes. As an incremental process, preexisting institutions change during distinct moments of policy adoption, reinvention, and amendment (Carley, Nicholson-Crotty, & Miller, 2016). In these moments of institutional development, preexisting rules make some change more likely, and other change less likely. I refer to this type of guided institutional development as “change on rails.” And whenever a



government considers changing institutions, the institution's current rules take on one of four relationships with new rules (Mahajan & Peterson, 1985):

1. *Complementary* if a preexisting rule increases the probability that the government enacts another rule. For example, a preexisting rule that makes CSOs tax exempt may be complementary to a later rule permitting a tax deduction for charitable contributions.
2. *Contingent* if a preexisting rule is necessary for the enactment of another. CSOs receiving tax privileges may be contingent upon first requiring them to register as a particular legal form, which itself might be contingent upon first establishing a government agency.
3. *Substitutes* if a preexisting rule prevents (or decreases the probability of) the enactment of another. A rule prohibiting CSOs from receiving foreign funding is a substitute for a rule taxing foreign funding.
4. *Independent* if preexisting rules have no relationships with the new rules the government is enacting. I refer to this type of unguided development as “change in the wild” because it has no relationship with current rules and institutions.

In my theory, a government evaluates its preexisting rules and considers whether they sufficiently achieve the regime's aims (Figure 1.1). The theory predicts that institutional change does not occur if the current provisions sufficiently achieve a government's aims. However, if a government evaluates the current rules and determines they are insufficient, then a government chooses which rules to add and which to remove. And unless current rules are independent of future ones—which may be possible, albeit unlikely—then rule changes are in reference to current provisions. Thus, my theory predicts directional relationships between current and future rules.

My theory predicts rule changes will be small if the *de facto* regulatory regime is close to achieving a government's desired outcomes. In democratic regimes that seek to protect rights and liberties, a government will react as necessary to change the regulatory regime with provisions that meet legitimate aims and are necessary and democracy. This can be achieved by either adding new permissive provisions or removing current restrictive ones. As another example, hybrid regimes that seek legitimacy will not add permissive provisions into perpetuity. Instead, the more permissive the current regulatory regime is, the fewer permissive provisions the semi-authoritarian adds. Similar to the notion of diminishing returns, I argue that current permissiveness in each provision subgroup—governance, formation, operations, and resources—has a substitutive effect on future permissive expansions. In simpler terms, once the regulatory regime is permissive enough, there is no need to add more permissive provisions.

Governments may manipulate legal institutions as part of a broader strategy to stay in power. Manipulation may present as a strong executive pushing legislation that hinders a civil society that has grown too bold and too strong under a regulatory regime that is too permissive. This discrete, heavy-handed response is less likely in environments where democratic rules and institutional constraints limit lawmaking. Governments may use indiscrete manipulation in different way. Synchronous manipulation occurs when governments use permissive provisions to distract from restrictive provisions in the same bill. Asynchronous manipulation takes place when a government determines current legal rules no longer align with its current aims and seeks institutional change. The goal of the institutional change is to either cull permissive provisions or counterbalance them with restrictive ones. The vessel for institutional change is either a bill that repeals and replaces a current law or an omnibus amendments bill that changes the contents in numerous current statutes. Regardless of the route taken to achieve institutional change, I argue

the consistent pattern is that semi-authoritarians respond to preexisting permissive provisions by enacting restrictive expansions. I argue that current permissiveness in each provision subgroup—governance, formation, operations, and resources—has a complementary effect on future restrictive expansions. More simply, the government adds restrictive provisions if the regulatory regime is too permissive for the government’s preference. The two path dependency hypotheses are:

**H2A:** Greater permissiveness in each subgroup—governance, formation, operations, resources—has a substitutive effect that decreases the size of later permissive expansions.

**H2B:** Greater permissiveness in each subgroup—governance, formation, operations, resources—has a complementary effect that increases the size of later restrictive expansions.

#### *Explanation Three: Policy Diffusion Shapes CSO Laws*

Current political circumstances and preexisting institutions offer local explanations for why governments choose to enact permissive or restrictive expansions. However, both explanations presume governments are independent and beyond the influence of international actors. Governments can be swayed by adjacent jurisdictions and more powerful countries. Policy diffusion is the inter-jurisdictional influence that one government’s policy decision has on changing the probability of adoption by the remaining pool of non-adopters (Strang, 1991, p. 325; Simmons et al., 2006, p. 787; Berry & Berry, 2014, p. 308). *Leaders* are those jurisdictions that have enacted a policy. *Laggards* are those that are considering enactment. The processes of policy diffusion are numerous (for a complete review see Berry & Berry, 2014) but organize into

the three broad classes: learning, emulation, and competition (Gilardi, 2015).<sup>4</sup> The shared trait of all processes is that laggard governments considering adoption first evaluate information from leaders who have already adopted a similar policy.

*Learning* is a pragmatic form of information evaluation that focuses on the policy and its outcomes. Policies are likely to diffuse if they create more positive results or fewer negative ones. This pragmatic learning diffusion process has recently expanded to include sameness-in-context between two jurisdictions (S. Nicholson-Crotty & Carley, 2016). Here, decisionmakers in laggard jurisdictions evaluate information on local factors to handicap and refine their expectations regarding whether desired outcomes observed in leader jurisdictions will replicate locally. Increased sameness in the “implementation environment” may include jurisdictional similarities along with structural or institutional characteristics, government’s capacity to monitor and enforce policy, and society’s willingness to comply with the policy (S. Nicholson-Crotty & Carley, 2016, pp. 78,82). Increased sameness in the implementation environment corresponds with the notion of “institutional stickiness,” where the likely success of a proposed institutional change is dependent on the ability of the change to “stick” where it is adopted (Boettke, Coyne, & Leeson, 2008).

*Emulation* is a sociological form of information evaluation that focuses on the leader government that adopted the policy rather than the policy or its objective consequences. Normative pressure drives one type of sociological emulation, known as the neighborhood effect. According to this process, the probability of enacting a given policy is positively correlated with

<sup>4</sup> The competition process of policy diffusion is beyond the current scope of this research. Testing for that process requires first identifying whether the policies have a measurable effect in the leader’s jurisdiction, and then establishing that laggard jurisdictions can identify that measurable effect.

the percentage of jurisdictions in the area that have previously enacted it. Analysts have found null results when testing for the neighborhood effect among CSO laws (Dupuy et al., 2016; DeMattee, 2019a). These null results conform with critiques policy scholars have for the approach. Specifically, the neighborhood effect is inaccurate because it operationalizes diffusion bluntly as a simple average effect across all prior adopters that are geographically close (Volden, 2006, p. 295; Boehmke, 2009, p. 1125; Carley et al., 2016, p. 11). Another and more precise approach measures how ‘close’ jurisdictions are concerning political and historical factors, and then tests if that ‘closeness’ correlates with enactments. The emulation process predicts a laggard jurisdiction is more likely to imitate leaders that are ‘closer’ along certain measurable factors. Imitation occurs when a laggard jurisdiction imitates a leader because of its strong reputation and credibility (Christensen & Weinstein, 2013), shared characteristics such as religious group and common colonial heritage (Simmons & Elkins, 2004; Elkins, Guzman, & Simmons, 2006; Berinzon & Briggs, 2019), or similar ideological and democratic convictions (Baldwin et al., 2019).

Together, I make three arguments drawing on this policy diffusion literature. The original data that I use makes it possible to frame my arguments in terms of both direction and size. First, regulatory regime expansions are larger if laggard and leader jurisdictions have similar implementation environments as measured by levels of organized opposition by CSOs to the current political system. Second, regulatory regime expansions are larger if jurisdictions have similar ideologies as measured by voting patterns in the UN. Third, expansions are larger if jurisdictions share common colonial histories. I reformulate these arguments into three testable policy diffusion hypotheses:

**H3A:** Greater leader-laggard similarity in the implementation environment increases the size of the expansion regardless of the provision type.

**H3B:** Greater leader-laggard similarity in political ideology increases the size of the expansion regardless of the provision type.

**H3C:** Sharing a common colonial past increases the size of the laggard's expansion regardless of the provision type.

## **Data and Methodology**

### *Research Design*

In Chapters Two and Four, I discussed collecting and systematically coding a legal corpus of 285 laws from 17 countries that produced the original dataset necessary for this analysis. I chose the EAC as the core group of countries to study. On theoretical grounds, the EAC is representative of African, low-, and middle-income countries. There is considerable political, social, and economic variation both between- and within-cases ([Table 2.2](#)). On practical grounds, these countries received their independence relatively recently, which allowed me to code their entire legal histories. My sample also includes a peripheral group to account for peer neighbors and global hegemony whose politics and policies might influence institutional change within the EAC core. The six countries adjacent to the EAC and the five Permanent Members of the UN Security Council (P5) constitute this peripheral group.

My research questions and hypotheses consider two dimensions of institutional change: direction and magnitude. These questions require a different analytical approach compared to what policy diffusion analyses generally use. Quantitative research studying CSO laws typically analyzes enactment among a large sample of countries and typically do not control for differences between laws (cf. DeMattee, 2019a; Bakke et al., 2020). Such an approach is common among diffusion analysts who use pooled event history analysis (PEHA) that stacks the data of different adoption events to estimate parameters in a single model (Kreitzer & Boehmke,

2016). And similar to most quantitative research on CSO laws, PEHA imposes a homogeneity assumption on adoption events—i.e., all outcomes are either *0* or *1*—that reality often violates (Jones, 1994; Box-Steffensmeier & Jones, 2004b; Kreitzer & Boehmke, 2016).

A more nuanced approach to event history analysis “emphasizes the unique determinants of a specific policy” and reveals that “certain variables have a heterogeneous effect” on adoption events (Jones, 1994; Kreitzer & Boehmke, 2016, pp. 123, 134; DeMattee, 2019a). Some analysts use multilevel modeling with random intercepts and random coefficients to control for policy heterogeneity (e.g., Kreitzer, 2015). In this analysis, policy heterogeneity is my precise focus. I examine policy heterogeneity to understand how the inventory of provisions within a regulatory regime changes over time while controlling for local, historical, and diffusion factors using a directed dyadic approach.

The directed dyadic approach organizes the data so that each country-dyad appears twice in a given year, alternating the identity of the leader and laggard country in the second observation (Boehmke, 2009, p. 1127). The data contain two types of dyads because unavailable data limits the number of cases for which I can construct politically relevant dyads. The six members of the East African Community (EAC), which is the primary sample in this analysis, comprise the first dyad type. EAC members have directional dyads with each other and generate at most 30 observations each year with each state taking a leader and laggard position ( $6_{\text{leaders}} \times 5_{\text{laggards}} = 30_{\text{directed-dyads}}$ ). Remaining countries take only leader positions. Six countries adjacent to the EAC take a leader-only position and generate at most 36 observations annually. The P5 members represent global hegemony and generate 30 observations annually.

I fully conceptualize CSO regulatory regimes in Chapter Four. Here, I review those concepts and describe how I operationalize each one. The regulatory regime is a legal institution

of multiple laws that combine various permissive and restrictive provisions. Permissive provisions are those that increase the autonomy of CSOs by making it easier to form and operate, enlarging their permissible scope of activities and lessening or eliminating restrictions on access to resources. Greater permissiveness strengthens society's trust in CSOs, tends to increase the demand for CSOs, and contributes to organizational pluralism (World Bank, 1997; Kiai, 2012). Restrictive provisions lessen the autonomy of CSOs by imposing restrictions on their ability to self-govern, form, operate, and access resources (Swiney, 2019). Restrictive provisions may also reduce the public's trust in CSOs and, therefore, decrease demand for their contributions, and ultimately, shrink the number and diversity of CSOs in a given country.

Figure 5.1 is another illustration of the data discussed in Chapter Four, but with variables relevant to the analyzes in this chapter. The panels show when and how frequently governments enact permissive expansion (left panels) and restrictive expansions (right panels). The top panels show that governments in East Africa have added both permissive and restrictive provisions to their regulatory regimes for several decades. The thick lines represent a regional average of the 12 East African countries studied here, while thin lines represent individual countries. While these regional averages appear to have lower variation than individual countries, the average permissive expansion (thick line, top-left panel) appears larger than the average restrictive expansion (dashed line, top-right panel). The top panels in Figure 5.2 use a lowess function to smooth lines and ease the interpretation over the 60-year observation period. Histograms (bottom panels) complement the smoothing function to show the nearly 20 instances when governments in East Africa added over five new provisions to the preexisting regulatory regime. Combined, these graphs show the institutional change of regulatory regimes in East Africa is neither smooth nor unidirectional (see also Figures [4.3](#) and [4.5](#)).



**Figure 5.1: Institutional Change & Changing Spaces of CSO Regulatory Regimes in East Africa**

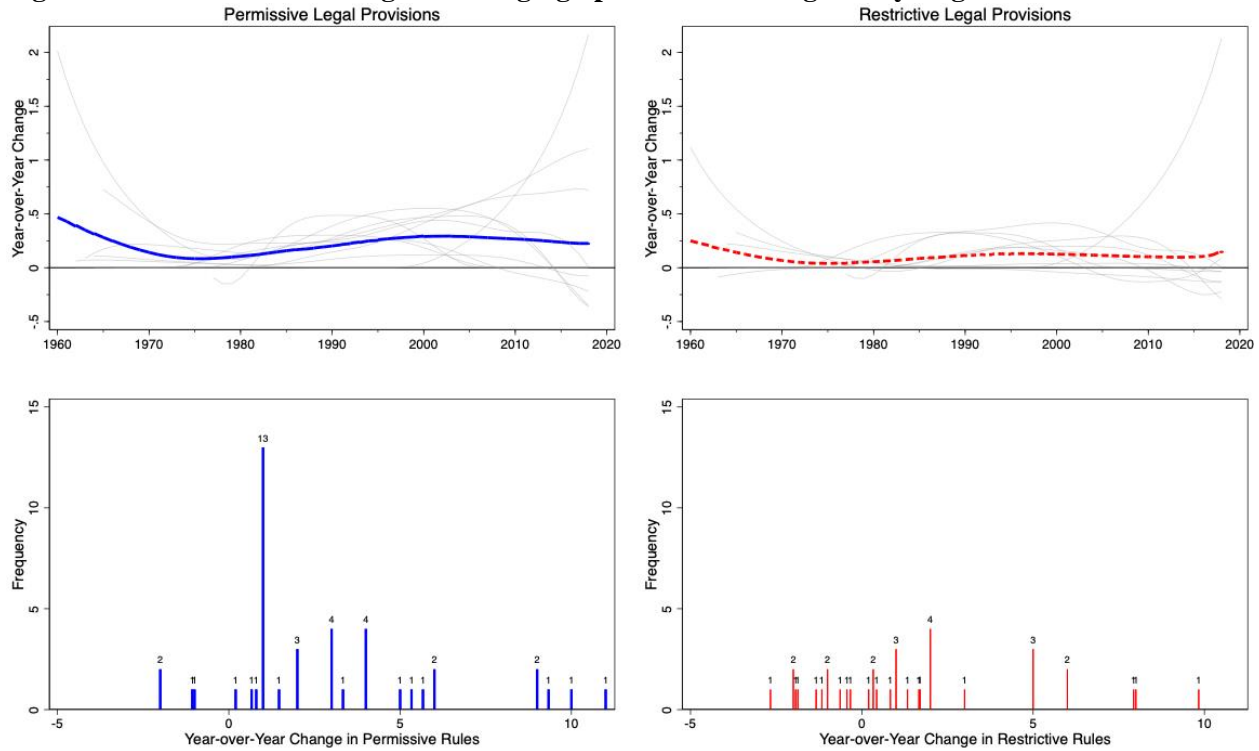


Figure shows how East African CSO regulatory regimes changed from 1960 through 2019. Left panels show permissive provisions while the right panels show data on restrictive provisions. In the top panels, the thin lines represent individual countries, and the thick lines show an average across East African countries. Histograms omit zero-values, which account for 94% of permissive expansions and 96% restrictive expansions in the 602 country-year observations shown in the figure.

In Chapter Four, I discussed how top-level indicators—e.g., number of active laws ([Figure 4.2](#)), total stocks of restrictive or permissive provisions ([Figure 4.3](#))—may blur or simplify the institutional development happening within regulatory regimes. Another example of this is net permissiveness, where midrange values are muddled because multiple combinations of permissive and restrictive stocks can yield the same overall value on the indicator. The existence of this muddled middle leads me to deconstruct the total stock of provisions into two indicators: one a stock of permissive provisions, the other the stock of restrictive provisions.<sup>5</sup> When the

<sup>5</sup> Separating the total stock in this manner is conceptually and operationally similar to deconstructing the highly cited POLITY variable of the Polity IV Project (Marshall et al., 2017, p. 17) into its underlying Institutionalized Democracy (DEMOC) and Autocracy (AUTOC) components.

analysis uses one provision type as a response variable, I use the other as a control variable. Year-over-year changes in these stocks become the response variables in this analysis (discussed below). Due to their continuous nature, my primary analysis is an OLS that regresses the year-over-year change in the stock of the provision type on explanatory variables and appropriate controls. I conduct each analysis once for permissive and once for restrictive provisions. As a robustness check, I round the response variables to the nearest integer allowing me to verify my findings with a negative binomial regression model (NBRM).<sup>6</sup> I cluster all standard errors by dyad pair to address potential intra-dyad dependencies and heteroskedasticity (Reiter & Stam, 2003; Volden, 2006) and limit the analysis to only those dyads where the leader had a larger stock of the provision type than the laggard, which methodologists suggest eliminates potential bias (Boehmke, 2009). The first year in the dataset is 1980, the earliest point Soviet/Russian (1979) and Chinese (1980) laws were available through Consultant Plus (Russian: Консультант Плюс) and Westlaw China legal databases, respectively.

### *Response Variable*

The legal corpus described in Chapter Four provides the data needed to calculate my response variables. In this analysis, the response variables measure the direction and magnitude of year-over-year changes in the regulatory regime. One factor challenging the proper operationalization of the response variables is that multiple laws simultaneously comprise

<sup>6</sup> Policy diffusion literature does not generally combine continuous or count models with the directed dyad-year approach. Such applications are common in comparative politics and international relations studying the frequency of economic sanctions (King, 1989), the volume of refugee flows between countries (Moore & Shellman, 2007), the number of corporate participants in CSR frameworks (Lim & Tsutsui, 2012), the count of transnational terrorists attacks (Findley, Piazza, & Young, 2012), the impact of trade exit costs on the rate of conflict initiations (Peterson, 2014), and trade protectionism as measured by the quantity of antidumping petitions (Wolford & Kim, 2017).

regulatory regimes. For example, the legal corpus shows EAC members have as few as one to as many as 13 laws contributing legal provisions to the country's regulatory regime. The simplest way to resolve this would be to focus on the enactment of particular laws, which would operationalize the response variable as the year-over-year change in the number of laws that contribute to the regulatory regime. Though straightforward and replicable, this operationalization risks oversimplifying these legal institutions while failing to account for differences in each law's content. Together, these faults could yield misleading results and Type-I and Type-II errors (Volden, 2002; Bailey & Rom, 2004; DeMattee, 2019a).

When studying institutional change, analysts sometimes use aggregate measures and “summative indexes” for theoretical, conceptual, and methodological reasons (Volden, 2002; Bailey & Rom, 2004; J. Nicholson-Crotty & Nicholson-Crotty, 2011, pp. 615-616). This operationalization requires knowing the type of change that occurs and not simply whether change happens. This solution, which remains replicable despite being harder, is the one I use to measure the direction and magnitude of institutional change within CSO regulatory regimes. In [Chapter Four](#), I discussed operationalizing a coded legal corpus using the ADICO syntax and a 58-item coding protocol. My first step uses brute force to code the contents of each law qualitatively. The coding protocol is a tool that I use to determine whether a legal provision exists in a law. When a law contains a particular restrictive provision, I code the provision as *-1*. If the law does not discuss the restrictive provision, I code the provision as absent (*N/A*). If the

law contains the negation of the restrictive provision, I code the provision as  $+1$ . A symmetrical set of rules codes permissive provisions: present  $+1$ ; absent  $N/A$ ; negation  $-1$ .<sup>7</sup>

My second step aggregates coded values of each provision across all active laws in a country. I do this by averaging all nonzero counts of a given provision from all laws adding to the regulatory regime in a particular year. Averaging equally weights all laws and creates a country-year-provision value (possibly non-integer) between  $-1$  and  $+1$ . Averaging is desirable because it does not inflate values for countries with many laws active at once. The result of this second step is one value for each provision for each country-year measure.

My third step produces two country-level summative indexes. One summative index totals all country-year-provision values that are positive. This represents the stock of permissive provisions. Because the coding protocol contained 58 items, this stock of permissive provisions is bounded between 0 and  $+58$ —i.e., all permissive provisions present and all restrictive ones negated. The other summative index is the absolute value of all negative country-year-provision values, which represents the stock of restrictive provisions. It is also bounded between 0 and  $+58$ —i.e., all permissive provisions present and all restrictive ones in negation.

The final step generates the response variables that I use to study the conditions under which governments choose to enact permissive or restrictive expansions. I calculate both response variables by taking the first difference of each non-integer summative index.<sup>8</sup>

<sup>7</sup> I demonstrate this using the coding-protocol item: “*All CSOs are forbidden to appeal a registration denial or a deregistration order after such a decision has been communicated or else face a noncompliance sanction.*” As written, this institutional statement is a restrictive provision. If the law does not contain any language matching it, then I code it as absent ( $N/A$ ). If a law contains language matching this restrictive provision, then I code it as a  $-1$ . If the law contains language matching the negation of the institutional statement—i.e., all CSOs may appeal a regulator’s unfavorable decision—then I code it as  $+1$ . [Chapter Two](#) discusses this coding procedure in detail.

<sup>8</sup> For the NBRM robustness check, I round the non-integer index to its closest integer value before taking the first difference.

*Permissive Expansion* is the year-over-year change in the stock of permissive provisions in the regulatory regime. This response variable ranges from -2 to 11 (Table 5.2, top panel). Positive values identify instances where a government added permissive provisions to its regulatory regimes. Negative values represent a government stripping permissive provisions out of the regulatory regime. *Restrictive Expansion* is the year-over-year change in the stock of restrictive provisions in the regulatory regime. The response variable ranges between -2.67 and 5 (Table 5.2, bottom panel). Positive values flag observations where a government added restrictive provisions to the regulatory regime, while negative values represent a government removing restrictive provisions.

#### *Key Independent Variables*

I measure *Nondemocratic Grip on Power* using the institutionalized autocracy variable produced by the Polity IV Project (Marshall et al., 2017). The indicator is an additive eleven-point scale (0-10) with higher values indicating weaker political participation, narrower executive recruitment, and fewer constraints on the executive. The variable tests my political regime hypothesis *H1*, which predicts nondemocratic regimes with a stronger grip on power enact more permissive provisions. In the 37 years analyzed, the six EAC countries had an average institutionalized autocracy score of 4.1 (n=186, std. dev. 2.30, min. 0, max. 7). These midrange values exemplify the types of hybrid regimes that exist in East Africa.<sup>9</sup> In 1990, Burkina Faso, Burundi, China, Cuba, Kenya, Libya, and Vietnam were among the 30 countries with an institutionalized autocracy score of seven. Then, in 2000, Kyrgyzstan, Singapore, and

<sup>9</sup> EAC countries do not seem representative of the strong autocracies familiar to us from the late-1990s onward—e.g., Iraq (9 from 1990 to 2002), North Korea (10 from 1990 to 2016), Saudi Arabia (10 from 1990 to 2016), Syria (9 from 1990 to 1999, and 2012 to 2016), and the United Arab Emirates (8 from 1990-2016).

Tunisia joined Kenya, Rwanda, and Uganda as six of the 11 countries with an autocracy measure of four. In 2016, Afghanistan, Bangladesh, Mauritania, and Uganda were the only countries with an institutionalized autocracy measure of two. I import the variable through the Varieties of Democracy dataset (V-Dem v.8, Coppedge et al., 2018).

Similar to the response variables, the legal corpus described in Chapter Four provides the data needed to test my two path dependency hypotheses. The first, **H2A**, predicts the more permissive the current regulatory regime is, the smaller the permissive expansion. This predicted substitutive relationship is similar to the notion of diminishing returns. The second, **H2B**, predicts the governments in hybrid regimes respond to permissive provisions by enacting restrictive ones. Thus, the more permissive the current regulatory regime is, the larger the restrictive expansion. I measure permissiveness for each mutually exclusive subgroup.<sup>10</sup> The independent variables *Governance Permissiveness*, *Formation Permissiveness*, *Operations Permissiveness*, and *Resources Permissiveness* represent the permissiveness of each subgroup (0 to 100). The number of permissive provisions minus the number of restrictive provisions calculates subgroup permissiveness. As with the response variables, I weigh all provisions equally to produce a clear, explicit, and replicable aggregation structure.<sup>11</sup> To standardize values across subgroups as percentages, I divide each subgroup's permissiveness by the number of provisions within each subgroup according to the coding protocol (12 for governance, 14 for

<sup>10</sup> Governance provisions stipulate how provisions are made and enforced; formation provisions define the types of CSOs that can exist and the procedures for their emergence and renewal; operations provisions establish if and how a CSO obtains permission to conduct activities; resources provisions prescribe how to record and report financial and non-financial assets (see full discussion in Chapter Four).

<sup>11</sup> I suspect the resulting measurements are imprecise and there is no theoretically grounded weighting scheme directing aggregation. I expect the "noisy" indicator will increase my standard errors, shrink my coefficients, and make it harder to find statistically significant relationships. Despite these challenges, this indicator is far more nuanced than any other measurement used in this literature.

formation, 16 for operations, 16 for resources). To simplify interpretation, I rescale the measures to a 100-point scale.<sup>12</sup>

The third part of my analysis tests three policy diffusion hypotheses. The first policy diffusion hypothesis, **H3A**, predicts that if a laggard's implementation environment is similar to a leader's implementation environment, then the former is more likely "learn from" the leader. In this analysis, I measure the implementation environment using the CSOs are anti-system variable available in the Verities of Democracy dataset (V-Dem v.8, Coppedge et al., 2018, p. 178).<sup>13</sup> *Similar Implementation Environment* is a continuous variable that measures the degree to which CSOs in separate countries have the same level of organized opposition to the current political regime. The second policy diffusion hypothesis, **H3B**, predicts a laggard jurisdiction will "emulate" a leading jurisdiction if the two governments have similar political ideologies. I use the country's ideal point in the United Nations multidimensional issue space as a proxy for its political ideology (Voeten, 2013; Bailey et al., 2017). *Similar Political Ideology* is a continuous variable that measures the degree of similarity between two countries' ideal points on international matters.

*Common Colonial Past* is self-defining and tests my final policy diffusion hypothesis (**H3C**). The variable has a binary, time-invariant value of 1 if jurisdictions share a common colonial past. I do not code the United States as sharing a colonial history with other British

<sup>12</sup> The formula for rescaling was:  $((\text{subgroup's permissiveness})/(\text{subgroup's \# of provisions}) \times 50) + 50$ . An applied example is:  $(((-5.67)/12) \times 50) + 50 = ((-0.4725) \times 50) + 50 = (-23.625 + 50) = 26.375$ .

<sup>13</sup> An anti-system opposition movement is any domestic movement—peaceful or armed organized in opposition to the current political regime. Its aims are to change society and governmental control in fundamental ways—e.g., from democratic to autocratic, from capitalist to communist, from secular to fundamentalist (or vice-versa for any). The variable was initially collected using ordinal intervals and converted to a continuous interval using a Bayesian item response theory measurement model.

colonies. All policy diffusion variables measure the degree of sameness in context between two jurisdictions with higher values indicating greater similarity. Table 5.2 shows the descriptive statistics for all variables. The top panel shows descriptive statistics for all permissive expansions, and the bottom shows similar information for restrictive expansions.

**Table 5.2: Descriptive Statistics—Selected Variables Only**

Variable	Obs.	Mean	Std. Dev.	Min	Max
<i>Response Variables</i>					
ΔPermissive Provisions (continuous)	1,251	0.17	1.04	-2.00	11.00
ΔPermissive Provisions (integer)	1,234	0.20	1.00	0	11
<i>Independent Variables</i>					
Nondemocratic Grip on Power (t-1)	1,251	4.11	2.24	0	7
Governance Permissiveness (t-1)	1,251	45.30	7.72	37.50	70.83
Formation Permissiveness (t-1)	1,251	53.37	6.00	42.86	78.57
Operations Permissiveness (t-1)	1,251	47.56	8.49	28.13	65.63
Resources Permissiveness (t-1)	1,251	57.94	3.96	53.13	69.79
Similar Implementation Environment (t-1)	1,251	-1.15	0.91	-5.03	0.00
Similar Political Ideology (t-1)	1,251	-1.11	1.10	-4.13	0.00
Common Colonial Past	1,251	0.18		0	1
<i>Control Variables</i> <sup>1</sup>					
Commitment to Guard Human Rights	1,251	0.83		0	1
Constitution Bolsters Commitments	1,251	0.08		0	1
<i>Sample Characteristics</i>					
Number of Active Laws - Laggard	1,251	3.79	2.05	1	13
Number of Active Laws - Leader	1,251	6.66	4.92	1	27
Calendar Years		2000		1980	2016
<i>Response Variables</i>					
ΔRestrictive Provisions (continuous)	741	-0.01	0.51	-2.67	5.00
ΔRestrictive Provisions (integer)	715	0.04	0.40	0	5
<i>Independent Variables</i>					
Nondemocratic Grip on Power (t-1)	741	3.68	2.31	0	7
Governance Permissiveness (t-1)	741	47.18	10.01	37.50	70.83
Formation Permissiveness (t-1)	741	54.18	7.18	42.86	78.57
Operations Permissiveness (t-1)	741	51.34	7.31	28.13	65.63
Resources Permissiveness (t-1)	741	59.21	4.63	56.25	69.79
Similar Implementation Environment (t-1)	741	-1.04	0.88	-4.39	0.00
Similar Political Ideology (t-1)	741	-0.52	0.67	-3.48	0.00
Common Colonial Past	741	0.28		0	1
<i>Control Variables</i> <sup>1</sup>					
Commitment to Guard Human Rights	741	0.90		0	1
Constitution Bolsters Commitments	741	0.08		0	1
<i>Sample Characteristics</i>					
Number of Active Laws - Laggard	741	4.34	2.85	1	13
Number of Active Laws - Leader	741	8.05	6.28	1	27
Calendar Years		2002		1980	2016

<sup>1</sup> Some variables omitted. See Appendix [Table 5A](#) for all descriptive statistics.



### *Control Variables*

My first control variable measures the number of provisions added to the CSO regulatory regime but of the type opposite that the response variable. *Restrictive Rules Enacted* are the number of restrictive provisions added to the regulatory regime in the same country-year observation as the response variable. *Permissive Rules Enacted* measures the number of permissive provisions that a government enacted concurrently with the restrictive expansion. The UN Office of Legal Affairs and the Comparative Constitutions Project (CCP) provide the raw data to control for international commitments and constitutional differences. The former provides information on a country's support for human rights, specifically whether and when a country ratifies the ICCPR. For each country-year observation, *International Commitment to Guard Civil and Political Rights* (*Commitment to Guard Human Rights* for short) is operationalized as 1 if the country ratified the ICCPR human rights treaty. The CCP provides constitutional texts for 214 independent countries from 1789 (Elkins et al., 2014b). *Constitutional Rules Strengthen International Commitments* (*Constitution Bolsters Commitments* for short) is operationalized as 1 for all constitutional systems that explicitly state international treaties are superior to ordinary legislation. The variable equals 0 if the constitution does not mention international treaties or gives them a status equal or inferior status to ordinary legislation.

*Executive Power* is a continuous variable measuring the powers given to the country's chief executive. I construct the additive index using data from the CCP and following the working paper on the constitutional boundaries of executive lawmaking (Elkins et al., 2012, 2014b).

*Constitutional Freedoms* is another additive index constructed from CCP data, which codes whether the constitution provides for the freedoms of assembly, association, expression, opinion, petition, press, and religion. Conceptually, this institutional control variable ranges from 0-7 with

higher values indicating more constitutional powers entrusted to the chief executive and more constitutional enshrined freedoms, respectively. Analyses do not lag *Commitment to Guard Human Rights, Constitution Bolsters Commitments, Executive Power, or Constitutional Freedoms*.

The Varieties of Democracy Project (V-Dem) provides data for over 100 years of regimes around the world (Coppedge et al., 2018) and provides several variables used here. *CSO Routinely Consulted* measures the degree to which policymakers consult major CSOs on matters relevant to their members with higher values representing more significant levels of consultation (Coppedge et al., 2018, p. 176). The variable was initially collected using ordinal intervals and then converted to a continuous interval using a Bayesian item response theory measurement model (Ibid.).

The World Development Indicators (World Bank, 2018) provide country-year data for population, and net official development assistance received (WBG code DT.ODA.ODAT.KD) in constant 2014 US dollars and Gross Domestic Product (WBG code NY.GDP.MKTP.KD) measured in constant 2010 US dollars. I combine these data to produce the control variables *ODA per capita* and *GDP per capita*. The analysis includes two directed-dyad control variables. *Rule of Law Similarity* and *Freedoms Similarity* each represents the similarity of these variables for each country in the dyadic pair, with higher values indicate greater similarity. Cubic splines control for time.

### *Empirical Findings and Results*

The following regressions test my hypotheses. Table 5.3 test the hypotheses under permissive expansions, while Table 5.4 tests them under restrictive expansions. The models use

an OLS regression with a directed-dyad approach, but the appendix includes robustness checks using negative binomial regression models (Table 5D and Table 5E). All models include directed-dyadic controls and cluster standard errors by dyad pair. The following interpretations of the coefficients are made with respect to the full model (model 6 in all tables).

I begin with nondemocratic grip on power, which I measure using an eleven-point scale (0-10) with higher values indicating weaker political participation, narrower executive recruitment, and fewer constraints on the executive (Marshall et al., 2017). Nondemocratic grip on power positively correlates with permissive expansions in all models. This statistically significant relationship provides suggestive evidence that supports my political regime hypothesis (*H1*) that nondemocratic regimes enact permissive provisions to manipulate civil society. The positive relationship supports the central thesis of my working theory that governments, whose grip on power is strong, use the regulatory regime to provide CSOs with greater operational space. The reason for this is that permissive provisions can be a tactic that governments use to give domestic and foreign observers the impression of democracy, thus adding to a democratic façade. Governments may also enact permissive provisions to grow particular types of CSOs that will help the regime deliver public service goods. Improved delivery in public service goods—whether the government is steering or rowing—bolsters the government’s output legitimacy. Then, by using permissive provisions to entice CSO compliance, CSOs directly give the legal rules increased credibility, which in turn legitimizes the government’s authority to govern. Such compliance also embeds CSOs in a bureaucratic web that directly contributes to administrative power held by the government. As I show in Chapter Seven, multiple reasons for enacting permissive provisions can exist simultaneously, but may also vary with time.

**Table 5.3: OLS Directed Dyad Models Predicting Permissive Expansions**

	(1)	(2)	(3)	(4)	(5)	(6)
Nondemocratic Grip on Power <sup>a</sup>	0.07*** (0.019)	0.06** (0.019)	0.05* (0.021)	0.06** (0.020)	0.06** (0.019)	0.05* (0.021)
Governance Permissiveness <sup>a</sup>		-0.03*** (0.009)	-0.03*** (0.008)	-0.03*** (0.009)	-0.03*** (0.009)	-0.03*** (0.008)
Formation Permissiveness <sup>a</sup>		-0.01 (0.006)	-0.01 (0.006)	-0.01 (0.006)	-0.01 (0.006)	-0.01 (0.006)
Operations Permissiveness <sup>a</sup>		-0.01** (0.004)	-0.02*** (0.004)	-0.01** (0.004)	-0.01** (0.004)	-0.02*** (0.004)
Resources Permissiveness <sup>a</sup>		-0.03* (0.016)	-0.04* (0.016)	-0.03* (0.016)	-0.03* (0.016)	-0.04* (0.016)
Similar Implementation Environment <sup>a</sup>			0.09** (0.031)			0.09** (0.032)
Similar Political Ideology <sup>a</sup>				0.00 (0.026)		-0.01 (0.026)
Common Colonial Past					-0.02 (0.069)	-0.02 (0.068)
Restrictive Rules Enacted	0.21* (0.079)	0.24** (0.076)	0.24** (0.076)	0.24** (0.076)	0.24** (0.076)	0.24** (0.076)
Commitment to Guard Human Rights	-0.15* (0.070)	-0.19 (0.148)	-0.20 (0.145)	-0.19 (0.147)	-0.19 (0.146)	-0.20 (0.142)
Constitution Bolsters Commitments	0.34** (0.121)	0.02 (0.137)	-0.12 (0.150)	0.02 (0.136)	0.02 (0.137)	-0.13 (0.150)
Observations	1251	1251	1251	1251	1251	1251
AIC	3587.92	3560.15	3555.64	3562.15	3562.06	3559.49
BIC	3664.90	3657.66	3658.28	3664.78	3664.69	3672.39
Degrees of Freedom	14	18	19	19	19	21

Standard errors in parentheses

+ p<0.10, \* p<0.05, \*\* p<0.01, \*\*\* p<0.001

<sup>a</sup> variables lagged one period (t-1)

Some controls omitted. See Appendix [Table 5B](#) for full results.

The effect size of nondemocratic grip on power and its significance are strongest in model 1, which omits other explanatory variables. The variable retains its sign and significance as additional explanatory variables are added to the model. Using the full specification (model 6) and holding variables at their mean values, increasing the nondemocratic grip on power by one standard deviation, roughly 2.25 points on the 0-10 scale, increases the size of a permissive

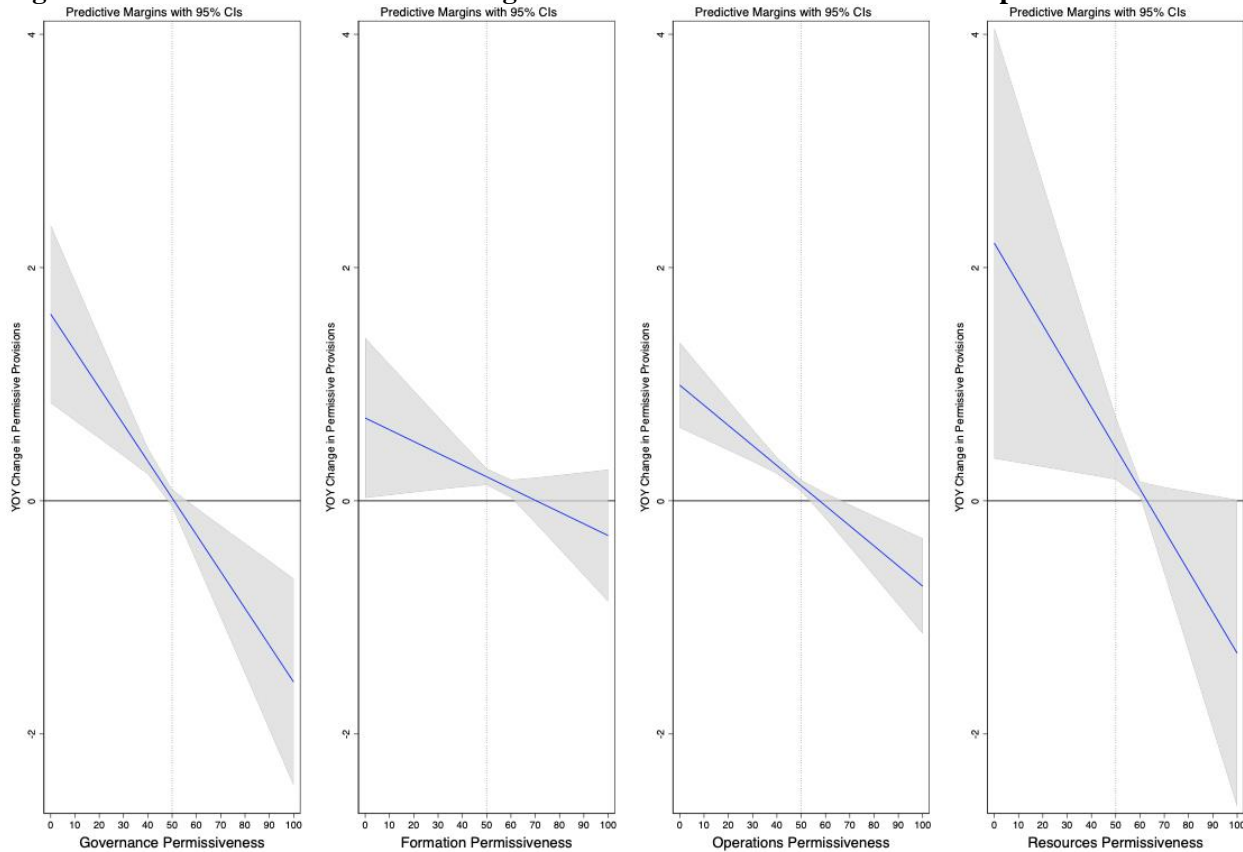
expansion on average by more than 0.10 ( $p < 0.05$ ).<sup>14</sup> The average permissive expansion in the data is 0.17, so the discrete change nearly doubles the size of the average permissive expansion. The variable representing restrictive provisions enacted concurrently with permissive ones is another indication that nondemocratic regimes manipulate CSO laws. When governments enact restrictive provisions alongside permissive ones, a one standard deviation increase in the number of restrictive rules enacted increases the size of the permissive expansion by 0.17 ( $p < 0.01$ ). These relationships do not exist for restrictive expansions (see Table 5.4).

My analysis includes a “lawmaking on rails” argument that predicts preexisting rules have a directional relationship with certain types of institutional change. These path dependency hypotheses argue that preexisting institutions constrain future changes to regulatory regimes. The first predicts governments that seek legitimacy will not add permissive provisions into perpetuity (**H2A**). Similar to the notion of diminishing returns, permissiveness has a substitutive quality: the more permissive the current regulatory regime is, the fewer permissive provisions are added. In confirmation of **H2A**, the data show the permissiveness of preexisting institutions is related to the size of both permissive and restrictive expansions. For permissive expansions (Table 5.3), holding other variables at their mean values, increasing the permissiveness of the governance subgroup by one standard deviation, roughly 7 points on the 0-100 scale, decreases the size of a permissive expansion on average by -0.24 ( $p < 0.001$ ). Similar discrete changes in the other subgroups further support this hypothesis: formation -0.06 ( $p = 0.11$ ); operations -0.15 ( $p < 0.001$ ); and resources -0.14 ( $p < 0.05$ ). A Wald test rejects the possibility these linear measures

<sup>14</sup> All predictions computed using margins in Stata version 16 (Long & Freese, 2014).

are simultaneously zero at the 0.001 level ( $X^2(4) = 15.30$ ).<sup>15</sup> The negative signs on these coefficients support the argument that current permissiveness has a substitutive effect on future permissive expansions. The negative signs also correspond to the downward sloping lines in Figure 5.2. These graphs also suggest that a lack of permissiveness in these subgroups (x-values < 50) predicts larger permissive expansions.

**Figure 5.2: Permissiveness of Preexisting Institutions and Future Permissive Expansions**



Figures shows the average marginal effects for each provision subgroup on permissive expansions: governance (left panel), formation (center-left), operations (center-right), and resources (right). The vertical reference line bisects the dataspace identifying net-restrictive environments (left) and net-permissive environments (right). Downward sloping lines support the argument that current permissiveness has a substitutive effect on future permissive expansions.

<sup>15</sup> Results are not sensitive to the model or methodological approach. Wald tests in other models reject the possibility these linear measures are simultaneously zero for restrictive expansions: directed-dyad NBRM rejects at 0.001 level ( $X^2(4) = 178.73$ ).

**Table 5.4: OLS Directed Dyad Models Predicting Restrictive Expansions**

	(1)	(2)	(3)	(4)	(5)	(6)
Nondemocratic Grip on Power <sup>a</sup>	0.02+ (0.008)	-0.00 (0.010)	-0.00 (0.010)	0.00 (0.010)	-0.00 (0.010)	-0.00 (0.010)
Governance Permissiveness <sup>a</sup>		-0.00 (0.005)	-0.00 (0.005)	-0.00 (0.005)	-0.01 (0.005)	-0.00 (0.005)
Formation Permissiveness <sup>a</sup>		0.00 (0.002)	0.00 (0.002)	0.00 (0.002)	0.00 (0.002)	0.00 (0.002)
Operations Permissiveness <sup>a</sup>		0.01** (0.002)	0.01** (0.002)	0.01** (0.002)	0.01** (0.002)	0.01** (0.002)
Resources Permissiveness <sup>a</sup>		0.02*** (0.004)	0.02*** (0.004)	0.02*** (0.004)	0.02*** (0.004)	0.02*** (0.004)
Similar Implementation Environment <sup>a</sup>			0.02+ (0.013)			0.03* (0.013)
Similar Political Ideology <sup>a</sup>				0.03* (0.014)		0.04** (0.014)
Common Colonial Past					-0.03 (0.023)	-0.04+ (0.023)
Permissive Rules Enacted	-0.05* (0.024)	-0.05+ (0.025)	-0.05+ (0.025)	-0.05+ (0.025)	-0.05+ (0.025)	-0.05+ (0.025)
Commitment to Guard Human Rights	-0.15** (0.047)	-0.19** (0.059)	-0.19** (0.058)	-0.19** (0.062)	-0.19** (0.060)	-0.19** (0.061)
Constitution Bolsters Commitments	-0.23*** (0.034)	-0.16*** (0.043)	-0.19*** (0.045)	-0.17*** (0.042)	-0.16*** (0.043)	-0.21*** (0.042)
Observations	741	741	741	741	741	741
AIC	1035.59	1033.39	1034.34	1034.20	1034.89	1036.19
BIC	1104.71	1120.94	1126.50	1126.36	1127.05	1137.57
Degrees of Freedom	14	18	19	19	19	21

Standard errors in parentheses

+ p<0.10, \* p<0.05, \*\* p<0.01, \*\*\* p<0.001

<sup>a</sup> variables lagged one period (t-1)

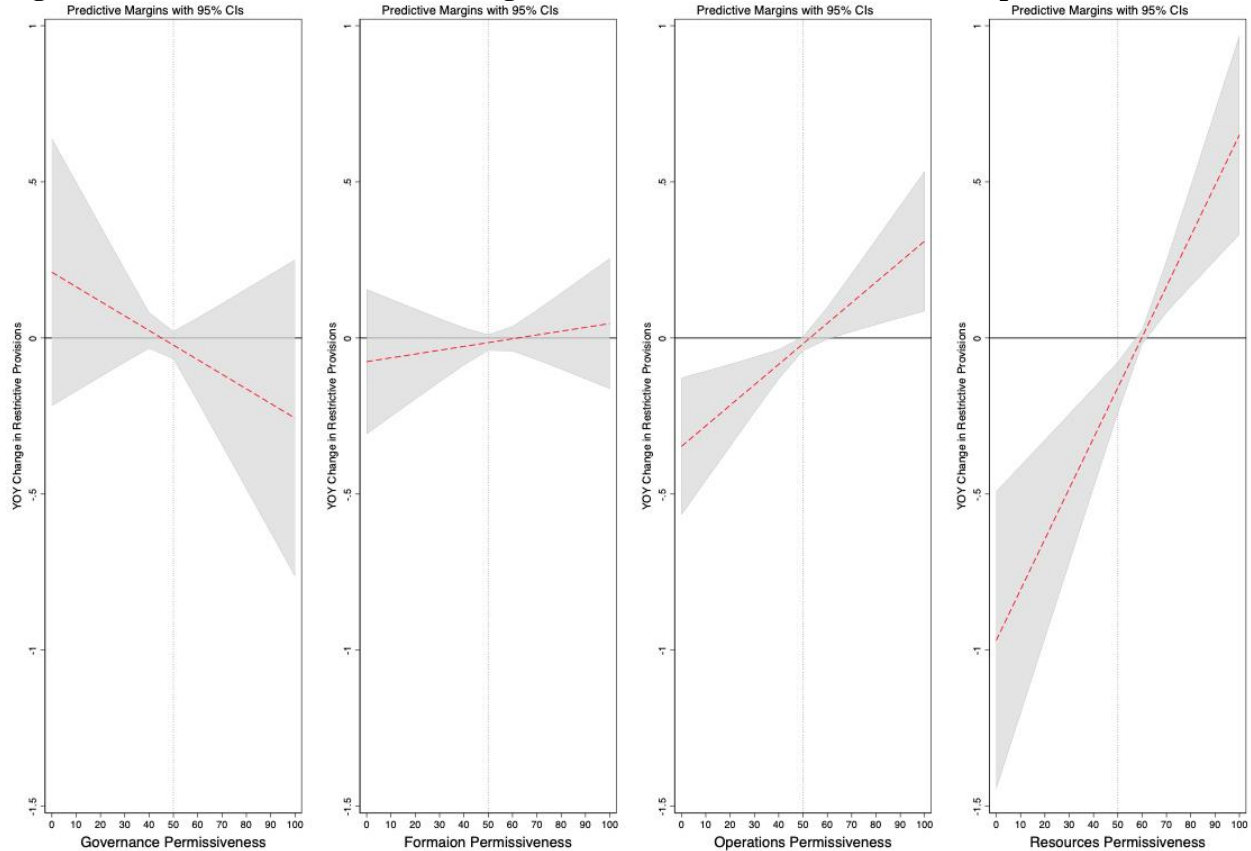
Some controls omitted. See Appendix [Table 5C](#) for full results.

The second path dependency argument (**H2B**) argues that governments will consistently respond to permissive provisions by enacting restrictive expansions. Here, current permissiveness stokes future restrictive expansions. Hypothesis **H2B** predicts a complementary relationship exists between current permissiveness and future restrictive expansions. The results in the restrictive expansions models in Table 5.4 support this hypothesis. A Wald test rejects the

possibility these linear measures are simultaneously zero at the 0.001 level ( $X^2(4) = 13.42$ ).<sup>16</sup>

While the four subgroups may be jointly significant, individual subgroups are not equally significant. Holding other variables at their mean values, increasing the current permissiveness of the operations subgroup by one standard deviation, over 7 points on the 0-100 scale, increases

**Figure 5.3: Permissiveness of Preexisting Institutions and Future Restrictive Expansions**



Figures shows the average marginal effects for each provision subgroup on restrictive expansions: governance (left panel), formation (center-left), operations (center-right), and resources (right). The vertical reference line bisects the dataspace identifying net-restrictive environments (left) and net-permissive environments (right). Upward sloping lines support the argument that current permissiveness has a complementary effect on future restrictive expansions.

the size of the restrictive expansion on average by 0.05 ( $p < 0.001$ ). Then, increasing the current permissiveness of the resources subgroup by one standard deviation, over 4 points, increases the

<sup>16</sup> Results are not sensitive to the model or methodological approach. Wald tests in other models reject the possibility these linear measures are simultaneously zero for restrictive expansions: directed-dyad NBRM rejects at 0.001 level ( $X^2(4) = 69.79$ ).



size of the restrictive expansion on average by 0.08 ( $p < 0.001$ ). Figure 5.3 shows these predicted relationships between future restrictive expansions and current permissiveness. The relationship is strongest for the operations and resources subgroups.

The data suggests that the current permissiveness of operations and resources subgroups are the only types of regulatory regime provisions that elicit restrictive responses from governments. The remaining subgroups have weak associations with future restrictive expansions. Increasing the permissiveness of the governance subgroup by one standard deviation, roughly 10 points on the 0-100 scale, increases the size of the restrictive expansion on average by -0.05 ( $p = 0.32$ ). A discrete change in the formation subgroup, roughly 7 points, has a near-zero and statistically insignificant relationship with restrictive expansions ( $p = 0.58$ ).

In reaffirming earlier work arguing that the effectiveness of international commitments to guard human rights is conditional on specific constitutional provisions (DeMattee, 2019a), the data here show that when an otherwise average country's constitution privileges international agreements above ordinary legislation then ICCPR ratification decreases future restrictive expansions by -0.20 ( $p < 0.01$ ). These findings are supported by the robustness checks and provide evidence that the institutional development of regulatory regime is partially explained by “lawmaking on rails” because it is historically informed and shaped by preexisting constitutional collective-choice rules. These findings also mark a crucial contribution to the research program that has largely omitted preexisting institutions from analyses and measure all laws as having identical contents.

My final set of hypotheses argue that policy diffusion influences institutional change within regulatory regimes. I argue specifically that separate processes of policy diffusion—learning and emulation—are at work. The first diffusion hypothesis (*H3A*) argues policy diffusion occurs

through a process of pragmatic learning. It asserts that greater similarity between two jurisdictions' implementation environments positively correlates with the size of both permissive and restrictive expansions. I proxy the implementation environment using a variable that measures the organized opposition by CSOs to the current political system. The data suggests a learning process of policy diffusion contributes to institutional change within regulatory regimes. What is more, the results suggest that the diffusion process of pragmatic learning is unequal across expansion types and is stronger for permissive expansions. Conditional on one jurisdiction (the *leader*) having more permissive provisions than one considering a permissive expansion (the *laggard*), a standard deviation increase in implementation environment similarity increases the size of the laggard's permissive expansion by 0.09 ( $p < 0.01$ ) holding other variables constant. A similar discrete change increases the size of restrictive expansions by 0.02 ( $p < 0.05$ ), holding other variables constant.

My second diffusion hypothesis is less about pragmatic learning—"what works best"—and more about sociological emulation—"who is doing what." **H3B** argues policy diffusion occurs through a process of sociological emulation. It asserts that increased similarity between two jurisdictions' political ideology positively correlates with the rule expansions. I measure countries' political ideology according to their ideal point on votes taken in the United Nations. The closer two ideal points are, the more similar the two jurisdictions. The analysis finds suggestive evidence supporting **H3B**, but the relationship is weaker for permissive expansions than restrictive ones. Conditional on the leader having more permissive provisions than the laggard, a standard deviation increase in ideological sameness decreases the size of the laggard's permissive expansion by less than -0.01 ( $p = 0.81$ ) holding other variables constant. The same

discrete change in ideological sameness increases the size of the laggard’s restrictive expansion by 0.03 ( $p < 0.01$ ), holding other variables constant.

**Figure 5.4: Regression Coefficients Plot (Discrete Change, 95% Confidence Intervals)**

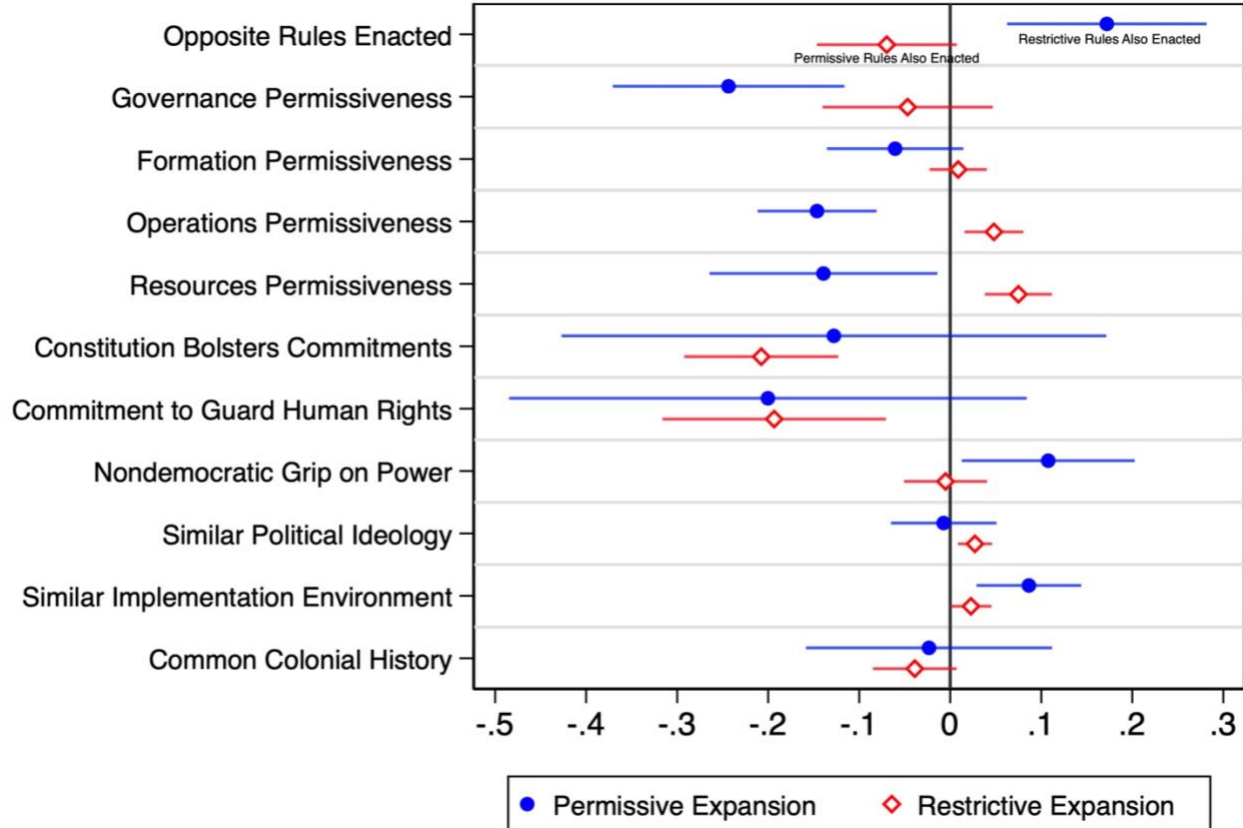


Figure compares discrete changes among selected coefficient. Discrete changes move continuous variables one standard deviation (see Table 5.2 for values) and change binary variables from 0 to 1. Circles represent permissive expansions (Table 5.3, model 6), and diamonds represent restrictive expansions (Table 5.4, model 6). “Opposite Rules Enacted” represents the Restrictive Rules Enacted variable in the permissive expansion models, and the Permissive Rules Enacted variable in restrictive expansion models.

The final diffusion hypothesis (**H3C**) argues sharing a common colonial history increases the expansion in the laggard jurisdiction if the leader jurisdiction has more provisions. I find no evidence supporting this hypothesis. The data and analyses show that sharing a common colonial history surprisingly decreases the laggard’s permissive expansion by more than -0.02 ( $p = 0.73$ ) and decreases restrictive expansions by -0.04 ( $p < 0.10$ ) holding other variables constant. A Wald test rejects the possibility these linear measures are simultaneously zero in the permissive

model (rejected at the 0.05 level ( $X_2(3) = 3.63$ ) and in the restrictive model (rejected at 0.05 level ( $X_2(3) = 4.16$ )).<sup>17</sup>

## Discussion

This analysis makes several novel contributions. To begin, it is the first to study permissive and restrictive provisions simultaneously in the same analysis. These legal provisions exist in the civil society laws that comprise CSO regulatory regimes. As *de jure* rules, legal provisions constrain and incentivize CSO behavior. Permissive provisions protect society and thus increase demand for CSOs, or those provisions create and preserve CSOs and thereby increase organizational pluralism and voluntary association over time. Restrictive provisions, by contrast, deteriorate society's trust in CSOs and thus decrease demand for such organizations, or they repress and intimidate organizations and their members, thus eroding voluntary association. The conventional explanation suggests that hybrid regimes, such as those in East African countries, enact restrictive provisions to "close" and "shrink" the civic space. Counter to the prevailing argument, I find that hybrid regimes frequently enact permissive provisions. The statistical analyses provide evidence that nondemocratic grip on power positively correlates with a type of institutional change that adds permissive provisions to the current regulatory regime. I argue the reason governments add permissive expansions to their current legal institutions is to manipulate CSOs into directly and indirectly legitimizing the political regime. These tactics include building a democratic façade that gives onlookers the impression of democratic law and order, crafting regulatory regimes so that they entice CSO compliance to legitimize the regime and provide the

<sup>17</sup> Results are somewhat sensitive to the model. Wald tests following the directed-dyad NBRM reject the possibility these linear measures are simultaneously zero at the 0.001 level for permissive expansion ( $X_2(3) = 24.30$ ), but does not reject the hypotheses for restrictive expansions ( $X_2(3) = 4.27$ ).

government administrative power, or encouraging service-oriented CSOs to deliver public service goods and support the government's policy. This critical finding calls on researchers to give increased attention to the ultimate aims and goals that guide the institutional development of regulatory regimes.

Second, I build on existing research using original data to incorporate preexisting institutions into my theory and analysis. In Chapter Three, I found that preexisting constitutional rules constrain lawmaking, specifically the institutional arrangement that minimizes the probability a country adopts restrictive provisions is one where international commitment to guard civil and political rights exists alongside constitutional rules that strengthen those commitments above ordinary legislation. Advancing that institutional argument, this chapter is the first to incorporate preexisting collective-choice rules in its analysis. I find that current legal provisions predict future legal changes. What is more, greater permissiveness in these current provisions decreases subsequent permissive expansions, while current permissiveness increases the size of restrictive expansions in the future. In simpler terms, if the permissiveness of current laws is sufficient for the government, then the government does not add new permissive provisions. But if the current laws are too permissive, then the government will add restrictive provisions.

Third, I find that the learning and emulation processes of policy diffusion are associated with the institutional development of regulatory regimes in East Africa. These processes vary according to explanation type and deserve further attention in the future. The learning process appears associated with both expansion types, but the effect is more substantial among

permissive expansions. By contrast, the emulation process of policy diffusion only seems relevant to restrictive expansions.<sup>18</sup>

## **Conclusion**

The dominant argument among researchers studying CSO laws is that restrictive legal provisions are uncommon in democratic settings and more likely found in authoritarian and semi-authoritarian regimes. The logic implies the reverse is also true and that permissive provisions are unlikely found in nondemocratic contexts and more likely belong to democratic regimes. Yet, as I first showed in Chapter Four, there is a puzzling and non-trivial number of exceptions to the conventional explanation, and the descriptive data show that permissive provisions characterize a large portion of the legal provisions that comprise CSO regulatory regimes in nondemocratic contexts. In this chapter, I find evidence that governments develop these legal institutions through a historical process that is influenced by both domestic and international politics. My analysis finds that legal institutions we see today are shaped by an incremental process in which preexisting institutions and policy diffusion are essential factors.

This research makes significant contributions to a growing interdisciplinary literature on CSO laws that is gaining increased attention in the Global South and around the world. While most prior research on this topic omits permissive provisions and preexisting institutions from their analyses and has found little evidence of diffusion, this research finds that all are

<sup>18</sup> The data does not find that common colonial history is a relevant factor when it is conceptualized and measured as a time-invariant factor. One possible explanation for the null effect of common colonial history is that the statistical models are estimating an average effect for the coefficient. Because the variable is historic and time-invariant, I suspect this average estimated effect is moderated by time and is strongest early in the period and wanes as time progresses. Thus, the four decades of data used here becomes a liability, and the time-varying dimension of colonial history is entangled with its fixed effect coefficient. It is reasonable that similar time-varying effects condition the other variables—e.g., Cold War and post-Cold War periods.

consequential. Yet, despite the careful analysis done here, the scope of inference is limited only to changes in *de jure* legal rules. The importance of *de facto* working rules increases the value of the contribution made here. The legal rules versus working rules difference (first distinguished as 'law-in-books' versus 'law-in-action' by Pound, 1910; Cole, 2017, p. 829 ) tells us that the *de facto* regulatory regime is what helps or hinders CSOs and voluntary association.

This difference is relevant because it tells us how the government represses civil society. And wherever civil society experiences a “closing space,” that repression could be the output of different combinations of legal rules and working rules. The two extreme examples are: one, elected officials enact restrictive legal rules that the bureaucracy implements with minimal deviation. These “Type 1 working rules” (Cole, 2017) create a restrictive working rules environment that represses CSOs. In a second example, elected officials enact permissive provisions, but the bureaucracy deviates from those legal rules when it implements the regulatory regime. This combination creates “Type 3 working rules” (Cole, 2017) and leads to the same restrictive working rules environment reached in the first example. Simply put, we cannot understand what rules create the repression without first knowing the legal rules of the *de jure* regulatory regime. That knowledge is a prerequisite when comparatively studying the implementation of these legal institutions, which is my focus in the next chapters.

## --Chapter VI--

### POLITICS, PRESIDENTS, AND CSO LAWS IN KENYA

This chapter is the first of two that uses a single case study, that of Kenya, to understand the conditions under which governments alter the content and enforcement of CSO regulatory regime over time. With Kenya's political history as its backdrop, this analysis focuses on Kenyan presidents and the different approaches each used to steer the government-CSO relationship. This historical review complements existing research of Kenya's political history with laws and primary data collected from CSO regulators. The analysis suggests Kenyan presidents took different approaches to alter legal rules and working rules to control and partner with civil society. To preview my findings, Jomo Kenyatta was a dominant figure who inherited a legal institution from the British and partnered with CSOs to fulfill his *harambee* policy and develop the country. Daniel arap Moi, Kenyatta's successor, enacted permissive legal rules but enforced restrictive working rules to harass and intimidate CSOs. Mwai Kibaki made nominal changes to legal rules that Moi left him. Instead, as part of his approach characterized by openness and goodwill, Kibaki emphasized working rules to reinvigorate the government-CSO relationship and appointed civil society leaders into prominent government positions. Uhuru Kenyatta, defied by CSOs at multiple times, has ineffectively enforced the regulatory regime that Kibaki left him. My analysis in Chapter Seven uses this historical context to explore causal process explanations.

#### **CSO laws in Kenya: A Historical Overview**

Before assessing each administration, I broadly review the role of civil society in Kenya and the legal institutions that structure CSO development. Civil society's role in Kenya has taken on many faces over its history. African traditions, Christian missionaries, and British occupation



were some of the factors that shaped Kenya’s civil society in its pre-colonial and colonial history (Kanyinga et al., 2004; Brass, 2016, pp. 62-66). Traditionally, Kenyan people lived and worked in small rural communities. These tightly-knit communities contained institutionalized norms and collective resources that assisted members whenever necessary. These communities exemplify *harambee*’s original meaning as self-help groups formed through collective-action and voluntary mutual assistance. *Harambee*—a Swahili term meaning “let’s pull together”—is an essential concept to Kenyan civil society and shows how the government can use its policies to reshape government-CSO relationships. Traditionally, *harambee* was the act of local communities self-organizing to organically respond to local matters and issues, with norms of reciprocity guiding activity and government having little involvement.<sup>1</sup> According to Ngau, *harabmee* efforts allowed community members to learn skills, make social ties, and develop moral values and group ethics. The colonial government exploited these self-help groups for forced labor and opposed *harambee* schools until it was clear that independence was unavoidable (J. E. Anderson, 1970; Holmquist, 1984; Brass, 2016).

European encroachment into East Africa profoundly affected societies. Christian missionaries arrived in East Africa during the sixteenth and seventeenth centuries, but their impact on society peaked during British occupation. As Hornsby (2012, p. 30) notes, the late-nineteenth century British colonization “saw the Bible arrive alongside the gun” and initiated a

<sup>1</sup> Definition follows Ngau (1987, p. 524): “Harambee is the collective and cooperative participation of a community in an attempt to fill perceived needs through utilization of its own resources... These historical self-help efforts were mostly voluntary in nature, with self-formed groups of men and women opening virgin land, cultivating, or helping a community member to move his family or restore his house. Small self-formed groups, usually of equal-age groups, same-sex groups, or clans from one village or two, would meet to do one of the above activities, rotating in turn from one household to another and from one village to another... Decisions were made informally through deliberations by all members of each group sitting together... efforts were oriented toward production of basic needs. It was a social exchange of labor and forms of mutual assistance.”

growth in European evangelical missions. Faith-based organizations provided essential social services such as healthcare and education to attract people to these congregations (Kanyinga et al., 2004; Hornsby, 2012).

British colonial law allowed for the establishment of CSOs to promote leisure and social welfare. Laws such as the Trustees (Perpetual Succession) Ordinance (No. 12 of 1923), the Societies Ordinance (No. 52 of 1952), and the Companies Ordinance of 1959 (No. 50 of 1959) regulated distinct CSO legal forms. According to government records, between 1924 and 1963, individuals in British-controlled Kenya registered at least 766 private, self-governed, voluntary organizations as official legal entities. Many of these CSOs provided outlets for sports and play—e.g., athletic, football, cricket, and polo clubs—and common interests such as affinity groups for dog-lovers, debate, safari, and youth leagues. Faith-based groups registered congregations to celebrate religion and workers organized to form professional associations for barbers, charcoal retailers, farmers, fish mongers, medical researchers, public health inspectors, and taxi drivers. Kenya’s post-colonial present, the nearly 60-year period studied in this chapter, builds on this historical foundation.

At independence, President Kenyatta used his inaugural address to make *harambee* a national watchword that became the country’s official motto.<sup>2</sup> Kenyatta evolved the *harambee* concept to achieve his development goals. In Sessional Paper No. 10 of 1965, the government formalized *harambee* project’s as part of its economic policy (Hornsby, 2012, pp. 147, 152; Brass, 2016, p. 63). After Sessional paper No. 10, *harambee* groups built schools, clinics, and

<sup>2</sup> “But you must know that Kenyatta alone cannot give you everything. All things we must do together to develop our country, to get education for our children, to have doctors, to build roads, to improve or provide all day-to-day essentials...Harambee!” Jomo Kenyatta, December 12, 1963 (Kenyatta, 1964, p. 8).

community centers (Barkan & Holmquist, 1989). Politicians and influential business people donated significant money during *harambee* fund drives to finance largescale projects such as roads and hospitals (Hill, 1991; Maxon & Ofcansky, 2000, p. 89). Some critique using *harambee* in this way. As Ngau (1987, p. 524) explains, Kenyatta’s version replaced organic self-governance with a five-stage political planning process that included “initiation, planning, fund-raising, implementation, and follow-up.” Nevertheless, President Kenyatta successfully used his policy to develop the country, support CSOs, and maintain political power (Thomas-Slayter, 1985; Widner, 1992; Matanga, 2000).

Kenya has many varieties of formal and informal CSOs that actively contribute to society (Prosser, 1970; Makanda, 2008). Many of these voluntary associations are legal entities that predate Kenya’s independence. *Community-based organizations* (CBOs) are one type and may be the greatest in number (Brass, 2010, p. 9). With close ties to *harambee*, CBOs are mutual-aid groups that form on an as-needed basis as a “spontaneous response to social and economic difficulties facing their members and local communities [that other CSOs partner with] as entry points to local communities” (Kanyinga, 2004, p. 11). While these groups are essential to Kenyan civil society, they are outside my dissertation’s scope because they are not regulated nationally and may exist for economic profit.<sup>3</sup> What is more, multiple searches of the National Council of Law Reporting<sup>4</sup> did not identify any laws relating to CBOs.

<sup>3</sup> CBOs operate only within single counties (see CBO registration form item 1 (page 1) in the [Appendix](#)) and may exist to generate private profits for members (See CBO registration form item 6 (page 3) and Self-Help Group registration form item 6 (page 2) in the [Appendix](#)). While not all CBOs are organized for economic benefit, the possibility that some are for-profit places them outside my conceptualization of CSOs.

<sup>4</sup> The National Council for Law Reporting (Kenya Law) is part of The Judiciary. It is a semi-autonomous state corporation created by the National Council for Law Reporting Act (No. 11 of 1994) mandated to revise, consolidate, and publish the Laws of Kenya. Kenya Law is the authoritative sources for Kenyan statues, bills, and repealed statues.

*Perpetual trusts* (referred to locally as charitable trusts) are “any body or association of persons established for any religious, educational, literary, scientific, social, athletic or charitable purpose, or who have constituted themselves for any such purpose.”<sup>5</sup> Created by British colonial laws, these charitable trusts are registered and regulated by a small office in the Ministry of Lands. Official government records show these CSOs are few in number but are among the oldest in Kenya. The Ministry of Lands registered 247 charitable trusts between 1924 and 1963. By comparison, 259 registered between 2015 and 2018.

The State Law Office regulates two CSO legal forms: societies and companies limited by guarantee. *Societies* are “any club, company, partnership or other association of ten or more persons, whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya, and any branch of a society [but not including companies, corporations, firms, cooperative societies, schools, building societies, banks, international organizations, and unlawful societies].”<sup>6</sup> Political parties registered with the Registrar of Societies until a later statute established parties as a unique legal form (§44 of the Political Parties Act No. 59 of 2008). *Companies limited by guarantee* are “formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members.”<sup>7</sup> The Registrar of Companies, which manages the registration of private and public businesses, registers this CSO legal form. The precise number of companies limited by guarantee is unclear. Only as recently as 2016 has the Registrar of Companies’

<sup>5</sup> § 3(1) of the Trustees (Perpetual Succession) Act of 1923.

<sup>6</sup> §§ 2(1), 4 of the Societies Act of 1968, which replaced the Societies Ordinance of 1952.

<sup>7</sup> §§ 2, 4(2b), 21(1) of the Companies Ordinance of 1959, 1962.

electronic records started to identify organizations by their precise legal form. We can only estimate how many of the 361,948 companies that registered between 1960 and 2015 are CSOs. What we do know is that many prominent Kenyan and international non-governmental organizations have—and still do—incorporate as companies limited by guarantee.<sup>8</sup>

The government added two additional CSO legal forms more than 25-years after independence. *Non-governmental organizations* (NGOs) are “private voluntary groups of individuals or associations, not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the promotion of social welfare, development, charity or research through mobilization of resources.”<sup>9</sup> Article 2 further differentiates NGOs as either *national* “registered exclusively in Kenya with authority to operate within or across two or more districts,” or *international* with “original incorporation in one or more countries other than Kenya, but operating within Kenya under a certificate of registration.” In 1992, President Moi commenced the NGOs Act and registered nearly 150 new NGOs per year during his tenure (1,655 in total). His successors registered over 8,400: 600 per year under Kibaki and over 350 per year for Uhuru Kenyatta. According to official records obtained from the NGOs Board, by the end of 2018, more than 10,800 NGOs had registered but the regulator considered only 3,010 as “active.”<sup>10</sup>

<sup>8</sup> Examples include The Ford Foundation (1966), Aga Khan Foundation (1974), International Rescue Committee (1977), Oxfam (1977), World Concern International (1981), John Hopkins University (1994), World Vision International (1999), Action Against Hunger (2002), Catholic Medical Missions Board (2003), AfriCog (2007), Amnesty International (2010), Kenya Human Rights Commission (2011), Plan International (2011), and Save the Children (2012).

<sup>9</sup> § 2 of the Non-Governmental Organizations Co-Ordination Act of 1990.

<sup>10</sup> Data retrieved from NGOs Board in .xlsx format on November 12<sup>th</sup>, 2018. Private information omitted and contained only organization name, registration date (DD/MM/YY), scope (international/national), and sector (more than 50 categories). NGOs Board personnel explained *active* is an internal status the regular assigns to organizations that either (a) registered in the prior calendar year, or (b) submitted required filings in either of the past two calendar years. We

Finally, a 2013 law created *public benefit organizations* (PBOs). These CSOs are “voluntary membership or non-membership groupings of individuals or organizations, which is autonomous, non-partisan, non-profit making and which is (a) organized and operated locally, nationally or internationally; (b) engages in public benefit activities in any of the areas set out in the Sixth Schedule; and (c) is registered as such by the Authority.”<sup>11</sup> No PBOs exist in Kenya because the government has chosen not to commence this law.

Laws that create and define CSOs are not the only laws that comprise the CSO regulatory regime. Alongside such laws are others that discuss taxes, political participation, and national security. Figure 6.1 shows how many laws contribute to the regulatory regime in any given year and how frequently lawmakers amend, replace, and add laws. The timeline provides scale and identifies historic political and legal milestones. The figure uses horizontal bars to represent different laws and sorts them in a manner to show each law’s amendment history.

The degree to which variation in these laws affects civil society is outside the scope of this dissertation but is part of my future research agenda. It is reasonable to assume that the regulatory regime affects CSOs, at least partially. For example, it may affect the number of new registrations each year (Figure 6.2). Data collected from four Kenyan regulators shows the number of new registrations for each CSO legal type (left axis). Official government records indicate that, between 1964 and 1974, the number of CSOs that had registered in Kenya almost doubled from 3,867 to 7,008. Those numbers do not take into account that some organizations

can interpret this to mean that, in 2018, the *inactive* status describes organizations that both registered on or before December 31<sup>st</sup>, 2016, and have not submitted the required annual filings to the NGOs Board since on or before December 31<sup>st</sup>, 2015. The NGOs Act does not require the NGOs Board to make its registry publicly available. Other Kenyan CSO laws requires the regulator to provide the public (§ 9(2) of the Trustees (Perpetual Succession) Act; § 48 of the Societies Act; and § 884(8) of the Companies Act, 2015; and § 15(2) of the PBOs Act, 2013).

<sup>11</sup> §§ 5(1-2) and Schedule 6 of the Public Benefits Organization Act of 2013.

dissolve over time. Assuming 50% of organizations that registered in the past remained operational, an estimated 3,504 CSOs were active in Kenya by 1974; that same estimate doubled by 1990 (7,523), tripled by 2000 (10,657), and surpassed 31,400 by the end of 2017.

**Figure 6.1: Institutional Development of CSO laws in Kenya**

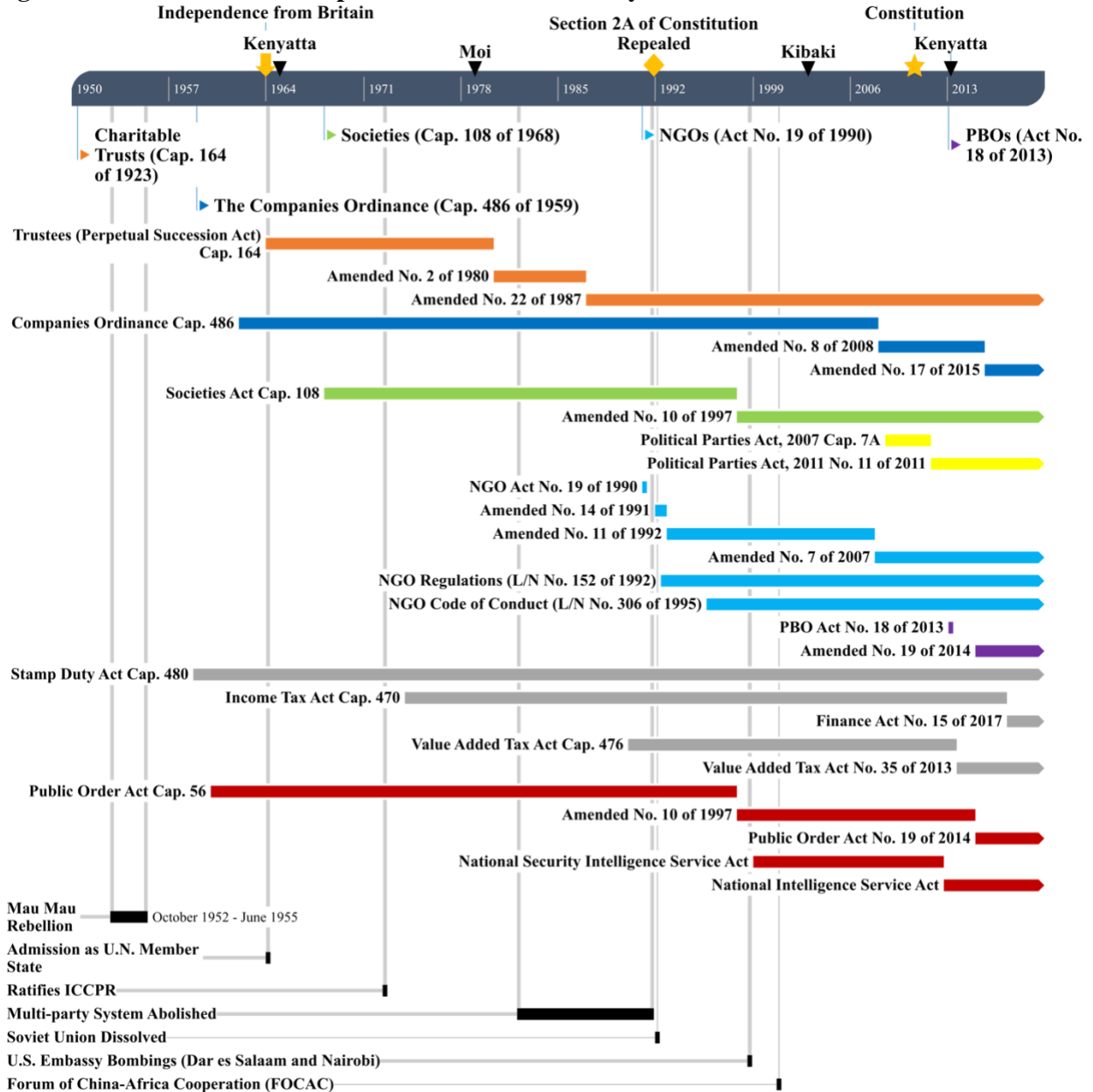
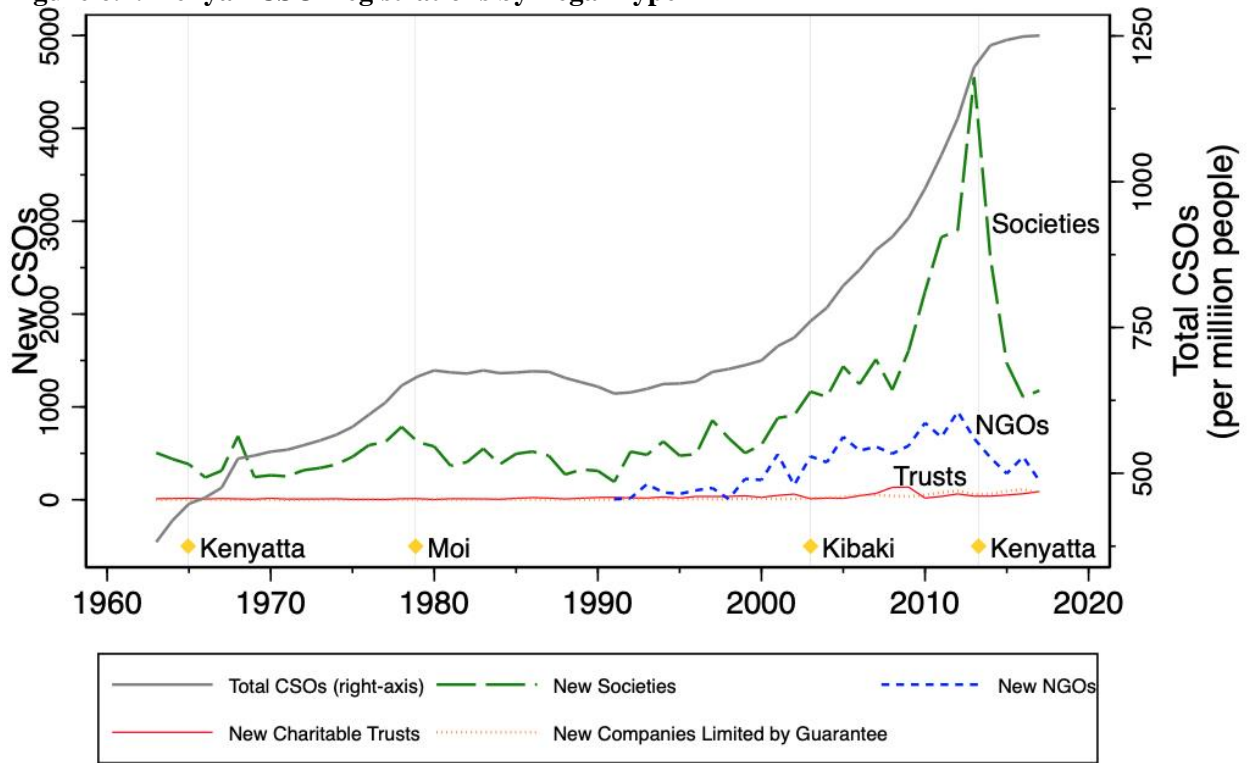


Figure 6.1 identifies instances of changes to Kenya’s regulatory regime. Horizontal bars represent Kenyan laws in my dissertation’s legal corpus. I sort items vertically to show how laws amend each other over time. Details at the bottom identify notable historical events in the country (thick vertical connectors) and the world (thin vertical connectors). See [Appendix](#) for similar figures for other cases and [bibliography](#) of coded laws.

**Figure 6.2: Kenyan CSO Registrations by Legal Type**



Data only show registrations and does not account for mergers or closures. Data generously estimate 62,808 registered CSOs operate in Kenya in 2017 (1,250 per million Kenyans). Data omit CBOs registered with the Ministry of Labour and Social Protection.

The smooth, upward-sloping line shows a total number of CSOs per million people (Figure 6.2, right axis). Assuming all registrations are active, government data shows 62,808 registered CSOs operate in Kenya in 2017, which is 1,250 CSOs per million people. This is considerably lower than other reputable sources that approximate the combined number of societies and NGOs in Kenya exceeds 76,000 (nearly 1,600 CSOs per million people).<sup>12</sup> Accounting for only population, the number of CSO registrations seems to vary by presidential administration: it

<sup>12</sup> International Center for Not-for-Profit Law (ICNL), “Civic Freedom Monitor: Kenya.” Retrieved June 4th, 2020 from [www.icnl.org/resources/civic-freedom-monitor/kenya](http://www.icnl.org/resources/civic-freedom-monitor/kenya). A 2007 report “using anecdotal estimation” suggests “there are well over one million [CSOs] in Kenya,” or roughly 26,000 per million people (Kanyinga, Mitullah, & Njagi, 2007, p. 16).



surges under Jomo Kenyatta and Kibaki, but wanes under Moi and Uhuru Kenyatta. I draw on existing research to explore this president-CSO relationship in the next section.

### **Presidential Administrations: An Explanation for Changing CSO Regulatory Regimes**

Kenya's politics have been described as "schizophrenic" (Branch, 2011, p. 296) due to the juxtaposition of a vibrant civil society on one side, and on the other a government that is perpetually corrupt, violent, and prone to authoritarian tendencies. Enabling the government's misbehavior is a "culture of impunity" (Branch, 2011, p. 21) that makes it nearly impossible to convict senior officials for major crimes even if they attracted considerable attention and criticism in the press (Branch, 2011, pp. 21, 109, 230, 281; Hornsby, 2012, pp. 440, 539, 552). While Kenya's four presidents may share similar vices and tendencies, these men faced different environments and took noticeably different stances towards civil society (Widner, 1992; Matanga, 2000; Oloo & Oyugi, 2002; Hornsby, 2012; Brass, 2016; Gugerty, 2017).

#### *Jomo Kenyatta: 1st President of Kenya (December 12th 1963 – August 22nd 1978)*

President Kenyatta is often described in benevolent terms by those nostalgic for the early post-independence period, but his presidency can be characterized as one in which power was increasingly centralized in the office of the president and in Kenyatta's hands specifically. He amassed tremendous power and was unafraid to repress opponents (Branch, 2011; Hornsby, 2012; Angelo, 2020). Kenya became a *de facto* one-party state during his tenure. As president, Kenyatta enforced legal institutions inherited from the British and changed them as necessary to serve the country's interest. He tolerated CSOs as partners in his economic and development policy but did not allow them to outgrow his control. This section discusses each of these points in further detail.

Kenyatta became the first President of Kenya because he was both a popular nationalist political symbol and the individual that the British transitional government identified as the best protector of British interests (Branch, 2011, p. 4; Angelo, 2020, pp. 81, 93). The euphoria of independence and the patriarchal respect others gave Kenyatta made it easy for him to mobilize power, abuse his authority, and repress dissenters (Mutua, 2008, p. 265). Even late into his administration, Kenyatta created such a “submissive climate” that high-ranking government officials gave great deference to the man “like a lot of junior schoolboys” in a disciplined classroom.<sup>13</sup> His governing style mirrored the colonial one he experienced under colonialism: suppress dissenting voices and imprison opposition leaders (Maxon & Ofcansky, 2000, pp. 94-95).<sup>14</sup> The *harambee* policy provided Kenyatta a tool to impose his authority on the country, fracture his party, and leave the legislature in disarray. Kenya’s first president quickly and effectively consolidated power and governed as a supreme arbitrator influenced only by an inner circle of advisors (Holmquist, 1984; Angelo, 2020, pp. 17, 30). By 1965, Kenyatta could afford to be both distant and authoritative, and by the end of the decade he made the presidency an “untouchable system of rule” (Barkan & Chege, 1989; Branch & Cheeseman, 2006; Angelo, 2020, pp. 248-249).

To navigate Cold War geopolitics, Kenyatta’s government remained rhetorically committed to non-alignment throughout the 1960s (Branch, 2011, pp. 37, 38). Despite the public profession of nonalignment and African Socialism, Kenyatta’s government were generally pro-West and

<sup>13</sup> Angelo (2020, pp. 256-257) citing British high commissioner Antony Duff’s confidential Diplomatic Report No. 310/75.

<sup>14</sup> In 1953, the British charged Kenyatta with leading the Mau Mau rebellion and sentenced him to seven years hard labor in NW Kenya (approximately 20 miles for Ethiopia and modern-day South Sudan).

pro-capitalism.<sup>15</sup> Keeping true to his strategy of non-alignment, Kenyatta ratified both the International Covenant on Civil and Political Rights—favored by the USA and allies—and the International Covenant on Economic, Social and Cultural Rights—championed by the USSR and other developing countries—on the same day (May 1<sup>st</sup>, 1972).<sup>16</sup>

Kenyatta faced multiple challenges in the 1970s that inflamed his autocratic tendencies. First, the septuagenarian's age and declining health motivated many politicians to position themselves for potential succession. Yet, nobody dared challenge Kenyatta openly nor challenge the presidency's informal powers. A military coup plot uncovered in 1971 forced Kenyatta to take an even harder line against political dissent and reinforced his authority and control over state institutions (Hornsby, 2012, p. 281; Angelo, 2020, p. 257). His impatience for political dissent mounted and eventually revealed how untouchable his system of rule had become. In October 15<sup>th</sup>, 1975, Kenyatta ordered police to enter Parliament and arrest longtime political opposition leaders—Martin Shikuku and Jean-Marie Seroney—in the middle of a parliamentary session and jailed them without trial. Both remained in solitary confinement for almost three years before being released after Kenyatta's death in late 1978.

The practice of imprisoning opposition leaders was not the only technique the colonial government left the new state. At independence, Kenya inherited a British CSO regulatory regime that included three laws. Kenyatta made the legal institution more sophisticated during

<sup>15</sup> To maintain the appearance of nonalignment, a Kenyan delegation traveled to China and the USSR in April and May 1964 to establish relations. In Moscow, the governments agreed that the USSR would support the construction of a 200-bed hospital and a technical college. In Beijing, China agreed to provide labor, expertise, and money to fund a major irrigation project in Kenya (Branch, 2011, p. 38).

<sup>16</sup> In the process that led to the Universal Declaration of Human Rights (1948), significant differences existed between UN members on the relative importance of negative civil and political rights versus positive economic (favored by Western democracies led by the US), and the social and cultural ones that challenged capitalist orthodoxy (led by the USSR and supported by other developing countries) eventually led to two separate covenants (Sieghart, 1983, p. 25).

his administration. He increased the number of active laws from three in 1974 to six in 1973. In his first few years in office, President Kenyatta added the Trustees (Perpetual Succession) Act (No. 19 of 1964) and replaced the Societies Ordinance (No. 52 of 1952) with the Societies Act (No. 4 of 1968). His final changes to the regulatory regime came in 1973 when he enacted the Income Tax Act (effective January 1<sup>st</sup>, 1974).<sup>17</sup> These new laws carried with them an expanded number of provisions regulating the governance, formation, operations, and resources of CSOs in

**Figure 6.3: Institutional Change Under J. Kenyatta (Dec. 1963 – Aug. 1978)**

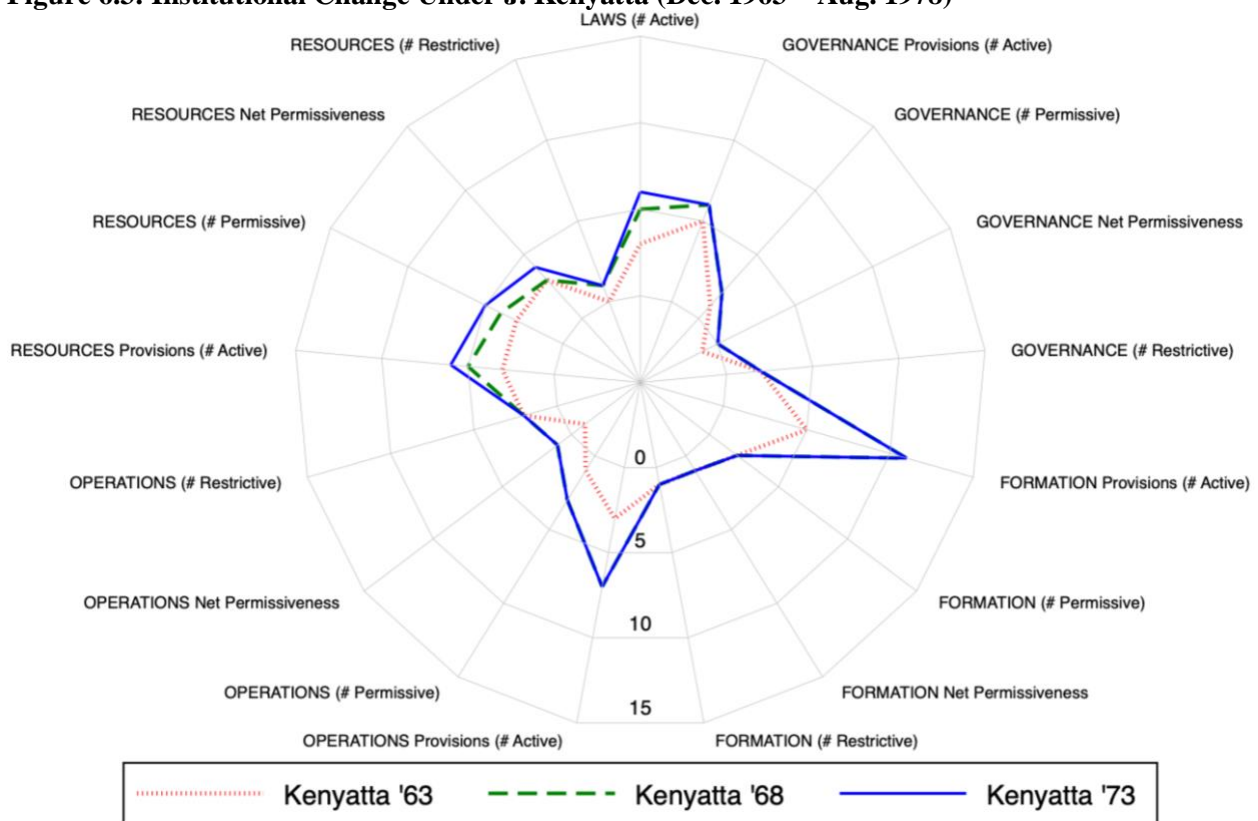


Figure illustrates changes to CSO laws during the president's administration. Values correspond to the legal rules inherited (dotted), the rules at an intermediate point (dashed), and the rules left to the successor (solid). Axes are quantitative variables that describe the regulatory regime. At twelve o'clock is the number of laws that comprise the regulatory regime. Then, quadrants provide four points of information for each subgroup: (i) number of provisions coded, (ii) number of permissive provisions, (iii) net permissiveness, and (iv) number of restrictive provisions.

<sup>17</sup> The Income Tax Act made donations to registered charitable organizations—i.e., charitable trusts, societies, companies limited by guarantee—and allowable deduction (§ 16(2)).

Kenya. Figure 6.3 illustrates the changes to the regulatory regime during Kenyatta's administration. Values represent the legal rules the president inherited (dotted), the rules at an intermediate point (dashed), and the rules left to his successor (solid). The axes represent quantitative variables that describe the regulatory regime. Moving in a clockwise direction and starting at twelve o'clock are the number of laws that comprise the regulatory regime. Then each quadrant provides four points of information for each provision subgroup: (i) number of provisions coded, (ii) number of permissive provisions, (iii) net permissiveness, and (iv) number of restrictive provisions.

Most of the institutional change in Figure 6.3 can be attributed to the Societies Act (1968).<sup>18</sup> Societies are likely the type of organization that the Kenyatta government would have used to initiate, plan, and implement the *harambee* policy. Government records show 281 societies legally registered with the phrase "welfare society" in their name during Kenyatta's administration. Some societies connected their immediate objectives with broader societal issues such as malnutrition, poverty and unemployment, and political instability. Some welfare associations leveraged ethnic ties to become politically powerful.<sup>19</sup> Kenyatta resisted the establishment of any CSO that could outgrow his authority (Widner, 1992, p. 117; Angelo, 2020, p. 251). The law gave the Registrar of Societies a broad mandate to make new rules (§ 52), made it unlawful for voluntary associations of at least ten people to exist without registration (§§ 2, 4),

<sup>18</sup> Amended in 1997 by The Statute Law (Repeals and Miscellaneous Amendments) Act (No. 10 of 1997).

<sup>19</sup> One example of societies possessing significant influence is the Kenyatta-friendly Gikuyu, Embu, Meru Association (GEMA)<sup>19</sup> that "eclipsed" Kenyatta's ruling party to occupy "centre stage in the political panorama" Oyugi (1994, p. 176). GEMA filled the political space left in the wake of the KANU's decline (Hornsby, 2012, p. 311). Following massive rallies showcasing GEMA's public support in September and October 1976, the group led an effort to remove the constitutional provision that removed the vice president from the presidential line of succession (Widner, 1992, p. 117; Oloo & Oyugi, 2002, pp. 252-253; Hornsby, 2012, pp. 324-326; Angelo, 2020, p. 251).

and bestowed the regulator with the power to determine how a society's assets are to be disposed (§§ 33-37) and the authority to access a society's documents and membership lists without cause (§§ 28, 31).

Was the Societies Act a tool to give Kenyatta greater control over CSOs and political opposition as some suggest (e.g., Angelo, 2020, p. 243)? While the list of restrictive provisions suggests yes, several observations challenge such a conclusion. Kenyatta often used extrajudicial tactics to intimidate and repress political challengers. It is therefore unclear why such a powerful figure would suddenly resort to laws to achieve political aims. Another observation is that the effect of the law fails to achieve the repression objective, at least by one measure. Instead of a crackdown, Kenya experienced a steady increase in the number of CSOs (Figure 6.2, smooth line) and societies (long-dashed line) registrations after the Societies Act was on the books.<sup>20</sup>

We can resolve these inconsistencies by returning to the argument I presented in Chapter One. Like other CSO laws, the Societies Act fuses many provisions. In addition to the restrictive provisions listed above, the law gave societies the positive right to challenge bureaucratic decisions (§§ 15, 41), established explicit guidelines for rejecting registration applications (§§ 12-14, 51), made government records publicly available (§ 48), and required societies be financially transparent and accountable to members and the public (§§ 27, 30). These permissive legal rules created an environment in which CSOs could multiply and civil society grow. There was no guarantee that the legal rules would be impartially enforced, however. It was certainly

<sup>20</sup> A third is that the timing of events does not support the argument that the government enacted the law as a response to GEMA and other CSOs. The government added the Societies Act to the regulatory regimes on February 6<sup>th</sup>, 1968 and began enforcing it 10 days later. GEMA, meanwhile, was founded in 1970, reached its zenith of power in 1976, and was involuntarily dissolved in 1980 (Oyugi, 1994, p. 171; Maxon & Ofcansky, 2000, p. 84; Branch, 2011, pp. 131,148,333).

within the reach of the centralized powers of the presidency to alter the working rules to achieve the government's, or rather Kenyatta's aims. In all, it does not appear that the government enacted the Societies Act solely to control Kenyan CSOs. It does appear that Kenyatta could have selectively manipulated its enforcement to achieve political aims.

*Daniel Toroitich arap Moi: 2nd President of Kenya (August 22nd 1978 – December 30th 2002)*

The constitutional line of succession made Daniel arap Moi president. Once in office, President Moi selectively dismantled CSOs he considered threatening. Soon after, he made numerous changes to the constitution to maximize his domestic control and power. After the Cold War, international pressure caused Moi to relinquish his authoritarian control and enact laws that supported political rights and civil liberties. These laws were not always enforced fully and impartially, and state-led repression remained a concern. Many civil society leaders, intellectuals, and academics returned to Kenya in the 1990s. They organized and fought for democratization, a new constitution, and educated voters ahead of two competitive national elections. Despite the return of multipartyism, Moi twice won reelection and left office “without fully internalizing the proper limits of executive power” (Mutua, 2008, p. 265).

Jomo Kenyatta died in the early hours of August 22nd, 1978, and later that day, Vice President Moi became acting president. The transition was nonviolent, but it did involve extensive debate and politicking (Hornsby, 2012, pp. 327-328).<sup>21</sup> Moi moved quickly to solidify his position. Following in the footsteps of Kenyatta, Moi used patronage adeptly to reallocate

<sup>21</sup> As acting president, Moi's primary duty was to arrange a national election in 90 days to select the next president. Because Kenyatta had led Kenya into a *de facto* one-party state, the party's unanimous nomination of Moi on October 3rd, 1978, cleared his path to the presidency: “On October 10th, no other nominations from political parties having been received (as there were none), Moi was elected unopposed. On 14 October 1978, Chief Justice Wicks swore him in as Kenya's second president” (Hornsby, 2012, p. 329).

government resources to key allies throughout the country to divide political enemies and ensure loyalty from senior officers and military commanders (Maxon & Ofcansky, 2000, p. 174; Branch, 2011, p. 173).<sup>22</sup> Unlike his predecessor, Moi was directly involved in polity, regularly traveled throughout the country, and did not shy away from public appearances.

During his tenure, President Moi repressed democracy advocates, opposition politicians, and disloyal individuals. He accomplished this with extrajudicial and judicial means, including changing constitutional and collective-choice rules. Civil society leaders and academics who persevered during President Kenyatta's strict rule became increasingly marginalized under President Moi and many fled the country (Branch, 2011, p. 147). During the Cold War, Kenya's strategic importance led countries like Britain and the United States to willfully ignore Moi's human rights abuses and maladministration. Once the Cold War ended, foreign powers no longer enabled Moi.

CSOs did not openly oppose Moi's government out of fear that he would swiftly punish critics and repress opposition (Holmquist, 1984, p. 80; Widner, 1992, p. 168; Brass, 2016, p. 66). That fear proved to be a reality as Moi's administration dismantled cultural and ethnic associations that posed a threat. In 1980, Moi outlawed ethnic welfare associations that observers note was payback for the GEMA's 1976 attempt to constitutionally prevent him from assuming the presidency upon Kenyatta's death (Ndegwa, 1996, p. 26; Oloo & Oyugi, 2002; Hornsby, 2012, p. 353). Unfortunately, the involuntary dissolution of GEMA was 'legal' under the

<sup>22</sup> A 2004 report suggests Moi and his allies "looted the Kenyan economy to the tune of nearly \$2 billion" (Branch, 2011, p. 252).



Societies Act that granted the Registrar and significant discretion to cancel or suspend organizational registration (§ 12) and make new rules regulating such CSOs (§ 53).<sup>23</sup>

President Moi became increasingly authoritarian as economic growth slowed in the 1980s (Maxon & Ofcansky, 2000, p. 8; Ochieng, 2008, pp. ii,16). An attempted coup on August 1<sup>st</sup>, 1982, pushed Moi over a tipping point.<sup>24</sup> The coup gave Moi an opportunity to consolidate his power and marginalize opponents. He arrested political rivals, closed universities, interrogated students, detained lecturers that the government believed radicalized students, and within two days more than a thousand Kenyan Air Force airmen were arrested and found guilty of sedition, treason, or similar crimes (Branch, 2011, p. 158). Later that same year Moi abolished the multi-party system<sup>25</sup> and moved Kenya from a *de facto* to *de jure* one-party state.<sup>26</sup>

In 1988, Moi replaced the secret ballot with queue-voting and removed the constitutional guarantee of tenure for judges.<sup>27</sup> These moves prolonged the era of repression. Moi's power had become so authoritarian by the close of the 1980s that "civil society, or whatever fledgling nongovernmental organizations existed, the churches, and the press all operated under great strain and threat" (Mutua, 2008, p. 67). Moi's control was so complete that Mr. Amos Wako, his

<sup>23</sup> According to the Societies Act (§§ 12(1)(a) - 12(5)(b)), a registration can be cancelled for a number subjective reasons including (a) the society is "likely to pursue, or be used for, any unlawful purpose"; (b) cancelling the registration is in "the interests of peace, welfare, or good order in Kenya"; and (c) if the bylaws "of the society are, in his opinion, in any respect repugnant to or inconsistent with any law."

<sup>24</sup> Discontent and low morale among disaffected airmen in the Kenyan Air Force led to a coup that loyalists snuffed out in a matter of hours (Branch, 2011, pp. 154-157).

<sup>25</sup> The Constitution of Kenya (Amendment) Act (No. 7 of 1982). Section 2A: "There shall be in Kenya only one political party, the Kenya African National Union."

<sup>26</sup> Murungi (1992, pp. 58-60) explains Moi did not initiate the assault on the constitution. The independence Constitution included eight mechanisms to prevent Kenya's independent government from engaging in the same "mischief" that characterized the "oppressive monolithic colonial system" that preceded it. The Kenyatta government embarked on a deliberate campaign to dismantle essential constitutional safeguards that Moi continued.

<sup>27</sup> The Constitution of Kenya (Amendment) Act (No. 4 of 1988).

new attorney general and former member of the United Nations Human Rights Committee (1985 to 1992), in his maiden speech to Parliament in July 1991, stated for the record:

“Sir, it has been said that the Attorney-General of any country is a trustee of a great duty to see that rule of law prevails. The Government is fully committed to the rule of law and human rights, which are the pillars of the Kenyan society....I must say here that steps will be taken during my tenure of office as the Attorney-General to strengthen the rule of law and to enhance respect for human rights. *A characteristic of the rule of law is that no man, except the President, is above law.* Every man, whatever his rank or position or place in the society is subject to the law of the land and amenable to the jurisdiction of the courts and tribunals by law established...Kenya, and indeed the whole world, is going through critical times. These are times, which we as a nation, can sail through successfully if we can guard our sovereignty and our Constitution; exercise and enjoy our peace and freedom with maturity and in a responsible manner; recognize that the rule of law prevails in the country and that rule or law makes reciprocal demands on the rulers and the ruled and give total support to our beloved President.” (emphasis added. Parliament of Kenya (1991). Hansard for Tuesday, July 2<sup>nd</sup>, 1991. Pages 26-28. Retrieved from Library of Parliament, Nairobi.)

The geopolitics of the Cold War led many foreign observers to overlook Moi’s authoritarianism and human rights abuses. The arrangement persisted as long as Moi remained an ally to the West on the international stage (Branch, 2011, pp. 142,151,172) and the USSR a credible threat to Western interests. As soon as the Cold War ended Kenya’s strategic location and anti-communist position lost considerable importance.<sup>28</sup> In turn, the international community devalued Moi’s strategic importance. In 1991, foreign partners clashed with the administration and international assistance became conditional on political and economic reforms (Haugerud, 1995, pp. 14, 202; Mutua, 2008, p. 68; Branch, 2011, p. 185; Brass, 2016, p. 67). Moi’s power, it appeared, had begun to crack under international pressure.

<sup>28</sup> Branch (2011, p. 185) writes, “[Kenya’s] strategic importance, which derived from its relative proximity to the Middle East, was lost with the Iraqi invasion of Kuwait and the opening up of military bases in the region for US forces. Kenya’s position within geo-political calculations in Washington, London and Brussels was now peripheral.”

At home, civil society started to openly challenge the Moi regime. CSOs such as Kituo Cha Sheria (“KITUO” Legal Advice Centre), academic unions, religious organizations such as the Catholic Church and the National Council of Churches of Kenya (NCCCK), and the Citizens for Constitutional Change (4Cs) collectively—yet individually—provided free legal services, defended social issues, and worked to reopen the civic space and enhance the rule of law (Kibwana, 1992; Nariuki, 1992; Mazrui & Mutunga, 1995; Mutunga, 1999; Makanda, 2008). The Law Society of Kenya (LSK) joined these CSOs and pushed Moi to reinstate democratic rules.<sup>29</sup> Their collective efforts proved fruitful, and in the early 1990s and under intense domestic and international pressures,<sup>30</sup> Moi restored judicial tenure (1990), re-legalized political opposition (1991), and amended the constitution to limit presidents to two five-year terms (1992). For the first time since independence, “[Kenyan] began enjoying freedom and right of speech and association” (Samuel A. Nyanchoga, Muchoki, Wanyonyi, & Mwangi, 2008, p. 63). Those basic freedoms allowed civil society to contribute to democratic and constitutional reforms.<sup>31</sup>

With constitutional tinkering no longer an option, Moi turned to the *de jure* regulatory regime as a means to maintain power and control. During his time in office, the government

<sup>29</sup> I use the term “joined” because the LSK is slightly outside my definition of a CSO. The bar association was created by statute (§3 of the Law Society of Kenya Ordinance, 1949; later replaced by Law Society of Kenya Act, 1992; later replaced by Law Society of Kenya Act No. 21 of 2014). Despite its governmental origins, the LSK has championed for the maintenance and advancement of constitutionalism, justice and the rule of law.

<sup>30</sup> For example, in November 1991, a group of foreign donors suspended aid to Kenya. Less than a week later, Moi made a histrionic reversal and legalized political opposition (Barkan, 2004; Mutua, 2008, p. 68).

<sup>31</sup> The Green Belt Movement (GBM), led by Wangari Maathai, was founded in 1984 with an environmental mission but quickly connected its efforts to political matters. Official records kept by the Registrar of Societies indicate the Green Belt Movement registered as a society on April 13<sup>th</sup>, 1984, as a welfare organization with adult members. Records identify Wangari Maathai as the founding chairman. GBM later switched registrations to the NGOs Board (September 17<sup>th</sup>, 1993) and a sister organization—Green Belt Movement International Limited—registered with the Registrar of Companies in 2005 as a company limited by guarantee.

added or amended 11 laws affecting civil society. Only three of those institutional changes occurred before the return of basic democratic rules in the 1990s;<sup>32</sup> while seven changed the regulatory regime in the period after the reinstatement of multi-party democracy.<sup>33</sup> The most significant of piece of legislation is the Non-Governmental Organizations Co-ordination Act (No. 19 of 1990), which Moi signed into law on January 14<sup>th</sup>, 1991.

**Figure 6.4: Institutional Change Under Moi (Aug. 1978 – Dec. 2002)**

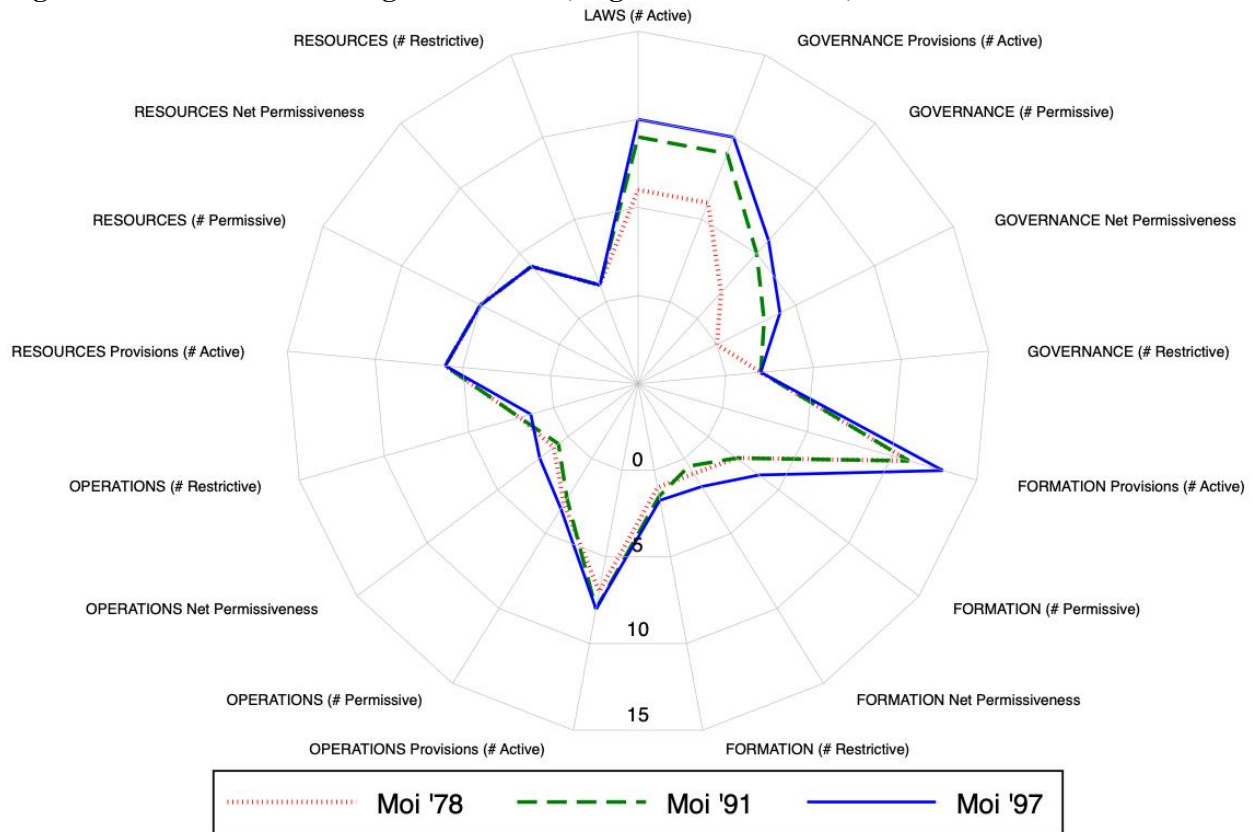


Figure illustrates changes to CSO laws during the president’s administration. Values correspond to the legal rules inherited (dotted), the rules at an intermediate point (dashed), and the rules left to the successor (solid). Axes are quantitative variables that describe the regulatory regime. At twelve o’clock is the number of laws that comprise the

<sup>32</sup> All changes were amendments: the Land (Perpetual Succession) (Amendment) Act (No. 2 of 1980), Trustees (Perpetual Succession) Act (No. 22 of 1987), and the Value Added Tax Act (No. 20 of 1989).

<sup>33</sup> Moi’s final adjustment to the regulatory regime occurred shortly after the al Qaeda bombings of U.S. Embassies in Kenya and Tanzania (August 7<sup>th</sup>, 1998). The government enacted the National Security Intelligence Service Act (No. 11 of 1998) on December 31<sup>st</sup> 1999 and started enforcing it on January 19<sup>th</sup>, 1999.

regulatory regime. Then, quadrants provide four points of information for each subgroup: (i) number of provisions coded, (ii) number of permissive provisions, (iii) net permissiveness, and (iv) number of restrictive provisions.

The government wrote and enacted the NGOs Act during a period when Moi's authoritarian instincts were colliding with the international community's demand for political and economic reforms. The process created an imperfect law with provisions that that appealed to each side. First, the law created an oversight body (the "Board") to supervise the new regulator's (the "Bureau") regulatory operations. An oversight board is commendable if it operates fairly and independently. In this case, the NGOs Act allowed the government to manipulate the board's composition to favor the regime: the law gave the government the ability to manipulate the board's membership in such a way that the oversight body could be 33% to 75% government or government appointed positions.<sup>34</sup>

The Board's far-reaching powers to interfere in an organization's operations was a second concern. The law gave the regulator the authority "to facilitate and co-ordinate the work of all national and international Non-Governmental Organizations" operating in Kenya (§ 7(a)). That authority could be broadly interpreted that the regulator had the power to interfere in organizations' external activities. The act required the regulator to receive and evaluate work permits for international employees and make recommendations to the immigration office whether to issue work permits (§ 17). Such influence on an organization's workforce gave the regulator an opportunity to unnecessarily meddle in an organization's internal affairs. The third concern was the vast power and discretion entrusted to the Minister overseeing the NGOs Board. The law required the Minister to select individuals in the regulators' operational and oversight

<sup>34</sup> § 4(1)(a)-(j) explains the board's 18-20 members must contain five civil society representatives, eight government offices and government-appointed positions, and five to seven members with qualified experience from either the public or private sector.

roles (§§ 4, 5), set fees unilaterally (§ 11), make final decisions on appeals submitted by aggrieved organization (§§ 19, 34(2)), and establish new rules regulating the sector (§ 32).

Given Moi's authoritarian tendencies, track record of human rights abuses, and strong hold on power, we might predict the NGOs Act to be a repressive and highly restrictive piece of legislation. But the opposite is true. Following the coding scheme I described in [Chapter Four](#), the number of permissive provisions (12) in the NGOs Act outnumbered the number of restrictive ones (8). Unlike any Kenyan law before it, the act strongly encouraged self-regulation (§§ 2, 23, 24), established an oversight body to preempt abuse and corruption inside the regulator (§§ 4, 6, 30-31), and minimized operating requirements for registered organizations (§ 12). The Repeal and Miscellaneous Amendments Act (No. 14 of 1991, pp. 610-614) made the NGOs Act even more permissive. Those amendments removed the five-year renewal requirements (§§ 13, 15 of the NGOs Act) and democratized the long-term leadership of the self-regulator (§ 26 of the NGOs Act).

There are at least two explanations for why a powerful authoritarian like Moi would allow permissive provisions into his CSO-controlling bill. The first is that is that the regime needed CSOs. One way the regime needed CSOs was that the international community was applying pressure for political reforms. Figure 6.4 illustrates that Moi's government enacted laws that expanded the permissiveness of the governance, formation, and operations subgroups after the international community demanded and applied pressure that Moi correct his poor human rights record. Meanwhile, domestically the regime needed CSOs to provide public services like education and healthcare (Kameri-Mbote, 2002; Brass, 2010, 2012a). As the Assistant Minister for Foreign Affairs and International Co-operation told Parliament, "[The government] would like all non-governmental organisations to increase their operations in Kenya. At the moment,

they are using U.S. \$300 million, but we would like them to double this amount because they are welcome in the country.”<sup>35</sup> But certainly not *all* operations. We can infer the “operations” the government wanted to “double” was the delivery of unmet public service goods, not human rights or democracy promotion.

The second reason the NGOs Act contains permissive provisions is that Moi’s strong hold on power gave him the option—not the obligation—to enforce permissive provisions. Like Kenyatta before him, Moi could manipulate or outright ignore the enforcement of whatever permissive provisions existed. Assuming the impartial enforcement of legal rules is tenuous at best under authoritarians. Indeed, the inclusion of permissive provisions had minimal impact and as late as 1998 humanitarian watchdogs such as the Kenya Human Rights Commission (KHRC), Africa Watch, and Amnesty International remained critical of the government’s human rights record under Moi (Maxon & Ofcansky, 2000, p. 95). In [Chapter Seven](#), I use interview data with government officials to support these causal processes.

*Mwai Kibaki: 3<sup>rd</sup> President of Kenya (December 30<sup>th</sup> 2002 – April 9<sup>th</sup> 2013)*

Kibaki’s presidency is a story of two different administrations. In 2002, he led an opposition coalition and handily won the State House and Parliament. The public gave him the mandate to end corruption, govern fairly, and enact long-awaited constitutional reforms. As president, Kibaki placed prominent CSO leaders in important administrative posts. Regarding CSO laws, he inherited Moi’s regulatory regime and made only a few changes to its legal rules. New CSO registrations boomed during the Kibaki administration. The economy did well, but inequality

<sup>35</sup> Parliament of Kenya (1990). Hansard for Tuesday, December 12<sup>th</sup>, 1990. Page 87. Retrieved from Library of Parliament, Nairobi.



remained a challenge for the masses. Despite his political experience, educational training, and legislative majority, President Kibaki underperformed in his first term. Heavy losses in Parliament, a questionable reelection victory, and post-election violence marred Kibaki's control and legitimacy as he began his second term.

Kibaki finished second in the 1992 and 1997 general elections while earning the largest share of the opposition's splintered vote. Opposition leaders aimed to unify voters behind a singular candidate to dethrone the incumbent party in the next election. Coordination commenced in January 2002. A series of memorandums of understanding (MOU) between political parties culminated in October and established the National Alliance and Rainbow Coalition (NARC). The alliance selected the experienced Kibaki as its singular nominee ahead of the general election.<sup>36</sup> NARC made broadly popular campaign promises such as ending corruption, enacting constitutional reforms, increasing teachers' pay, providing free primary education, reforming the civil service, and improving the economy (Samuel A. Nyanhoga et al., 2008, pp. 54-61; Branch, 2011, p. 251; Hornsby, 2012, pp. 686-687). The alliance and extravagant party platform gave Kibaki an undeniable victory and a clear mandate to govern.<sup>37</sup> The MOU that made the victory possible committed the president-elect to distributing government posts and responsibilities among alliance members (D. M. Anderson, 2003, p. 3).

President Kibaki differed from his predecessor in key ways. The first was the political veteran's leadership style. As President Moi's Permanent Secretary observed, Kibaki "wanted

<sup>36</sup> Kibaki was both a logical and familiar selection. He was from the same ethnic group as Moi's handpicked successor, which meant Kibaki would split that ethnic voting block. He was also a known quantity capable of governing. As a lifelong politician, he held four cabinet-rank positions in the Kenyatta and Moi administrations, served as Moi's vice president, and was a Member of Parliament for over 35 years.

<sup>37</sup> Kibaki's won nearly two-thirds of the votes cast margin of victory was 1.8 million votes, 31% of all 5.9 million votes cast) and NARC's constituent parties took 132 of the 222 seats in parliament (Mutua, 2008, p. 92).



very much to switch the country's management style" back to Jomo Kenyatta's approach and end "[Moi's] era of roadside policy declarations" (Ochieng, 2008, p. 7). In practice, this meant less interaction with the public, less travel outside the capital, less hands-on management of ministries' operations, and a stronger civil service. This hands-off style was possible for Kenyatta, the patriarchal figure of the independence era, who successfully consolidated power and led a *de facto* one-party state. Kibaki, by contrast, led a fragile alliance that required him to be "active and assertive," traits that the president seemed unwilling or unable to embrace (Hornsby, 2012, p. 702).

Another difference was the posture Kibaki took towards civil society. The conflict and tensions that characterized the government-CSO relationship under Moi was replaced with attitudes of openness and collaboration under the Kibaki (Branch, 2011, p. 256; Brass, 2016, pp. 60-61). We can attribute part of this change in attitude to the president's recognition of civil society's efforts to unseat Moi. Religious and secular civil society leaders played a key role in educating voters for the 1992 and 1997 elections, and in 2002 one prominent CSO went so far as to endorse Kibaki ahead of the general election (Mutunga, 2003, p. 31; Kanyinga, 2004, pp. 17-23; Mutua, 2008, p. 276).<sup>38</sup> The administration went further to repair the government-CSO relationship. Kibaki assigned prominent CSO leaders to critical governmental posts such as

<sup>38</sup> Kanyinga describes several ways CSOs aided democratization. Religious leaders preached on matters of good governance and provided a formidable cover to governmental critics. Then, CSOs monitored the government's actions to ensure it honored the pro-democracy constitutional amendments. Thirdly, because political opposition had been absent from political society for so long, CSOs complemented weak parties with policy ideation and voter education. And finally, CSOs led a campaign of civic education where various groups discussed the importance of constitutionalism and democracy, legal education, equality, and social justice. In 2002, the Kenyan Human Rights Commission endorsed Kibaki against Moi's handpicked KANU successor.

fighting corruption and leading the judiciary.<sup>39</sup> The consequence of those appointments was the courageous voices that once critiqued government from the outside were now part of the political machine. As Branch (2011, p. 256) notes, this “brain drain weakened the quality of civil society leadership in the aftermath of 2002, but also restrained criticism of the government from many of the once forthright critics of human rights abuses who now sat in parliament.”

President Kibaki’s first term showed many successes in absolute terms and relative to his predecessors. The Kenyans experienced improvements in democratic governance, economic growth, international relations, and civil liberties (Ochieng, 2008; Brass, 2016). But these victories failed to satisfy the extravagant campaign promises made in 2002 (Samuel A. Nyanhoga et al., 2008, p. 65; Hornsby, 2012, p. 702). And constitutional reform, which NARC promised in Kibaki’s first 100 days, failed the people and fractured the NARC alliance (Samuel A. Nyanhoga et al., 2008, pp. 52-57; Nic Cheeseman, 2009, pp. 108-110; Hornsby, 2012, pp. 722-725). Many observe the experienced and educated Kibaki should have done far more regarding corruption, press freedoms, income inequality, and unwinding the immense concentration of power in the “bureaucratic-executive” (e.g., Branch & Cheeseman, 2006, p. 15; Mutua, 2008; Samuel A. Nyanhoga et al., 2008; Nic Cheeseman, 2009).

Kibaki’s control and legitimacy reduced after the 2007 general election. His margin of victory collapsed from a commanding 31% in 2002 to less than 3% five years later.<sup>40</sup> Perhaps more damaging was the president’s inability to hold Parliament. His party secured only 20% of

<sup>39</sup> Examples include: John Githongo, former director of Transparency International, led the fight against corruption; Wangari Maathai, renowned environmental activist and Nobel laureate, served as assistant minister for Environment and Natural resources; and Willy Mutunga, leader of the prominent Kenyan Human Rights Commission and the Citizens’ Coalition for Constitutional Change, was appointed Chief Justice of Kenya.

<sup>40</sup> Assisted by a fractured opposition vote, Mwai Kibaki’s victory over Raila Odinga was only 231,728 out of 9.9 million votes cast (Table 11.4 in Mutua, 2008, p. 246).

the seats in Parliament—down from 60% in 2002—while the opposition party won 47%. Another dent to Kibaki’s legitimacy came when election monitors raised concerns that the general election was seriously flawed, especially with respect to counting presidential ballots (Mutua, 2008, p. 247). Kibaki expedited the swearing-in protocols and plunged Kenya into “chaos and near meltdown” as ethnic clashes and postelection violence killed over 1,000 people and displaced at least 250,000 Kenyans (Mutua, 2008, p. 249; Nic Cheeseman, 2009). Kibaki’s grip on power in his second term was far weaker than the moral and legal legitimacy he enjoyed in 2002.

The Kibaki administration oversaw the largest expansion of CSO registrations in Kenya’s history, but with very little changes to the *de jure* regulatory regime. As [Figure 6.2](#) illustrates, government data estimates that there were approximately 750 CSOs per million people when Moi left office. That figure increased to more than 1,100 CSOs per million—a 50% increase—during Kibaki’s tenure that included two constitutional referenda and six laws that affecting the Kenyan CSO regulatory regime (Figure 6.1).<sup>41</sup> The Kibaki era laws made very few changes to the regulatory regime and added only two *new* statutes to the 11 that comprised the legal institution developed by Presidents Kenyatta and Moi.

The first new statute came at the end of Kibaki’s first term. The Political Parties Act of 2007 separated CSOs and political parties and legislated that the latter would no longer be “societies” and gave them a unique legal identity (§ 44) and prohibited donations from “foreign government, inter-governmental or nongovernmental organizations” (§ 31(1)(c)). The separation

<sup>41</sup> The first referendum (November 2005) failed with 58% of 6.2 million voters opposing it, while the second (August 2010) passed decisively with 67% of 9 million voters supporting it (Hornsby, 2012, pp. 740, 779).

of these legal entities removed opportunities for corrupt behavior because cash donations to organizations registered under the Societies Act are tax-deductible (§ 15(2)(w) of the Income Tax Act, 1973). The Political Parties Act of 2011 replaced the 2007 statute but kept these provisions.

**Figure 6.5: Institutional Change Under Kibaki (Dec. 2002 – Apr. 2013)**

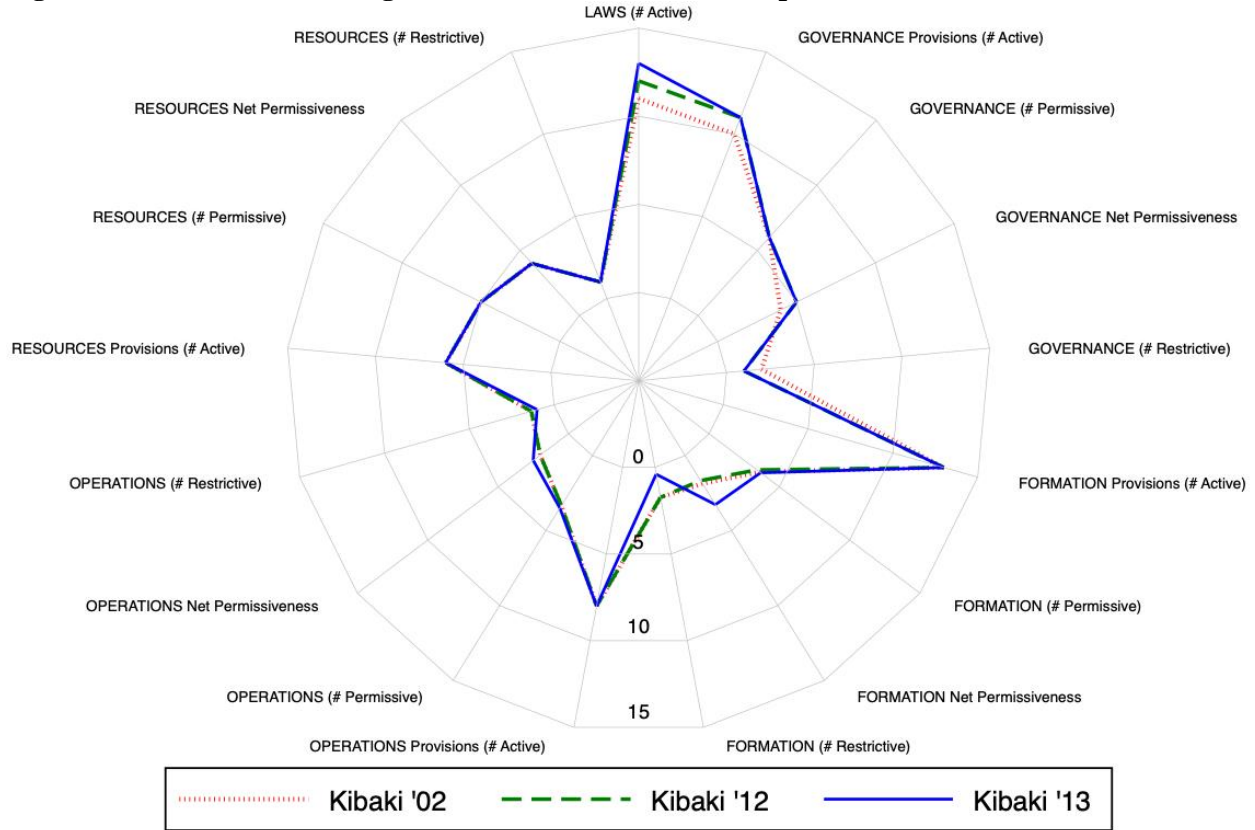


Figure illustrates changes to CSO laws during the president’s administration. Values correspond to the legal rules inherited (dotted), the rules at an intermediate point (dashed), and the rules left to the successor (solid). Axes are quantitative variables that describe the regulatory regime. At twelve o’clock is the number of laws that comprise the regulatory regime. Then, quadrants provide four points of information for each subgroup: (i) number of provisions coded, (ii) number of permissive provisions, (iii) net permissiveness, and (iv) number of restrictive provisions.

The second new statute was one of Kibaki’s last as president. The Public Benefits Organizations Act (No. 18 of 2013) was a private member’s bill introduced by Sophia Abdi Noor of the opposition party that controlled parliament (ODM). Described as a “middle of the roader” by someone intimately familiar with the act’s complicated history, Sophia Abdi Noor was the

bill's best chance at becoming law. She worked well with elected officials in the minority (Kibaki's PNU) and had experience leading CSOs. The calculus was that if the president and members of his party could embrace the bill, then ODM would be unlikely to reject legislation sponsored by one of their own. The bill drew heavily on Sessional Paper No. 1 of 2006—the Kibaki administration's official policy document towards CSOs—to attract government support. The bill had broad support throughout civil society and buttressed the regulatory regime's permissive qualities. Upon commencement, the act would repeal and replace the NGOs Act (§ 70 of the PBOs Act).<sup>42</sup>

Like other CSO laws, the PBOs Act fuses permissive and restrictive provisions. Its permissive provisions are laudable if they are enforced fully and impartially. The act explicitly allows CSOs to join self-regulation forums other than the one created by the act (§§ 21, 23-26, 28), permits associations to remain unregistered and informal (§§ 6-7), requires the regulator to make registration decisions within 60 days (§ 9(5)), does not require CSOs obtain additional permits to operate throughout the country (§ 10(1)), and gives CSOs the option to pursue income-generating activity related to their organizational missions (§ 65). Its restrictive provisions, by contrast, could quickly become repressive if the regulator acts without effective oversight. Three examples follow. One, the regulator can still collect “information that the Authority may deem necessary to include or as may be provided in the regulations” (§ 15(1)(e)) and must make that information available to public inspection (§ 15(2)). Another is that CSOs must still allow the regulator to influence private organizational decisions such as the nationality

<sup>42</sup> Private member's bills are those introduced into the legislature by a member legislator not acting on behalf of the executive branch. This process is allowed under Article 109(5) of the Constitution (Lumumba & Franceschi, 2014, pp. 387-388).

and residency of directors (§ 11(5)(a)) and includes requirements for how each CSO governs itself and conducts its day-to-day activities (§§ 25-26). And finally, the PBOs Act gives the regulator and Cabinet Secretary the authority to institute new rules in support of the act's other legal provisions (§ 69).

Another concerning downside of the PBOs Act is that it would consolidate Kenya's fragmented CSO regulatory responsibilities under the Public Benefit Organizations Regulatory Authority (§ 34). Currently, there are four regulators in Kenya that register and regulate CSOs. As I discuss in my next chapter, this regulatory pluralism allows CSOs to "shop" for the best regulator that meets their needs in terms of service, accessibility, fees, sophistication, registration requirements, etcetera. What is more, regulatory pluralism also makes it harder for the government to control civil society by capturing or coopting regulators. In short, regulatory pluralism is a feature not a bug and legislating it away may have undesirable consequences for fragile democracies.

*Uhuru Muigai Kenyatta: 4th President of Kenya (April 9th 2013 – current)*

CSOs made Uhuru Kenyatta's path to the presidency uneasy. As Moi's handpicked successor in 2002, Kenyatta ran as a member of KANU, his father's party. Civil society leaders associated Uhuru Kenyatta with KANU's long history of repression and human rights abuses. The Kenyan Human Rights Commission's (KHRC) bold endorsement of presidential contender Mwai Kibaki contributed to Kenyatta's electoral defeat in 2002 (Mutua, 2008, p. 276).<sup>43</sup> CSOs challenged Kenyatta two more times: one was their support for the International Criminal

<sup>43</sup> The executive director of the KHRC explained human rights CSOs cannot remain silent and adhere to a "no-comment orthodoxy" when a dictatorial government systematically abuses and oppresses basic human rights (Mutunga, 2003, p. 31).

Court's (ICC) investigation of Kenyatta, the other was petitioning the Supreme Court to dismiss the 2013 election results and nullify Kenyatta's victory. In a different era and under different circumstances, this uneasy relationship may have foreshadowed an abusive response from Uhuru Kenyatta once he became president. Although President Kenyatta has ineffectively—and at times illegally—enforced the regulatory regime he inherited, characterizing his style as heavy-handed is inaccurate.

Kibaki's term-limited presidency ended as his Prime Minister Raila Odinga (Orange Democratic Movement party) competed against his Deputy Prime Minister Uhuru Kenyatta (The National Alliance party). Both men were standard-bearers for alliances that sought to unify voters, a strategy that aided Kibaki in his first electoral win. Despite the ongoing investigation by the ICC for his involvement in the 2007-2008 post-election violence,<sup>44</sup> the Independent Electoral & Boundaries Commission announced Uhuru Kenyatta the winner on March 9<sup>th</sup>. Soon after, on March 16<sup>th</sup>, Odinga filed a petition at the Supreme Court arguing the election results were unreliable and needed reexamination.<sup>45</sup> The Supreme Court moved quickly and announced its unanimous decision on March 30<sup>th</sup>. The court found that the election had been conducted in compliance with the law, that presidential candidate Uhuru Kenyatta validly won, and that rejected ballots should be omitted when calculating final tallies.<sup>46</sup> Odinga accepted the court's decision and Uhuru Kenyatta was inaugurated on April 9<sup>th</sup>.

<sup>44</sup> In December 2010, the ICC charged Kenyatta and other prominent figures with five counts of crimes against humanity. Public support for the ICC investigation neared 80% in November 2010 but lost support over time (T. Chapman & Chaudoin, 2019). On March 13<sup>th</sup>, 2015, the ICC withdrew charges and terminated the case (ICC Press Release ICC-CPI-20150313-PR1099 <https://www.icc-cpi.int/pages/item.aspx?name=pr1099>).

<sup>45</sup> Article 87(2) of the Constitution of Kenya, 2010 and the Elections Act, 2011 (§§ 74, 80) required the Supreme Court to settle the electoral dispute in a timely manner (Lumumba & Franceschi, 2014, pp. 335-336).

<sup>46</sup> Raila Odinga & 5 Others v Independent Electoral and Boundaries Commission & 3 Others (Petition No. 5 of 2013). Retrieved from: [kenyalaw.org/caselaw/cases/view/87380/](http://kenyalaw.org/caselaw/cases/view/87380/).



Kenyatta’s approach to civil society is unlike any of his predecessors. He has not embraced CSOs with an attitude of goodwill as Kibaki did. Nor has he partnered with them to develop the economy strategically as his father showed possible. But he has not been openly hostile towards civil society in the same way Moi had been. It is unlikely that Kenyatta is a full-throated supporter of civil society. CSOs endorsed his presidential opponent in 2002 and supported the ICC investigation that embarrassed and delegitimized him on the international stage. These grudges provide insight into the continued delay in commencing the PBOs Act (Amnesty International, 2015, p. 215; 2018, p. 223).

**Figure 6.6: Institutional Change Under U. Kenyatta (Apr. 2013 – current)**

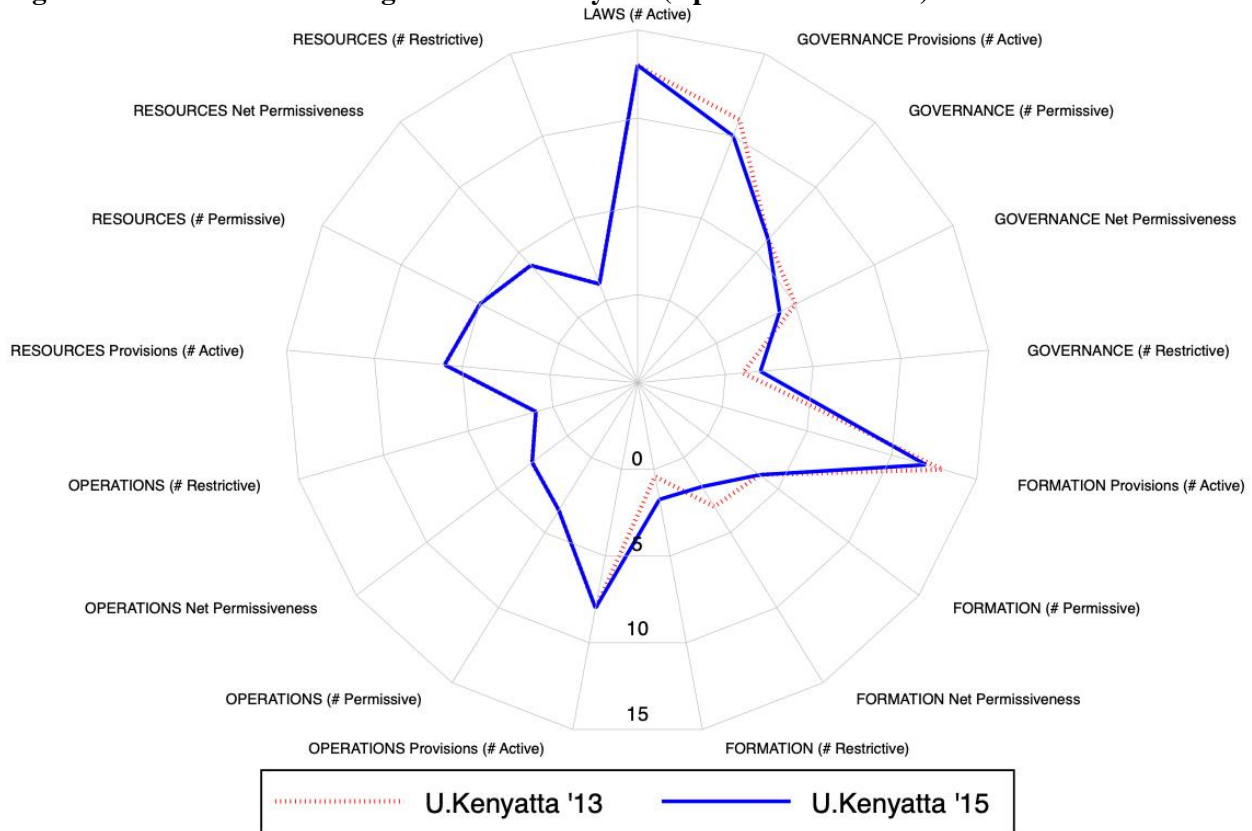


Figure illustrates changes to CSO laws during the president’s administration. Values correspond to the legal rules inherited (dotted), the rules at an intermediate point (dashed), and the rules left to the successor (solid). Axes are quantitative variables that describe the regulatory regime. At twelve o’clock is the number of laws that comprise the regulatory regime. Then, quadrants provide four points of information for each subgroup: (i) number of provisions coded, (ii) number of permissive provisions, (iii) net permissiveness, and (iv) number of restrictive provisions.



The Kenyan regulatory regime changed very little under President Uhuru Kenyatta, as Figure 6.6 illustrates. The figure does not reflect the government's failed attempt to amend the PBOs Act through a 2013 bill. The October 2013 bill proposed limiting a PBO's external funding at 15% unless it had Cabinet Secretary authorization, lowering qualifications for persons serving on the oversight board, and reinserting the CSO regulator into CSOs' work visa applications.<sup>47</sup> Those amendments did not receive sufficient support during the legislative process. The act the government eventually enacted in December 2014—i.e., the Security Laws (Amendment) Act (No. 19 of 2014)—did not alter the PBOs Act in meaningful ways. As I discuss in the next chapter, elected officials explained the bill's original restrictive elements failed because Members of Parliament organized to protect CSOs that were providing public service goods to their constituents. Those research participants made clear that CSOs' effective service provision increased their reelection chances.

President Kenyatta seems determined to selectively alter the working rules to create the *de facto* regulatory regime that he wants. Not commencing the PBOs Act is one example. Another example is who he appoints to lead CSO regulators, particularly Mr. Yusuf Mahamed Fazul, Executive Director, NGOs Coordination Board (December 2014 to February 2018). In addition to abusing his own organization (Amollo & The Office of the Ombudsman, 2016), Mr. Fazul showed a pattern of directing his agency to conduct illegal and highly prejudicial enforcement actions that appeared to directly benefit President Kenyatta. In May 2017, Director Fazul alleged the Kalonzo Musyoka Foundation was laundering money and ordered the Central Bank to freeze

<sup>47</sup> Statute Law (Miscellaneous Amendments) Bill, 2013. Kenya Gazette Supplement No. 146 (Bills No. 32). October 30th, 2013. Pages 977-986.

the CSO's accounts.<sup>48</sup> The directive appeared politically motivated because the foundation was associated with Raila Odinga's running mate to unseat President Kenyatta in the upcoming election. Then, on August 4<sup>th</sup>, 2017, Fazul's agency deregistered the Key Empowerment Foundation, a CSO associated with Raila Odinga daughter.<sup>49</sup> After the disputed August 8<sup>th</sup>, 2017 presidential election, Mr. Fazul reportedly wrote to the Directorate of Criminal Investigations to investigate two prominent pro-democracy CSOs. On August 16<sup>th</sup>, Kenyan Police and Kenya Revenue Authority raided KHRC and AfriCOG offices after those CSOs raised public concerns regarding the outcome of the election.<sup>50</sup> Fazul's enforcement actions became so baseless that human rights CSOs in Mombasa ignored summonses by the regulator and dismissed it as an ineffective agency under questionable leadership.<sup>51</sup> I discuss the implications of this lost legitimacy on the regulator in Chapter Seven.

## Conclusion

Research suggests that Kenyan presidents have taken different stances towards civil society: Jomo Kenyatta inherited a legal institution from the British and enacted some changes that allowed his *harambee* policy to develop the country and shape the political landscape. Moi selectively dismantled CSOs he considered threatening before making numerous changes to Kenya's constitution that maximized his domestic control and power. Only after the Cold War did international pressure cause Moi to relinquish his authoritarian control and enact laws that to support political rights and civil liberties. Kibaki took over Moi's regulatory regime and made

<sup>48</sup> Maina, Carole. (2017, June 1). "Kalonzo Foundation's accounts to be active." *The Star, Kenya*.

<sup>49</sup> Thoronjo, Paul. (2017, August 4). "Board 'deregisters' Raila daughter's NGO." *The Standard*.

<sup>50</sup> Ndunda, Joseph. (2017, August 23). "KHRC, AfriCOG to blame for ugly spats with state, says NGOs council." *The Star, Kenya*.

<sup>51</sup> Otieno, Brian. (2017, November 6). "Coast activists ignore Fazul summonses, say NGOs board childish." *The Star*.

only a few changes to the legal rules. He made a concerted effort to improve the bureaucracy by placing prominent civil society leaders in important administrative positions. The current president, Uhuru Kenyatta, has ineffectively—and at times illegally—enforced the regulatory regime that Kibaki left him. With this historical overview as context, my final empirical chapter uses interviews with elected officials, bureaucrats, and four CSO regulators to understand why Kenyan CSO laws exist and how they are enforced.

## --Chapter VII--

### FOUR CSO REGULATORS IN KENYA

The preceding chapters analyzed the institutional development of CSO regulatory regimes as if they were strictly *de jure* legal rules. In Chapters Three and Five, I showed that preexisting constitutional and collective-choice rules, path dependence, and policy diffusion affect the institutional development of regulatory regimes. And in Chapters Four and Five, I illustrated that governments fuse permissive and restrictive provisions to craft the legal institutions governments want and need. Important questions remain, such as under what conditions do nondemocratic governments enact permissive provisions? Drawing on the case of Kenya for evidence, I argue that *de jure* institutional change is not an endpoint, and a provision's mere existence does not ensure its impartial enforcement. This means that the government's ulterior motives can cause working rules to bear no resemblance to legal rules.

It is therefore necessary but insufficient to study the institutional development of *de jure* regulatory regimes. What is also needed is to get one's hands dirty and understand the enforcement of regulatory regimes from the inside. To fully understand how and why governments regulate CSOs, we must understand the degree to which working rules deviate from legal rules and explore the factors that may cause that deviation. In this chapter, I examine the enforcement of the Kenyan regulatory regime by interviewing Kenyan government officials and agency personnel. My interviews focused on why Kenyan CSO laws exist and how they are enforced. To verify the interview data collected from research participants at CSO regulators, more than one-third of my participants are elected officials and bureaucrats with working

knowledge of those regulators and Kenyan civil society more broadly.<sup>1</sup> I combine this interview data with additional archival materials to show that different presidential administrations led the bureaucracy to enforce the same regulatory regime in different ways for political expediency. And while the interview data suggests that CSOs regulators lack the necessary personnel, expertise, and technology to be an imposing omnipresent threat, participants widely agreed that individual managers can do considerable damage to targeted CSOs and damage the regulator's credibility in the process.

Evaluating these data together leads to my primary contribution that regulatory regimes are another tactic that governments use to directly and indirectly legitimize the regime and expand its control. Specifically, I argue that although elected officials in all political regime types may enact similar *de jure* legal provisions, the way they instruct the bureaucracy to enforce those rules can be explained as a quest of legitimacy at different levels. Legitimacy is therefore a subversive method for increasing control, maintaining power, and prolonging the regime's existence.

While particular tactics may vary, the strategy remains the same. As one example, when a government aims to increase control directly, it uses coercive tactics. This occurs when elected officials enact *de jure* restrictive provisions and instruct the bureaucracy to enforce them with little deviation. In the same moment, the bureaucracy under-enforces *de jure* permissive provisions by enforcing them selectively (if at all). A second example shows that governments may have ulterior motives for enacting permissive provisions. When a government seeks to

<sup>1</sup> A concern is that government officials may embellish statements concerning why the civil societies laws exist or bias responses regarding enforcement and enforcement. I manage this by interviewing personnel at each regulator as well as elected officials and bureaucrats whose agencies work with civil society actors and CSO regulators.

increase control through legitimacy, it uses laws to manipulate civil society. This happens when elected officials enact *de jure* legal institutions that contain permissive and restrictive legal provisions. The disingenuous “dark side” of this tactic is that a nondemocratic government highlights permissiveness in a way that appears to empower and enable civil society, but actually increases the government’s legitimacy and buttresses its control.

### **The Importance of Legitimacy**

Scholars use legitimacy to describe concepts at different levels of analysis within societies. At the national level, legitimacy is analogous to “system affect” and “diffuse support” and describes the citizenry’s general evaluation of and support for the political system (Lipset, 1960; Almond & Verba, 1963; Easton, 1965, 1975). Applied at the subnational-level, legitimacy is the evaluation of and support for particular government actors and policies, which makes it analogous to terms such as “specific support,” “effectiveness,” and “incumbent affect” (Lipset, 1960; Almond & Verba, 1963; Easton, 1965). In countries like Kenya, governments tie their legitimacy to their ability to deliver public service goods (Bratton, 1989a; Fowler, 1991; Katumanga, 2004; Owiti, Aluoka, & Oloo, 2004).

Legitimacy is a vital concept because it is the impetus for enacting different provisions in CSO laws (Bratton, 1989b). This loss of legitimacy is central to the “closing space” argument that explains why governments enact legal provisions that hinder civil society. That reasoning has sent analysts on a quest to investigate the conditions under which governments enact restrictive provisions. But restrictive provisions are not the only response available to governments with diminishing or fragile legitimacy. The “dark side” of permissive provisions is

that nondemocratic governments can enact them and selectively enforce them as part of a broader strategy to maintain power.

### *Why Nondemocracies Enact Permissive Provisions: Legitimacy, Control, and Manipulation*

In Chapters Four and Five, I carefully detail that nondemocratic governments routinely enact permissive provisions and that the practice is not random.<sup>2</sup> Lorch and Bunk (2017, pp. 989-991) have identified several tactics where governments use permissive provisions to legitimize their regimes and expand their control. I discuss these tactics as contributing to the government's strategy through direct or indirect legitimization, or through manipulation.<sup>3</sup> Two tactics use permissive provisions to directly bolster the regime's legitimacy. The first direct tactic uses permissive provisions to strengthen the regime's democratic façade (*Tactic #1*). The action is that the government enacts permissive provisions to the *de jure* CSO regulatory regime. Doing so flashes the impression of democratic qualities to observers in the domestic or international spheres.<sup>4</sup> The intended effect is to increase diffuse support for the regime. The other direct tactic engages CSOs on social matters to demonstrate responsiveness (*Tactic #2*). The first action is that the government enacts permissive provisions that allow for the controlled growth of CSOs, some of which will be friendly towards the current administration. The second action is that the government meets with those CSOs and claims they represent society's collective interests, even

<sup>2</sup> Analyses in Chapter Five suggest that a one standard deviation increase in institutionalized autocracy almost doubles the size of the average permissive expansion (0.10,  $p < 0.05$ ). The direction, magnitude, and statistical significance of this relationship is consistent among models analyzing permissive expansions (see [Table 5.3](#)).

<sup>3</sup> Prior research shows these tactics are used in contexts such as the Middle East and North Africa (Wiktorowicz, 2000; Dimitrovova, 2010), Southeast Asia (Lorch, 2006; Giersdorf & Croissant, 2011), Sub-Saharan Africa (Tripp, 2001; Brass, 2016; Lorch & Bunk, 2017), and many other authoritarian and hybrid regimes around the world (Lewis, 2013; Froissart, 2014; Teets, 2014; Benevolenski & Toepler, 2017; Toepler et al., 2019; Toepler et al., 2020).

<sup>4</sup> This is similar to organizing elections that are in reality "elections without democracy" (Diamond, 2002, p. 21).

if some or all of them support the administration. The first intended effect is to engage with legally registered CSOs and depoliticize widespread social discontent (Giersdorf & Croissant, 2011) and thus publicly demonstrate the government's willingness to work with groups that represent society's concerns—i.e., CSOs. The other intended effect is to collect information that the government can use to understand pressing societal concerns and respond to them before they threaten the regime (Tripp, 2001; Teets, 2014). Both legitimize the government by improving its responsiveness.

Two additional tactics indirectly add to the regime's legitimacy. One uses permissive provisions to entice CSOs to comply with the regime (*Tactic #3*). The action is that the government enacts permissive provisions to increase compliance. Compliance does not directly improve diffuse-support legitimacy, but instead adds specific-support legitimacy to the regulatory regime. The intended effect is to turn the specific support for the legal institution into a signal that legitimizes the government's authority to govern (Froissart, 2014). The other (*Tactic #4*) uses CSOs' service provision to increase the government's output of public service goods. The action is that the government enacts permissive provisions to encourage and engineer the growth of particular types of CSOs. This may involve facilitating the growth of welfare- and service-oriented CSOs because those organizations fulfill fundamental social needs unmet by the government (Bratton, 1989b; Lorch, 2006; Spires, 2011; Brass, 2016; Toepler et al., 2019). The intended effect is to absorb CSOs' organizational outputs into the government's official policy and allow the regime to seize credit for those successes through either cooperation or cooptation. Improved service provision directly bolsters the regime's output legitimacy.

The final two tactics are manipulative. The first (*Tactic #5*) increases the regime's administrative power using permissive provisions to ensnare CSOs “in a web of bureaucratic



practices and legal codes” (Wiktorowicz, 2000, p. 43). Similar to Tactic #3, the action is that the government enacts permissive provisions to increase voluntary compliance. The manipulation happens when CSOs willingly—and perhaps unknowingly—surrender to the government the basic information it needs to observe these autonomous non-market and non-governmental organizations. This information may be as banal as physical and website addresses, but it allows governments to scrape additional information, monitor social media accounts, collect names and phone numbers, and arrive unannounced at public meetings. The intended effect is to accumulate the information necessary to penetrate and observe civil society. With that information and administrative power, the government can monitor, control, and prevent collective action. The final tactic (*Tactic #6*) uses permissive provisions to attract international assistance that indirectly expands the government’s resource base. The action is that the government enacts permissive provisions that promote foreign assistance to local CSOs. The manipulation happens when the provisions legally require international assistance to specific locations—e.g., deposited at certain financial institutions, placed in escrow at government ministries for later distribution, or channeled to favored or coopted organizations. The intended effect is to give the regime multiple opportunities to use those funds to increase its influence and resource base (Dimitrovova, 2010, pp. 528-529; Lewis, 2013, p. 329).<sup>5</sup>

### **Interviewing Kenyan Elected Leaders, Bureaucrats, and CSO Regulators**

This chapter analyzes data collected from the Government of Kenya (GOK). I conducted interviews with participants associated with multiple GOK offices and triangulate that interview

<sup>5</sup> I omit Tactic #6 from this analysis because my data neither corroborated nor refuted its use in Kenya.

data with archival materials obtained from government repositories managed by the executive and legislative organs. Table 7.1 identifies the GOK entities that participated in my primary data collection and describes the type of data they provided.<sup>6</sup>

**Table 7.1 Government Agency Archival and Interview Data**

<b>Government of Kenya Entity</b>	<b>Agency Type</b>	<b>Data Collected</b>	<b>Interview Participants</b>	<b>Office Location</b>
Chief Land Registrar, Ministry of Lands	CSO Regulator	2 Interviews (1.5hrs); Archives	GOK104, GOK115	Ardhi House (Upper Hill Nairobi)
Commission on Administrative Justice, Office of the Ombudsman	Other GOK Agency	1 Interview (1.5hrs); Archives	GOK103	West End Towers, 2 <sup>nd</sup> Floor (Westlands Nairobi)
Kenya Law Reform Commission	Other GOK Agency	2 Interviews (2.3hrs); Archives	GOK096, GOK102	Reinsurance Plaza, 3 <sup>rd</sup> Floor (Downtown Nairobi)
Library of Parliament, National Assembly	Other GOK Agency	Archives		Parliament Tower (Downtown Nairobi)
Members of Parliament	Elected Officials	6 Interviews (5.1hrs)	GOK095, GOK097, GOK099, GOK114, GOK119, GOK120	Parliament Buildings (Downtown Nairobi)
Ministry of East African Affairs, Commerce and Tourism	Other GOK Agency	1 Interview (0.5hrs); Archives	GOK100	Co-op Bank House, 17 <sup>th</sup> Floor (Downtown Nairobi)
NGOs Co-ordination Board	CSO Regulator	6 Interviews (8.7hrs); Archives	GOK094, GOK101, GOK108, GOK110, GOK118, GOK122	Co-op Bank House, 15 <sup>th</sup> Floor (Downtown Nairobi)
Public Service Commission	Other GOK Agency	1 Interview (1.5hrs); Archives	GOK109	Commission House (Downtown Nairobi)
Public Service Performance Management Unit, Executive Office of the President	Other GOK Agency	Archives		Kenyatta International Convention Center (Downtown Nairobi)
Registrar of Companies, State Law Office	CSO Regulator	5 Interviews (4hrs); Archives	GOK098, GOK112, GOK117, GOK107, GOK113	Sheria House (Downtown Nairobi)
Registrar of Societies, State Law Office	CSO Regulator	5 Interviews (4.6hrs); Archives	GOK105, GOK106, GOK111, GOK116, GOK121	Sheria House (Downtown Nairobi)

Table identifies government agencies that graciously participated in my research. Additional information summarizes the types of data collected from each source.

<sup>6</sup> I attempted to conduct interviews and collect data from the National Intelligence Service (NIS), but despite multiple attempts, I was unable to speak with them.

I used a top-down interviewing strategy to identify research participants.<sup>7</sup> I interviewed six Members of Parliament (MPs). These elected officials averaged more than a decade of political experience and represented several political parties. To interview government employees, I had to place a formal request with a senior official in that particular GOK office. Once the necessary permission had been given, I requested to interview 5-15 employees at the agency with varying characteristics according to role and responsibilities, professional experience within the agency, and gender. In echoing the contents of my formal request for information, I explained that all interviews should be voluntary and offered to meet interview participants at a time and place of their choice. This strategy resulted in eight GOK managers scheduling interviews with 23 willing research participants. Table 7.2 summarizes the sample, and my analysis randomizes pronouns to protect participants' identity and privacy.

Involving GOK managers in my recruitment process was unavoidable, and I suspect their necessary participation made my sample less representative. I expect that managers handpicked participants who would satisfactorily represent the agency. By this I mean that each participant knew enough about the agency and their position within it to provide adequate responses to my queries and, conservatively, did not harbor underlying resentment towards their employer. To be clear, I suspect managers selected participants who they thought would make their agency look good.

<sup>7</sup> The constraints that accompany data acquisition from government agencies prevented me from interviewing a random or representative sample for two reasons. First, any request for information from a GOK agency required approval from a senior manager within that agency. The approval process varies across agencies, but most required an information packet with a formal letter requesting access. This packet contained my official request and detailed the precise information that I sought, a high-level description of my project, my CV, and copies of my NACOSTI research permit and IRB notification. The speed of approvals came as quickly as 1.5 weeks (Library of Parliament) to as long as 11.5 weeks (NGOs Co-ordination Board). Only one request failed to collect information (National Intelligence Service).

**Table 7.2 Deidentified Interview Participant Characteristics**

<b>ID#</b>	<b>Government of Kenya Agency</b>	<b>Professional Experience</b>	<b>Professional Responsibilities</b>
GOK094	NGOs Board	Under 5 years	Junior Professional
GOK095	Parliament	Over 20 years	Elected Official
GOK096	Kenya Law Reform Commission	Over 20 years	Senior Professional
GOK097	Parliament	Over 20 years	Elected Official
GOK098	Registrar of Companies	5 to 9 years	Senior Professional
GOK099	Parliament	10 to 20 years	Elected Official
GOK100	Ministry of East African Affairs	10 to 20 years	Senior Professional
GOK101	NGOs Board	Under 5 years	Junior Professional
GOK102	Kenya Law Reform Commission	Over 20 years	Senior Professional
GOK103	Ombudsman	10 to 20 years	Senior Professional
GOK104	Registrar of Trusts	10 to 20 years	Senior Professional
GOK105	Registrar of Societies	5 to 9 years	Junior Professional
GOK106	Registrar of Societies	Under 5 years	Junior Professional
GOK107	Registrar of Companies	Under 5 years	Junior Professional
GOK108	NGOs Board	10 to 20 years	Senior Professional
GOK109	Public Service Commission	10 to 20 years	Senior Professional
GOK110	NGOs Board	5 to 9 years	Senior Professional
GOK111	Registrar of Societies	5 to 9 years	Junior Professional
GOK112	Registrar of Companies	5 to 9 years	Junior Professional
GOK113	Registrar of Companies	Under 5 years	Junior Professional
GOK114	Parliament	5 to 9 years	Elected Official
GOK115	Registrar of Trusts	Under 5 years	Junior Professional
GOK116	Registrar of Societies	Over 20 years	Senior Professional
GOK117	Registrar of Companies	5 to 9 years	Junior Professional
GOK118	NGOs Board	5 to 9 years	Senior Professional
GOK119	Parliament	Under 5 years	Elected Official
GOK120	Parliament	10 to 20 years	Elected Official
GOK121	Registrar of Societies	10 to 20 years	Junior Professional
GOK122	NGOs Board	10 to 20 years	Senior Professional

Table summarizes interview data. Identification numbers (ID#) are randomized and do not reflect the order in which interviews occurred. Full anonymity was given when asking for informed consent. To fully deidentify participants, no names or specific titles are used.

The selection process likely increases the probability that interview data contains a positive tone regarding CSO laws. I anticipate this distortion is largest among CSO regulators.

Accordingly, I discount thinly corroborated interview data that paints legal provisions and regulators in a positive light. Data of this sort would likely embellish legal provisions as strongly permissive, exaggerate compliance rates from CSOs, and overstate the resources and capacities of the agency. To be convincing, nearly all interview participants would need to corroborate this straw-in-the-wind evidence (Mahoney, 2012, p. 584; Bennett & Checkel, 2015, p. 17).

Conversely, given the gatekeeper-selected sample, I give extra attention to the low-probability interview data that negatively discuss CSO laws and consider it smoking-gun evidence (Mahoney, 2012, p. 578; Bennett & Checkel, 2015, p. 17). By way of comparison, if I included CSO leaders in my analysis, I would discount the highly-probable interview data that discuss CSO laws and regulators with a negative tone, and overweight the less-probable data that positively discuss those same topics.

I conducted nearly 30 hours of interviews with 29 GOK bureaucrats and elected officials between August and December 2018 (Table 7.2). The average interview lasted slightly over one hour (min = 0.5 hour, max = 2.25 hours). The average interview was shorter for elected officials (51 minutes), approximately the same for CSO regulators (62 minutes), and slightly longer for other GOK agencies (70 minutes). Semi-structured interviews included general questions about participants' professional background, their perception of government-CSO relationships in Kenya, inter-agency partnerships, and the creation and enforcement of Kenyan CSO laws. Handwritten notes were transformed into contemporaneous interview memos following each interview. When participants allowed it, a common smartphone recorded the conversation to assist in writing the interview memos.

Using NVivo (v.12), I analyzed all interview memos according to the themes used to construct my interview protocol. Then, with a second close reading of the data, I used iterative open coding to sort the data into themes explaining why the governments enacts and enforces specific legal provisions. The findings of that analysis follow.

## **Analytical Findings: Exploring the Dark Side of Permissive Legal Provisions**

### *Tactic #1: Using Permissive Provisions to Strengthen a Democratic Façade*

Kenyan elected officials, bureaucrats, and CSO regulators supported the argument that governments use CSO laws to strengthen a democratic façade. Reaffirming the historical research discussed in [Chapter Six](#), one Member of Parliament explained that during the Cold War, Moi used a strategy of non-alignment to allow himself maximum leeway on domestic issues. She continued that after the fall of the Soviet Union, Kenya had to “lean towards the West” and Moi used the return of multi-party democracy as a brick in the democratic façade (GOK114). A Kenyan legal expert and a senior official with the Kenya Law Reform Commission (KLRC) supported this. He observed that the NGOs Act was a product of the movement pushing for governance reform and a government willing to negotiate on certain terms (GOK096). He noted that many in civil society wanted an entirely new constitution (e.g., Mutunga, 1999). Instead, to appease critics, President Moi showed his commitment to the democratization efforts and agreed to changes in the NGOs bill demanded by CSOs pushing for democracy and governance reform. The enacted statute gave CSOs the room necessary to pursue governance activities and made sure those actions took place under the watchful eye of the government.

CSO regulators also described Kenyan CSO laws as possessing dual intentions. A legal expert with the Registrar of Societies explained the Societies Act and other CSO laws are publicly portrayed as protecting society and societal actors, but the private intention has always been to ensure these actors play by the rules (GOK106). A seasoned regulator at the NGOs Coordination Board separately verified this. She shared that her experiences in the 1990s led her to

believe that foreign donors “imposed” multi-party democracy on an unwilling government and that CSO laws had two intentions: one was to control and stifle political competition and the other was to regulate the CSOs that were now receiving increased levels of foreign aid that donors once channeled to the government (GOK122).

CSOs weigh many things when deciding whether and if to incorporate as an official legal entity. Not registering with the regulator does not prove decision-makers saw through a democratic façade or any other attempt to manipulate CSOs. Still, a CSO’s decision to register with an agency signals that it was swayed by something in the legal rules. Evaluating the decisions sophisticated CSOs made concerning the NGOs Act provides information on whether those actors accepted the government’s gesture that the new law protected society and CSOs. Two sophisticated CSOs actors are Oxfam and the Legal Advice Centre.<sup>8</sup> After Moi enacted and finally commenced the NGOs Act in June 1992,<sup>9</sup> Oxfam registered with the NGOs Board on March 11<sup>th</sup>, 1993. The local legal experts soon followed, and the Legal Advice Centre registered on August 2<sup>nd</sup>, 1993. Neither of these CSO should be considered naïve, and their decisions to register suggest the legitimizing tactic to give domestic and international onlookers the impression of democratic qualities worked, at least to some degree.

Kenyan elected officials, bureaucrats, and CSO regulators discussed the need for a certain degree of willpower among political elites to execute the democratic façade tactic (GOK095,

<sup>8</sup> Oxfam is the international humanitarian organization, which registered as a Kenyan company limited by guarantee in 1977. The Legal Advice Centre (*Kituo Cha Sheria*) is one of the oldest and most experienced legal aid CSOs in East Africa. A group of legal experts established the human rights CSO on July 9<sup>th</sup>, 1973, to offer free legal advice and education to poor Kenyans.

<sup>9</sup> The Non-Governmental Organizations Co-Ordination Act (No. 19 of 1990) was assented to on January 14<sup>th</sup>, 1991. The law was not commenced until June 15<sup>th</sup>, 1992, after it was amended by The Statute Law (Repeal and Miscellaneous Amendments) Act (No. 14 of 1991, pages 610-612).

GOK096, GOK097, GOK109, and GOK114). Participants concurred that President Moi and President Uhuru Kenyatta most clearly possessed the willpower necessary to enforce permissive provisions minimally. Some participants qualified the explanation and added that the same willpower could be used for good to build democratic institutions by insisting permissive provision be enforced as they are written. Interview participants generally identified President Kibaki as having a genuine interest in helping Kenyan civil society. They described President Jomo Kenyatta as supporting Kenyan CSOs to achieve a broader policy agenda. In support of the historical research reviewed in Chapter Six, research participants suggested that political elites can direct the bureaucracy to enforce legal institutions that help CSOs; they just have to choose to do so (GOK095, GOK103, GOK109, GOK122).

At the agency level, one regulator suggested to me that presidents' concern for control and legitimacy manifests as a constraint on CSO regulators (GOK118). The Kenyan regulatory regime directs regulators to cancel or suspend CSO registrations for legitimate purposes by following an exact process (e.g., Societies Act § 12; NGOs Act § 16). The participant informed me that she believed the regulator was instructed not to process *legitimate* cancellations because doing so would create a blowback that would damage the administration's democratic façade. Additional data suggests that public management objectives and performance benchmarks align with this legitimization tactic to give local and international onlookers the impression of democracy. A growing number of CSOs in a country gives such an impression and is one straightforward metric that onlookers may compare. As one junior professional at the Registrar of Companies told me, her agency structures individual performance goals around the number of CSO registration applications they complete, with higher volumes indicating better performance (GOK112).



## *Tactic #2: Engaging CSOs Increases Government's Responsiveness Legitimacy*

The Kenyan government officials I interviewed agreed that by engaging CSOs in dialogue, the government both addresses social problems and minimizes public criticism. Further analysis of the interview data shows this legitimacy-through-engagement tactic is a nuanced process. Respondents widely agreed that the government actively recruits and meets with CSOs to prevent allegations that the government is unresponsive. These officials commented that the large supply of CSOs makes it easy to initiate engagement because all CSOs seek dialogue with policymakers.

Politics determines which CSOs the government invites to the table. As one official observed, engaging faith groups—i.e., Catholic, Muslim, Christian churches and organizations—and secular groups together is the most effective way to address social unrest (GOK120). As I reviewed in the previous chapter, broad coalitions such as these were vital to democratization in the 1990s, constitutional reform in the 2000s, and reconciling election disputes after the 2010 constitution. But there are occasions when the government does not want a strong or effective CSO coalition. The government can profoundly influence—and in some cases predetermine—the outcome of engagement by intentionally selecting participants. As another leader reported, the government is reluctant to involve “noisemakers” in the policymaking process (GOK097). The implication is that CSOs may self-censor or acquiesce if they wish to remain involved in future policy discussions. The government may further manipulate engagement by handpicking particular CSOs that promote a particular policy or carry a loyalty towards the regime.

The preponderance of interview data I collected depicts genuine engagement with CSOs. As one bureaucrat with over 20 years of experience drafting legislation in multiple policy areas told me, her agency routinely invites CSOs with relevant expertise to comment on particular social

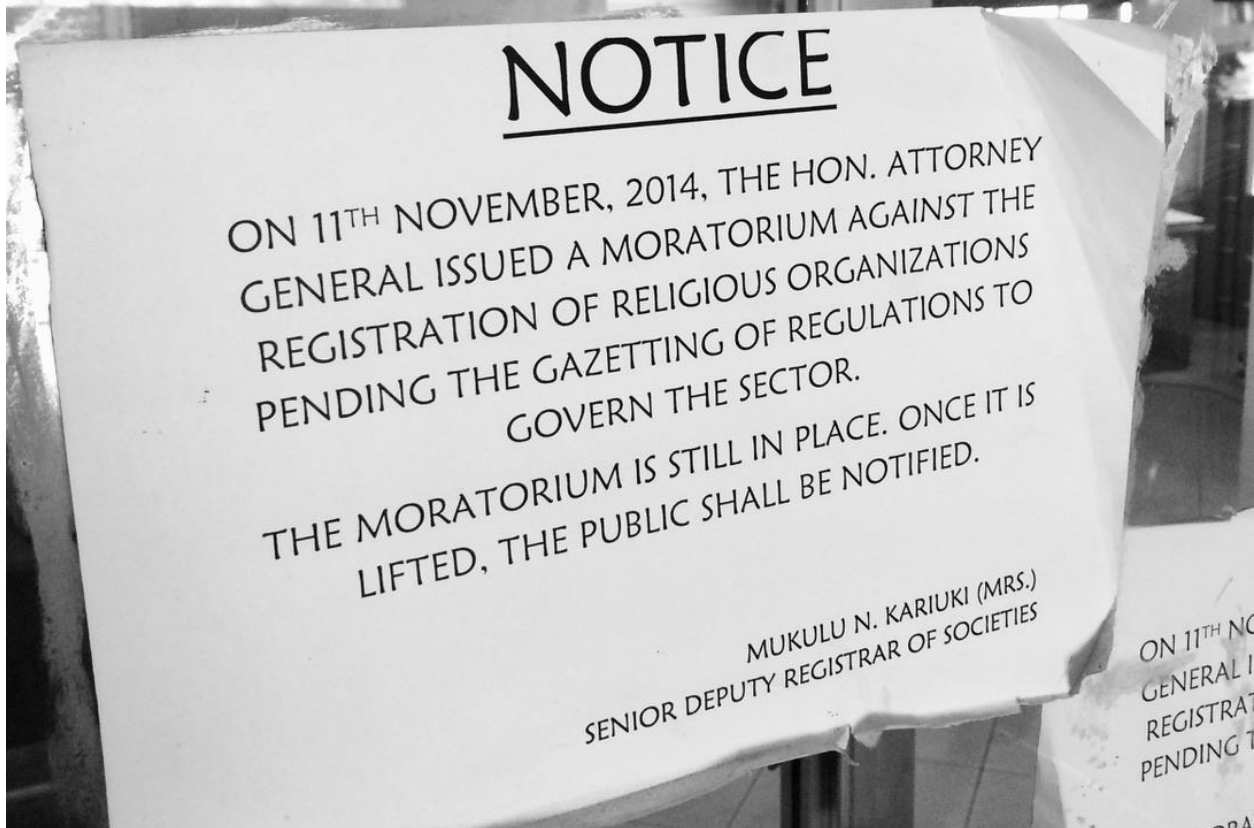
problems and contribute policy formulation (GOK102). She explained that her agency—the KLRC—first produces a “concept paper” that summarizes the social problem a government partner wants to address through the legislative process. Next, the KLRC makes a “request for memorandums” through publicly accessible sources—e.g., its website and the media. After a sufficient amount of time, the KLRC identifies CSOs it wants to invite to a multi-day forum to engage the topic further: “[we] discuss, we exchange views, and we reach consensus.” She clarified that when necessary, the KLRC will ask CSO regulators for recommendations on which CSOs are the most relevant to a particular issue. The respondent proudly informed me that this manner of engagement is considered “public participation” and is both constitutionally and statutorily required.<sup>10</sup>

The Registrar of Societies maintains ongoing discussions with religious CSOs regarding the alleged dishonest actions of religious leaders and self-regulation within religious communities. Some religious leaders in Kenya have taken to “misquoting Holy Scriptures” and abusing the prosperity gospel to commit “blatant theft” (Mutunga, 2018, p. 3). Growing allegations of this led the Attorney General to respond quickly to this public concern. He directed his Registrar of Societies to halt the registration of all religious congregations effective November 11<sup>th</sup>, 2014 (see Figure 7.3 and the [Appendix](#) for full statement). Days later, on November 14<sup>th</sup>, the Attorney General organized a consultative forum to discuss religious congregations’ operations and lay the groundwork for a regulatory framework preventing future abuses. Representatives from the National Council of Churches of Kenya (NCCK), Supreme Council of Kenya Muslims

<sup>10</sup> Articles 10, 118, 124, 201, 221, and 232 of the Constitution of Kenya, 2010 and the National Assembly Standing Orders (The Clerk of the National Assembly, 2017).

(SUPKEM), and the Hindu Council of Kenya attended. Following the forum, religious CSOs submitted their opinions as memoranda that laid the foundation for a policy discussion at a second forum four months later (March 31<sup>st</sup>, 2015). An agreement was not reached, and the second forum ended with the moratorium in full effect.

**Figure 7.3: Moratorium Stopping the Registration of Religious Organizations**



Public notice of the moratorium halting the registration of new religious organizations in Kenya. Photo taken October 5<sup>th</sup>, 2018, inside the offices of the Registrar of Societies (State Law Office—Sheria House, Nairobi).

Observers may consider the Attorney General’s moratorium an overreaction to protect society from phony pastors that unnecessarily punishes innocent religious groups. I explored this possibility with a senior member of the State Law Office who was quite generous with his time given the many responsibilities of his office. Our conversation eventually turned to the

Blackstone formulation (Blackstone, 1765),<sup>11</sup> which I posed to him in the form of a question and then asked it a second time rephrased with respect to the moratorium on religious congregations.

The conversation is paraphrased as follows:

DeMattee: Do you think it is better to let ten guilty persons go free than allow one innocent person to be wrongly punished?

GOK116: [Without hesitation and with full confidence] It is better to let ten go free than allow one innocent to suffer.

DeMattee: Is it better to let ten phony congregations register or deny one legitimate entity the ability to register?

GOK116: [Again without hesitation] It is better to deny all of them registration. There needs to be a proper framework to protect the public interest. That framework is the law.

What is compelling about this exchange is that the respondent's full-throated endorsement of the current moratorium is unshaken despite first anchoring him to his legal thinking on the Blackstone formulation. Still, every word he spoke during our 143-minute interview were honest, relaxed, and unrehearsed. His insights regarding the moratorium seemed to me to be a sincere explanation of what he thought was the government's prudent and evenhanded course of action. If experienced legal experts such as this gentleman are so quick to go to such lengths to demonstrate genuine responsiveness, then a similar attitude may energize regulatory fixes to societal concerns relating to CSOs more broadly—e.g., briefcase NGOs and terrorism. Elected officials, bureaucrats, and regulators repeatedly identified those societal issues as leading justifications for legislative action (GOK098, GOK095, GOK109, GOK122).

<sup>11</sup> The Blackstone formulation is named after English jurist William Blackstone who argued that it is better to let ten guilty persons escape than wrongfully imprison one innocent person.

### *Tactic #3: Using Compliance to Legitimize the Government's Authority to Govern*

My interview data expands the proposition that compliance gives laws and regulators credibility, which in turn legitimizes the government's authority to govern. Multiple participants suggested there is a concerted effort to improve the credibility and legitimacy of agencies. The Kenyan regulators with whom I spoke appeared keenly aware of how others experience and perceive their agency. What is more, these individuals suggested a causal connection between the agency's perceived credibility and its ability to regulate and fulfill statutory responsibilities.

One participant retold stories of ordinary citizens feeling frustrated or defeated by the incredible processes that laypersons believe should be simple and quick (GOK115). He suggested that these events tarnished the agency's reputation and credibility. Regulators at the NGOs Co-ordination Board felt strongly that the wrongful actions of a single individual in a leadership role severely damaged the credibility of the entire organization. A long-time employee of the NGOs Board described how the actions of Mr. Yusuf Mahamed Fazul, Executive Director of the regulator from December 2014 to February 2018, stained the regulator with a negative perception and caused it to lose credibility among CSOs, other government agencies, and elected officials (GOK108). As I reviewed in Chapter Six, the Commission on Administrative Justice (CAJ) investigated allegations that Mr. Fazul lacked the necessary qualifications for the position, made irregular promotions and transfers of agency staff, victimized and intimidated personnel, and mismanaged public funds (Amollo & The Office of the Ombudsman, 2016, p. 2). The underlying allegations first surfaced in July 2015 and

concluded in November 2016 with the official report “Death of Integrity.”<sup>12</sup> The report, alongside a courtroom defeat of Mr. Fazul and his questionable deregistration of certain CSOs in Kenya, sowed distrust and “bad blood” between CSOs and the regulator (GOK904).<sup>13</sup>

Questions remain concerning the drama that engulfed the NGOs Board during Mr. Fazul’s tenure. Each relates to the simple question: did the government appoint Mr. Fazul knowing that he would unfairly enforce the legal rules entrusted to him? For the first scenario, let us assume the government *did not expect* Mr. Fazul would act in the way he did, which is possible given his short political resume. If the government honestly did not expect him to act the way he did, then why did neither the Minister who appointed him nor the Board that oversaw his actions demand his resignation? Innocent until proven guilty is not an explanation. Mr. Fazul stayed on the job for more than a year after the court ruled against his managerial decisions (September 2016) and the Commission on Administrative Justice published the “Death of Integrity” report (November 2016). Let us now consider a scenario where the government *did expect* Mr. Fazul would act in the manner he did. If that is the case, then we can reasonably conclude that the Minister who appointed him did so in the interest of the government and President Kenyatta. This is supported

<sup>12</sup> “[CAJ] wrote to Mr. Fazul vide a letter Ref: CAJ/NGO/076/6/15-DKO dated 1<sup>st</sup> September, 2015 to inform him about the allegations raised in the anonymous complaint letter dated 21<sup>st</sup> July, 2015 and to request him to respond to the allegations. Mr. Fazul responded to the allegations vide a letter Ref: NGOB/5/30A/8/Vol. XII dated 15<sup>th</sup> September, 2015 in which he disputed all the allegations raised against him. CAJ then received other anonymous complaint letters against Mr. Fazul Considering Mr. Fazul’s response which was not satisfactory as well as other anonymous complaints received, the Commission made a decision to undertake investigations... The Commission notified the Principal Secretary, Planning and Statistics vide a letter Ref: CAJ/IE/6/46/16(1) dated 17<sup>th</sup> August 2016 of its decision to undertake investigations” (Amollo & The Office of the Ombudsman, 2016, pp. 1-2).

<sup>13</sup> “Petition No. 107 of 2016: Josephine Ngatia Vs. The Executive Director and NGOs Coordination Board was determined on 22<sup>nd</sup> September, 2016 in favour of Ms. Josephine Ngatia, the Human Resource and Development Manager...Investigations noted that the NGOs Coordination Board currently has no chairperson, thereby giving the Executive Director the prerogative to make unilateral decisions.” (Amollo & The Office of the Ombudsman, 2016, p. 15).

by the fact that six months after he resigned from the NGOs Board, the government appointed Mr. Fazul to be the director general of the Private Security Regulatory Authority.<sup>14</sup>

Assuming that the government knew what Fazul might do, it may still seem unclear why under these circumstance that the government permitted an investigation into the very regulatory malpractice it expected. Why did President Kenyatta allow the CAJ investigation to press forward? One straightforward explanation is that squashing the investigation would damage the regime's democratic façade. Another is that the CAJ had no teeth and the government knew it could ignore its findings and recommendations. Whether the regime intended it or not, it appears Mr. Fazul was the person the government wanted running the NGOs Board with the 2017 general election on the horizon.

The theory that I proposed in [Chapter One](#) guided the above explanations. Both scenarios exemplify a government manipulating the working rules to create the *de facto* regulatory regime it desires. I also attribute the unwanted attention—i.e., news headlines, courtroom battles, and CAJ reports—during Mr. Fazul's tenure to missteps of a politically inexperienced bureaucrat. In the end, the disgraced public manager's most valuable service to the regime may have been giving it plausible deniability to all of the NGOs Board's damnable actions committed between December 2014 to February 2018.

Interview participants held Former Executive Director Fazul singularly responsible for tarnishing the reputation of the NGOs Board and harming the credibility of the law that empowers it. This led the NGOs Board to undertake actions different from other CSO regulators

<sup>14</sup> Agutu, Nancy. (2018, August 27). "Private security authority appoints Fazul Mahamed as director general." *The Star, Kenya*.

in Kenya. Following his departure, the NGOs Board launched initiatives to increase compliance and rebuild credibility. One seasoned official recalled that, historically, compliance was never the top priority compared to registration, capacity building, or coordination (GOK122). But she remembered a clear turning point three years ago (circa 2015) where compliance became the top priority.

Triangulating my interview data and knowledge of Kenya’s CSO laws leads me to identify three overlapping reasons—short, medium, and long term—that explain the urgency surrounding these compliance initiatives. Most immediately, a savvy regulatory veteran cited precise numbers off the top of her head that less than 25% of the over 11,000 organizations registered with the NGOs Board submit annual reports (GOK122). While several factors may contribute to the low compliance rate, she implied that a diminished level of credibility made the compliance level abnormally low. In her explanation of the situation, the low compliance rate was the symptom caused by a lack of credibility among CSOs. This had a knock-on effect that impeded the NGOs Board from fulfilling its statutory duty to advise the government on the role of NGOs in Kenya.<sup>15</sup> This created a downward spiral where a lack of credibility lowered the compliance rate, and a low compliance rate weakened credibility through an inability to meet statutory obligations. Thus, the immediate reason for improving compliance was to halt the tailspin caused by a lack of credibility.

<sup>15</sup> Unlike other CSO regulators in Kenya, the Non-Governmental Organizations Co-Ordination Act, 1990 requires the NGOs Board to receive, review, and synthesize annual reports and advise the government on the role NGOs have in development within Kenya (§ 7). NGOs Board interview participants concur that this responsibility is fulfilled by the publication of the Board’s “Annual NGO Sector Report.”



In the medium-term, the reason the NGOs Board sought to increase compliance was to repair its damaged reputation in the eyes of CSOs and government officials. This reputational rebuilding will take time, and the agency has initiated several strategies to mend relations between the NGOs Board, NGOs, and Kenyan civil society more broadly. Appointing Gichira Kibara—a civil society insider, legal expert, proven manager, and former Kibaki appointee—Chairman of the NGOs Co-ordination Board, was a strong first step. Additional efforts included TV interviews with its chairman, networking with clusters of CSOs such as the Civil Society Reference Group and the NGO Council, and engagement forums with organizations in Mombasa, Kisumu, and Nairobi (GOK108). Each of these forums aimed to raise compliance levels through dialogue on laws and regulations, compliance training, goodwill, and post-workshop surveys to identify areas where the agency can improve (GOK110). Interview participants at the NGOs Board explained these “goodwill tours” are new while participants outside the NGOs Board gave no indication that other CSO regulators use similar programs.

Improving year-to-year compliance rates and repairing its damaged reputation add momentum to the agency’s long-term goal of becoming Kenya’s lone CSO regulator. Many interview participants interpreted the legal language of the Public Benefits Organization Act as consolidating all CSO regulators under one roof: the Public Benefit Organizations Regulatory Authority, or “the Authority.” The transitional provisions in the PBO Act (§ 70 and Schedule Five) explain that the NGOs Board will temporarily act as the PBO Authority and regulate all CSOs in Kenya.<sup>16</sup> The act does not explicitly state the Board will become the Authority,

<sup>16</sup> The act defines a PBOs as “voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan, non-profit making and which is—(a) organized and operated locally, nationally or internationally; (b) engages in public benefit activities in any of the areas set out in the Sixth Schedule; and (c) is

however. Interview participants at the NGOs Board presumed the NGOs Board would seamlessly and fully transition into the Authority, but other participants disagreed. CSO regulators widely acknowledged the NGOs Board would act as a custodian, but those outside the NGOs Board maintained the Authority's structure and personnel would look different from the Board. Elected officials, meanwhile, suggested little will change until MPs exercise oversight responsibilities.

*Tactic #4: CSOs' Service Provision Increases Government's Output Legitimacy*

Interview data with elected officials, bureaucrats, and CSO regulators support the argument that, under certain conditions, nondemocratic governments tolerate the growth of service-oriented CSOs because those organizations fulfill fundamental needs left unmet by the government's public service provision. My data suggests that instead of leading CSOs, the government sets its policy priorities to align with the areas in which CSOs allocate considerable resources. The outcome is the same, even if the execution differs.

One elected official, speaking in broad terms, explained CSOs are “an addition to public services” that fill the gap, especially in the hinterlands on issues such as education and health (GOK097). Similarly, an experienced bureaucrat emphasized that the bigger the gap, the greater the urgency. Citing South Sudan as an example, she explained, “[the country is] in the middle of a civil war, and it would make more sense for international relief organizations to be given a bigger leeway to operate in the country, to deliver food and medical supplies” (GOK102). Referring to Kenyan history, another MP argued the early CSO laws were meant to help farmers,

registered as such by the Authority” (Section 5(1)). The act explicitly states that it does not affect societies (§ 5(2)(e)) but does not suggest charitable trusts or companies limited by guarantee are similarly exempt.

particularly tea farmers organize themselves so that they could better work with the government. She read the Societies Act (1968) and other early laws as establishing governance and facilitating economic transactions between government and the civil society groups, what she referred to as “the business nature of things” (GOK114).

Another elected official’s account suggests this particular legitimizing tactic may be newer than others. The participant was alive at the time of Jomo Kenyatta’s death and explained that event marked the beginning of “dark days for the country” (GOK095). He insisted it was not because CSOs were bad, but because of the way Moi’s dictatorial regime treated them. He retold many stories from that period and informed me that Moi never attempted to claim credit for the public service goods provided by CSOs and financed by international donors.

Now, with the benefit of learned experience, elected officials seem to be turning away from Moi’s example and embracing CSOs’ public contributions. The same elected official recited his involvement in the legislature concerning the proposed 2014 amendments to the PBO Act (2013). According to him, there was a multi-party coalition that defeated those amendments because the elected officials recognized the restrictive provisions would adversely affect CSOs’ ability to complement and supplement public service provision within constituencies. To be clear, the elected official did not suggest that in 2014 Kenyan MPs were liberal vanguards protecting CSOs. He suggested instead that there is a positive relationship between an incumbent’s reelection and CSOs providing public service goods in their constituencies (GOK095). A top-level bureaucrat at the KLRC agreed that this new perspective exists. She reported that CSOs can sometimes go on the offensive and will “withhold their services, like their attendance of meetings, their formulation of policies, joint partnerships with government and other organizations” until elected officials prioritize certain policies (GOK102).

While an elected official may be able to individually identify and benefit from CSOs' activities in his/her constituency, it is more laborious for the government to aggregate the actions of tens of thousands of CSOs in Kenya and claim those deeds as its own. In practice, the only formal tool available to the government to accomplish such widespread usurpation is the "NGO Sector Report" published by the NGOs Board. Interview participants at the NGOs Board expressed that the report demonstrates the government's ability to organize, understand, and communicate what NGOs have done in the country over a particular period (GOK0094, GOK122).<sup>17</sup>

A third regulator at the NGOs Board explained that that government encourages CSOs to consider supporting particular programmatic "areas of interest" (GOK1110). When asked for examples, the respondent identified microfinance and geriatric care as past and present examples, respectively.

The NGOs Board research participant claimed that government leadership steered CSO programming away from microfinance and into geriatric care. He explained that microfinance had been part of Kenya's charitable sector. The evolving nature of the country led the Central Bank to develop policies to regulate microfinance itself. No longer considered charitable, microfinance now belongs to the commercial sector and is regulated by the Central Bank of Kenya (GOK1110). Evidence does not support this explanation. One, it appears CSOs are still active in this commercial sector. More than 70% of the 660 NGOs engaged in microfinance

<sup>17</sup> When I requested access to copies of these reports, the NGOs Board informed me it was unable to share its unpublished drafts and directed me to its Resource Center library for all available documents. That library contained only one such report (Financial Year 2013/14). Since my time conducting fieldwork, the NGOs Board published the 2018/19 Annual NGO Sector Report.

activities registered in the years after the government commenced the Microfinance Act.<sup>18</sup> Two, NGOs' microfinance expenditures have increased from 586 million KSh in 2013/14 to 620 million KSh in 2018/19 (NGOs Co-Ordination Board, 2014, p. 9; 2019, p. 24). Turning to geriatric care, there exist only 59 registrations (20 international and 39 national) of NGOs engaged in that activity. The expenditure toward that programmatic area is down 54% from 2017/18. Expenditure in that area is only 66 million KSh for 2018/19, slightly more than 10% of expenditures allocated towards charitable microfinance.

While the government has unsuccessfully lead CSO activity, it has effectively changed its own policy to follow CSO programmatic activity. In late-2017, the Kenyatta administration identified four flagship programs it publicizes as “The Big 4.”<sup>19</sup> These initiatives include manufacturing, affordable housing, universal health coverage, and food security. Governmental reports show the government's top policy areas are the same sectors in which CSOs are the most active as measured by expenditure. According to the NGOs Board official report for 2018/19, more than 1,000 registered NGOs and nearly 45% of all NGO expenditure was directed to charitable programs closely related to The Big 4 initiatives. Specifically, these areas included economic trade (19 million KSh), agriculture, water, and sanitation (6.8 billion KSh), population health, reproductive health, and HIV/AIDS (27.8 billion KSh), and housing (19.6 million KSh).<sup>20</sup>

<sup>18</sup> The Microfinance Act (No. 19 of 2006, commencement May 2<sup>nd</sup>, 2008) gives the Central Bank regulatory authority, which supports the participant's argument that the number of registered charitable organizations involved in microfinance activity should quickly diminish after commencing the law. However, according to the NGOs Board own records, there are 660 NGOs (184 international and 476 national) registered with the agency that are involved in microfinance to some degree. Yet, only 194 of these organizations registered with the agency before the commencement of the *Microfinance Act*. This means, the government permitted 466 charitable organizations to participate in this space after declaring it a non-charitable, commercial zone.

<sup>19</sup> <https://www.president.go.ke/> and <https://big4.delivery.go.ke/>

<sup>20</sup> NGOs Co-Ordination Board (2019, pp. 24-25, 33).

Yet, with only the 2018/19 datapoint, it is unclear whether The Big 4 led or followed NGO expenditures. The historical data tells us that expenditures in these charitable sectors have not varied. In 2012/13, these sectors accounted for 43% of all NGO expenditure. Nearly a decade later in 2018/19, these same sectors accounted for 45% of NGO expenditure.<sup>21</sup> In the larger picture, the government seems unable to steer CSO activity towards the administration's policy priorities. Instead, the data suggests that the government's policy priorities *follow* CSO activity. This, in turn, allows the administration to capitalize on CSOs' service provision to increase the government's output legitimacy.

#### *Tactic #5: CSO Compliance and the Government's Fractured Administrative Power*

Some of the interview data support the thesis that CSO regulatory regimes are an antecedent to control. Yet, my data contain little evidence supporting the notion that CSO regulators are capable of mobilizing the administrative power necessary to observe civil society over a large territory for a prolonged period. However, the ability to periodically harass a handful of CSOs is still very much a concern. My data also suggest that true administrative power rests with a government agency mentioned nowhere in Kenya's CSO regulatory regime: the National Intelligence Service.

Interview participants did not agree on the types of legal provisions the Kenyan regulatory regime should and should not contain. The types of legal provisions that the Kenyan regulatory regime should contain and the powers CSO regulators should have seemed to vary across interview participants and how they perceive Kenya's political history. One participant believed

<sup>21</sup> In 2012/13, just as President Kenyatta was coming into office, these same sectors accounted for nearly 43% of all NGO expenditure (NGOs Co-Ordination Board, 2014, pp. 9-10).

the reason for controlling Kenyan civil society after independence was the “political differences between Kenya’s founding fathers” (GOK118). In support of my argument that these legal institutions have long histories, she explained earlier laws followed the colonial example and were established to know what CSOs existed and keep tabs on what they were trying to do.

The strongest critiques against these laws are framed in the context of the Moi administration. One observer noted the legal rules Kenyatta used to build the country in partnership with Kenyan civil society were manipulated by Moi to “stifle” political competition (GOK109). An elected official agreed with this and explained that Moi directed the bureaucracy to use its administrative power to selectively target CSOs organized to agitate and challenge the political regime (GOK114). She insisted the government’s true motivation in Moi’s enactment and enforcement of these laws was to control the civic space saying, “[Moi told CSOs] you have a chance to organize yourselves, agitate, make demands of the government, *but we will control how much you will do*” (GOK114, emphasis added). Her explanation was not limited to the NGOs Act that Moi enacted and enforced in the early-1990s. She made a point to emphasize that Moi’s fixation with power and control began when he became president in 1978.

An experienced observer of both Kenyan law and civil society shared a less-scathing opinion of Kenya’s regulatory regime. She observed Kenya regulates CSOs firstly to pursue its national interest and achieve national security. Then, secondly, to promote social or national cohesion (GOK102). Her assessment bordered on approval, “We can say that regulations promote social justice and national cohesion. Then the regulations are also meant to regulate the actions and activities of CSOs so as to achieve a measure of accountability” (GOK102). Her opinion placed great emphasis on ensuring that the laws had the proper content and did not consider the possibility that enforcement may vary from the legal rules. This distinction is

critical because it is the abuse of legal rules that gives the government some of its administrative power.

When discussing administrative power it is necessary to understand the types of information CSOs give regulators when registering. Most are banal information that parallel intake documentation required by regulators in democracies. CSOs provide the organization's location(s), partner(s), operational scope, and resources. They also provide particular information regarding the organization's founding members and leaders—e.g., names, biographical information, and qualifications. Regulators keep this data in hardcopy form, organized in single files, and stored in large dusty rooms. Most regulators have made modest efforts to digitize these records. But unreliable systems and the lack of resources keep regulators tethered to physical documents and processes. There were no signs that the situation would change soon and all regulators admitted that they are severely under-resourced in terms of expertise, staff, and technology (GOK098, GOK101, GOK104, GOK105, GOK108, GOK110, GOK111, GOK114, GOK115, GOK116, GOK118, GOK121, and GOK122).

The four regulators seemed technically incapable of turning their administrative power into a prolonged national campaign to observe and control Kenya's civic space. It did appear that regulators were able to respond to requests to compile and provide information on a handful of CSOs. Interview participants concurred they use their administrative power to assist investigations into alleged unlawful activities but explained their involvement in investigations typically starts and ends with providing requested information to other agencies conducting investigations—e.g., the police or the Kenyan Revenue Authority. The exception to this is the



NGOs Board, which is the only regulator that has created the necessary administrative capacities to investigate the CSOs that register with it.<sup>22</sup>

Only two of the six interview participants from the NGOs Board had the necessary experience to discuss these functions. Beginning in 2015, the NGOs Board started relying on citizen-based complaints to investigate CSOs (GOK118). Fire-alarm complaints ranged from matters of internal governance to complaints from citizens that included untrue, frivolous, and legitimate complaints (GOK094). The NGOs Board's Operations Department leads investigations and allocates three full-time employees to receive, verify, and prioritize complaints from citizens regarding CSO activities. Citing concerning examples that include female genital mutilations and child abuse in orphanages, interview participants separately emphasized prudence is practiced when receiving unsolicited and unverified information. Investigations move forward carefully using documentation stored at the NGOs Board—e.g., annual reports, compliance history, assets, prior complaints. This information allows investigators to make a preliminary desk review and will make phone calls to collect additional information if necessary (GOK118, GOK094). One estimated that he investigates 30 to 40 complaints per week and investigated over 750 in his time at the NGOs Board (GOK094). Of those, fewer than five came from outside this normal fire-alarm process. Two of those five, he recalls, were high-profile organizations that he saw in the news after conducting those investigations “off the books” (GK094). He underscored that these cases were anomalies and

<sup>22</sup> The NGOs Act gives the NGOs Board the ability to establish “subsidiary organs” that are “necessary for the performance of its functions” (§ 8(a)), which includes only eight functions. The broadest function is “to conduct a regular review of the register to determine the consistency with the reports submitted by NGOs” (§ 7(e)).

occurred before the establishment of the Compliance and Enforcement Committee that prevents administrators of the NGO Board from unilaterally investigating NGOs.

Overall, there is little evidence that regulators possess the agency assets necessary to abuse their administrative power. The power to observe the Kenyan civic space is diversified across four CSO regulators, an arrangement that I refer to as “regulatory pluralism.” Participants from each regulator lamented their dependency on manual systems and physical recordkeeping. And while the ability to observe and harass singular organizations may be possible, regulators’ expertise and technological resources seem inadequate to maintain prolonged efforts to simultaneously observe and subvert collective action in 47 countries and multiple CSO legal forms. CSO regulators might not be the agency that should concern us. Multiple interview respondents told me that the National Intelligence Service (NIS) possesses the administrative power to observe Kenyan civil society for a prolonged period. And given the agency’s history and resources, the NIS is likely capable of using this power to control or undermine CSOs.<sup>23</sup>

In general, national security agencies are not regularly involved with CSOs. It would certainly be the exception rather than the rule for agencies such as the American FBI or the British MI5 to participate in CSO affairs. Learning the Kenyan NIS is involved with the local regulatory regime is no surprise because the “closing space” argument warns that some governments use these agencies to episodically harass CSOs (Carothers & Brechenmacher, 2014). What I found unusual is that multiple interview participants told me that the NIS is involved with every registration decision processed by Kenya’s four CSO regulators. One

<sup>23</sup> Article 242(1) of the Constitution established the NIS, or the “Service,” to replace the National Security Intelligence Service (NSIS) that the National Security Intelligence Service Act established in 1998. The transitional provisions (§ 81) of the National Intelligence Service Act, 2012 deem NSIS property and personnel are NIS resources.

elected official explained the security agency’s involvement in such simple matters was at the direction of the current administration who sought revenge on “*evil* society organizations” that provided evidence to the International Criminal Court’s 2010-2015 investigation into the post-election violence of 2007/8 (GOK097). She believed the government only recently—circa 2015—sought to boost its administrative power by making CSO regulation part of the national security apparatus (GOK097). Archival data at one CSO regulator refutes this. Government records show a steady flow of confidential communications between the regulator and the Office for the Director of Intelligence as early as November 1981. Its apparent 40-year involvement with the application process for CSO legal types in Kenya makes the NIS a super-aggregator of information that gives it unparalleled administrative power.

I was unable to collect precise information on NIS and its processes. Research participants insisted their roles and responsibilities as CSO regulators were to prepare the necessary materials for NIS to determine whether a particular CSO and its leaders should be allowed to operate in Kenya.<sup>24</sup> CSO regulators vary in what they tell CSOs about NIS and its process. The Registrar of Companies explained applicants are told NIS will contact them and that the CSO cannot begin operations until after NIS makes its recommendation and the regulator completes its registration process (GOK112). A participant at the NGOs Board reported that he tells organizations they will be contacted to provide more information but does not go into specifics because “we don’t want them to preempt their activity” (GOK110). He elaborated that the rationale for this is one,

<sup>24</sup> Other than appealing regulatory decisions to the courts or involving necessary authorities in investigations, Kenyan CSO laws do not suggest routinized cooperation with any other government organ.

the NGOs Board does not want organizations to change what they are doing, and two, he and his colleagues do not know how NIS operates.

While some participants expressed that the NIS vetting process may be slow and that ordinary citizens registering their simple organization may find the process unnecessarily difficult, all regulators support the intelligence agency's expertise. One participant told me, "NIS will investigate applicants to be sure they are not malicious in their intentions and that the company limited by guarantee will work as directed" (GOK098). Another justified the vetting process because "[CSOs] work in a very sensitive sector, and we don't want [unqualified people] managing such organizations. So we need to vet them, and if they pass the vetting process, we issue a registration" (GOK1110). Respondents unequivocally emphasized that the NIS recommendation is a nearly unchallengeable veto-point in the registration process. The vetting process remains a black box, and the agency did not accept two formal invitations to participate in this research. The government's silence aside, none of the over 75 CSOs independently interviewed in Kenya reported negative experience of the NIS process. Those that chose to elaborate shared similar experience and described the vetting experience as cordial, undisruptive, and on some occasions, even humorous. Of course, that interview data is censored and does not contain any data from informal groups rejected by the registration process.

## **Discussion**

The qualitative analysis in this chapter helps us make sense of the statistical relationship identified in [Chapter Five](#) that shows nondemocratic governments have a propensity to enact permissive provisions. The legitimization tactics identified by Lorch and Bunk (2017, pp. 989-991) are especially helpful in this regard because each posits the condition under which the

government uses CSO laws for its own purposes. By considering legal rules and working rules simultaneously, my analysis finds the Kenyan government used several legitimization tactics collectively, separately, and episodically as it altered its *de facto* regulatory regime.

Multiple elected officials, bureaucrats, and CSO regulators suggested that the government enacts permissive provisions to give the impression of democratic institutions to local and international observers. Interview participants made a point to explain that not all administrations use this tactic. They stressed that the government could improve the CSO regulatory regime in two ways, either by enacting new permissive provisions or enforcing current permissive provisions the way they are written. This supports my theory that the *de facto* regulatory regime can change through both formal and informal processes.

Interview data from senior government officials indicated that the government goes to great lengths to incorporate CSOs in policy discussions to demonstrate responsive. One salient example of this is the routine involvement of CSOs whenever the Kenyan Law Reform Commission crafts new legislation. Another powerful example comes from the Registrar of Societies that moved very quickly to enact a moratorium on the registration of new religious congregations. At the same time, it worked with religious leaders on a solution to a new societal problem. While the data show the government makes considerable investments involving CSOs in lawmaking and responding to societal concerns, it remains unanswered whether such engagement produces effective policy. Despite that, the findings accord with the theory that governments engage organizations to maintain their responsiveness legitimacy.

The qualitative data had mixed support for the argument that compliance with the regulatory regime gives laws and regulators credibility, which in turn legitimizes the government's authority to govern. Although interview participants did not refute that causal process

explanation, the dominant theme in the data suggested the compliance-legitimacy process is salient only at the agency level. What is most interesting from the data is that compliance and credibility are interdependent. Several participants believed that the inappropriate enforcement actions of one former senior manager directly contributed to lower compliance levels. This made it harder for this regulator to fulfill its statutory responsibilities to elected officials, which they feared would further damage credibility.

Interview and archival data supported the hypothesis that governments use CSOs' service provision to bolster their output legitimacy. The evidence appeared strongest at the local level based on the report that MPs mobilized to protect the PBO Act from amendments that would add restrictive provisions that would hinder CSOs' ability to provide public service goods to MPs' constituencies. Nationally, there was little evidence to support the claim that the government engineers CSO activity to support its policy initiatives. More investigation is required, but the data suggested that CSOs' ability to access charitable donations and foreign assistance may lead administrations to follow CSOs and claim some of those charitable deeds as policy successes.

A consistent theme in the interview data was that CSO regulators possessed administrative power, but it was weak. Participants in all corners of the government told me CSO regulators lack resources and technology. Assembling their collective grievance of low morale, understaffing, and unreliable physical and electronic systems suggested to me that CSO regulators are incapable of mounting a large-scale campaign to observe—much less control—civil society. However, participants explained that all registration applications are routed through the national security apparatus, which means the concerns of this tactic are very real but are not wielded by an agency with the legislative authority to regulate the sector.

## Conclusion

Scholars have given significant attention to the enactment of CSO laws around the world, but most of this research has focused on *de jure* restrictive provisions. As I showed in Chapters Four and Five, permissive provisions appear more frequently in CSO regulatory regimes than restrictive ones. Building on those findings and the work of other scholars, this chapter shows that it is critical to not only study the enactment of both provision types but also how they are enforced.

We cannot be confident of a provision's effect on society and CSOs without studying enforcement. Some governments enact permissive provisions with the genuine intention of helping CSOs and there is nothing that limits nondemocratic governments from doing the same. Yet, we must also consider the possibility that governments enact permissive provisions with no intention of enforcing them as they are written. This chapter considered several tactics to explain the conditions under which governments use CSO laws for its own purposes. This analysis showed that governments alter legal provision and enforcement actions to create the *de facto* regulatory regime they want. The complication for researchers is that the deviation between these legal rules and working rules is not guaranteed to be either large or small, but to vary at different times and for different reasons.

## --Chapter VIII--

### GOVERNMENTS USE CSO LAWS AND ENFORCEMENT ACTIONS TO CREATE THE GOVERNMENT-CSO RELATIONSHIP THEY WANT

This dissertation has focused on answering one overarching research question: how and why do governments regulate CSOs? Each of my empirical chapters studies this topic from a different perspective using multiple forms of data and multiple types of analyses. Individually, each makes an original contribution. Collectively, the dissertation offers a new understanding into how and why governments use legal institutions and enforcement actions to engineer the government-CSO relationship they want. I find that it is the *de facto* CSO regulatory regime that either supports or upends voluntary association; by manipulating it, the government can profoundly influence democratic processes. My principal contribution is a theory that explains the conditions under which governments enact and enforce permissive and restrictive legal provisions. The following sections of this concluding chapter revisit my causal argument and locate evidence supporting it in my empirical chapters. I then discuss why my arguments matter to the real world before concluding with several possible areas of future research.

#### **Restating the Argument**

This dissertation presented and tested a theoretical argument that predicts the conditions under which governments enact and enforce the legal provisions that help or hinder CSOs. I will first explain some of my argument's features before restating it in detail. My theory uses an institutional approach as its foundation. Doing so emphasizes the various rules that affect actors by shaping their incentives and constraints. Institutional rules come in two forms, the *de jure* legal rules found in texts, and the *de facto* working rules experienced in the real world. These



institutional rules are not unidirectional but instead feedback on themselves. In simpler words, the laws' outcomes in one period initiate changes in a later period.

Four arguments act as pillars for my theory. First, CSO laws in all political contexts contain provisions that both help and hinder CSOs. These legal institutions, what I introduced as CSO regulatory regimes, contain multiple laws and fuse permissive and restrictive provisions to regulate CSOs. Second, path dependency steers the regulatory regimes' institutional development. This process creates distinct relationships whereby current rules make some institutional change more likely, and other change less likely.<sup>1</sup> The third argument places international influence alongside path dependency and local politics as factors that shape institutional change. Finally, rules-in-form do not necessarily match rules-in-use. This means the government's enforcement actions may deviate from the provisions that exist in the *de jure* regulatory regime. When deviation occurs it is not necessarily malicious, however. Deviation becomes malicious when governments manipulate enforcement by intentionally under-enforcing permissive rules. Or by over-enforcing restrictive ones. In the final analysis, it is this *de facto* regulatory regime that affects CSOs and society.

In a highly cited article, Michael Bratton (1989b) theorized about the politics of government-CSO relationships in Africa. He argued the degree to which the government perceives CSO activity as a threat to its power is consequential for how it regulates the sector: “where leaders are confident of their grip on power, they will not fear [CSOs]. The more fragile a government's sense of political legitimacy, the less permissive it is likely to be toward [CSOs]”

<sup>1</sup> Namely, a complementary relationship exists when certain current rules make a particular type of institutional change more likely. When current rules make the change less likely, the relationship is substitutive.

(1989b, p. 576). Bratton’s article is one of the earliest arguments that we can associate with what scholars and practitioners refer to as the “closing space” phenomena. This research argues governments enact and enforce CSO laws to maintain control over CSOs within their borders and prolong the regime’s rule. Scholars and practitioners have made important contributions by studying the restrictive provisions within CSO laws. Studying restrictive provisions is a reasonable entry point to understanding the legalized repression of CSOs. Likewise, it makes sense to examine permissive provisions when studying the laws governments use to strengthen civil society. These logics do not consider the possibility that governments enact some laws with ulterior motives. In particular, analysts rarely consider that nondemocratic governments enact permissive legal provisions for reasons other than strengthening civil society. The theoretical contribution of my work is that how the government perceives its control and legitimacy causes it to take one of two actions: enact provisions to enforce them as they are written or enact provisions with the intention of disregarding or sabotaging their enforcement.

My causal theory predicts two pathways by which governments create the *de facto* regulatory regime they want. Both paths begin with the government evaluating whether the current provisions in the regulatory regime are sufficient to achieve the government’s aims. By aims I mean the government’s goals to maintain political control and expand its legitimacy among its citizenry and the international community. The law is the first available path. When necessary, governments initiate institutional change that alters the legal provisions in their regulatory regimes. In [Chapter One](#) I reviewed several factors that shape this process and its outcome: the political system of power that sets broad boundaries on what governments can and cannot do, structural constraints and incentives that change more frequently than regime types and administrations, and how the government perceives its control and legitimacy. Once the

government adds or removes provisions, that institutional change merges with current provisions to literally rewrite the *de jure* regulatory regime. CSO regulators are the second path governments have at their disposal. If the current *de jure* regulatory regime is sufficient, or too difficult to change, then governments can manipulate their regulatory regimes by altering enforcement actions. When done consciously with malice, the result is the blatant under-enforcement of permissive provisions or the targeted over-enforcement of restrictive ones. It is important to note that governments are not limited to only one path. When creating their desired *de facto* regulatory regime, governments can change the content of the legal institutions and simultaneously alter regulators' enforcement actions.

### **CSO Laws and Enforcement Actions: Locating the Argument in Chapters**

I now turn to my empirical chapters, which used five different methods and four different datasets, to show how those findings support my theory. My findings in Chapters Three and Five show structural constraints limit the government's choices when enacting new provisions. My analysis in [Chapter Three](#) studied the relationship between a global commitment to safeguard civil and political rights and governments' decision to enact restrictive provisions. Using a global dataset of 138 countries, I found that countries that make a global commitment to safeguard civil and political rights *and* whose constitutions demand those commitments be honored are less likely to pass restrictive provisions. The pledge to protect human rights is a constraint on only those countries that make the commitment. It comes in the form of a constitutional rule that limits the types of legal provisions a government can enact.<sup>2</sup> The more rigorous analyses in

<sup>2</sup> The commitment is that any law regulating voluntary association will meet a three-part test: (1) prescribed by law and use sufficiently precise and accessible language; (2) established to meet legitimate aims specified by Article 22(2) of the International Covenant for Civil and Political Rights to include "national security or public safety, public order,

Chapter Five found that the commitment consistently diminished the size of restrictive expansions.

Chapters Two, Four, and Five provide evidence that shows the evolution of regulatory regimes is a long, slow, and muddled process in which new provisions are added to the current legal institution rather than an unconstrained process of “lawmaking in the wild.” My general description of the legal corpus in Chapter Two ([Table 2.4](#)) shows that over 70% of changes to regulatory regimes are made by laws that amend the current legal institution. Then, using a novel dataset created by coding 285 laws from 17 countries, [Chapter Four](#) illustrates that institutional development is typically an incremental process rather than stepwise changes. Finally, the analyses in Chapter Five demonstrates that certain preexisting provisions make the addition of new provisions more likely and others less likely. Specifically, when the permissiveness of the current regulatory regime is high, then governments add fewer permissive provisions. The opposite is true for new restrictive provisions. When the permissiveness of the regulatory regime is high, then governments add more restrictive provisions. In the larger picture, Chapter Three thru Five provide evidence showing the importance of preexisting institutions to countries’ regulatory.

Chapter Five thru Seven provide evidence that the government’s perception of its control and legitimacy is the mechanism for the type of institutional change it enacts. These chapters explored the role of international influence on governments’ decision to add restrictive or permissive provisions to the regulatory regime. The particular processes considered are whether

the protection of public health or morals or the protection of the rights and freedoms of others”; (3) be “necessary for democracy” so as to meet a pressing social need in a proportional manner.

governments learn from each other on how to regulate civil society, or whether they emulate each other to garner legitimacy. Using a novel directed-dyad-year dataset produced by coding primary sources, my analyses in [Chapter Five](#) suggest that as countries have increasingly similar implementation environments, those governments use similar approaches to control civil society and enact similar provisions. These analyses also show that as governments have increasingly similar political ideologies, those governments emulate each other by enacting similar provisions.

Chapters Six and Seven used data from Kenya to understand the processes identified in the statistical relationships in earlier chapters. [Chapter Six](#) reviewed existing research of Kenya's political history. The historical evidence suggests that on numerous occasions Kenyan presidents have enforced the regulatory regime to either expand their control or increase their legitimacy. The historical record also shows a pattern in which fluctuations in control and legitimacy initiate changes to the regulatory regime. [Chapter Seven](#) exclusively focused on the enforcement of regulatory regimes. The analysis drew primarily on interview data with government officials triangulated with archival data collected from government sources. Elected officials, bureaucrats, and CSO regulators explained the government's perception of its control and legitimacy is the mechanism that initiates changes to legal rules and enforcement actions. Government officials touched on several broad themes to explain how control and legitimacy initiate changes to the *de facto* regulatory regime. The first was that the government enacted permissive provisions in a direct attempt to give the impression the democratic institutions but failed to enforce those provisions. This is just one of several tactics the government used collectively, separately, or episodically to expand its control and legitimize the regime. CSO regulators repeatedly shared concerns over low morale, understaffing, and unreliable physical and electronic systems. Those

concerns suggest the bureaucracy lacks the infrastructure and power necessary to observe and control civil society on a national scale. However, many participants separately commented that the national security apparatus possesses the information necessary for administrative power and—we can presume—has the resources to wield it effectively.

### **What Have We Learned? Why My Argument Matters**

There are three points to take away from the analysis of why and how governments use CSO laws to help or hinder non-market, non-governmental organizations worldwide. First, human rights defenders are doing a great service by calling our attention to governments that enact laws that hinder CSOs. Building on research that has studied nondemocratic regimes' enactments of such laws in recent decades, I find restrictive legal provisions are older than we think. Many predate the twenty-first century, the internet, and the associational revolution of the 1980s and 1990s. In some cases, restrictive legal provisions are inherited from colonial occupiers and predate a country's independence. With scarce exceptions, nearly all of the 285 CSO laws in my legal corpus include some restrictive provisions. This tells us that restrictive CSO laws are an old pattern of repression rather than a new global phenomenon.

Second, research and reports that discuss CSO laws have focused primarily on developing countries or nondemocratic states. Excluding wealthy, democratic societies places such countries beyond reproach and reinforces a structure of global power. Deciding to omit democracies from our inquiries means their restrictive laws pass unnoticed by analysts. In fact, democratic exemplars such as France, Great Britain, and the United States all include restrictive provisions in their regulatory regimes. A specific example is the Internal Security Act of 1950 (Public Law 81-831) that the United States enacted during Jim Crow and McCarthyism. Title I, the

Subversive Activities Control Act, created the Subversive Activities Control Board (the “Board”) and gave the government incredible powers to investigate CSOs and American citizens in order to protect the United States against certain un-American and subversive activities. French and British colonial era laws and ordinances are an even more widespread example, in which civil society was stifled for most of the people living in the French and British political systems. Cherry-picking the countries we study reinforces a normative discourse that nondemocratic (and usually non-Western) governments are the only actors that pass restrictive laws that undermine the freedom to associate. This distorts reality. Legal aggressions by Western, democratic governments have tended to go unreported in global scholarship, but analysts can choose to use these historical events to understand current patterns in CSO laws.

My third point is a call to human rights defenders, practitioners, and scholars to recognize the possible “dark side” to CSO laws: that a government can use permissive provisions to increase the regime’s control and legitimacy. Little research exists on this particular pattern of repression because the data have not been systematically collected until now. Those concerned by governments’ abuse of CSO laws will make significant progress and discover new insights using such the holistic approach that I have developed here.

### **A Research Agenda**

This dissertation has made original contributions to advance theory, but additional work is needed. There are two pressing needs in the literature. The first involves a more rigorous, holistic, and historical assessment of CSO laws around the world. Currently, highly credible institutions that report on legal developments around the globe are leading this effort. Their contribution is critically important, but their attention has focused strictly on the enactment of

restrictive provisions. Studying only the adoption of restrictive provisions misses the larger and more concerning pattern that permissive and restrictive provisions exist together, and they cooccur where they are least expected. In this dissertation, I coded the legal histories of CSO laws in 17 countries, but a complete worldwide set would allow researchers to understand (1) the prevalence of various permissive and restrictive provisions globally; (2) the conditions under which these provisions diffuse globally; and (3) how these legal provisions affect sociopolitical outcomes such as civil society robustness, democratization, and regime legitimacy.

The second pressing need is the increased attention to the working rules governments use to enforce CSO regulatory regimes. My subnational analysis of four regulars in Kenya showed how enforcement varies within a controlled political context. Future research into enforcement will be more valuable if analysts can speak to why and to what degree working rules deviate from legal rules. This deviation is vitally relevant because wherever government-led repression occurs, it can be either repression that matches rules-in-form or repression bears no resemblance to legal rules. This enforcement agenda will be most valuable if research begins with a knowledge of the provisions that comprise the *de jure* regulatory regime. Only with that information is it possible to determine the degree to which working rules deviate from legal rules. Thus, incorporating enforcement into the analysis identifies the politics of control and legitimacy: a tactic of direct control is the strict enforcement of restrictive provisions, whereas a tactic of control-through-legitimacy is the subjective or incomplete enforcement of permissive provisions. While the former is a mostly straightforward subject, the latter is harder to study because it involves manipulation.

This dissertation, like much of the prior research, has focused primarily on legal rules, the elected officials that enact them, and the bureaucracies that enforce them. While work on these



research agendas continues to advance, scholars must also consider what other government entities affect how and why governments regulate CSOs. For example, scholars have not yet studied or theorized the role of the judiciary and national security agencies as political actors affecting CSO laws. Overlooking them has created two considerable gaps in the research. One shortcoming is the omission of the judiciary and its vital function: the review of legislative enactments. Through its decisions, the courts inform lawmakers and bureaucrats if laws need changing or if government enforcement action went too far. By understanding this process, we animate the judiciary as a political actor and improve our theory. Common law systems, which assign the preeminent position to legal precedent as opposed to legislation, would be a fruitful place to begin this research.

The role of national security agencies is another considerable gap. Scholars and practitioners generally argue that national security agencies undermine many civil society efforts. Still, under different conditions, these law enforcement agencies may produce positive outcomes by culling unscrupulous actors attempting to abuse CSO legal forms. To date, scholars have been unable to systematically study national security agencies because data on their activities has not been available.

\* \* \* \* \*

Beyond scholarly debates, this dissertation engages an inspiring and sobering topic: the freedom to associate. Voluntary associations allow individuals to participate in society by building communal ties, engaging fellow citizens, and involving ourselves in democratic processes. Freedoms mean we take the good with the bad, and for every CSO we want to support with our time and talents, others exist that may seem silly and backward (e.g., The Flat Earth

Society) or downright despicable (e.g., the KKK).<sup>3</sup> I believe this trade-off is inherent to the freedom of association and is a tension that accompanies democratic citizenship. The alternative is a government that chooses which CSOs should stay and which should go.

In a society that values freedom of association and speech, the government's intervention into a CSO's private matters should be limited. The government should enact laws that protect society and are necessary for democracy. Then, it should enforce those laws impartially and with due process. Two very recent examples demonstrate this is possible in a highly politicized environment. The first came to the public's attention exactly three days after I defended this dissertation. On August 6<sup>th</sup>, 2020, New York Attorney General filed a lawsuit seeking to dissolve the National Rifle Association alleging a culture of self-dealing, mismanagement, negligence, and extensive violations of fundamental IRS regulations.<sup>4</sup> The second example grabbed the public's attention two weeks later when Steve Bannon, former adviser to the President of the United States, and three of his associates were charged with defrauding donors who contributed to an American CSO.<sup>5</sup> These CSOs have not been closed and the individuals charged remain innocent until proven guilty. Still, these organizations have almost certainly experienced

<sup>3</sup> The Flat Earth Society is registered with the IRS as a public charity eligible to receive tax-deductible charitable contributions under the name Flat Earth Society of Covenant People Church (EIN: 23-7154049). On May 15<sup>th</sup>, 2010, the IRS automatically revoked the tax exempt status for the Christian Knights of the KKK (EIN: 58-1677607) for not filing a Form 990-series return or notice for three consecutive years. The National Ku Klux Klan Museum Inc. (EIN: 26-1654936) is a public charity eligible to receive tax-deductible charitable contributions. Retrieved from: <https://apps.irs.gov/app/eos/>.

<sup>4</sup> The Attorney General began her investigation into the NRA in February 2019. The suit specifically charges the NRA as a whole, as well as Executive Vice-President Wayne LaPierre, former Treasurer and Chief Financial Officer (CFO) Wilson "Woody" Phillips, former Chief of Staff and the Executive Director of General Operations Joshua Powell, and Corporate Secretary and General Counsel John Frazer with failing to manage the NRA's funds and failing to follow numerous state and federal laws, contributing to the loss of more than \$64 million in just three years for the NRA. Retrieved from: <https://ag.ny.gov/press-releases>.

<sup>5</sup> We Build the Wall is a 501(c)(4) tax exempt organization classified by the IRS in 2019 as a social welfare organization. Retrieved from: <https://www.charitynavigator.org/ein/833040627>.

negative repercussions from government actions. Damage to those organizational reputations is unfortunate, but necessary for democracy. If these allegations are true, then these CSOs failed at their responsibility to self-govern their activities in a manner that would protect their members and not harm society. Under such circumstances the government's impartial enforcement of laws was necessary to protect society and prevent usurpers from abusing the CSO legal form. But intervention was necessary only after—not before—these CSOs proved incapable of preventing their leaders' illegal actions.

Several global events unfolded while writing this dissertation and illustrate the different ways governments and citizens engage with and react to civil society. I began writing this dissertation immediately after completing my fieldwork in December 2018. It was around that same time, February 2019, that the people of Hong Kong began to assemble and demand greater freedoms from the government. Over a year later, without any public debate, the Chinese government abruptly ended the “one country, two systems” policy on June 30<sup>th</sup>, 2020, and silenced a social movement. Those 18 months showed just how quickly a government could crack down on civil society using either laws or enforcement actions. My writing also witnessed a global pandemic where government inaction spurred CSOs to mobilize personal protective equipment, produce masks in small community groups, and provide food and essential services to the suddenly unemployed. Some governments have used the pandemic as an excuse to enact executive orders and laws affecting the freedoms of expression and assembly.<sup>6</sup> Then, a reenergized Black Lives Matter movement is demanding social change around the world; “good

<sup>6</sup> The International Center for Not-for-Profit-Law leads a collaborative effort that monitors public health responses to that affect civic freedoms and human rights, focusing on emergency laws: <https://www.icnl.org/covid19tracker/>.

trouble” as the late United States Representative John Lewis described similar collective action.<sup>7</sup> Unfortunately, some of its protests were infiltrated by troublemakers fulfilling an ugly urge to damage property and undermine a social movement. Civil society and CSOs are not guaranteed to bring out the best people, but they are an *opportunity* to bring out the best in people.

<sup>7</sup> Black Lives Matter is separately a 501(c)(3) in the United States but has also taken on the qualities of social movement in parts of the country and around the world.

## APPENDIX

### Chapter Appendices

#### Chapter I—Regulating the Freedom to Voluntary Associate

Click [here](#) to return to chapter.

**Appendix Table 1A: Legal Definitions of CSO in East African Countries**

<b>BURUNDI</b>	
<b>Association of Foreigners</b> —Article 3(2) <i>Organic Framework of Non-profit Associations</i> (2017)	a non-profit association created under this Act and of which the majority of the actual members or of the executive committee are of foreign nationality
<b>Collective</b> —Article 3(9) <i>Organic Framework of Non-profit Associations</i> (2017)	a non-profit association formed by several non-profit associations in order to achieve common objectives;
<b>Foreign Association</b> —Article 3(3) <i>Organic Framework of Non-profit Associations</i> (2017)	an association whose constitution obeys a legal regime other than the Burundian regime
<b>Foreign Non-governmental Organization</b> —Article 2 <i>General Framework of Cooperation Between the Republic of Burundi and Foreign Non-Governmental Organizations (ONGEs)</i> (2017).	is a not-for-profit institution of foreign law, created by a private initiative to the exclusion of any intergovernmental agreement, comprised of private or public natural or legal persons, having its principal head office abroad that can be of various nationalities and pursuing aims covering broad and varied areas.
<b>Foundation</b> —Article 3(11) <i>Organic Framework of Non-profit Associations</i> (2017)	any organization created for a philanthropic purpose to ensure the sustainability of a work or values;
<b>International Association of Burundian Law</b> —Article 3(4) <i>Organic Framework of Non-profit Associations</i> (2017)	any organization composed of Burundian and foreign associations created in the form and spirit of the present law and having its headquarters in Burundi;
<b>Non-profit Association Recognized as a Public Utility</b> —Article 3(6) <i>Organic Framework of Non-profit Associations</i> (2017)	an association with at least five years of existence, with significant achievements in areas of public utility;
<b>Non-profit Association</b> —Article 3(7) <i>Organic Framework of Non-profit Associations</i> (2017)	any association which does not undertake commercial, industrial and political activities as its main objective and whose purpose is not the sharing of profits between members; however, is not considered to be a lucrative activity, the fact that an Association undertakes activities that tend to make its heritage yield a profit in order to better realize its purpose
<b>Non-profit Associations</b> —Article 2(6) <i>Code General Taxes</i> (1969)	[any organization] whose purpose is to deal with religious, scientific, social or philanthropic works which have been granted a legal person status under former decrees or which will be obtained under the laws or regulations of the Kingdom of Burundi
<b>Professional or Corporate Association</b> —Article 3(16) <i>Organic Framework of Non-profit Associations</i> (2017)	any organization created by professionals of an area, sector or a professional area, sector or branch to ensure the promotion and defense of specific interests;
<b>KENYA</b>	

<b>Company Limited by Guarantee</b> —Articles 2, 4(2b), 21(1) <i>The Companies Ordinance</i> (1962)	a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up [and] formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members.
<b>International Non-Governmental Organization</b> —Article 2 <i>The Non-Governmental Organizations Co-Ordination Act</i> (1990)	means a Non-Governmental Organization with the original incorporation in one or more countries other than Kenya, but operating within Kenya under a certificate of registration.
<b>National Non-Governmental Organization</b> —Article 2 <i>The Non-Governmental Organizations Co-Ordination Act</i> (1990)	means a Non-Governmental Organization which is registered exclusively in Kenya with authority to operate within or across two or more districts in Kenya.
<b>Non-Governmental Organization</b> —Article 2 <i>The Non-Governmental Organizations Co-Ordination Act</i> (1990)	means a private voluntary groups of individuals or associations, not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the promotion of social welfare, development, charity or research through mobilization of resources.
<b>Perpetual Trust</b> (known locally as charitable trust)—Article 3(1) <i>The Trustees (Perpetual Succession) Act</i> (1923)	trustees who have been appointed by any body or association of persons established for any religious, educational, literary, scientific, social, athletic or charitable purpose, or who have constituted themselves for any such purpose.
<b>Public Benefit Organization</b> —Article 5(1-2), Schedule 6 <i>Public Benefits Organization Act</i> (2013)	means a voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan, non-profit making and which is— a) organized and operated locally, nationally or internationally; b) engages in public benefit activities in any of the areas set out in the Sixth Schedule; and c) is registered as such by the Authority.
<b>Society</b> —Articles 2(1), 4 <i>The Societies Act</i> (1968)	includes any club, company, partnership or other association of ten or more persons, whatever its nature or object, established in Kenya or having its headquarters or chief place of business in Kenya, and any branch of a society [but not including companies, corporations, firms, cooperative societies, schools, building societies, banks, international organizations, and unlawful societies].
<b>RWANDA</b>	
<b>Common Interest Organisation</b> —Article 3(2) <i>Governing the Organisation and the Functioning of National Non-Governmental Organisations</i> (2012)	organisations which act in a specific domain in favour of their members.
<b>Foundation</b> —Article 3(3) <i>Governing the Organisation and the Functioning of National Non-Governmental Organisations</i> (2012)	an organisation whose purpose is either to establish a fund or to collect funds, manage and use them to provide beneficiaries with support.
<b>International Non-Governmental Organisation</b> —Article 2 <i>Governing the Organisation and the Functioning of International Non-Governmental Organisations</i> (2012)	an organization that was established in accordance with foreign laws and the objective of which is related to public interest.

<b>Public Interest Organisation</b> — Article 3(1) <i>Governing the Organisation and the Functioning of National Non-Governmental Organisations</i> (2012)	organisations serving public interests. The organisations carry out activities in the development of various sectors including civil society, economy, social welfare, culture, science and human rights.
<b>Non-Governmental Organisation</b> —Articles 2(2), 3 <i>Governing the Organisation and the Functioning of National Non-Governmental Organisations</i> (2012)	an organisation which is comprised of natural persons or of autonomous collective voluntary organizations whose aim is to improve economic, social and cultural development and to advocate for public interests of a certain group, natural persons, organizations or with the view of promoting common interest of their members. [They] are classified into three (3) broad categories in respect of their main objectives and nature of membership.
<b>Non-profit Making Organization</b> —Articles 1, 5-7 <i>Relating to Non-Profit Making Organizations</i> (2000)	any grouping having legal entity, governed by civil law, constituted by physical or by moral entities which aim at social works and which decide to put in common, and in a permanent way, their knowledge or their activity for a goal other than making profit. The organization must fulfill condition provided by this law. It has its main objective to exercise religious, philanthropic, scientific, cultural and sporting activities. It may, at a subsidiary level and for no profit making, extend its field to other activities. [It] shall choose freely its headquarters within the territory of the Republic of Rwanda [be] constituted for an indefinite duration [by] immoveable assets and movable assets necessary for the achievement of its objectives.
<b>South Sudan</b>	
<b>Community-based Organization</b> —Article 5 <i>Non-Governmental Organizations Act</i> (2016)	a public or private, nonprofit including religious entity, which is a representative of a community or a significant segment of a community, and is engaged in meeting human, education, environmental or public safety community needs.
<b>International Non-Governmental Organization</b> —Article 5 <i>Non-Governmental Organizations Act</i> (2016)	any Non-Governmental or semi-governmental Organization established in a foreign country and registered in South Sudan in accordance with section 9 of this Act.
<b>National Non-Governmental Organization</b> —Article 5 <i>Non-Governmental Organizations Act</i> (2016)	means any National Non-Governmental Organization registered in accordance with section 9 of this Act.
<b>Non-Governmental Organization</b> —Article 5 <i>Non-Governmental Organizations Act</i> (2016)	means a non-profit voluntary Organization formed by two or more persons, not being Public bodies, with the intention of undertaking voluntary or humanitarian projects.
<b>Non-Governmental Organization</b> —Article 3 <i>The Non-Governmental Organizations Act</i> (2003)	means a voluntarily formed organization or association with a written Constitution stating the aims and objectives of that organization or association for the promotion of social welfare and charity through mobilization of private resources regardless of whether these resources were internally or externally raised. Without prejudice to the generality of this definition, this shall include, Churches, Mosques, synagogues, Indigenous Religious Communities or other Relief, humanitarian, Religious organizations or associations operating in the New Sudan in accordance with the provisions of this Act.
<b>TANZANIA</b>	
<b>Charitable Organization</b> —Article 64(8) <i>The Income Tax Act</i> (2008)	means a resident entity of a public character that satisfies the following conditions:



	<ul style="list-style-type: none"> <li>a) the entity was established and functions solely as an organisation for: <ul style="list-style-type: none"> <li>i. the relief of poverty or distress of the public;</li> <li>ii. the advancement of education; or</li> <li>iii. the provision of general public health, education, water or road construction or maintenance; and</li> </ul> </li> <li>b) the entity has been issued with a ruling by the Commissioner under section 131 currently in force stating that it is a charitable organisation or religious organisation.</li> </ul>
<b>International Non-Governmental Organization</b> —Article 2 <i>The Non-Governmental Organizations Act</i> (2002)	means a Non-Governmental Organization established outside mainland Tanzania.
<b>National Non-Governmental Organization</b> —Article 2 <i>The Non-Governmental Organizations Act</i> (2002)	means a Non-Governmental Organization established in accordance with the Provisions of this Act and whose scope of Operation extends to more than two regions.
<b>Non-Governmental Organization</b> —Article 2 <i>The Non-Governmental Organizations Act</i> (2002)	<p>means a voluntary grouping of individuals or organizations which is autonomous, non-partisan, non-profit sharing-</p> <ul style="list-style-type: none"> <li>a) organized at the local, national or international level or the purpose of enhancing or promoting economic, environmental, social or cultural development or protecting the environment, lobbying or advocating on such issues; or</li> <li>b) established under the auspices of any religious or faith propagating organization, trade union, sports club, political party, religious or faith organization or community based organization, but does not include a trade union, social club, a religious or faith propagating organization or community based organization.</li> </ul>
<b>Society</b> —Article 2 <i>Societies Ordinance</i> (1954)	<p>Any club, company, partnership or association of ten or more person whatever its nature or object but does not include—</p> <ul style="list-style-type: none"> <li>a) company registered under the Companies Ordinance, or any company which has complied with the requirements of section 321 of that Ordinance,</li> <li>b) any company, council, authority, association, board or committee lawfully constituted or established under Royal Charter, or Royal Letters Patent, or any Applied Act, or any law for the time being in force in Tanganyika,</li> <li>c) any Lodge of Freemasons regularly constituted under any of the registered governing bodies of Freemasons in the United Kingdom of Great Britain and Northern Ireland,</li> <li>d) any trade union registered under the Trade Unions Ordinance,</li> <li>e) any company, association or partnership consisting of not more than twenty persons formed and maintained for the sole purpose of carrying on any lawful business,</li> <li>f) any co-operative society registered under the Co-operative Cap. 211 Societies Ordinance,</li> <li>g) any society which the President may, by order published in the Gazette, declare not to be a society for the purposes of this Ordinance.</li> </ul>
<b>UGANDA</b>	
<b>Community Based Organisation</b> —Article 2 <i>The Non-Governmental Organisations Registration Regulations</i> (2009) and	means an organisation wholly controlled by Ugandans operating at a sub-county level and below, whose objective is to promote and advance the wellbeing of its members or the community;



<i>Non-Governmental Organisations Act (2016)</i>	
<b>Continental Organisation</b> —Article 3 <i>Non-Governmental Organisations Act (2016)</i>	means an organisation that has its original incorporation in any African country, other than the Partner States of the East African Community, and is partially or wholly controlled by citizens of one or more African countries, other than the citizens of the Partner State of the East African Community, and is operating in Uganda under the authority of a permit issued by the Bureau.
<b>Indigenous Organisation</b> —Article 3 <i>Non-Governmental Organisations Act (2016)</i>	means an organisation that is wholly controlled by Ugandan citizens.
<b>International Organisation</b> —Article 3 <i>Non-Governmental Organisations Act (2016)</i>	means an organisation that has its original incorporation in a country, other than a Partner State of the East African Community and is partially or wholly controlled by citizens of one or more countries, other than the citizens of the Partner States of the East African Community, and is operating in Uganda under the authority of a permit issued by the Bureau.
<b>Exempt Organisation</b> —Article 2(bb) <i>The Income Tax Act (1997)</i>	means any company, institution, or irrevocable trust – <ul style="list-style-type: none"> <li>i. which is – <ul style="list-style-type: none"> <li>A. an amateur sporting association;</li> <li>B. a religious, charitable, or educational institution of a public character; or</li> <li>C. a trade union, employees’ association, an association of employers registered under any law of Uganda, or an association established for the purpose of promoting farming, mining, tourism, manufacturing, or commerce and industry in Uganda; and</li> </ul> </li> <li>ii. which has been issued with a written ruling by the Commissioner currently in force stating that it is an exempt organisation; and</li> <li>iii. none of the income or assets of which confers, or may confer, a private benefit on any person;</li> </ul>
<b>Foreign Organisation</b> —Article 2 <i>The Non-Governmental Organisations Registration Regulations (2009)</i>	means an organisation which is not a local organisation
<b>Foreign Organization</b> —Article 3 <i>Non-Governmental Organisations Act (2016)</i>	means an organisation that does not have original incorporation in any country, and is partially or wholly controlled by citizens of other countries, other than the citizens of the Partner States of the East African Community, and is operating in Uganda under the authority of a permit issued by the Bureau
<b>Organization</b> —Article 1(d) <i>The Non-Governmental Organizations Registration Act (1989)</i>	means a nongovernmental organization established to provide voluntary services, including religious, educational, literary, scientific, social or charitable services to the community or any part of it.
<b>Organization</b> —Article 3 <i>Non-Governmental Organisations Act (2016)</i>	means a legally constituted non-governmental organisation under this Act, which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes;
<b>Regional Organization</b> —Article 3 <i>Non-Governmental Organisations Act (2016)</i>	means an organisation incorporated in one or more of the Partner States of the East African Community, and which is partially or wholly controlled by citizens of one or more of the Partner States of the East African Community, and which is operating in Uganda under the authority of a permit issued by the Bureau;
<b>Trust</b> —Article 1(1) <i>The Trustees Incorporation Act (1939)</i>	any body or association of persons established for any religious, educational, literary, scientific, social or charitable purpose

## Chapter II—Research Design

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### Existing Cross-National Studies of CSO Laws

The following edited volumes are leading contributions in the research program. *The International Guide to Nonprofit Law* (Salamon & Toepler, 1997) carefully reviews laws in 22 countries. National legal experts wrote each chapter following a shared outline written in a dense legalese that is consistent in phrasing and meaning (p. xiii). While the consistent content allows readers to find similar information for each case, the volume's legal summaries did not leave room for systematic comparison. Further, the chapters represent ‘snapshots’ of countries’ current regulatory regimes and does not discuss their development. Four cases appear in my sample. *Regulatory Waves: Comparative Perspective on State Regulation and Self-Regulation Policies in the Nonprofit Sector* (Breen et al., 2017) compares regulation and self-regulation policies of nonprofit sectors around the world. A combination of scholars and subject-matter experts author 10 chapters discussing 15 countries. These “country narratives” defend the working hypothesis that an “ongoing causal relationship exists between statutory and nonstatutory regulation of the nonprofit sector” and discuss the factors that energize the relationship (p. 2). Though the authors admirably unpack the history and politics of each case study, they were unable to systematically compare cases. Eight countries appear in my sample. *The following table summarizes the samples, approaches, and outputs of the edited volumes and compares them to the research presented here.*

**Appendix Table 2A: Summarizing Three Cross-National Studies of CSO Laws**

	<i>International Guide</i>	<i>Regulatory Waves</i>	<i>Regulating Freedom</i>
Number of countries	22	15	17
Cases overlapping with this work	4—France, Russia, UK, USA	8—China, Ethiopia, Kenya, Malawi, Tanzania, Uganda, UK, USA	Ref.
Analytical scope	Preexisting institutions; Restrictive and permissive	Preexisting institutions; Restrictive and permissive; Self-Regulation	Preexisting institutions; Restrictive and permissive; Self-Regulation; Constitutions and International Treaties
Method of analysis	National legal experts summarize each country's regulatory regime in a highly consistent manner	Academic and subject-matter experts describe the history and politics underpinning <i>statutory and nonstatutory regulation</i> relationship	Mixed-methods: 58-item coding protocol applied to legal corpus of 285 laws enacted between 1872 and 2019; in-depth interviews with elected officials, legal experts, bureaucrats.
Analytical output	Detailed legal summaries of current regulatory regimes	Analytical narratives outlining development of regulatory regimes	Longitudinal dataset of provisions that comprise regulatory regimes
Amenable to quantitative description and analysis	No	No	Yes
Level of analysis	Country	Country	Country-year

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**Appendix Table 3A: Descriptive Statistics of Estimation Sample**

	Mean	Std. Dev.	Min	Max
<i>138 Cases</i>				
Enacted Law <sup>1</sup>				
Any Law <sup>a</sup>	0.268		0	1
Prohibitive <sup>a</sup>	0.072		0	1
Red-Tape <sup>a</sup>	0.210		0	1
Notification <sup>a</sup>	0.109		0	1
<i>2,398 Country-year Observations</i>				
Enacted Law <sup>1</sup>				
Any Law <sup>a</sup>	0.015		0	1
Prohibitive <sup>a</sup>	0.004		0	1
Red-Tape <sup>a</sup>	0.012		0	1
Notification <sup>a</sup>	0.006		0	1
Commitment to Guard Human Rights <sup>b, 2</sup>	0.744			
Constitution Bolsters Commitments <sup>b, 3</sup>	0.272			
Executive Power <sup>b, 2</sup>	3.223	2.30	0	7
Electoral Competition <sup>c, 4</sup>	0.536	0.50	0	1
ln(ODA per capita) <sup>c, 5</sup>	2.382	3.06	-6.10	6.83
CSOs Routinely Consulted <sup>c, 4</sup>	0.579	1.12	-2.25	3.04
CSOs are Anti-System <sup>c, 4</sup>	-0.561	1.14	-2.94	3.33
Imputed FH/Polity2 <sup>c, 4</sup>	5.790	2.85	0	10
U.N. Votes with USA (%) <sup>c, 6</sup>	19.991	11.75	0	100
U.N. Votes with Russia (%) <sup>c, 6</sup>	65.976	11.71	0	100
Regional Diffusion (%) <sup>c, 1, 5</sup>	7.317	11.53	0	55.56
PTS Average <sup>c, 7</sup>	2.685	1.05	1	5
Rule of Law Index <sup>c, 4</sup>	0.488	0.27	0.03	0.98
Analysis Time (years) <sup>d</sup>	10.125	5.69	1	20

<sup>a</sup> Outcome variable; <sup>b</sup> Institutional variables; <sup>c</sup> Control variables lagged one year in analysis; <sup>d</sup> Control variable for the number of years without adopting a law since entering the dataset. **Sources** <sup>1</sup>Dupuy et al. (2016), Ron, Prakash (2016); <sup>2</sup>Comparative Constitutions Project; <sup>3</sup>United Nations Office of Legal Affairs; <sup>4</sup>Varities of Democracy dataset; <sup>5</sup>World Bank Development Indicators; <sup>6</sup>United Nations Voting Data; <sup>7</sup>The Political Terror Scale.

**Appendix Table 3B.1: Competing Risk Model with Logistic Regression (full table)**

	(1) Pooled	(2) Prohibitive	(3) Red-Tape	(4) Notification
<b>(DV: Enacts specific law)</b>				
Commitment to Guard Human Rights	0.37	0.33	0.49	-0.36
Constitution Bolsters Commitments	-14.24***	-14.13***	-15.03***	-13.74***
Commitment x Constitutional Rules	12.99***	12.57***	13.86***	13.23***
Executive Power	0.30***	0.24	0.29**	0.16
Electoral Competition <sup>a</sup>	1.72*	1.92	1.93*	1.53
ln(ODA/cap) <sub>a</sub>	0.10	-0.09	0.09	0.14
ln(ODAcap) x ElectComp <sup>a</sup>	-0.15	-0.01	-0.14	-0.14
CSO Routinely Consulted <sup>a</sup>	0.26	-0.31	0.21	1.25**
CSOs are Anti-System <sup>a</sup>	-0.11	0.01	-0.05	-0.33
Imputed FH/Polity2 <sup>a</sup>	-0.56***	-0.35	-0.58***	-0.62**
UN votes with USA (%) <sub>a</sub>	-0.01	-0.06	-0.01	-0.01
UN votes with RUS (%) <sub>a</sub>	0.04*	0.02	0.04	0.08**
Regional Diffusion (%) <sub>a</sub>	-0.00	-0.01	0.01	-0.00
PTS average <sup>a</sup>	0.39+	0.42	0.46+	0.25
Rule of Law Index <sup>a</sup>	-0.18	0.02	-0.10	0.01
Time	0.13**	0.15*	0.13*	0.05
Constant	-8.96***	-8.76**	-9.26***	-10.93***
Observations	2398	2398	2398	2398
<i>AIC</i>	339.78	141.53	284.52	184.09
<i>BIC</i>	438.08	239.83	382.82	282.39
Degrees of Freedom	16	16	16	16
Failure Events	37	10	29	15
Countries in Sample	138	138	138	138

+ p<0.10, \* p<0.05, \*\* p<0.01, \*\*\* p<0.001

<sup>a</sup> Denotes one-year lag on variables

Models ran with Stata 15 with cluster-robust standard errors grouped by unique country IDs.

**Appendix Table 3B.2: Cox with Time-Varying Coefficients CRM (full model)**

	(1) Pooled	(2) Prohibitive	(3) Red-Tape	(4) Notification
<b>(DV: Enacts specific law)</b>				
Commitment to Guard Human Rights	0.28	0.29	0.44	-0.33
Constitution Bolsters Commitments	-20.43***	-21.74***	-20.24***	-20.12***
Commitment x Constitutional Rules	19.40	20.17	19.32	19.90
Executive Power	0.85**	0.70	0.92*	0.79
Electoral Competition <sup>a</sup>	1.54*	2.58*	1.73*	1.57
ln(ODA/cap) <sub>a</sub>	0.08	-0.04	0.07	0.18
ln(ODAcap) x ElectComp <sup>a</sup>	-0.16	-0.15	-0.15	-0.20
CSO Routinely Consulted <sup>a</sup>	0.24	-0.39	0.28	1.22**
CSOs are Anti-System <sup>a</sup>	-0.10	0.09	-0.10	-0.33
Imputed FH/Polity2 <sup>a</sup>	-0.66	-3.05*	-0.40	-0.28
UN votes with USA (%) <sub>a</sub>	0.10	0.63***	0.08	-0.07
UN votes with RUS (%) <sub>a</sub>	-0.03	0.22**	-0.07	-0.02
Regional Diffusion (%) <sub>a</sub>	-0.22*	-0.21	-0.16+	-0.44**
PTS average <sup>a</sup>	0.39*	0.59	0.46+	0.27
Rule of Law Index <sup>a</sup>	-2.58	14.35*	-6.99+	-9.79
<i>Time-varying Coefficients</i>				
Executive Power	-0.04	-0.02	-0.05+	-0.05
Imputed FH/Polity2 <sup>a</sup>	0.01	0.18*	-0.01	-0.03
UN votes with USA (%) <sub>a</sub>	-0.01	-0.06***	-0.01	0.01
UN votes with RUS (%) <sub>a</sub>	0.00	-0.02**	0.01	0.01
Regional Diffusion (%) <sub>a</sub>	0.01*	0.01	0.01+	0.03**
Rule of Law Index <sup>a</sup>	0.19	-0.97*	0.50+	0.80
Observations	2398	2398	2398	2398
AIC	329.14	105.46	260.80	152.67
BIC	444.79	221.10	376.45	268.32
Degrees of Freedom	20	20	20	20
Failure Events	37	10	29	15
Countries in Sample	138	138	138	138

+ p<0.10, \* p<0.05, \*\* p<0.01, \*\*\* p<0.001

<sup>a</sup> Denotes one-year lag on variables

Cox model with robust standard errors using Stata 15. Coefficients are displayed rather than exponentiated coefficients or hazard ratios. Time-varying covariates (TVC) added because model 2 failed the proportional hazard assumption. New predictors are added to the model using the -tvc()- option. These time-varying covariates are temporal interaction terms equivalent to the product of the predictor interacted with a function of time. The hazard ratio of the TVC at time=0 is shown in the top panel of the table and adjusts by the value shown in the bottom panel of the table for every unit of time. Thus, like any interaction term, the effect of each TVC is unenterable as one number and instead changes according to the specified function of time.

**Appendix Table 3B.3: Rare-Events CRM (logistic regression, random 35% of sample)**

	(1) Pooled	(2) Prohibitive	(3) Red-Tape	(4) Notification
<b>(DV: Enacts specific law)</b>				
Commitment to Guard Human Rights	-0.27	0.22	-0.11	-0.65
Constitution Bolsters Commitments	-16.10***	-13.33***	-14.99***	-15.05***
Commitment x Constitutional Rules	14.94***	12.01***	13.98***	14.61***
Executive Power	0.33***	0.21	0.31**	0.18
Electoral Competition <sup>a</sup>	1.70+	1.73	1.97*	1.27
ln(ODA/cap) <sup>a</sup>	0.16	-0.10	0.14	0.22
ln(ODAcap) x ElectComp <sup>a</sup>	-0.20	0.06	-0.20	-0.24
CSO Routinely Consulted <sup>a</sup>	0.29	-0.57	0.27	1.18**
CSOs are Anti-System <sup>a</sup>	-0.06	-0.13	-0.05	-0.21
Imputed FH/Polity2 <sup>a</sup>	-0.45***	-0.24	-0.48***	-0.40+
UN votes with USA (%) <sup>a</sup>	0.02	-0.04	0.02	0.01
UN votes with RUS (%) <sup>a</sup>	0.06*	0.04	0.06+	0.09*
Regional Diffusion (%) <sup>a</sup>	-0.00	-0.01	0.01	-0.00
PTS average <sup>a</sup>	0.20	0.41	0.32	0.05
Rule of Law Index <sup>a</sup>	-1.08	0.48	-0.99	-1.02
Time	0.22***	0.22*	0.20**	0.13+
Constant	-10.07***	-11.06*	-10.39***	-11.49**
Observations	849	849	849	849
AIC	268.12	121.74	228.72	154.98
BIC	348.76	202.38	309.37	235.63
Degrees of Freedom	16	16	16	16
Failure Events	37	10	29	15
Countries in Sample	135	135	135	135

+ p<0.10, \* p<0.05, \*\* p<0.01, \*\*\* p<0.001

<sup>a</sup> Denotes one-year lag on variables

Models ran with Stata 15 with cluster-robust standard errors grouped by unique country IDs. Random 135 cases sampled following recommendations by King & Zeng (2001, p141-142). All 482 country-year observations of countries that adopt laws included in sample.

**Appendix Table 3C: Assessing Conceptual Equivalence & Distinctness (All Model Strategies)**

	Only Prohibitive Laws	Only Red-Tape Laws	Only Notification Laws
<b>Panel A: Conceptual-equivalence Hypotheses</b>			
<i>H2A: ODA per capita positively correlated with enactment.</i>			
Primary modeling strategy (logit)	-0.000 ( <i>p</i> =0.330)	0.000 ( <i>p</i> =0.881)	0.000 ( <i>p</i> =0.462)
Cox with TVC robustness check	-0.000 ( <i>p</i> =0.880)	-0.000 ( <i>p</i> =0.916)	0.000 ( <i>p</i> =0.877)
Rare-events robustness check	-0.000 ( <i>p</i> =0.560)	0.001 ( <i>p</i> =0.549)	0.001 ( <i>p</i> =0.292)
<i>H2B: Electoral competition positively correlated with enactment.</i>			
Primary modeling strategy (logit)	0.001 ( <i>p</i> =0.400)	<b>0.002 (<i>p</i>=0.071)</b>	0.001 ( <i>p</i> =0.338)
Cox with TVC robustness check	<b>0.000 (<i>p</i>=0.878)</b>	<b>0.004 (<i>p</i>=0.839)</b>	0.000 ( <i>p</i> =0.856)
Rare-events robustness check	0.004 ( <i>p</i> =0.523)	<b>0.009 (<i>p</i>=0.142)</b>	0.002 ( <i>p</i> =0.623)
<i>H2C: CSOs are anti-system positively correlated with enactment.</i>			
Primary modeling strategy (logit)	0.000 ( <i>p</i> =0.986)	-0.000 ( <i>p</i> =0.783)	-0.000 ( <i>p</i> =0.281)
Cox with TVC robustness check	0.000 ( <i>p</i> =0.892)	-0.000 ( <i>p</i> =0.852)	-0.000 ( <i>p</i> =0.863)
Rare-events robustness check	-0.000 ( <i>p</i> =0.652)	-0.000 ( <i>p</i> =0.788)	-0.001 ( <i>p</i> =0.459)
<i>H2D: Level of democracy negatively correlated with enactment.</i>			
Primary modeling strategy (logit)	-0.000 ( <i>p</i> =0.234)	<b>-0.001 (<i>p</i>=0.001)</b>	<b>-0.001 (<i>p</i>=0.079)</b>
Cox with TVC robustness check	<b>-0.000 (<i>p</i>=0.883)</b>	-0.002 ( <i>p</i> =0.848)	-0.000 ( <i>p</i> =0.868)
Rare-events robustness check	-0.001 ( <i>p</i> =0.471)	<b>-0.004 (<i>p</i>=0.005)</b>	<b>-0.002 (<i>p</i>=0.222)</b>
<b>Panel B: Conceptual-distinctness Hypotheses</b>			
<i>H3A: Voting alignment with Russia positively correlated with enacting prohibitive laws.</i>			
Primary modeling strategy (logit)	0.000 ( <i>p</i> =0.592)	0.001 ( <i>p</i> =0.233)	<b>0.001 (<i>p</i>=0.019)</b>
Cox with TVC robustness check	<b>0.000 (<i>p</i>=0.897)</b>	-0.002 ( <i>p</i> =0.830)	-0.000 ( <i>p</i> =0.763)
Rare-events robustness check	0.001 ( <i>p</i> =0.400)	<b>0.005 (<i>p</i>=0.148)</b>	<b>0.004 (<i>p</i>=0.019)</b>
<i>H3B: CSO consultation positively correlated with enacting notification laws.</i>			
Primary modeling strategy (logit)	-0.000 ( <i>p</i> =0.432)	0.000 ( <i>p</i> =0.544)	<b>0.002 (<i>p</i>=0.004)</b>
Cox with TVC robustness check	-0.000 ( <i>p</i> =0.890)	0.001 ( <i>p</i> =0.844)	<b>0.001 (<i>p</i>=0.870)</b>
Rare-events robustness check	-0.001 ( <i>p</i> =0.167)	0.002 ( <i>p</i> =0.441)	<b>0.007 (<i>p</i>=0.017)</b>
<i>H3C: International commitment + constitutional rules negatively correlated with enactment of prohibitive laws.</i>			
Primary modeling strategy (logit)	<b>-0.000 (<i>p</i>=0.147)</b>	<b>-0.004 (<i>p</i>=0.028)</b>	<b>-0.001 (<i>p</i>=0.518)</b>
Cox with TVC robustness check	<b>-0.000 (<i>p</i>=0.887)</b>	<b>-0.010 (<i>p</i>=0.850)</b>	<b>-0.000 (<i>p</i>=0.876)</b>
Rare-events robustness check	<b>-0.003 (<i>p</i>=0.196)</b>	<b>-0.008 (<i>p</i>=0.033)</b>	<b>-0.002 (<i>p</i>=0.525)</b>
<i>H3D: Voting alignment with USA positively correlated with enacting notification laws.</i>			
Primary modeling strategy (logit)	-0.001 ( <i>p</i> =0.162)	-0.000 ( <i>p</i> =0.773)	-0.000 ( <i>p</i> =0.730)
Cox with TVC robustness check	<b>0.000 (<i>p</i>=0.894)</b>	0.004 ( <i>p</i> =0.869)	-0.000 ( <i>p</i> =0.861)
Rare-events robustness check	-0.001 ( <i>p</i> =0.485)	0.001 ( <i>p</i> =0.477)	0.000 ( <i>p</i> =0.778)

**Bold text** represents factors with statistically significant regression coefficients ( $p < 0.10$ ) in either main effects, interaction effects, or time-varying coefficients. See individual regression tables for additional information. Shaded cells identify statistically significant discrete marginal effects at the  $p < 0.10$  and  $p < 0.20$  level. Discrete changes are changes from 0 to 1 in binary variables and a standard deviation change in continuous variables. Each average marginal effect is accompanied by its *p*-value in the parentheses for readers to evaluate statistical significance in their own terms. All predictions computed in Stata 15 using `mchange` to reflect interaction terms (Long & Freese, 2014).



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### Assessing Measurement Validity

Measurement is a comparative exercise that uses a standard metric to equivalently and consistently measure a concept (Gerring, 2012b, pp. 159-160). My use of the ADICO syntax to produce a coding protocol produced numerous indicators measuring the different dimensions of CSO regulatory regimes. The degree to which these indicators meaningfully reflect concepts is known as measurement validity. This methodological quality underpins the adequacy of descriptive and causal inference and is of prime importance for both qualitative and quantitative researchers (King, Keohane, & Verba, 1994, p. 25; Brady & Collier, 2010, pp. 337, 357).

A signal of measurement validity will be if my approach consistently reaches similar measurements as other researchers independently studying the same concept. Unfortunately, few studies have attempted to both systematically analyze CSO laws and produce measures that enable valid comparisons. Some of the most thorough analyses produced highly detailed legal summaries and "country narratives" (Salamon & Toepler, 1997; Breen et al., 2017, p. 2) but stopped short of producing metrics. Many other studies, meanwhile, use secondary data to produce binary outcomes measuring whether certain restrictive provisions exist (e.g., Dupuy et al., 2016; Reddy, 2018; DeMattee, 2019a; Swiney, 2019). Those binary measures seem oversimplified compared to the data discussed here.

A recent article in *International Studies Quarterly* provides the best comparison. Bakke et al. (2020) study state-sponsored restrictions on civil society in 176 countries between 1994 and 2014. The authors code secondary data from the U.S. Department of State to create a count variable that measures the prevalence of restrictions on CSOs. Although the study omits

permissive provisions, the researchers' variable measuring CSO restrictions is equivalent to my indicator that counts the total number of restrictive provisions (e.g., Figure 2). Bakke et al. coded ten restrictions that organize into the four provision subgroups discussed throughout this chapter:

- *Governance*—(i) harassing civil society activists; (ii) surveilling civil society activists.
- *Formation*—(i) banning specific civil society organizations; (ii) creating difficulties in registering as civil society organizations.
- *Operations*—(i) curtailing travel; (ii) restricting their visits to government sites; (iii) creating difficulties in obtaining visas or denying visas; (iv) censoring their publications.
- *Resources*—(i) limiting their domestic funding sources; (ii) limiting their international funding sources.

With Bakke et al. serving as an independent robustness check, I find our separate measurements of the same concept are strongly similar, but not perfectly identical. The correlation between the two measures is significant ( $\rho = 0.34$ ,  $p\text{-value} = 0.000$ ). And regressing their values on mine shows my measures predict the Bakke et al. measurements with high statistical precision (coefficient = 0.201, standard error = 0.031,  $n = 319$ , degrees of freedom = 1). This linear relationship means for every five restrictions coded in my data, Bakke et al. coded one. This ratio is reasonable given a 58-item coding protocol produced my measures, while a 10-item protocol produced theirs. Figure 5 graphically reproduces these comparisons.

### Appendix Figure 4A: Assessing Measurement Validity

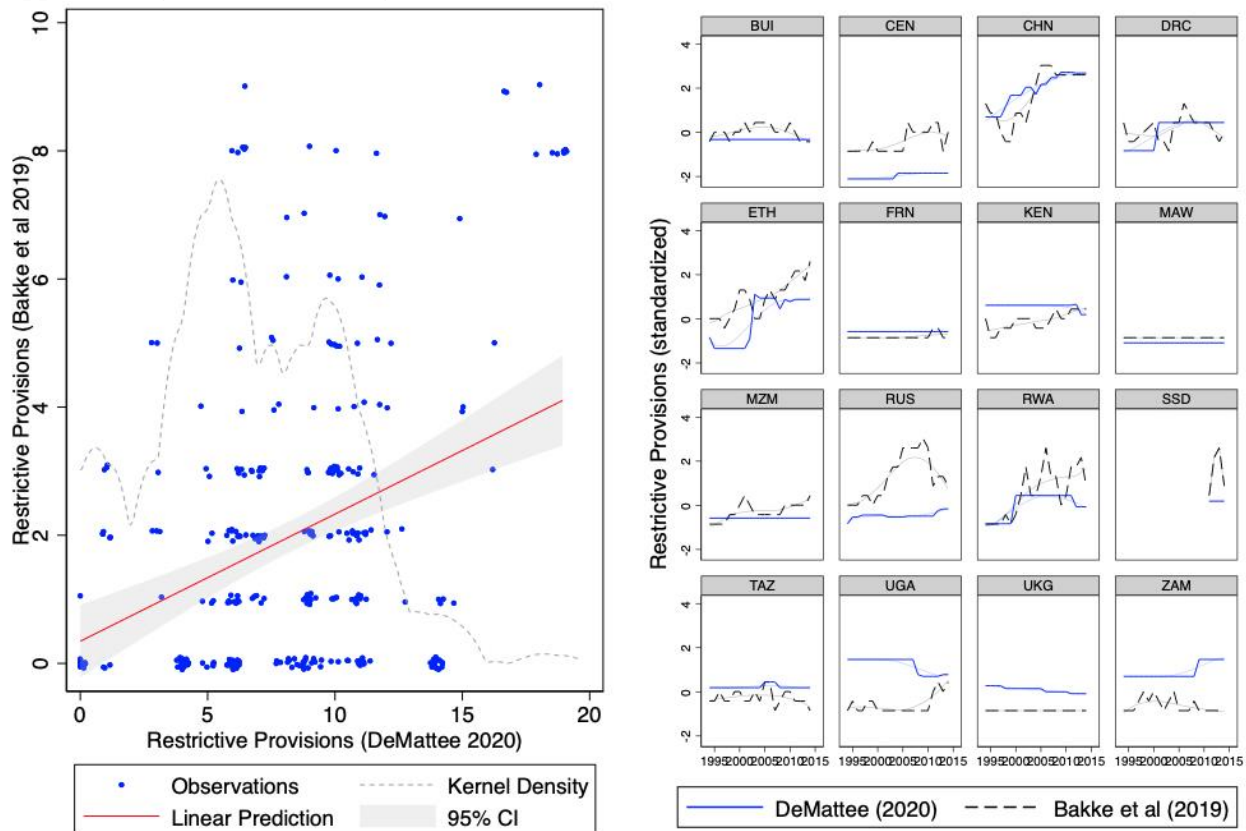


Figure compares counts of restrictive provisions from Bakke et al (2019) and this study (DeMattee 2020). Data restricted to the years studied by Bakke et al (2019) and limited to countries coded here. Scatter plot (left) uses studies' original values. Line graphs (right) use standardized values for comparability. Each line graph displays data for each country (1994-2014) but omits the United States because of missing data in Bakke et al (2019).

Bakke et al. is the only reasonably comparable study available to assess measurement validity because they used secondary data to code all 17 of my cases for 1994-2014. There may still be concerns that using measurement similarity to draw broader conclusions about measurement validity is invalid for a sample using primary sources of East African countries and P5 members. Thus, I draw on Frank, Maroulis, Duong, and Kelcey (2013) to quantify how much bias there would have to be due to the non-random sample (or any other source) to invalidate my descriptive inference supporting measurement validity. Analyzing this threat to inference indicates that over 69% of the cross-study measurement correlation would have to be due to bias to invalidate the inference that the two studies have similar measures for the same concept.

Correspondingly, if measurement similarity suggests measurement validity, to invalidate

inference in this analysis, one would have to replace over 69% of the observed data (222 of 319 country-year observations) with measurements for which there is zero cross-study similarity.<sup>1</sup>

This cross-study comparison provides evidence that both analyses use scores that meaningfully reflect the concept (measurement validity), and whatever inferences rely on those measures for a set of cases are correct for those cases (internal validity).

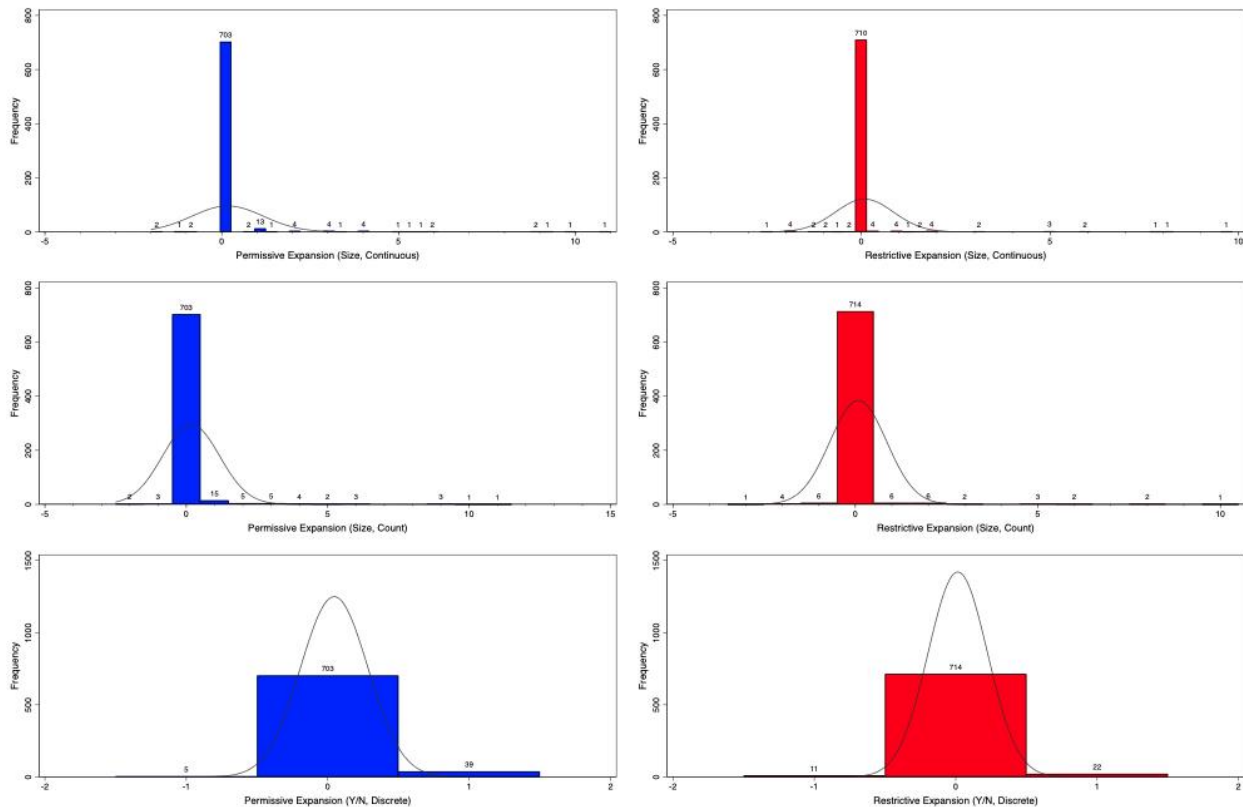
<sup>1</sup> I derive these estimates from sociologists making important methodological contributions to how empirical analyses discuss robustness and threats to descriptive and causal inference (Frank, 2000; Pan & Frank, 2003, 2004; Frank & Min, 2007; Frank et al., 2008; Frank et al., 2013).

Click [here](#) to return to chapter.

### Measurement Decisions: Continuous, Count, or Binary Response Variables?

Figure 5A shows histograms summarizing the distribution of the response variable among 12 East African countries using the traditional monadic setup. The top graphs show the response variable using a continuous operationalization for permissive expansions (left) and restrictive expansions (right). Values above each bar represent the frequency of that value in the data, and the line is a simple normal-density plot. Lower graphs show the same information using count (middle) and binary (bottom) operationalizations, respectively.

**Appendix Figure 5A: Histograms of Response Variables and Supporting OLS as the Primary Model**



The histograms show the continuous measure is a superior operationalization for two reasons. First, it does not oversimplify the response variable and sacrifice important variation

during analysis. The data also show some, but not many, contractions of both permissive and restrictive provisions. A negative binomial regression model (NBRM) used as a robustness check and a logit would be unable to analyze these negative values, but a straightforward OLS using continuous variables can. For these reasons, the primary analysis of the paper is an OLS, and the NBRM serves as a robustness check. A logit model is not discussed because of how strongly it oversimplifies the data.

**Appendix Table 5A: Descriptive Statistics—All Variables**

Variable	Obs.	Mean	Std. Dev.	Min	Max
<b>ΔPermissive Provisions (continuous)</b>	1,251	0.17	1.04	-2.00	11.00
<b>ΔPermissive Provisions (integer)</b>	1,234	0.20	1.00	0	11
Restrictive Rules Enacted (continuous)	1,251	0.07	0.72	-2.67	6
Similar Implementation Environment (t-1)	1,251	-1.15	0.91	-5.03	0.00
Similar Political Ideology (t-1)	1,251	-1.11	1.10	-4.13	0.00
Common Colonial Past	1,251	0.18		0	1
Governance Permissiveness (t-1)	1,251	45.30	7.72	37.50	70.83
Formation Permissiveness (t-1)	1,251	53.37	6.00	42.86	78.57
Operations Permissiveness (t-1)	1,251	47.56	8.49	28.13	65.63
Resources Permissiveness (t-1)	1,251	57.94	3.96	53.13	69.79
Commitment to Guard Human Rights	1,251	0.83		0	1
Constitution Bolsters Commitments	1,251	0.08		0	1
Executive Power	1,251	2.23	2.38	0	6
Constitutional Freedoms	1,251	3.32	3.05	0	7
Nondemocratic Grip on Power (t-1)	1,251	4.11	2.24	0	7
CSO Consultation (t-1)	1,251	0.51	0.85	-1.37	2.21
ODA/cap (t-1)	1,251	58.22	26.89	12.34	161.67
GDP/cap (t-1)	1,251	446.27	215.48	204.77	1435.33
Rule of Law Sameness (t-1)	1,251	-0.32	0.22	-0.91	0.00
Freedoms Sameness (t-1)	1,251	-2.23	2.58	-7.00	0.00
Time	1,251	35.89	12.42	2.00	56.00
Time Spline 1	1,251	17.40	13.33	0.00	46.96
Time Spline 2	1,251	3.64	3.85	0.00	13.13
Number of Active Laws - Laggard	1,251	3.79	2.05	1	13
Number of Active Laws - Leader	1,251	6.66	4.92	1	27
Calendar Years		2000		1980	2016
<b>ΔRestrictive Provisions (continuous)</b>	741	-0.01	0.51	-2.67	5.00
<b>ΔRestrictive Provisions (integer)</b>	715	0.04	0.40	0	5
Permissive Rules Enacted (continuous)	741	0.27	1.51	-2	11
Similar Implementation Environment (t-1)	741	-1.04	0.88	-4.39	0.00
Similar Political Ideology (t-1)	741	-0.52	0.67	-3.48	0.00
Common Colonial Past	741	0.28		0	1
Governance Permissiveness (t-1)	741	47.18	10.01	37.50	70.83
Formation Permissiveness (t-1)	741	54.18	7.18	42.86	78.57
Operations Permissiveness (t-1)	741	51.34	7.31	28.13	65.63
Resources Permissiveness (t-1)	741	59.21	4.63	56.25	69.79
Commitment to Guard Human Rights	741	0.90		0	1
Constitution Bolsters Commitments	741	0.08		0	1
Executive Power	741	2.36	2.38	0	6
Constitutional Freedoms	741	3.36	2.92	0	7
Nondemocratic Grip on Power (t-1)	741	3.68	2.31	0	7
CSO Consultation (t-1)	741	0.52	0.78	-1.37	2.21
ODA/cap (t-1)	741	58.67	27.31	12.34	161.67
GDP/cap (t-1)	741	496.08	245.97	204.77	1,435.33
Rule of Law Sameness (t-1)	741	-0.26	0.18	-0.89	0.00
Freedoms Sameness (t-1)	741	-1.65	2.30	-7.00	0.00
Time	741	38.22	12.84	2.00	56.00
Time Spline 1	741	20.58	14.20	0.00	46.96
Time Spline 2	741	4.60	4.16	0.00	13.13
Number of Active Laws - Laggard	741	4.34	2.85	1	13
Number of Active Laws - Leader	741	8.05	6.28	1	27
Calendar Years		2002		1980	2016

**Appendix Table 5B: OLS Directed Dyad Models Predicting Permissive Expansions (Full Model)**

	(1)	(2)	(3)	(4)	(5)	(6)
Governance Permissiveness <sup>a</sup>		-0.03*** (0.009)	-0.03*** (0.008)	-0.03*** (0.009)	-0.03*** (0.009)	-0.03*** (0.008)
Formation Permissiveness <sup>a</sup>		-0.01 (0.006)	-0.01 (0.006)	-0.01 (0.006)	-0.01 (0.006)	-0.01 (0.006)
Operations Permissiveness <sup>a</sup>		-0.01** (0.004)	-0.02*** (0.004)	-0.01** (0.004)	-0.01** (0.004)	-0.02*** (0.004)
Resources Permissiveness <sup>a</sup>		-0.03* (0.016)	-0.04* (0.016)	-0.03* (0.016)	-0.03* (0.016)	-0.04* (0.016)
Similar Implementation Environment <sup>a</sup>			0.09** (0.031)			0.09** (0.032)
Similar Political Ideology <sup>a</sup>				0.00 (0.026)		-0.01 (0.026)
Common Colonial Past					-0.02 (0.069)	-0.02 (0.068)
Nondemocratic Grip on Power <sup>a</sup>	0.07*** (0.019)	0.06** (0.019)	0.05* (0.021)	0.06** (0.020)	0.06** (0.019)	0.05* (0.021)
Restrictive Rules Enacted	0.21* (0.079)	0.24** (0.076)	0.24** (0.076)	0.24** (0.076)	0.24** (0.076)	0.24** (0.076)
Commitment to Guard Human Rights	-0.15* (0.070)	-0.19 (0.148)	-0.20 (0.145)	-0.19 (0.147)	-0.19 (0.146)	-0.20 (0.142)
Constitution Bolsters Commitments	0.34** (0.121)	0.02 (0.137)	-0.12 (0.150)	0.02 (0.136)	0.02 (0.137)	-0.13 (0.150)
Executive Power	-0.09*** (0.010)	-0.10** (0.036)	-0.09* (0.034)	-0.10** (0.035)	-0.10** (0.035)	-0.09* (0.033)
Constitutional Freedoms	0.08*** (0.012)	0.10** (0.036)	0.09* (0.034)	0.10** (0.035)	0.10** (0.036)	0.09* (0.034)
CSO Consultation <sup>a</sup>	-0.01 (0.038)	-0.04 (0.052)	-0.06 (0.054)	-0.04 (0.052)	-0.04 (0.051)	-0.07 (0.054)
ODA/capita <sup>a</sup>	-0.00 (0.001)	0.00 (0.001)	0.00 (0.001)	0.00 (0.001)	0.00 (0.001)	0.00 (0.001)
GDP/capita <sup>a</sup>	-0.00 (0.000)	0.00** (0.000)	0.00** (0.000)	0.00** (0.000)	0.00** (0.000)	0.00** (0.000)
Rule of Law Sameness <sup>a</sup>	0.03 (0.079)	0.13 (0.087)	0.06 (0.087)	0.12 (0.120)	0.14 (0.092)	0.08 (0.119)
Freedoms Sameness <sup>a</sup>	-0.01+ (0.007)	-0.02+ (0.009)	-0.02+ (0.008)	-0.02+ (0.008)	-0.02+ (0.008)	-0.01+ (0.008)
Tknot1	0.01 (0.011)	0.06* (0.024)	0.05* (0.024)	0.06* (0.025)	0.06* (0.024)	0.05* (0.024)
Tknot2	0.00 (0.031)	-0.08 (0.050)	-0.07 (0.052)	-0.08 (0.050)	-0.08 (0.050)	-0.07 (0.052)
Tknot3	0.01 (0.085)	0.21 (0.129)	0.19 (0.135)	0.21 (0.129)	0.21 (0.129)	0.18 (0.135)
Observations	1251	1251	1251	1251	1251	1251
AIC	3587.92	3560.15	3555.64	3562.15	3562.06	3559.49
BIC	3664.90	3657.66	3658.28	3664.78	3664.69	3672.39
Degrees of Freedom	14	18	19	19	19	21

Standard errors in parentheses

+ p<0.10, \* p<0.05, \*\* p<0.01, \*\*\* p<0.001

<sup>a</sup> variables lagged one period (t-1)

Response variable: year-over-year change in stock of permissive provisions (continuous)



**Appendix Table 5C: OLS Directed Dyad Models Predicting Restrictive Expansions (Full Model)**

	(1)	(2)	(3)	(4)	(5)	(6)
Governance Permissiveness <sup>a</sup>		-0.00 (0.005)	-0.00 (0.005)	-0.00 (0.005)	-0.01 (0.005)	-0.00 (0.005)
Formation Permissiveness <sup>a</sup>		0.00 (0.002)	0.00 (0.002)	0.00 (0.002)	0.00 (0.002)	0.00 (0.002)
Operations Permissiveness <sup>a</sup>		0.01** (0.002)	0.01** (0.002)	0.01** (0.002)	0.01** (0.002)	0.01** (0.002)
Resources Permissiveness <sup>a</sup>		0.02*** (0.004)	0.02*** (0.004)	0.02*** (0.004)	0.02*** (0.004)	0.02*** (0.004)
Similar Implementation Environment <sup>a</sup>			0.02+ (0.013)			0.03* (0.013)
Similar Political Ideology <sup>a</sup>				0.03* (0.014)		0.04** (0.014)
Common Colonial Past					-0.03 (0.023)	-0.04+ (0.023)
Nondemocratic Grip on Power <sup>a</sup>	0.02+ (0.008)	-0.00 (0.010)	-0.00 (0.010)	0.00 (0.010)	-0.00 (0.010)	-0.00 (0.010)
Permissive Rules Enacted	-0.05* (0.024)	-0.05+ (0.025)	-0.05+ (0.025)	-0.05+ (0.025)	-0.05+ (0.025)	-0.05+ (0.025)
Commitment to Guard Human Rights	-0.15** (0.047)	-0.19** (0.059)	-0.19** (0.058)	-0.19** (0.062)	-0.19** (0.060)	-0.19** (0.061)
Constitution Bolsters Commitments	-0.23*** (0.034)	-0.16*** (0.043)	-0.19*** (0.045)	-0.17*** (0.042)	-0.16*** (0.043)	-0.21*** (0.042)
Executive Power	0.03* (0.013)	0.02 (0.019)	0.03 (0.020)	0.03 (0.018)	0.02 (0.019)	0.03 (0.019)
Constitutional Freedoms	-0.05** (0.017)	-0.05* (0.021)	-0.05* (0.021)	-0.05* (0.021)	-0.05* (0.021)	-0.05* (0.021)
CSO Consultation <sup>a</sup>	-0.07*** (0.017)	-0.10*** (0.021)	-0.10*** (0.022)	-0.10*** (0.021)	-0.10*** (0.021)	-0.10*** (0.021)
ODA/capita <sup>a</sup>	-0.00 (0.001)	-0.00 (0.001)	-0.00 (0.001)	-0.00 (0.001)	-0.00 (0.001)	-0.00 (0.001)
GDP/capita <sup>a</sup>	-0.00* (0.000)	-0.00 (0.000)	-0.00 (0.000)	-0.00 (0.000)	-0.00 (0.000)	-0.00 (0.000)
Rule of Law Sameness <sup>a</sup>	0.08 (0.060)	0.11+ (0.067)	0.09 (0.067)	0.07 (0.066)	0.11+ (0.068)	0.03 (0.067)
Freedoms Sameness <sup>a</sup>	-0.01 (0.007)	-0.01 (0.007)	-0.01 (0.007)	-0.01 (0.007)	-0.01 (0.007)	-0.01 (0.007)
Tknot1	-0.04*** (0.010)	-0.04** (0.012)	-0.04** (0.013)	-0.04** (0.012)	-0.04** (0.012)	-0.04** (0.013)
Tknot2	0.17*** (0.040)	0.18*** (0.043)	0.18*** (0.044)	0.18*** (0.043)	0.18*** (0.043)	0.19*** (0.044)
Tknot3	-0.47*** (0.102)	-0.49*** (0.109)	-0.50*** (0.113)	-0.50*** (0.109)	-0.49*** (0.109)	-0.52*** (0.112)
Observations	741	741	741	741	741	741
AIC	1035.59	1033.39	1034.34	1034.20	1034.89	1036.19
BIC	1104.71	1120.94	1126.50	1126.36	1127.05	1137.57
Degrees of Freedom	14	18	19	19	19	21

Standard errors in parentheses

+ p<0.10, \* p<0.05, \*\* p<0.01, \*\*\* p<0.001

<sup>a</sup> variables lagged one period (t-1)

Response variable: year-over-year change in stock of restrictive provisions (continuous)

**Appendix Table 5D: NBRM Directed Dyad Models Predicting Permissive Expansions (Full Model)**

	(1)	(2)	(3)	(4)	(5)	(6)
Governance Permissiveness <sup>a</sup>		-0.08** (0.030)	-0.06* (0.026)	-0.08** (0.029)	-0.07* (0.030)	-0.05+ (0.029)
Formation Permissiveness <sup>a</sup>		-0.16*** (0.047)	-0.14*** (0.039)	-0.16*** (0.048)	-0.15*** (0.046)	-0.12** (0.038)
Operations Permissiveness <sup>a</sup>		-0.19*** (0.030)	-0.19*** (0.027)	-0.19*** (0.030)	-0.19*** (0.031)	-0.19*** (0.028)
Resources Permissiveness <sup>a</sup>		-0.36*** (0.098)	-0.41*** (0.094)	-0.36*** (0.099)	-0.38*** (0.096)	-0.44*** (0.096)
Similar Implementation Environment <sup>a</sup>			0.92*** (0.221)			1.03*** (0.219)
Similar Political Ideology <sup>a</sup>				0.00 (0.175)		-0.27+ (0.149)
Common Colonial Past					0.62 (0.411)	0.88* (0.394)
Nondemocratic Grip on Power <sup>a</sup>	0.91** (0.289)	0.96*** (0.261)	0.99*** (0.286)	0.96*** (0.264)	1.04*** (0.268)	1.10*** (0.293)
Restrictive Rules Enacted	0.50*** (0.078)	0.90*** (0.147)	0.90*** (0.130)	0.90*** (0.149)	0.91*** (0.147)	0.92*** (0.129)
Commitment to Guard Human Rights	-2.86*** (0.730)	-2.85** (1.034)	-2.19* (0.897)	-2.85** (1.023)	-2.81** (1.009)	-2.13* (0.866)
Constitution Bolsters Commitments	0.80 (0.608)	-3.98*** (1.106)	-4.74*** (1.167)	-3.98*** (1.104)	-4.05*** (1.134)	-4.96*** (1.218)
Executive Power	-0.83*** (0.130)	-0.10 (0.164)	-0.03 (0.178)	-0.10 (0.164)	-0.07 (0.173)	-0.02 (0.188)
Constitutional Freedoms	0.67*** (0.134)	0.31* (0.150)	0.33* (0.154)	0.31* (0.150)	0.30* (0.152)	0.35* (0.152)
CSO Consultation <sup>a</sup>	0.64+ (0.344)	-0.67* (0.268)	-0.79** (0.271)	-0.67* (0.271)	-0.69* (0.278)	-0.91*** (0.262)
ODA/capita <sup>a</sup>	0.02*** (0.005)	0.03* (0.011)	0.02+ (0.011)	0.03* (0.011)	0.02* (0.011)	0.02* (0.011)
GDP/capita <sup>a</sup>	0.00*** (0.001)	0.02*** (0.003)	0.01*** (0.002)	0.02*** (0.003)	0.02*** (0.003)	0.02*** (0.002)
Rule of Law Sameness <sup>a</sup>	-1.75* (0.707)	-0.62 (0.618)	-1.12+ (0.591)	-0.64 (1.028)	-1.01 (0.706)	-0.70 (0.947)
Freedoms Sameness <sup>a</sup>	0.08 (0.058)	0.06 (0.059)	0.06 (0.058)	0.06 (0.053)	0.04 (0.054)	0.07 (0.049)
Tknot1	0.14 (0.182)	0.67*** (0.175)	0.92 (1.129)	0.67*** (0.174)	0.66*** (0.169)	0.90 (1.360)
Tknot2	0.74 (0.631)	-0.22 (0.650)	-0.94 (2.156)	-0.23 (0.645)	-0.13 (0.643)	-0.82 (2.585)
Tknot3	-2.13 (1.591)	0.23 (1.671)	1.99 (4.413)	0.23 (1.662)	0.01 (1.649)	1.75 (5.262)
ln(alpha)	2.45*** (0.189)	1.95*** (0.146)	1.84*** (0.135)	1.95*** (0.148)	1.95*** (0.140)	1.82*** (0.128)
Observations	1234	1234	1234	1234	1234	1234
AIC	816.61	761.19	750.57	763.19	761.10	750.30
BIC	898.50	863.55	858.05	870.67	868.58	868.01
Degrees of Freedom	14	18	19	19	19	21

Standard errors in parentheses

+ p<0.10, \* p<0.05, \*\* p<0.01, \*\*\* p<0.001

<sup>a</sup> variables lagged one period (t-1)

Response variable: year-over-year change in stock of permissive provisions (count)

**Appendix Table 5E: NBRM Directed Dyad Models Predicting Restrictive Expansions (Full Model)**

	(1)	(2)	(3)	(4)	(5)	(6)
Governance Permissiveness <sup>a</sup>		0.78*** (0.108)	0.79*** (0.102)	0.73*** (0.107)	0.79*** (0.112)	0.78*** (0.124)
Formation Permissiveness <sup>a</sup>		0.48*** (0.122)	0.50*** (0.114)	0.34+ (0.187)	0.49** (0.154)	0.34+ (0.204)
Operations Permissiveness <sup>a</sup>		1.96*** (0.261)	1.99*** (0.240)	1.64*** (0.245)	1.96*** (0.262)	1.75*** (0.260)
Resources Permissiveness <sup>a</sup>		-2.27*** (0.366)	-2.22*** (0.366)	-2.02*** (0.307)	-2.31*** (0.423)	-2.12*** (0.371)
Similar Implementation Environment <sup>a</sup>			-0.74 (0.563)			-0.51 (0.453)
Similar Political Ideology <sup>a</sup>				2.96+ (1.530)		2.86* (1.422)
Common Colonial Past					0.19 (0.547)	-0.02 (0.591)
Nondemocratic Grip on Power <sup>a</sup>	0.86** (0.311)	4.46*** (0.745)	4.37*** (0.847)	4.22*** (0.872)	4.64*** (1.090)	4.21*** (1.027)
Permissive Rules Enacted	0.82** (0.300)	1.84*** (0.236)	1.93*** (0.231)	1.47*** (0.258)	1.86*** (0.247)	1.61*** (0.260)
Commitment to Guard Human Rights	-6.42*** (1.580)	-5.09*** (1.286)	-5.30*** (1.270)	-6.06** (1.903)	-4.94*** (1.212)	-6.79** (2.292)
Constitution Bolsters Commitments	-15.74*** (0.853)	9.40** (2.909)	11.49*** (3.235)	6.19* (2.571)	9.96*** (2.644)	9.18* (3.741)
Executive Power	-0.20 (0.266)	1.82*** (0.491)	1.63*** (0.475)	1.68* (0.671)	1.71** (0.582)	1.69* (0.839)
Constitutional Freedoms	0.09 (0.227)	-2.82*** (0.463)	-2.88*** (0.442)	-2.61*** (0.540)	-2.73*** (0.504)	-2.78*** (0.697)
CSO Consultation <sup>a</sup>	-1.43* (0.621)	-0.37 (0.505)	-0.41 (0.537)	-1.08 (0.971)	-0.26 (0.587)	-1.34 (1.100)
ODA/capita <sup>a</sup>	0.03*** (0.008)	0.03*** (0.010)	0.01 (0.020)	0.03* (0.013)	0.03** (0.011)	0.02 (0.014)
GDP/capita <sup>a</sup>	0.00 (0.001)	-0.00 (0.002)	-0.00+ (0.002)	-0.00 (0.002)	-0.00 (0.002)	-0.00+ (0.002)
Rule of Law Sameness <sup>a</sup>	0.53 (1.836)	-0.15 (1.534)	-0.04 (1.456)	-1.40 (1.587)	0.05 (1.544)	-0.96 (1.656)
Freedoms Sameness <sup>a</sup>	0.79*** (0.174)	0.77*** (0.189)	0.84*** (0.207)	0.59+ (0.317)	0.79*** (0.203)	0.62* (0.312)
Tknot1	-1.35*** (0.322)	-0.74*** (0.158)	-0.83*** (0.170)	-0.87** (0.289)	-0.78*** (0.189)	-0.82* (0.342)
Tknot2	5.58*** (1.349)	2.69*** (0.345)	2.95*** (0.389)	3.48*** (0.697)	2.73*** (0.365)	3.41*** (0.877)
Tknot3	-14.46*** (3.506)	-6.44*** (0.817)	-7.17*** (0.945)	-8.61*** (1.658)	-6.42*** (0.836)	-8.51*** (2.178)
ln(alpha)	2.62*** (0.249)	1.54*** (0.428)	1.45** (0.490)	1.01 (1.067)	1.55*** (0.418)	0.95 (1.136)
Observations	715	715	715	715	715	715
AIC	159.63	140.89	142.19	139.56	142.86	143.12
BIC	232.79	232.33	238.21	235.58	238.88	248.29
Degrees of Freedom	14	18	19	19	19	21

Standard errors in parentheses

+ p&lt;0.10, \* p&lt;0.05, \*\* p&lt;0.01, \*\*\* p&lt;0.001

<sup>a</sup> variables lagged one period (t-1)

Response variable: year-over-year change in stock of restrictive provisions (count)

Click [here](#) to return to chapter.

**Appendix Archival Document 6A: Community Based Organization Registration Form (Page 1)**

<b>CBO</b>	Revised in October, 2016 <b>NEW</b> <b>MINISTRY OF EAST AFRICAN COMMUNITY (EAC), LABOUR AND SOCIAL PROTECTION</b> <b>STATE DEPARTMENT FOR SOCIAL PROTECTION</b> <b>DEPARTMENT OF SOCIAL DEVELOPMENT</b>	
<b>APPLICATION FORM FOR REGISTRATION OF A COMMUNITY BASED ORGANIZATION (CBO)</b>		
<b>COUNTY</b>	<b>CONSTITUENCY</b>	<b>SUB-COUNTY</b>
<b>WARD</b>		

**1. (a) Basic Information of the Community Based Organization (CBO)**

Name of Community Based Organization.....

Type of CBO (Tick one)    New    Amalgamation    Merger

If Amalgamation or Merger list the forming groups

1. Registration No. .... Group name .....

2. Registration No. .... Group name .....

*(If more than 2 groups attach a separate list)*

**Area of Coverage (not more than one County).....**

Division..... Location.....

Sub Location..... Year of Formation.....

Postal Address..... Physical Address.....

Email..... Telephone.....

Website (where applicable).....

**(b) Who mobilized your members to seek official registration?**

- Self
- Officer from social development office
- Other ministry's staff
- CBO
- NGO
- Chief
- Others.....Indicate the person/official

1

CBO Registration Form provided by Ministry of Labour and Social Protection, State Department for Social Protection. Retrieved July 13th, 2020 <https://www.socialprotection.go.ke/social-development-downloads/>.

Appendix Archival Document 6B: Community Based Organization Registration Form (Page 3)

**5. CBO Project Objectives**

- i.....  
ii.....  
iii.....

**6. Activities of the CBO**

a) Type of activity(ies) - tick as appropriate

- 1- **Business**  
2- Community project  
3- Crop farming  
4- Cultural/traditional activities  
5- Environment Conservation  
6- Financial services  
7- Fishery  
8- Health care  
9- livestock rearing  
10- Poultry keeping  
11- Skills development  
12- Tourism  
13- Youth empowerment  
14- Merry-go-round  
15- Table banking

b) List the main activities

- i.....  
ii.....  
iii.....

**7. Future Plans/Activities (if any)**

- i.....  
ii.....  
iii.....

**Appendix Archival Document 6C: Self-Help Group (SHG) Registration Form (Page 3)**

Number of Youth (18-35 years)				
Number of Older Persons (60+ years)				
<b>TOTAL</b>				

**4. Management Committee:-**  
 Date Elections were conducted..... Election Venue .....

Supervised by..... Title.....

Contact Address/Tel. No.....

No	Position	Name of Person	F	M	ID/No.	Mobile/Email	Signature
1.	Chairperson						
2.	Secretary						
3.	Treasurer						
4.	V/Chairperson						
5.	V/Secretary						
6.	Member						
7.	Member						

**\*Attach a separate list of all members**

**5. Group/Community Project Objectives**

i.....

ii.....

iii.....

**6. Activities of the Group/Community Project**

a) Type of Activity(ies) - tick as appropriate

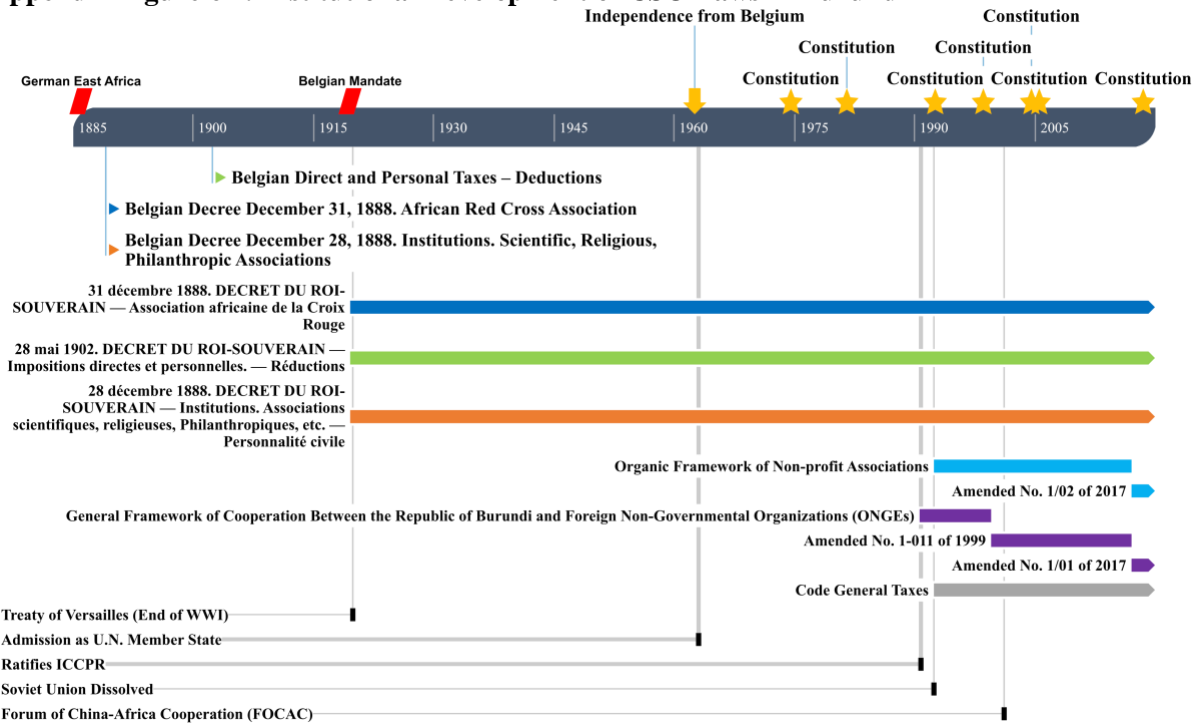
1 - Business

2 - Community project

2

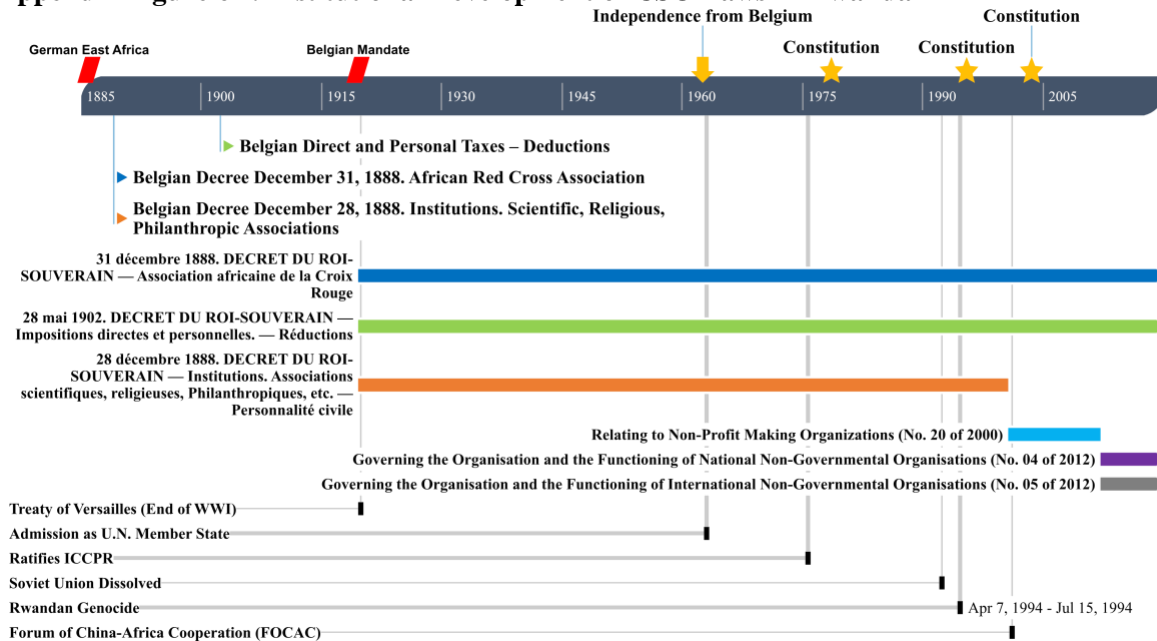
SHG Registration Form provided by Ministry of Labour and Social Protection, State Department for Social Protection.  
 Retrieved July 13th, 2020 <https://www.socialprotection.go.ke/social-development-downloads/>.

## Appendix Figure 6A: Institutional Development of CSO Laws in Burundi

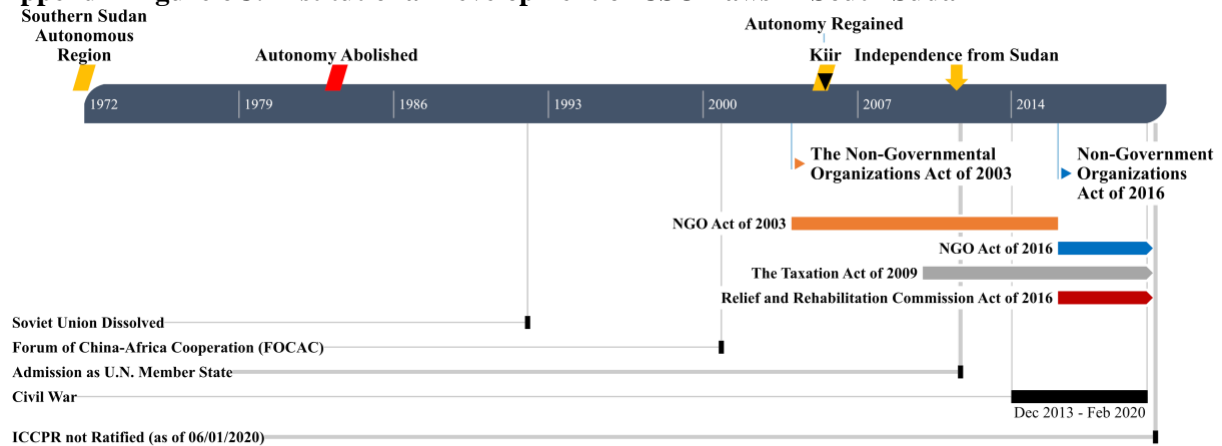


Figures 6A-6E show the development and multidimensionality of civil society laws separate EAC member countries. The timeline at the top of the figure provides scale and identifies significant political and legal milestones in the country's history. Triangles immediately below the timeline identify significant civil society laws. Horizontal bars represent primary sources contained in the legal corpus and coded in the data. I order all coded items vertically to show how laws amend each other over time. Items at the bottom identify notable historical events in the country (thick vertical connectors) and the world (thin vertical connectors).

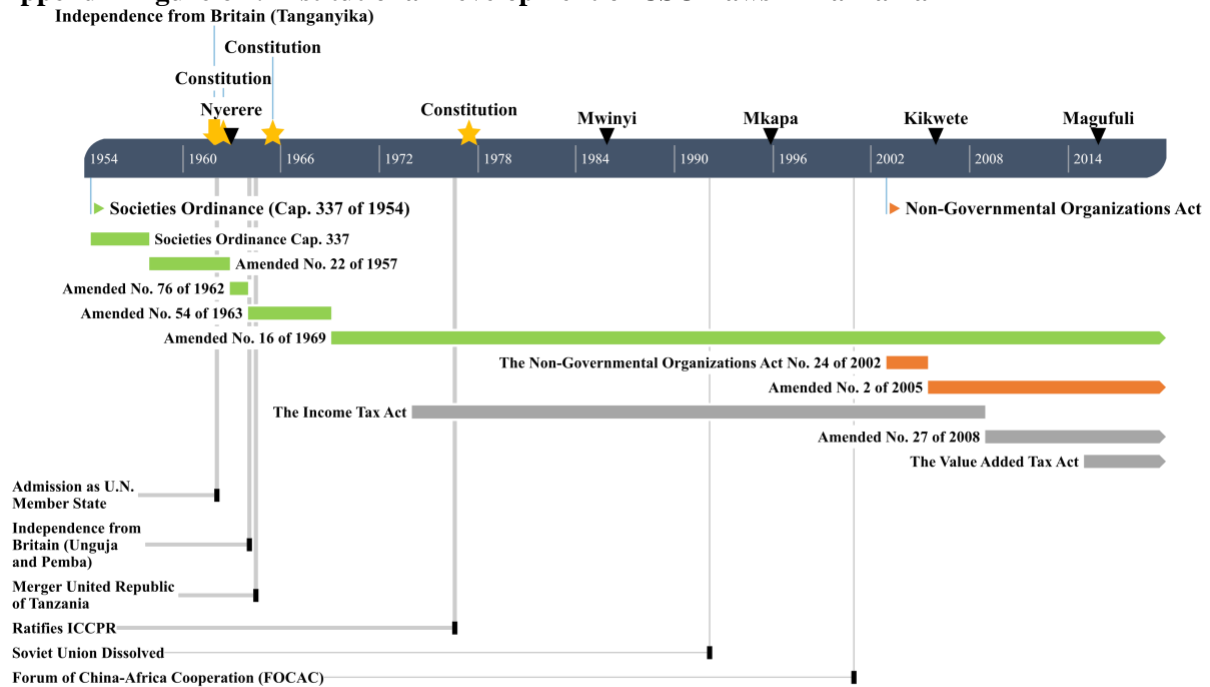
## Appendix Figure 6B: Institutional Development of CSO Laws in Rwanda



**Appendix Figure 6C: Institutional Development of CSO Laws in South Sudan**

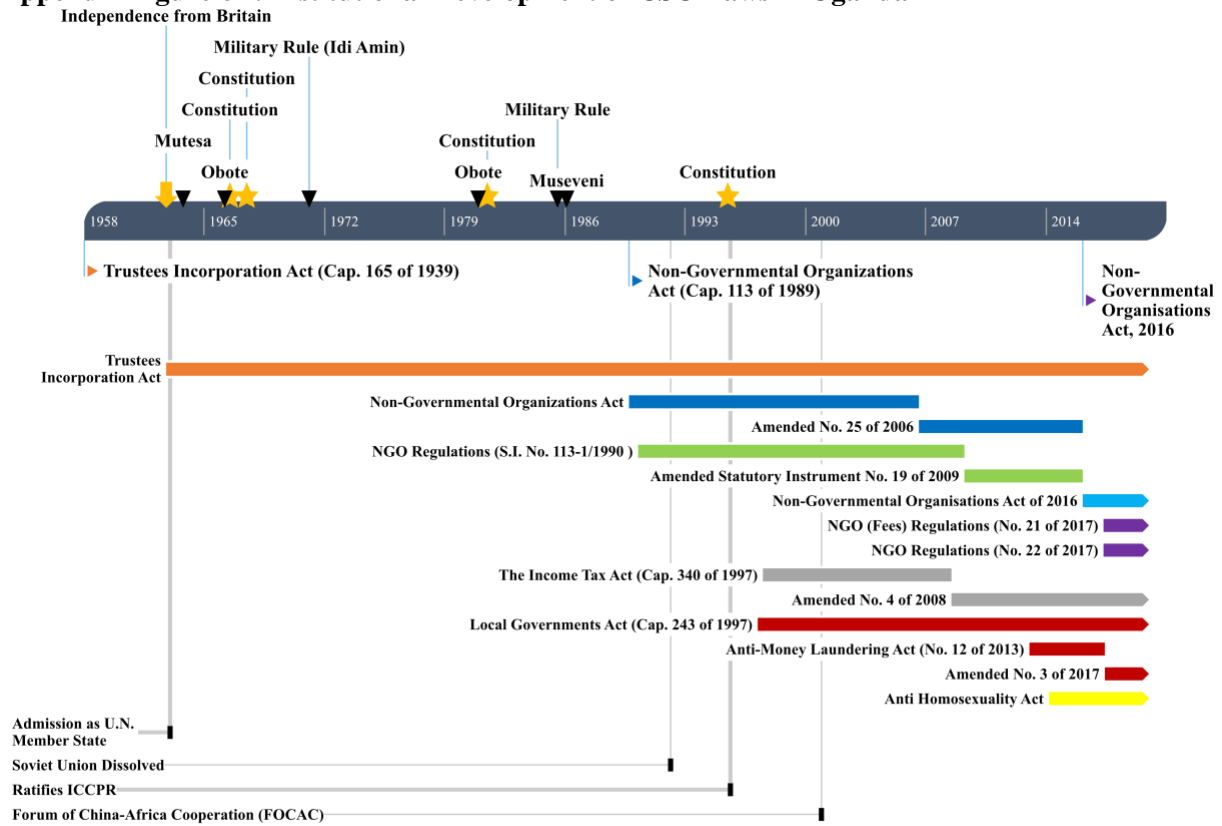


**Appendix Figure 6D: Institutional Development of CSO Laws in Tanzania**





**Appendix Figure 6E: Institutional Development of CSO Laws in Uganda**



Click [here](#) to return to chapter.

### Appendix Archival Document 7A: Registrar Halts the Registration of Religious Congregations



OFFICE OF THE ATTORNEY-GENERAL AND DEPARTMENT OF JUSTICE

#### PRESS RELEASE ON PROPOSED CHURCHES LAW

The Office of the Attorney General and Department of Justice is drawn to several news articles that have been appearing in various sections of the media regarding the proposed law that is aimed at streamlining the processes pertaining to the registration of religious organizations including churches in Kenya.

The Office of the Attorney General and Department of Justice through the Registrar of Societies wishes to issue certain clarifications;

The matter at hand is the subject of ongoing proceedings at the High Court in Nairobi and should be allowed to reach a natural conclusion. This statement is not in any way intended to be an attempt to influence the said court proceedings. This statement is purely for information purposes as aligned with Article 35 of the Constitution of Kenya as well as the Article 5 (1)(b)(c) and Article 13 of the Access to Information Act 2016 which allows for public institutions to “publish all relevant facts while formulating important policies or announcing the decisions which affect the public, and for correction of information;

From the outset, none of the Government agencies including the Office of the Attorney General and the Registrar of Societies, have expressed intention to limit the freedom of association, freedom of conscience, religion, belief, opinion, and access to information as these are guaranteed in Articles 32, 35 and 36 of the Constitution of Kenya. Indeed, the intended objective of the proposed amendments to registration of religious organizations is the legitimate foundation and sustainable development of these organizations;

The Registrar of Societies is mandated to register and regulate all societies including churches under the Societies Act Cap 108 of the Laws of Kenya;

The Moratorium stopping the registration of churches and societies was issued on 11<sup>th</sup> November 2014 by the Attorney General in line with his constitutional mandate to promote, protect and uphold the Rule of Law and defend the public interest. This was necessitated by several reports indicting the officials of several religious institutions and societies of orchestrating certain unconscionable activities that left their congregants at a disadvantage. Such instances included the infamous ‘panda mbegu’ saga. These incidences are within the public domain having been widely reported by the media. Within the same period, many cases of increased radicalization in the regions of Coast, North Eastern and Nairobi

(Page 1 of 3) February 2017 Press Release Statement on Proposed Churches Laws. Provided by State Law Office. Retrieved Feb 13<sup>th</sup>, 2019 <https://www.statelaw.go.ke/press-statement-on-proposed-churches-law/>.

continued to be reported. These incidences were of grave concern as they are directly connected to the maintenance of law and order within the country and the assurance of security of the citizenry;

On 14<sup>th</sup> November 2014, a consultative meeting to deliberate on the existing operations of the faith based institutions with a view of establishing a regulative framework of the religious bodies was held between the Office of the Attorney General and representatives from the National Council of Churches of Kenya (NCCK), Supreme Council of Kenya Muslims (SUPKEM) and the Hindu Council of Kenya. At the end of the deliberations, the leaders were required to deliberate on the proposed rules with their members and thereafter submit their opinions through memoranda. Many religious bodies submitted their memoranda which formed the basis for yet another workshop that was held at the Kenya School of Government, Nairobi on 31<sup>st</sup> March 2015 under constitutional requirement of public participation in legislative processes. This process has therefore been open and transparent with the full involvement of the stakeholders from the beginning

During this forum on 31<sup>st</sup> March 2015, some factions within the representatives of faith based organizations objected to certain provisions, which they opined would lead to over-regulation by the government. Key among these were provisions touched on leadership and integrity, as well accountability on resources entrusted to religious organizations by congregants. The impasse on these provisions is what has led to the moratorium remaining in place;

**On the concern for registered societies to submit audited accounts, the Office further informs the public thus:**

The requirement that religious organizations submit audited reports is a requirement under the section 30 of the Societies Act (CAP 108), Laws of Kenya.

Every registered Society is required to furnish the Registrar of Societies on an annual basis, on or before the prescribed date, such returns, accounts, and other documents as may be prescribed under Section 30 of the Societies Act (CAP 108). This section should be read together with sections 26, 28 and 29 where every registered society is under obligation to keep one or more books of accounts containing details of monies received and payments made by the society. These records should be availed for inspection to any officer or member and to the Registrar or any person authorized in that behalf. Further every registered society is under obligation to at least once every year, hold a general meeting to which all its members shall be invited, and shall be at the meeting;

During the annual general meetings issues of deliberation include but are not limited to; render a full and true accounts of monies received and paid by the society where such accounts have been audited in accordance with the constitution and rules of the society. Elections of office bearers including committees, trustees and auditors are carried out in accordance with the constitution and rules of the society;

Section 30 therefore contemplates that the accounts referred to under sections 26, 28 and 29 are to be furnished to the Registrar of Societies. It further stipulates that any annual return, account, or other documents that are incomplete in the prescribed manner or form shall be taken not to have been furnished;

(Page 2 of 3) February 2017 Press Release Statement on Proposed Churches Laws. Provided by State Law Office. Retrieved Feb 13<sup>th</sup>, 2019 <https://www.statelaw.go.ke/press-statement-on-proposed-churches-law/>.

Section 30 provides an offence for registered Societies that fail to comply with the provision;

It is also worthwhile to note that under the Schedule to the Act, the provision of annual and periodical audit of accounts is one of the matters that must be provided in the constitution of registered and exempted Societies, as provided under Section 19 of the Societies Act.

As the country awaits the Court's pronouncement of the suit relating to this matter on the registration of churches, the Office of the Attorney General remains committed to working towards a solution that is in the best interest of all stakeholders and in line with public interest.

Signed,

Registrar of Societies.

(Page 3 of 3) February 2017 Press Release Statement on Proposed Churches Laws. Provided by State Law Office.  
Retrieved Feb 13<sup>th</sup>, 2019 <https://www.statelaw.go.ke/press-statement-on-proposed-churches-law/>.

## Legal Repositories Accessed to Collect Primary Sources (Legal Texts)

**Abyssinia Law**—an online free-access resource for Ethiopian legal information. Abyssinia Law is administered and maintained by Liku Worku Law Office and it is not affiliated with any government entity. The online collection is an independent effort to understand the Ethiopian legal system.

<https://www.abyssinialaw.com/>

**African Legal Information Institute (AfricanLII)**—is a programme of the Democratic Governance and Rights Unit at the Department of Public Law, University of Cape Town. It helps organizations and governments build and maintain sustainable free access to law portals. It convenes a network of 16 African legal information institutes.

<https://africanlii.org/>

**Commonwealth Legal Information Institute (CommonLII)**—provides core legal information from all Commonwealth countries. It provides a common technical platform through which all Commonwealth countries can cooperatively provide access to their laws. CommonLII supports the rule of law throughout the Commonwealth, by making each country's legal system more transparent.

<http://www.commonlii.org/>

**Consultant Plus** (Russian: Консультант Плюс)—a proprietary system containing the legislation of Russia. Consultant's centralized database is updated daily and distributed via a network of partners.

<http://www.consultant.ru/>

**Foreign Law Guide (FLG)**—an essential database offering relevant information on sources of foreign law, including complete bibliographic citations to legislation, the existence of English translations and selected references to secondary sources in one virtual destination. Broad in content and global in scope, the FLG is an indispensable resource for comparative law research and a fundamental tool for developing a foreign and comparative law collection. Approximately 190 jurisdictions are systemically covered and updated by a global team of experts.

<https://referenceworks.brillonline.com/browse/foreign-law-guide>

**Gazette of DRC**—an unofficial publication attempting to digitize and share the DRC's legal information. The online repository includes a variety of sources including the DRC's Gazette and laws.

<http://www.leganet.cd/index.htm>

**GlobaLex**—an electronic legal publication dedicated to international and foreign law research. Published by the Hauser Global Law School Program at NYU School of Law, GlobaLex is committed to the dissemination of high-level international, foreign, and comparative law research tools in order to accommodate the needs of an increasingly global educational and practicing legal world.

<https://www.nyulawglobal.org/globalex/about.html>

**Government Gazettes Online**—attempts to list all online government gazettes and their characteristics to aid researchers. Government Gazettes, which are published by federal governments worldwide, are the means through which the government can communicate to officials and the general public. Although most countries publish a gazette, their regularity and content varies widely, which is noted in the description of each gazette. Gazettes are useful not only to monitor the actions of the government, but also as primary source documentation in research.

<http://www-personal.umich.edu/~graceyor/doctemp/gazettes/index.htm>

**Guide to Law Online**—prepared by the United States Law Library of Congress Public Services Division. It is an annotated guide to sources of information on government and law, and includes selected links to useful and reliable sites for legal information.

<http://www.loc.gov/law/help/guide.php>

**International Center for Not-for-Profit-Law (ICNL)**—founded in 1992 as one of the first organizations to focus on the legal environment aspect of civic space, ICNL works with partners from civil society, government, and the international community to develop long-term relationships to advance reforms. With regional programs all over the world, ICNL is the the only global organization focused on the laws

affecting civil society, philanthropy, and public participation. Its Civic Freedom Monitor provides up-to-date information on legal issues affecting civil society and civic freedoms, including freedoms of association, expression, and peaceful assembly for 55 countries and 8 multilateral organizations. Each country report provides an overview of key legal issues relating to civic freedoms, with a focus on legal barriers to civil society activity. It also curates a Digital Legal Library collection of nearly 4,000 resources from more than 200 countries and territories, written in more than 60 languages. The database contains laws, reports, and other civil society legal resources.

<https://www.icnl.org/>

<https://www.icnl.org/resources/civic-freedom-monitor>

<https://www.icnl.org/resources/library>

**Journal Officiel de la République Française (JORF)**—is the government gazette of the French Republic. It publishes the major legal official information from the national Government of France and the French Parliament.

<https://www.legifrance.gouv.fr>

**Legislation.gov.uk**—carries most (but not all) types of legislation and their accompanying explanatory documents relevant to the United Kingdom. Researchers can browse legislation by type and category, or use an advanced search to explore by title or keyword in text.

<http://www.legislation.gov.uk/>

**Legislationline.org**—online legislative database created to assist OSCE (Organization for Security and Cooperation in Europe) participating States in bringing their legislation into line with relevant international human-rights standards. The database was designed as a drafting tool for lawmakers and provide assistance to those who prepare and draft laws at the working level.

<https://www.legislationline.org/>

**Leibniz Information Center for Economics (ZBW, German: Leibniz-Informationszentrum Wirtschaft)**—the world's largest research infrastructure for economic literature with a national mandate.

<https://www.zbw.eu/en/>

**LLMC Digital**—non-profit cooperative of libraries dedicated to the twin goals of preserving legal titles and government documents while making copies inexpensively available digitally through its on-line service LLMC-Digital.

<http://www.llmc.com/default.aspx>

**NATLEX**—database of national labour, social security, and related human right legislation maintained by the International Labour Organization (ILO).

[https://www.ilo.org/dyn/natlex/natlex4.byCountry?p\\_lang=en](https://www.ilo.org/dyn/natlex/natlex4.byCountry?p_lang=en)

**National Council for Law Reporting (Kenya Law)**—provides universal access to public legal information by monitoring and reporting on the development of jurisprudence for the promotion of the rule of law. Kenya Law is an entity of Kenya's judiciary and is a semi-autonomous state corporation created by The National Council for Law Reporting Act (Act. No. 11 of 1994). It monitors and reports on the development of Kenya's jurisprudence through the publication of the Kenya Law Reports; and revises, consolidates, and publishes the Laws of Kenya.

<http://kenyalaw.org/kl/>

**Official Gazettes & Civil Society Documentation**—collection of official gazettes and other key historical government documentation from countries where the integrity of the public record is known to be at risk. Center for Research Libraries' (CRL) open web repository promotes transparency and accountability by providing a permanent public record of government documentation that defines the rights and obligations of citizens and records the activities of government. CRL is digitizing official gazettes from its extensive collection of print and microfilm, and will augment these materials by harvesting from the web more recent gazettes and related data published digitally.

<https://dds.crl.edu/search/collection/16>



**Southern African Legal Information Institute (SAFLII)**—publishes legal information for free public access which comprises mainly of case law from South Africa. SAFLII also hosts legal materials from other countries in the region which are obtained through partnerships, collaborative efforts and more recently through linking to other Legal Information Institutes established in these regions.

<http://www.saflii.org/>

**Uganda Legal Information Institute (ULII)**—provides legal information relating to Uganda, with a view of promoting and supporting the rule of law. It publishes public legal information such as decisions of courts, legislation and some publicly available secondary legal materials created by public bodies for purposes of public access

<https://ulii.org/>

**United States Statutes at Large**—collection of laws passed by the United States Congress, in chronological order. The Law Library of Congress has digitized this collection and aims to make historic Statutes at Large accessible to the public. This project incorporates additional years and legal material on an ongoing basis.

<http://www.loc.gov/law/help/statutes-at-large/>

**Westlaw China**—online China law database launched by Thomson Reuters. Legal topics are compiled by experienced attorney editors to help researchers understand key legal issues. Westlaw China is updated daily to ensure the most current and accurate information.

[http://www.westlawchina.com/index\\_en.html](http://www.westlawchina.com/index_en.html)

**World Constitutions Illustrated: Contemporary and Historical Documents and Resources**—enables scholars to research the constitutional and political development of every country in the world. It includes substantial constitutional histories for all countries and provides original text, amending laws, consolidated text, and important related texts. The database includes more than 11,000 historical and current constitutions and constitutional documents from more than 190 countries.

<https://libguides.heinonline.org/world-constitutions-illustrated>

**World Law Guide, The (Lexadin)**—extensive collection of structured links to world legal information resources on the internet, maintained by Lexadin, the legal technology service based in the Netherlands. The repository contains more than 70,000 links to legal sites in over 180 countries.

<https://www.lexadin.nl/wlg/>

**World Legal Information Institute (WorldLII)**—non-profit global legal research facility developed collaboratively by the following Legal Information Institutes and other organizations. Over 270 databases from 48 jurisdictions in 20 countries are included in the initial release of WorldLII.

<http://www.worldlii.org/>

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314. Smyth, R., & Turovsky, R. (2018). Legitimising Victories: Electoral Authoritarian Control in Russia's Gubernatorial Elections. *Europe-Asia Studies*, 70(2), 182-201. doi:10.1080/09668136.2018.1436697
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### ACADEMIC APPOINTMENTS

- 2020— National Science Foundation SBE Postdoctoral Research Fellowship for Fundamental Research (SPRF-FR). Sponsored by the Directorate for Social, Behavioral and Economic Sciences.
- 2020— Postdoctoral Research Fellow. Department of Political Science, Emory University.

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### EDUCATION

Ph.D. in Public Policy in a joint program between the Department of Public Policy and the O'Neill School of Public and Environmental Affairs. September 2020

- Dissertation: *Domesticating Civil Society: How and Why Governments Use Laws to Regulate CSOs*

M.A., Political Science, Indiana University. June 2018

M.B.A., Kellogg School of Management, Northwestern University. June 2010

B.A., Illinois Wesleyan University. June 2003

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### RESEARCH INTERESTS

Civil Society and Civil Society Organizations, Comparative Public Administration and Policy, Governance, Institutional Analysis, International Development, Judicial Politics, Organizational Theory and Behavior, Policy Process Theory, Research Design and Methods. Regional focus on the Global South—East Africa and the Caribbean—and the Global North in a comparative perspective.

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### PUBLICATIONS

#### *Peer-Reviewed Articles:*

Allison Schnable, **Anthony J. DeMattee**, Rachel Sullivan Robinson, and Jennifer N. Brass. 2020. "International Development Buzzwords: Understanding Their Use Among Donors, NGOs, and Academics." *Journal of Development Studies*. (Accepted). doi: 10.1080/00220388.2020.1790532.

**Anthony J. DeMattee**. 2019. "Covenants, Constitutions, and Distinct Law Types: Investigating Governments' Restrictions on CSOs Using an Institutional Approach." *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations*. 30(6): 1229-1255. doi: 10.1007/s11266-019-00151-2. [[PDF](#)].



**Anthony J. DeMattee.** 2019. "Toward a Coherent Framework: A Typology and Conceptualization of CSO Regulatory Regimes." *Nonprofit Policy Forum*. 9(4):1-17. doi:10.1515/npf-2018-0011. [[Open Access](#)].

***Editor-Reviewed Book Chapters:***

**Anthony J. DeMattee** and Chrystie F. Swiney. 2020. "Ostromian Logic Applied to Civil Society Organizations and the Rules that Shape Them." In Shelia Foster and Chrystie Swiney (Eds.) *The Cambridge Handbook of Commons Research Innovations*. Cambridge University Press. [Under Contract 2020].

**Anthony J. DeMattee.** 2019. "Was it Worth It?: The Effects of ODA, NGOs, and Time on the Haitian State." In Stefanie Haeffele, Abigail R. Hall, and Adam Millsap (Eds.) *Informing Public Policy*. Lanham: Roman & Littlefield.

***Manuscripts Under Review:***

**Anthony J. DeMattee.** 2020. "Taking Time and Distinct Law Types Seriously: Effects of Civil Society Laws Vary by Type and Unfold Over Time."

**Anthony J. DeMattee** and Alasdair C. Rutherford. "Understanding Formal Sector Salary Differentials in Developing Countries: Biases in Low-Information Environments."

Julie Lorah, **Anthony J. DeMattee**, Yiming Qian, Poh Li Lau, "Type I Error and Power Rates for Time-Invariant Predictors in Discrete Multilevel Survival Models: A Simulation Study."

***Professional Reports:***

"Beneficiary Targeting in Haiti: Detection Strategies." With Timothy T. Schwartz, Elie Melech Desir & Emile Pharrel. Coordination Nationale de la Securite Alimentaire (CNSA – Haiti), World Food Programme, and the Food and Agriculture Organization. 2015.

"Case Study: Transparency & Incentives of Diverse Organizations Partnered in Development." With Chris Nicoletti & Ken Nugent. Posner Center for International Development. 2014.

"Strategic Orientations for Humanitarian Aid Targeting in Haiti." With Timothy T. Schwartz, Elie Melech Desir & Emile Pharrel. Coordination Nationale de la Securite Alimentaire (CNSA—Haiti), World Food Programme, and Food and Agriculture Organization. 2014.

"Commander's Emergency Response Program (CERP): Evidence of Effectiveness and Quantitative Measure of Impact." With Greg Hearne. U.S. Government Official Use. 2013.

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**GRANTS, FELLOWSHIPS, AND AWARDS**

Public Policy, Politics, and Law (PPPL) 2019 Best Paper Award. PPPL section of Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA).

National Science Foundation SBE Postdoctoral Research Fellowship for Fundamental Research. Sponsored by the Directorate for Social, Behavioral and Economic Sciences. 2020. (\$148,000).

Bently Chair Dissertation Fellowship for Innovative Social Inquiry and Research Methods. Department of Political Science at Indiana University. 2020. (\$1,000).

Association for Research on Civil Society in Africa Conference (AROCSA) Travel Grant to attend 3rd Annual Meeting. Sponsored by the Ford Foundation. Nairobi, Kenya. 2019. (\$1,500).

Dissertation Research Grant. Department of Political Science at Concordia University. 2019. (\$1,140).

Ostrom Workshop Research Award. The Vincent and Elinor Ostrom Workshop in Political Theory and Policy Analysis at Indiana University. 2018 and 2019. (\$10,000).

Ostrom Fellowship. Full-year fellowship sponsored by The Vincent and Elinor Ostrom Workshop in Political Theory and Policy Analysis at Indiana University. 2018-2019. (\$20,000).

American Political Science Association Volcker Junior Scholar Research Grant. Sponsored by APSA and the APSA Centennial Center. 2018. (\$3,000).

Summer Fellowship for Training in Research Methods. Used to attend Institute for Qualitative and Multi-Method Research (IQMR). Syracuse, NY. Fellowship sponsored by Indiana University and SPEA. 2017. (\$7,500 in-kind).

Penn Social Impact Doctoral Fellowship. School of Social Policy & Practice at University of Pennsylvania. 2015. (\$3,000).

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## **SELECTED CONFERENCE PAPERS AND PRESENTATIONS**

### ***Mini-Conferences and Invited Talks (\*venue discussed my unpublished worked):***

*UT Austin Department of Government Research Series.* “Regulating Freedom: Policies that Help and Hinder Civil Society Organizations.” The University of Texas at Austin Department of Government. Austin, TX. April 2020.\*

*The Ostrom Workshop Research Series.* “An Institutional Approach to Understanding CSO Regulatory Regimes: An Historical Analysis of 19 Countries.” The Vincent and Elinor Ostrom Workshop in Political Theory and Policy Analysis, Indiana University. Bloomington, IN. October 2019.\*

*Research Group on Political Institutions and Economic Policy (PIEP Conference).* The Vincent and Elinor Ostrom Workshop in Political Theory and Policy Analysis, Indiana University. Bloomington, IN. April 2019.

*Emory Conference on Institutions and Lawmaking.* Department of Political Science, Emory University. Atlanta, GA. March 2019.\*

*NGO Data Workshop.* Department of Political Science, Concordia University. Montreal, Canada. October 2018.

### ***Professional Conferences:***

“Transnational Interest Group Effects on Democracy and Sustainability.” Panel Organizer, Presenter. 116th American Political Science Association (APSA) Annual Meeting. San Francisco. September 2020.



- “Laws on the Right: Implementing the Laws Governing Civil Society.” Panel Organizer, Chair, Presenter. International Society for Third-Sector Research (ISTR) 14<sup>th</sup> International Conference. Montreal, Canada. July 2020. (Postponed due to COVID-19).
- “Laws on the Left: “Changing Spaces” and Why Countries Change Laws Governing Civil Society.” Panel Organizer, Discussant, Presenter. ISTR 14<sup>th</sup> International Conference. Montreal, Canada. July 2020. (Postponed due to COVID-19).
- “An Institutional Approach to Understanding CSO Regulatory Regimes: An Historical Analysis of East African Countries.” Panel Organizer, Chair, Presenter. Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA) 48<sup>th</sup> Annual Conference. San Diego. November 2019.
- “How to Capture Nonprofit Regulation Accurately and Effectively: A Mixed-Methods Discussion Learning from Experience.” Research Roundtable Participant. ARNOVA 48<sup>th</sup> Annual Conference. San Diego. November 2019.
- “Nonprofits in Authoritarian Contexts.” Discussant. ARNOVA 48<sup>th</sup> Annual Conference. San Diego. November 2019.
- “International Development Buzzwords: Understanding Their Adoption and Use among NGOs, Academics, and the World Bank.” Development in Dialogue annual conference of the Sociology of Development section of the American Sociological Association. University of Notre Dame. Notre Dame, IN. October 2019.
- “An Institutional Approach to Understanding CSO Regulatory Regimes: An Historical Analysis of 13 Countries.” 115<sup>th</sup> APSA Annual Meeting. Washington, D.C. August 2019.
- “International Development Buzzwords: Understanding Their Adoption and Use among NGOs, Academics, and the World Bank.” 114<sup>th</sup> American Sociological Association (ASA) Annual Meeting. New York. August 2019.
- “Understanding the Development of CSO Regulatory Regimes.” 4<sup>th</sup> Conference Annual Association for Research on Civil Society in Africa (AROCSA). Nairobi, Kenya. July 2019.
- “Closing Space or Changing Space? An Institutional Approach to Understanding CSO Regulatory Regimes.” Workshop on the Ostrom Workshop 6<sup>th</sup> demi-decade conference (WOW6), Governance: Past, Present, and Future. Bloomington, IN. June 2019.
- “Regulating Freedom: Policies that Help and Hinder Civil Society Organizations.” International Spring School on Public Policy. International Public Policy Association (IPPA). Denver. May 2019.
- “Bringing Institutions Back In: Revisiting Restrictions on Foreign Aid to CSOs.” Emory Conference on Institutions and Lawmaking. Atlanta. March 2019.
- “Catching the Tail of the ‘Closing Space’ Phenomenon: Finally, a Typology of CSO Regulatory Regimes.” ISTR 13<sup>th</sup> International Conference. Amsterdam, The Netherlands. July 2018.
- “Where Do They Come From, Where Do They Go?: The Tale of Diffusion of CSO Regulatory Regimes.” ISTR 13<sup>th</sup> International Conference. Amsterdam, The Netherlands. July 2018.

“Donor-Driven Research? The World Bank’s Role in Agenda Setting in Scholarly Publications.”  
With Allison Schnable, Jennifer N. Brass, Rachel Sullivan Robinson. ISTR 13<sup>th</sup>  
International Conference. Amsterdam, The Netherlands. July 2018.

“In Harm’s Way: Life or Death After Disaster Strikes.” Oxfam America and Indiana University  
Hutton Honors College. Moderator and Discussant. Bloomington, IN, April 2015.

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## RESEARCH EXPERIENCE

*Domesticating Civil Society: How and Why Governments Use Laws to Regulate CSOs.* Book-length dissertation combining qualitative coding of 285 laws from 17 countries written in six languages, quantitative analysis of policy adoption and diffusion, and qualitative and archival fieldwork to understand their historical implementation.

*NGO Knowledge Collective.* Lead research assistant (2015-2017) to Jennifer N. Brass (Indiana University), Allison Schnable (Indiana University), Wes Longhofer (Emory University), and Rachel S. Robinson (American University). The research platform is the result of a systematic review of over 3,000 English, peer-reviewed, social science journal articles about NGOs in development published 1980-2014. [[www.ngoknowledgecollective.org](http://www.ngoknowledgecollective.org)]

Cumulative Fieldwork Experience: Latin America and the Caribbean (primarily Haiti, 2011-2016); East Africa (primarily Kenya, 2018).

### *Additional Research Training:*

Institutional Analysis and Development. Instructed by William Blomquist, Ostrom Workshop in Political Theory & Policy Analysis and Department of Political Science. 2019.

Causal Inference and Multi-Method Research. Instructed by Jason Seawright, Department of Political Science at Northwestern University. The Institute for Qualitative and Mixed-Methods Research (IQMR). 2017.

Computer Assisted Text Analysis and Topic Modeling. Instructed by Will Lowe, Department of Politics and Woodrow Wilson School at Princeton. The Institute for Qualitative and Mixed-Methods Research (IQMR). 2017.

Qualitative Comparative Analysis and Fuzzy Sets. Instructed by Charles Ragin, Sociology at University of California, Irvine. The Institute for Qualitative and Mixed-Methods Research (IQMR). 2017.

Within-Case and Small-N Analysis. Instructed by Andrew Bennett, Department of Government at Georgetown University. The Institute for Qualitative and Mixed-Methods Research (IQMR). 2017.

Categorical Data Analysis. Instructed by Scott J. Long, Departments of Sociology and Statistics at Indiana University. 2016.

The Workflow of Social Science and Data Analysis. Instructed by Scott J. Long, Departments of Sociology and Statistics at Indiana University. 2016.

Field Research and Strategies for Social Inquiry. Instructed by Lauren M. MacLean, Department of Political Science at Indiana University. 2015.

Languages: French (conversant reader); Haitian Creole (basic speaker and reader); Kiswahili (beginner)

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## TEACHING INTERESTS

Comparative Public Administration, Comparative Politics, Comparative Public Policy, International Development, Management (Nonprofit & Public), Organizational Theory, Policy Process Theory, Public Administration, Public Policy, Research Design and Methods.

### *Teaching Experience:*

Instructor of Record: *The Nonprofit and Voluntary Sector* (Undergraduate). O'Neill School of Public and Environmental Affairs, Indiana University. Fall 2017 & Fall 2019.  
Undergraduate Course Guest Lecture for Professor Allison Schnable: "Conducting Ethical Research." O'Neill School of Public and Environmental Affairs, Indiana University. February 2019 & 2020.

Graduate Course Guest Lecture for Professor Jill Nicholson-Crotty: "NGOs & Consequences: Good, Bad, Unexpected." O'Neill School of Public and Environmental Affairs, Indiana University. March 2018 & April 2019.

Graduate Course Guest Lecture for Professor Jennifer N. Brass: "Laws & Regulations – Understanding Rules, Managing Restrictions." O'Neill School of Public and Environmental Affairs, Indiana University. February 2018.

Graduate Course Guest Lecture for Professor Beth Gazley: "The Wacky World of Watchdogs." O'Neill School of Public and Environmental Affairs, Indiana University. November 2017.

Undergraduate Course Guest Lecture for Professor Lauren M. MacLean: "The Politics of Food Security & Famine." Department of Political Science, Indiana University March 2016.

Undergraduate Course Guest Lecture for Professor Lauren M. MacLean: "The INGO Consultant: Unintended Consequences in Haiti & Afghanistan." Department of Political Science, Indiana University. April 2015.

Teaching Assistant: *Statistical Techniques* (Undergraduate). O'Neill School of Public and Environmental Affairs, Indiana University. Spring 2018.

Teaching Assistant: *Introduction to Comparative Politics: "Politics Around the World."* (Undergraduate). Department of Political Science, Indiana University. Spring 2015.

Teaching Assistant: *American Political Controversies* (Undergraduate). Department of Political Science, Indiana University. Fall 2014.

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## PROFESSIONAL SERVICE

Reviewer (manuscripts). *Journal of Public and Nonprofit Affairs; Nonprofit and Voluntary Sector Quarterly; Nonprofit Management & Leadership; Public Administration Review; VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations.*

Reviewer (faculty applications). Fischer Faculty Fellowship. O'Neill School of Public and Environmental Affairs, Indiana University. 2019.

Legal Translations. The International Center for Not-for-Profit Law (ICNL). 2019.  
Conference Organizing Committee. Workshop on the Ostrom Workshop 6th demi-decade conference (WOW6), Governance: Past, Present, and Future. Bloomington, IN. 2019.  
Assistant to the Librarian. Clerk of the Senate and the Library of Parliament. Parliament, Republic of Kenya. 2018.  
Assistant to the Registrar. Registrar General and Deputy Attorney General. State Law Office, Government of Kenya. 2018.  
African Scholar Liaison. Institute for Qualitative and Mixed-Methods Research. 2017.

***Professional Memberships:***

American Political Science Association (APSA)  
*Section Member:* Democracy and Autocracy; Human Rights; Public Administration; Public Policy; Political Economy; Qualitative and Multi-methods Research  
Association for Research on Civil Society in Africa (AROCSA)  
Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA)  
*Section Member:* Public Policy, Politics, and Law  
International Public Policy Association (IPPA)  
International Society for Third-Sector Research (ISTR)  
Midwest Political Science Association (MPSA)

***Academic Institutional Affiliations:***

Academic Council on the United Nations System (ACUNS)  
British Institute in Eastern Africa (BIEA)  
Institute for Development Studies (IDS), The University of Nairobi  
Jesuit Historical Institute in Africa (JHIA)  
L’Institut français de recherche en Afrique (French Institute for Research in Africa – IFRA)  
Ostrom Workshop in Political Theory & Policy Analysis