REFRAMING OUR UNDERSTANDING OF NONPROFIT REGULATION THROUGH THE USE OF THE INSTITUTIONAL ANALYSIS AND DEVELOPMENT FRAMEWORK

by

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This dissertation was prepared under the direction of the candidate's dissertation advisor, Dr. Ronald Nyhan, School of Public Administration, and has been approved by the members of her supervisory committee. It was submitted to the faculty of the College for Design and Social Inquiry and was accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

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ABSTRACT

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Regulation of the nonprofit sector is a subject of significant debate in the academic and professional literature. The debate raises questions about how to regulate the sector in a manner that addresses accountability while preserving the sector's unique role in society. Central to the debate is the role of self-regulation.

The nonprofit sector is recognized and defended as a distinct third sector in society. Cultural norms and values differentiate the purpose of the sector from the governmental and commercial realms. The legal regime secures rights, establishes organizational structures, and provides tax benefits that enable, reinforce, and protect participation in nonprofit activities. Nevertheless, government regulation is thought to be antithetical to sector autonomy, as well as an obstacle to flexibility and innovation. Self-regulation protects the sector's political independence and its distinctiveness through the cultivation of shared norms, standards, and processes for ethical practices. Although self-

regulation is considered to be consistent with the autonomous nature of the sector, it is also criticized as a weaker form of regulation.

The ability to address regulatory issues expressed in the broader debate is limited by how we frame nonprofit regulation. The problem with advancing our understanding of self-regulation has to do with how we conceptualize nonprofit regulation. Government and self-regulation are conceptualized and studied as distinct options for regulating the sector. Missing in the nonprofit scholarship is a theoretical framework capable of reframing nonprofit regulation as a system of governance that depends on self-regulation. This represents a glaring gap in the research. Neglecting the institutional context that explains the structure and functioning of the nonprofit sector has led to an oversimplification of nonprofit governance.

To study the effects of self-regulation on the functioning of the sector, I argue that we must first frame what is relevant about how the nonprofit sector is governed. The Institutional Analysis and Development (IAD) Framework outlines a systematic approach for analyzing institutions that govern collective endeavors. The objective of this dissertation is to introduce the IAD as an approach for examining self-regulation not as an alternative to government regulation but as an important part of nonprofit governance.

DEDICATION

To Maya and Audon—my role models.

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CHAPTER ONE. INTRODUCTION

The nonprofit sector in the United States has a significant impact on the nation's economy, public service delivery, and political participation. In 2010, the nonprofit sector included approximately 2.3 million organizations with operating revenues of $2.1 trillion and $2.71 trillion in assets. The sector represents 5.5% of annual GDP with 10.7 million paid employees. The 27% of American adults who volunteer each year represent the equivalent of $297 billion in wages–about the same value as monetary donations (Roeger, Blackwood, & Pettijohn, 2012). The nonprofit sector is philosophically different from the public and commercial sectors (Hopkins, 2011). It is shaped by ideas relating to public service and helping others that are deeply rooted in ancient traditions of charity, philanthropy, and volunteerism (Ott, 2001). Besides these traditions, nonprofits provided many essential public services well before the Republic was formed and government assumed this role, and it is only in recent history that nonprofits became legally recognized and regulated (Arnsberger, Ludlum, Riley, & Stanton, 2008). So, while some contemporary nonprofits operating in the United States can trace their roots back to the early 20th century, "the concept of nonprofit organizations as a unified and coherent sector dates back only to the 1970s" (Hall, 1999, p. 3). In fact, the majority of all nonprofit organizations operating in the U.S. were formed after 1970.

The nonprofit sector is accountable to a variety of constituencies including federal, state, and local agencies, funders, professional certification organizations, and the public in general. Because of the charitable purpose and relative newness of the sector, government regulation has been relatively minimal, with self-regulation serving as the key element of nonprofit governance.

The presumption is that regulation is necessarily and fundamentally different as it pertains to the nonprofit sector. Government regulation is thought to be antithetical to sector autonomy, as well as an obstacle to flexibility and innovation. Self-regulation is considered to be more consistent with the autonomous nature of the sector, making it essential both for political independence and sector capacity. Given this general perspective, it is not surprising that the rapid development and prevalence of self-regulation in the nonprofit sector has stimulated research interest in understanding not just what drives and shapes nonprofit self-regulation, but also what leads to effective self-regulation.

Research on self-regulation has covered a lot of territory but is missing an organizing framework to both encompass current work and advance knowledge. Several studies have focused on the general development of self-regulation in particular national or regional settings (Dale, 2005; Gugerty, 2008; Ortmann & Svítková, 2007, 2010; Sidel, 2003). Other investigations have theorized more specifically about the factors that explain the emergence, design, and effectiveness of various models of self-regulation (Bekkers, 2003; Bies, 2010a, 2010b; Gugerty & Prakash, 2010; Ortmann & Myslivecek, 2010). All of these approaches focus on the conditions in a specific national or regional context that explain what self-regulation is responding to and the models, or forms, of self-regulation that result. Taking a comprehensive view, a concerted effort to document the scope and structure of self-regulatory initiatives worldwide has found nonprofit self-regulation to be extremely diverse and widespread.[1] One problem, however, is that general features of self-regulation and specific details about various forms of self-regulation have not led to a better understanding of how self-regulation is affecting the sector or individual organizations. Obrecht (2012) argues that we now need a framework in order to advance our understanding of what constitutes effective self-regulation. While I agree with Obrecht, I propose that we need to first take a step back and investigate the role of self-regulation for governing the sector if we are to have a foundation for studying its effects on the sector or individual nonprofits.

The objective of this dissertation is to reframe nonprofit regulation as a system of governance that depends on self-regulation. The way in which I propose to do this is by applying the Institutional Analysis and Development (IAD) framework in order to draw attention to features that explain the structure of the nonprofit sector and the role of self-regulation. Pioneered by Elinor and Vincent Ostrom, the IAD framework outlines a systematic approach for analyzing institutions that govern actions and outcomes within collective action arrangements (E. Ostrom, 2007, p. 44). To date, institutional analysis has not been employed to study self-regulation (Obrecht, 2012). Still, it is widely believed that the institutional context of the sector and structure of nonprofit organizations are central to explaining nonprofit motivations and behavior (Dimaggio & Anheier, 1990; Salamon & Anheier, 1992). Similarly, a sector's institutional context also affects the shape and focus of self-regulation and explains national and regional variations in self-regulation (Warren & Lloyd, 2009). Both the institutional perspective

[1] The purpose of this effort is to raise nonprofit and stakeholder awareness of self-regulatory initiatives. It was initiated by One World Trust, which is an independent charity whose mission is to make policy and decision-making in governance more accountable to the people impacted.

and application of the (IAD) framework represent new approaches for and contributions to analyzing self-regulation.

The Changing Nonprofit Regulatory Environment

Regulation of the nonprofit sector represents a perplexing problem. Government devolution and globalization have spurred the growth of the sector and made nonprofit accountability a salient issue on the public agenda. Globalization and global transformation of governance are altering nonprofit environments, government-civil society relationships, and stakeholder expectations (Corbett, Vienne, Assi, & Namisi, in press). The size of the sector and its increasing involvement in the provision of public services has resulted in scrutiny from the public, media, and Congress. In addition, new public management ideology that decentralized implementation of public services has also impacted sector operations by increasing the mechanisms used by government to control the sector, competition with for-profit providers, employment of market practices, hybridized organizational forms, and demand for evidence-based verification of outcomes. While these factors significantly contribute to nonprofit accountability demands, they are also strategies that each present their own challenges for the integrity of the nonprofit sector (Bok, 2003; Eikenberry & Kluver, 2004; Fishman, 2007b; Young & Salamon, 2002).

Sector visibility and high profile scandals have also led to the perception that the sector is under-regulated, and political pressure has often focused attention on finding regulatory solutions. Diverse public and private responses to sectoral concerns subject nonprofits to overlapping regulatory, funder, and self-regulatory requirements (Sidel, 2010b). In fact, there has been a proliferation of self-regulatory initiatives since the 1990's (Sidel, 2003; Warren & Lloyd, 2009).

The result is a shifting regulatory environment that involves a combination of adaptive regulatory strategies and traditional government regulation. The appropriate way to regulate the nonprofit sector in order to both achieve confidence in accountability and preserve the unique role of the sector in society is a question of great importance to the public, government, and nonprofit sector.

The Challenges in Nonprofit Regulation

The challenges presented by nonprofit regulation are related to how we conceptualize regulation. Framing regulation as a choice between government and self-regulation, as has been done in the past, emphasizes the limitations of both approaches, rather than explains how nonprofit governance occurs in practice. Nonprofits involve and are accountable to a broad range of constituencies, and a basic concern for nonprofit regulation is that it serves to enable and protect participants and participation in nonprofit activities (Pratt, 2005; Salamon, 1999). Thus, it is the very nature of the sector that prescribes a narrow role for government and the necessity for self-regulation.

The central debate in nonprofit regulation is over the extent of reliance on government regulation. The general concern of resorting solely to government regulation is that it ultimately threatens to overburden individual nonprofits to the detriment of mission and, even, the fundamental nature of the sector (Fishman, 2007b, 2010). Historical perspectives demonstrate that the nonprofit legal regime reflects societal choices to enable the sector, explaining the relative freedoms and privileges afforded the sector (Fishman 2007a; Fremont-Smith, 2004; Hopkins, 2011). Recommendations to increase government regulation, or even to strengthen oversight and enforcement of existing regulation, are not realistic, given resource constraints or past and present funding patterns (Fremont-Smith, 2004). Moreover, nonprofit accountability only begins with legal compliance, and it depends heavily on cultivating ethical cultures over time (Strickland & Vaughn, 2008). Thus another critical limitation of government regulation is that organizational responsibility cannot be achieved through legal mechanisms alone (Howard, 1994).

Although self-regulation is compatible with the independent nature of the sector and associated with the processes necessary for building good practices, meaningful programs, and ethical conduct, it is frequently criticized as a weaker form of regulation that is prone to either symbolic efforts or conflicts of interest that preclude strong enforcement (Arya & Salk, 2006; Berns, 2007; Bowman & Bies, 2005; Ortmann & Myslivecek 2010; Silverman, 2004). Highly publicized scandals have led to some public distrust of the sector, stimulating political attention and calls for stronger regulation (Fishman, 2007b; Fullwood, 2004). Even though such attention often overstates wrongdoing in the sector and though government control has proven to be ineffective at preventing fraud, public preferences tend to lean toward government regulation simply because external control mechanisms are more visible and recognizable (Bothwell, 2001; Dicke, 2002; Fishman, 2007a). However, the research presented in subsequent sections of this dissertation reveals that government and self-regulation do not operate as strictly separate approaches for regulating the sector.

Research Approaches to Nonprofit Self-Regulation

Research interest in nonprofit self-regulation has been stimulated by the widespread proliferation of self-regulatory initiatives since the 1990s. To date, researchers have explored the regional development of self-regulation, established the scope of self-regulation, and amassed profiles of a wide range of self-regulatory initiatives (SRIs). Initial research was theoretically focused, limited to regional trends in self-regulation, or targeted a handful of prominent initiatives for case studies (Bies, 2001; Bothwell 2001; Dale, 2005; Gugerty, 2008; Sidel, 2003). These efforts offer more insight into what led to particular forms of self-regulation in specific regional or national contexts than they do about the general features or function of self-regulation. The true scope and diversity of self-regulation, however, only became evident with One World Trust's comprehensive effort to map the extent of sector involvement in self-regulation and document profiles of the different initiatives occurring around the world.[2] This ongoing effort has contributed to both a broad picture of self-regulation and the categorization of initiatives based their content, level of participation, and compliance mechanisms. Even with these combined broad and more focused perspectives on the state of self-regulation in the sector, however, there has not been a short or long-tem systematic investigation of the effects of self-regulation on the sector or individual nonprofits (Obrect, 2012). To be able to guide such an inquiry first requires a framework for organizing features and relationships relevant to explaining the role and functioning of nonprofit self-regulation.

[2] One World Trust's five-year effort to document civil society self-regulatory initiatives was just the initial stage from which to continue nonprofit self-regulation research. The database and research archives are available at: http://www.oneworldtrust.org/csoproject/

The state of research can be thought of in terms of scope. We currently know a lot about the general features of self-regulation, relationships that influence self-regulation, and the make-up of particular SRIs. Self-regulation is at once more prevalent and diverse in makeup than previously thought with codes of conduct, certification schemes, information services, working groups, and award schemes representing the general categories that initiatives fall into (Warren & Lloyd, 2009).

Even though it has become clear that there is no one-size-fits-all approach to self-regulation, there are several common features of self-regulation. For instance, three common problems that self-regulatory initiatives (SRIs) are designed to address are the need to counteract restrictive state activity, bolster stakeholder trust, and strengthen sector capacity or learning (Lloyd, Calvo, & Laybourn, 2010). Self-regulation in the sector also faces special challenges because nonprofits are organized to advance a public mission and, toward achieving this end, they are answerable to multiple constituencies. Thus a common task of nonprofit self-regulation is balancing accountability and effecting transformative organizations (Lloyd, 2005). How well self-regulation balances accountabilities depends on societal context. In societies where there is no public policy in place to support sector activities, self-regulation is often found to be more attentive to the accountability concerns of powerful stakeholders (Lloyd & de las Casas, 2006). Nevertheless, self-regulatory initiatives are highly consistent with respect to the general principles they promote as the basis for expectations regarding nonprofit practices (Lingán, Cavender, Lloyd, & Gwynne, 2009; Lingán, Cavendar, Palmer, & Gwyne, 2010; Lingán & Hammer, 2010). Thus, while the sector is strongly influenced by institutional context, the general concerns of self-regulation involve responding to institutional conditions, addressing stakeholder demands, and bolstering the sector.

Despite such commonalities, however, there is enormous diversity in both where and how self-regulation develops. Self-regulation is widespread, but it is more prevalent and developed in Canada, Western Europe, and the United States than it is in the Middle East, North Africa, and Central and Southeast Asia (Warren & Lloyd, 2009). What determines how self-regulation actually develops is based on contextual factors such as the level of sector development, the availability of resources, and the state of sector-government relations (Warren & Lloyd, 2009). Where all three of these factors present challenges to nonprofit activity, self-regulation can be stifled altogether (Corbett et al., in press). Theoretical approaches have been employed in attempt to more closely examine these relationships.

Several approaches have applied different variations of economic theory as a lens for examining relationships that explain self-regulation. Bies (2010a) argues that the form and focus of self-regulation depends on resource needs, sector development, and stakeholder interests driving self-regulation. In emergent economies, it is assumed further that certification schemes in particular are necessary for sector involvement in order to overcome the lack of formal regulation, trust, and familiarity with the sector (Ortmann & Myslivecek, 2010). Self-regulation is also viewed as subject to failure due to collective action problems. This perspective is grounded in the assumption that strong threats or mandates by government or dominant funders initiate self-regulation, that member-driven self-regulation is less inclined to have strong compliance, and that strong forms of self-regulation are more effective than less formal or strictly voluntary forms

(Gugerty, 2008; Ortmann & Svítková, 2007). Along these lines, self-regulation is described as a mechanism to signal credibility to stakeholders and is only effective when strong standards are imposed and bad actors are isolated (Gugerty, 2009; Guerty & Prakash, 2010). Yet, the low occurrence of compliance mechanisms and the tendency for them to be informal in nature where they do exist does not quite mesh with the assumption that the benefits of self-regulation are tied to strong enforcement (Lingán et al, 2009; Lingán et al., 2010; Lloyd, 2005; Lloyd et al., 2010). Economic approaches highlight the influence of powerful stakeholders and hurdles for organizing self-regulation, particularly in contexts without, or with limited, institutional foundations to support nonprofit participation. Still, an economic lens does not come close to capturing the full range of goals and challenges undertaken by self-regulation as summarized above.

There are limitations associated with the application of economic perspectives toward explaining self-regulation. In particular an economic lens does not capture the complexity of nonprofit accountability or mission-related motivations (Ebrahim, 2003b). Some of these limitations are evident in studies following Gugerty and Prakash's (2010) approach for which findings contradicted predictions. For example, Bekkers (2003) found that it was not the national certification scheme alone that improved donations—only those who had already trusted and supported the sector noticed the certification scheme and increased their level of support. Deloffre (2010) found that while there was government and funder pressure to self-regulate, humanitarian organizations did not simply respond to external demands. Rather than conform to external demands, accountability pressures led humanitarian agencies to "articulate their own vision, principles and standards by which performance should be judged" (Deloffre, 2010, p. 197). These contradictions and the limitations of economic assumptions are not surprising given that the purpose of self-regulation is not just about responding to funders and regulators. While these are important concerns they exist within the broader context of strengthening sector capacity, political independence, and trust (Lloyd et al., 2010).

To summarize, theoretical approaches have supplied insight with respect to trends in particular national and regional contexts while comprehensive efforts have mapped common themes and specific cases with respect to self-regulation. Across regional and national contexts, there are similarities with respect to the purpose of self-regulation, the meaning of nonprofit accountability, the factors that shape self-regulation, and the articulation of core principles. Diversity in self-regulation occurs according to content, participation, and compliance. Contextual factors such as sector development, the availability of resources, and the state of sector-government relations determine the shape that self-regulation assumes (Warren & Lloyd, 2009).

The current research gap is reflected in the absence of systematic studies with respect to the effects of self-regulation. The most recent research focus establishes a framework for defining and analyzing the effectiveness of self-regulation (Obrecht, 2012). This presumes we can analyze effectiveness if only we identify the relevant contextual factors and theory that explain to what and how self-regulation is responding. The problem is that there is no one theory that captures all the aspects of or motivations for self-regulation. Thus, I believe that to answer more focused questions, such as what constitutes effectiveness, we first need a framework for organizing the general features that research has found important for explaining the role of self-regulation in nonprofit governance.

Problems with Existing Research Approaches

The problem is not with what we know about self-regulation, but with how we conceptualize nonprofit regulation. The broader debate surrounding nonprofit regulation depends on the assumption that regulation is different as it pertains to the nonprofit sector. The very nature of the sector dictates the limitation of government regulation and a role for self-regulation. Furthermore, it has been shown that the purpose and function of self-regulation is to address specific problems and challenges associated with nonprofit governance. These challenges directly relate both to how nonprofits are organized and their institutional setting (Lloyd, 2005; Lloyd et al., 2010).

Absent a framework, government and self-regulation are conceptualized and studied as distinct options, or models, for regulating the sector. However, the sector does not experience the regulatory environment in terms of static, discrete sets of rules. The broader institutional context and organizational structure of individual nonprofits are the basis for sector motivations and behavior (DiMaggio & Anheier, 1990; Salamon & Anheier, 1992). The structure of the sector is composed of legal frameworks, normative structures, and operational strategies that combine to affect both the structure and functioning of the sector. Public policy toward the sector can affect the sector on all fronts because policy ultimately reflects shifting expectations and values that affect the sector via the legal framework, formal and informal interactions, contracts, resources, and incentives (Eikenberry & Kluver, 2004; Gazley, 2008; Gronbjerg & Salamon, 2002; Sidel, 2010a). These expectations are also reflected in the demands of funders. At the same time, the sector engages in self-regulation to respond to the accountability demands of stakeholders, establish principles and standards for practice, and advocate for regulatory reform (Independent Sector, 2005). In actuality, therefore, most individual nonprofits experience a multitude of over-lapping regulatory and accountability requirements from the federal government, states, funders, accreditation bodies, and voluntary associations (McCambridge, 2005).

The shortcomings in extant research relate to analytical approaches. The analytical approach used to study self-regulation frames the scope and focus of inquiry. Framework, theories, and models are nested theoretical concepts that can engage a specific problem from different vantage points and with different levels of specificity ranging from the most general to the most detailed types of assumptions that a policy analyst can make (E. Ostrom, 2005, p. 27). Frameworks bound inquiry and focus attention by specifying classes of variables and general relationships. Within a framework, theories explain relationships between variables and predict outcomes. Models, in turn, make very precise assumptions with regard to a narrow set of variables under certain conditions, and they can be used to refine theories (Schlager, 2007).

These analytical distinctions are relevant for differentiating between the types of questions we ask about the role of self-regulation in the nonprofit sector. A framework can help to establish the general factors that contribute to nonprofit regulation in order to explain the role of self-regulation. Theory is used to posit the effects of particular relationships on self-regulation. By studying models, we learn about how various forms of self-regulation address particular problems in a specific nonprofit context.

The previous section notes that research efforts document the general problems that self-regulation seeks to address, specific models of self-regulation, and the effects of particular relationships on self-regulation. A problem with the self-regulation literature is that research approaches use frameworks, theories, and models interchangeably. This lack of clarity is problematic because it masks the limitations of the approach taken, the assumptions being made, and generalizability of findings (Schlager, 2007). For example, frameworks have been presented with respect to assessing a particular model, or type, of self-regulation based on a proposed theory of self-regulation (Gugerty & Prakash, 2010). A slightly more expanded framework was proposed for assessing the effectiveness of different models of self-regulation depending on the problems being addressed and the mechanisms employed by self-regulation (Obrecht, 2012). These frameworks are akin to causal stories that link the problem, solution, and expected change (Obrecht, 2012; Stone, 1997). Instead, I propose that what is missing, and what we need, is a more general framework to account for the role of self-regulation in nonprofit governance.

Currently, there is no framework for organizing the literature and available data with respect to self-regulation. A framework can act as a guide for unanswered questions and examining the strengths and limitations of different theoretical approaches.

Using the Institutional Analysis and Development (IAD) Framework

As has been stated, self-regulation is not just an alternative to government regulation but an important part of nonprofit governance. Missing in the nonprofit scholarship is a theoretical framework capable of reframing nonprofit regulation as a system of governance that depends on self-regulation. To date, the IAD has not been used to study nonprofit regulation. The objective of this dissertation is to introduce the

Institutional Analysis and Development (IAD) framework as an approach for explaining and examining self-regulation as part of nonprofit governance.

Pioneered by Elinor and Vincent Ostrom, the Institutional Analysis and Development (IAD) Framework emerged from the Workshop in Political Theory and Policy Analysis at Indiana University, Bloomington. The IAD offers researchers a way to understand policy and the effects of policy change by outlining a systematic approach for analyzing institutions that govern action and outcomes within collective action arrangements (E. Ostrom, 2007, 44). The framework is built on efforts to understand the institutional foundations of self-governance (McGinnis, 2011). Institutions are defined as the prescriptions and constraints that people use to organize collective activities (E. Ostrom, 2005, 3). These prescriptions can include formally expressed or informal rules, norms, and shared strategies (Crawford & Ostrom, 1995, 2005; E. Ostrom, 1998). Moreover, institutions can be analyzed according to whether rules involve decision-making that affects formation, policy making, or day-to-day operational choices (Kiser & Ostrom 1982; Ostrom 1990).

The IAD framework is a new lens for understanding nonprofit self-regulation that addresses the shortcomings of previous approaches. It captures both what is distinctive about how rules and norms are used to structure interactions in the nonprofit context and the complex regulatory dynamic that the literature recognizes as inherent to the process of governance. A particular advantage is that the IAD is rooted in theory that explains the emergence and success of self-governing arrangements. Another advantage is that the framework's structure guides and organizes inquiry into the compatibility of rule systems for advancing collective endeavors, the relationship between different levels of rules, and the role of learning and change in adapting rule systems for successful governance. It is a nuanced theoretical framework that accounts for the dynamic, composite nature of nonprofit regulation.

The philosophical basis of the sector, multiple accountabilities, and societal context are relevant for understanding the make-up of nonprofit regulation and the role of self-regulation. These factors account for the importance of norms for explaining the bounds of government regulation and the significance of self-regulation. From the perspective of the IAD, nonprofit activities and culture combine with the formal legal framework and sector norms to explain the sector's institutional structure and the viability of self-regulation. The broader picture that emerges then serves to frame narrower theoretical questions, such as those relating to effectiveness and the role of monitoring and enforcement.

Chapter Summaries

Chapter Two reviews the literature with respect to nonprofit regulation. It discusses the trends that have altered the nonprofit regulatory environment and the debate surrounding nonprofit regulation. It then reviews the literature investigating nonprofit self-regulation and identifies several gaps. The literature review is meant to demonstrate that these gaps are not due to a dearth of information about self-regulation but to how we conceptualize nonprofit regulation.

Chapter Three introduces the Institutional Analysis and Development (IAD) framework as an approach for examining how institutions facilitate collective endeavors, which can serve a variety of purposes other than strictly governmental or competitive objectives. It is an alternative lens for understanding nonprofit regulation as a complex interdependent rule system that explains the structure of the sector and how the sector is governed.

Chapter Four discusses how theories of governance inform our understanding of regulation. The chapter discusses how theories of governance that shape ideas about regulation are not just out of step with the way regulation operates in practice but are particularly problematic for understanding nonprofit regulation. The chapter then explains the IAD as an analytical approach that is consistent with both emergent notions of governance and characteristics of the nonprofit sector. This is important because the broader debate surrounding nonprofit regulation depends on the assumption that regulation is different as it pertains to the nonprofit sector.

Chapter Five illustrates how using the IAD to analyze facets of the nonprofit sector better explains the importance of self-regulation for nonprofit governance. This chapter describes how the IAD can guide analysis of nonprofit self-regulation by drawing attention to features that impact nonprofit governance and what this says about the role of self-regulation. It shows that the institutional foundations of the nonprofit sector are relevant for explaining what sets the nonprofit sector apart, how nonprofit organizations are structured, and the impact of legal frameworks, normative structures, and operational strategies on the functioning of the sector. Chapter Six is a concluding discussion about the implications and utility of institutional analysis for future research on nonprofit regulation.

CHAPTER TWO. NONPROFIT REGULATION

This chapter reviews a broad range of research pertinent to understanding self-regulation as a growing phenomenon in the nonprofit sector. The literature paints a complex picture of nonprofit regulation in which the purpose and effectiveness of nonprofit regulation are highly dependent not only on what sector participants are trying to accomplish, but also on how they interpret, respond to, and incorporate rules.

The first section of this chapter will address factors that have altered the nonprofit environment and have led to mounting regulatory pressures and responses. These trends and the implications of changes in the nonprofit regulatory landscape provide the background necessary to frame the broader debate about how to regulate the sector in a manner that addresses accountability while preserving the sector's role in society. The next section addresses the philosophical and practical issues associated with nonprofit regulation. The third section reviews research specifically focused on investigating self-regulation in, as well as outside, the nonprofit sector. The last section concludes the chapter by identifying the gaps with respect to theory and the absence of a framework for capturing the forgoing dynamics, particularly issues and variables that have been found to be relevant for explaining the role of self-regulation.

The Nonprofit Operational and Regulatory Landscape

Several trends have altered the nonprofit landscape and raised concerns regarding the adequacy of the nonprofit regulatory framework. Changes in philosophy and public policy with respect to governance and public service delivery have transformed the nonprofit operational and regulatory environment. These trends have changed sector relationships and led to enormous growth in the sector. They have also resulted in regulatory responses from government, third parties, and the nonprofit sector. Accountability demands are experienced formally and informally through contracts, working relationships, public perceptions, and expectations of practices and performance. The sector has undertaken self-regulation to respond to evolving conditions and accountability demands. As a consequence, the perception that the sector is under-regulated does not match the multiple and overlapping accountability demands faced by the majority of nonprofits (McCambridge, 2005; Sidel, 2010a).

Trends Altering the Nonprofit Environment

Government devolution, globalization, and an ever-increasing complexity of the nonprofit organizational form are some of the prominent trends that have made an impact on the sector and its operational environment. Together, government devolution and globalization have spurred the growth and complexity of the sector, injecting civil society more deeply into governance (Kettl, 2002). Nonprofits have been increasingly involved in government service delivery, competing with for-profit organizations, exposed to sophisticated new forms of philanthropy, and subjected to the forces of globalization (Salamon & Flaherty, 1996, pp. 32-33). Social, economic, and political dynamics stimulate interdependencies and blur the boundaries between sectors. These dynamics have also encouraged the application of pragmatic market approaches toward solving social problems (Gronberg & Salamon, 2002). As government divests many activities traditionally within its realm, its actions have led to an increased dependence on the nonprofit sector, as well as the encouragement of competition and collaboration between the nonprofit and for-profit sectors (Fishman, 2007b). At the same time, internal structures of nonprofits have become more complex as many 501c (3) corporations create separate 501c (4) organizations to support education and lobbying activities along with for-profit subsidiaries to manage related business ventures (Young & Salamon, 2002, p. 439).

Changing philosphies with regard to governance not only alter approaches to public administration and the provision of public services, but also impact the nonprofit sector (Gronbjerg & Salamon, 2002). The explosive growth of the welfare state between 1950 and 1980 was a time of government and nonprofit collaboration and interdependence, which was followed by retrenchment during the Reagan and Bush administrations (Salamon, 1995). Although the nonprofit sector is thought to serve as a bridge for gaps left by market and government failure, the Reagan revolution initiated a convergence of the nonprofit and for-profit sectors (Fishman, 2007b). It was argued that cut-backs in government social services would give the voluntary sector its independence, and corresponding changes in tax policies would restore lost government funding by increasing personal income available for charitable giving (Salamon, 1995, p. 9). The actual effect of these policy changes was to reduce incentives for charitable giving, while cutting government funding and impeding collaboration. The following period ushered in the "National Partnership for Reinventing Government" and "Contract with America," which called for government reform (Kettl, 2002). These philosophies demanded improved effectivenenss and generally favored privatizing government services, initiating welfare reform in 1996. The significance of this philosohy is that it signaled a resurgence of attitudes favoring the market as the appropiate mechanism for addressing public problems (Gronbjerg & Salamon, 2002). As a result, the elevation of market values has influenced both nonprofit practices and expectations of nonprofit performance.

In addition to its tightening nexus with government, the nonprofit sector has been experiencing marketization (Eikenberry & Kluver, 2004; Weisbrod, 1998). Multiple factors have contributed to the commercialization of the nonprofit sector, and there are several manifestations of this trend (Young & Salamon, 2002). Already discussed is how government devolution combined with changes in the provision of social services have encouraged nonprofit and for profit competition. Funding pressures along with social and economic trends increase competition and as a consequence create pressure to adopt market practices. While the benefits of market practices are often tangible, costs to the sector are less immediate and difficult to quantify (Bok, 2003, p. 118). There are risks that accompany the nonprofit sector's move toward the market, which undermine, or diminish, the belief system associated with the sector and the social values it promotes (Eikenberry & Kluver, 2004).

The nonprofit sector tax advantage is often deemed to provide an unfair competitive advantage. However the difficulty in raising equity hampers nonprofit investment in facilities, technology, and competitive salaries for talent (Young & Salamon, 2002, p. 426). The decline in charitable giving and the increase in demand for services also coincide with increased competition with the for-profit sector and within the nonprofit sector (Young & Salamon, 2002, pp. 424-428). Moreover, shifts in demographics, such as the increase in number of women in the workforce, growing senior population, and transformation of the traditional family structure, have resulted in a larger demand from clientele with the ability to pay for services (Young & Salamon, 2002, pp. 424-428). For example, for-profit options caused the nonprofit share of childcare services to drop from 52% in 1982 to 38% in 1997 (Salamon, 2002 p. 15). In the same time frame, the nonprofit sector's share of home healthcare declined from 60% to 20% (Salamon, 2002, p. 15). And, since for-profits entered the field of charitable giving, Fidelity Investments has outpaced the contributions made to the largest community foundation (Young & Salamon, 2002, p. 427).

The presence of market forces is not new for nonprofit arenas such as universities, healthcare, museums, religion, and public schools, but the scope and influence has changed (Bok, 2003, pp. 7-15). The proliferation of commercialization goes beyond the need to fill funding gaps and has as much to do with changing attitudes as with social and economic forces (Bok, 2003, pp. 7-15). Changing attitudes about the role of government have created the impetus to privatize services and encourage public-private collaborations (Kettl, 2002). These partnerships, however, rarely resemble collaborative arrangements in terms of decision-making and are typically controlled by government through contractual arrangements and informal interactions that occur during the implementation of public services (Gazley, 2008). Furthermore, these partnerships increasingly demand specialized knowledge that can be translated into profits. The Welfare Reform Act (1996)[3], for instance, had the effect of introducing for-profit opportunities in the once nonprofit social services realm (Young & Salamon, 2002, p. 427). The Bayh-Dole Act (1980) similarly allowed universities to capitalize on their research through patents on discoveries made through publicly funded research, and federal and state subsidies were

[3] Officially known as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

designed to encourage university-business ventures that made economic contributions (Bok, 2003, pp. 11-12). Such marketization raises for nonprofits the dual risks of becoming an instrument of government or displacement by the private sector.

Philosophical changes have also altered the relationship between the business sector and nonprofits by increasing accountability and performance expectations of donors and the public, thereby shifting the emphasis from satisfying societal need to demonstrating results (Young & Salamon, 2002, p. 429). At the same time, businesses concerned with image and social responsibility actively seek to associate their profit-making ventures with the advancement of nonprofit missions (D. Rhodes, 2008). These social and economic pressures translate into market requirements that have introduced new opportunities for nonprofit collaborations and partnerships, but have also transformed nonprofit culture and its structural complexity (Young & Salamon, 2002, pp. 436-439). The more immediate risk is evidenced by partnerships that result in scandals due to unethical practices or excess benefit transactions (D. Rhodes, 2008). Individual institutions risk mission creep, but entire segments of the sector run the parallel risk of drifting off course relative to intended public benefit (Bok, 2003, p. 119).

Regulatory Responses and the Shifting Regulatory Landscape

The convergence of the aforementioned trends has generated regulatory responses from government, third parties, and the nonprofit sector. Thus regulation is responding to varying problems and is explained from several perspectives. Nonprofits find themselves in uncharted water, government has less control over social services that were once under their control, and the public gets distorted messages about the prevalence of nonprofit wrongdoing. From the nonprofit standpoint, this rapidly changing environment lacks established models to guide behavior (Brody, 2007). Boards and organizations unable to find guidance they need in the prevailing laws have had no alternative but to turn to self-regulation in order to support individual organizations and address general issues pertaining to the sector (Independent Sector, 2002). Government too finds itself ill equipped to deal with a range of activities that were once strictly within its domain but are now delivered by private for-profit and nonprofit organizations (Kettl, 2002). According to recent accounts, there are approximately 1.6 million tax exempt organizations registered with the IRS that account for a total of 2.06 trillion dollars in revenues, representing a 30% increase in the number of organizations and a 41% increase in revenues in 10 years after adjusting for inflation. Nonprofits receive 8.3% of their revenue in the form of government contracts and of the 73.5% of nonprofit revenue that is collected in fees, 23.9% is paid by the government (Blackwood, Roeger, & Pettijohn, 2012). From the vantage point of the public, nonprofit sector growth as a portion of the economy and its involvement in the provision of public services has had the effect of raising its visibility, resulting in scrutiny from the public, media, and Congress. Several high profile scandals have greatly distorted the actual incidence of fraud and fueled the perception that the sector is under regulated, ratcheting up political pressure to find regulatory solutions (Fishman, 2007b). As a consequence, policy prescriptions often reflect public preferences for external regulation and assumptions that self-regulation is a weaker or superficial form of regulation (Cook, 2005; Dicke, 2002). This is evident in the growing federalization of nonprofit regulation despite active sector involvement in self-regulation (Sidel, 2010b).

The wide-ranging impact of for-profit fraud cases involving Enron, Tyco, and WorldCom that precipitated the Sarbanes-Oxley Act (2002) also resulted in stricter standards for nonprofit financial transactions and accounting procedures (Narin, 2009). The nonprofit sector has similarly produced several high-profile scandals, including the Nature Conservancy's inappropriate relationships with businesses and questionable real-estate deals, the misuse of donations by United Way executives, and the lack of transparency with regard to the distribution of donations to victims of 9/11 by the American Red Cross (Rhodes, 2008). The effect of these scandals was to draw attention to the leeway afforded the sector due to limited oversight and enforcement mechanisms. As a result, concern regarding nonprofit oversight led to extending, at least in part, the application of Sarbanes-Oxley (2002) to the nonprofit sector (Freemont-Smith, 2004, pp. 110-111). The intent behind proposals to apply the Sarbanes-Oxley Act to nonprofits was to protect donors and nonprofit assets by improving financial transparency and integrity, but the effect was to raise questions regarding the applicability of for-profit regulatory solutions in the nonprofit context (Reiser, 2007, pp. 27-34).

On the whole, the sector is increasingly participating in self-regulation and committed to accountability (Bothwell, 2001; Independent Sector, 2007; Lloyd & de las Casas, 2006). There has been a proliferation of voluntary initiatives organized to establish transparency, accountability, common norms, and standards of practice (Brody, 2004; Ilchman & Burlingame, 1999; Warren & Lloyd 2009). These initiatives are tailored to sector-specific needs and are adaptive to rapidly changing environments, supplementing and reinforcing existing regulation (One World Trust, 2009). Self-regulation has become a nonprofit imperative driven not just by the sector, Congress, media, and stakeholders, but also by stronger self-governance of nonprofit networks and increasing voluntary and educational efforts occurring within the sector at all levels (Bothwell, 2001; Independent Sector, 2007; Lloyd & de las Casas 2006; Sidel, 2010b, p. 1039). Nevertheless, these moves have not quelled the inclination toward external control mechanisms both on the part of Congress and the public (Cook, 2005; Dicke, 2002; Van Slyke, 2006).

Implications of the Changing Environment

The pervasive perception of an under-regulated nonprofit sector does not square with the sector's regulatory reality. The actual experience of individual nonprofits is that they face a multitude of regulatory and accountability requirements from the federal government, states and localities, funders, accreditation bodies, and voluntary associations (McCambridge, 2005). This means that above and beyond accountability to mission and stakeholders, there are multiple and complex regulatory and reporting requirements that nonprofits must satisfy for different levels of government. Over the course of their existence, individual nonprofits have numerous interactions with state and federal government to meet requirements for their establishment, annual filings, ongoing compliance, involvement in any events that require special filings, and changes in form, support, or activities. Nonprofits also voluntarily submit to principles and standards via associational memberships or more strident accreditation processes that stipulate financial, fundraising, and governance expectations.

While self-regulation not new to the sector, its growth is a new phenomenon due to the explosion of initiatives since the 1990s and the fact that they are flourishing, expanding, and becoming more refined (Lingán & Hammer, 2010; Warren & Lloyd, 2009). Self-regulation is more than a growing trend; it is a response to accountability concerns and the inability of government regulation to prevent scandals and purge "bad apples" (Bothwell, 2001). Voluntary initiatives have established transparency, accountability, common norms, and standards of practice (Brody, 2004; Ilchman & Burlingame, 1999). These initiatives are tailored to sector-specific needs, address emergent issues, develop strategies for adapting to rapidly changing environments, and supplement existing regulation (One World Trust, 2009).

Philosophical and Practical Issues Associated with Nonprofit Regulation

Several philosophical and practical issues have surfaced during the sector's rapidly evolving legal and regulatory environment. These issues range from the appropriate way to regulate the sector to addressing the practical realities associated with implementing and navigating regulatory change, which necessarily involves confronting perceptions and expectations of what government and self-regulation can accomplish. Invariably analyses of regulatory responses are grounded in some combination of these issues as they are interrelated. Self-regulation is not only thought to be more amenable to sector autonomy but also necessary for establishing and retaining sector norms and as a mechanism for building ethical organizational cultures.

Regulatory responses unavoidably stimulate reactions, which center on understandings about why the sector's legal regime is structured the way it is and what this means for regulatory reforms over time. The main issue here is that philosophical underpinnings of nonprofit regulation generally contradict preferences for external regulation and perceptions about the strength of self-regulation. But, since the sector depends on public trust, it has to take public perceptions seriously even if they are not consistent with the capacity of government regulation relative to the sector. There are several limitations associated with government regulation, the most important of which is its inability to effect meaningful organizational responsibility associated with nonprofit accountability. In essence, authentic nonprofit accountability is an ongoing process that only begins with legal compliance (Strickland & Vaughn, 2008).

Philosophical Basis for Nonprofit Regulation

As the embodiment of an American preference toward finding private solutions for public problems, nonprofits have been afforded greater flexibility and freedom because of public trust that accompanies their role in society (Salamon, 1995). The history of nonprofit law demonstrates an inclination toward allowing the sector special freedoms within a structure designed to counterbalance *protecting* and *facilitating* [emphasis added] public benefit (Freemont-Smith, 2004). The result is a conflict between the flexibility reflected in the legal regime and a preference toward external control mechanisms that give the appearance of accountability even when they are considered contrary to political independence and frequently shown to be less effective (Dicke, 2002). Although the legal regime governing the sector reflects its special character and historical role in American society, the guidance it affords the sector is not commensurate with the sector's expansion (Brody, 2007). As noted previously, the growing prominence of the sector has made nonprofit regulation an ongoing issue on the governmental agenda (Independent Sector, 2005, 2007). The central dilemma of regulation is rooted in the desire to preserve the sector's role in our society under growing accountability pressures (Fleishman, 1999). A related issue involves not only public perceptions and expectations of nonprofit accountability but also the capacity of government to regulate the nonprofit sector.

Practical Limitations to Government Regulation

There are several practical limitations associated with government regulation. These include consequences for the operations of individual nonprofits, the diversity of the nonprofit sector, political and resource commitment for implementing new and existing regulations, and misperceptions about the effects of regulation. The main criticisms against recommendations for stricter accountability of the nonprofit sector are that more regulation does not necessarily equate with stronger accountability and that regulatory requirements are becoming overly burdensome for many, particularly smaller, nonprofits that make up the majority of the nonprofit sector (McCambridge, 2005). Too much regulation can overburden nonprofits to the detriment of mission, which is after all the purpose and focus of a nonprofit's existence (Fishman, 2007b). Additionally, many small nonprofits that are unable to afford compliance appear unworthy to donors, which has the attendant effect of inadvertently perpetuating an elite class of organizations (Brody, 2004, p. 13).

Recommendations for more government regulation also overlook several important practical realities with respect to the extent of the sector, as well as economic and political realities that preclude additional oversight and enforcement. The size and diversity of the nonprofit sector make it impossible to conceive of a universal regulatory regime that overarches all contingencies related to the range of services and activities within the sector. Based on 2012 data, there are 1,569,572 tax-exempt organizations on record and an estimated 377,640 unrecorded congregations (Roeger et al., 2012). In addition, approximately 40,000 new organizations apply for official tax-exempt status yearly (Brody, 2002, p. 473). The National Center for Charitable Statistics categorizes nonprofit activities into 26 major fields with a range of 16 possible functions within each field (Salamon, 2002, pp. 7-8). When the subcategories of each field are taken into account, there are all told several thousand different types of nonprofit organizations. And although the nonprofit sector represents a significant portion of the economy, it is impossible to pinpoint its locus of economic impact beyond major categories of health, education, and social services (Salamon, 2002, p. 9). Considering the magnitude of activities that fall under the nonprofit umbrella, it is not reasonable to expect or rely solely upon the legal system to bear the burden of regulation, and it would be undesirable to squeeze this multiplicity of organizations into a one-size fits all legal mold (Brody, 2007, p. 523).

The absence of political will and insufficient resources are further barriers to regulation reform and enforcement. Instituting external controls is time-consuming and expensive (Dicke, 2002). The accountability conversation often overlooks the cost and coordination effort involved in enforcing regulation or implementing regulatory change (R. Cohen, 2005). The IRS and States are underfunded and lack the staffing and expertise levels necessary to engage in enforcement. Such limited governmental resources are therefore a realistic obstacle to increased monitoring and enforcement (Freemont-Smith, 2004). In addressing accountability, a further question is whether the proper response is to focus attention on improving the laws or funding enforcement (Brody, 2004). In addition, nonprofits are subject to multiple levels of scrutiny, and under federalism there is inconsistency in laws at the state level. This has the effect of causing overlap in some cases and lapses in others, particularly when charities operate in multiple states (Brody, 2004, pp. 4-5). It is also important to consider the preferences of legislators and the level of commitment to different regulatory models. While legislators are reluctant to invest the time and resources required of oversight activities (McCubbins & Schwartz, 1984), they also demonstrate a preference for avoiding blame by disassociating from direct responsibility associated with rule making (Weimer, 2006). Finally, despite the Congressional attention that nonprofit accountability attracts, it is important to remember that past attempts by states and municipalities to control the sector have often been found to be in conflict with the right to association implied by the First Amendment, and thereby blocked by the courts (Ilchman & Burlingame, 1999, p. 202).

Public Trust and Nonprofit Regulation

Another important issue that has become apparent involves public trust and the expectations of various regulatory approaches. The perception of wrongdoing is much greater than its actual occurrence (Fishman, 2007a). At the same time, there is a tendency to overestimate the capability of external regulation for controlling or changing behavior and underestimate the strength and contribution of self-regulation for influencing practices (Brody 2011; Howard, 1994). Rightly or wrongly calibrated, these perceptions and expectations are critical, given sector dependence on public trust and its interdependence with government and the market. As has been noted, the public and government each depend on and support the sector (Salamon, 1995), and the devolution of government services due to reform has only accelerated these interdependencies (Kettl, 2002). But, unlike rights to association and petition government, the benefits afforded the sector through tax-exemption are not secured in the Constitution and are always subject to shifting political attitudes (Hopkins, 2011). The sector relies on public attitudes and government good will to secure public funding and maintain its legal standing and tax status (Brody, 2002). Government, in the meantime, is increasingly under pressure to justify the diversion of tax dollars to the sector (Salamon, 2003). The result is that nonprofit fraud and scandal captures the attention of the public and government (Outside the box, 2008; Gugerty & Prakash, 2010; J. Smith, 2010). The fact that the level of fraud occurring in the sector is distorted has become less important than the general perception that the sector is under-regulated (Fishman, 2007a). Congressional attention that results typically leads to recommendations for stricter oversight and regulatory reform (Independent Sector, 2005, 2007), reflecting preferences for government regulation (Dicke, 2002; Van Slyke, 2006). Consequently, the misdeeds of individual nonprofits can undermine the integrity of the entire sector (Gugerty & Prakash, 2010). This risk is evidenced in an intensified legal climate and by public sentiment increasingly interested in nonprofit accountability (Narin, 2009). Veracity of perceptions aside, there are still other important practical considerations and limitations with respect to external regulation.

Nonprofit Regulation and Accountability

There is a tendency to conflate regulation with accountability and to have a lack of clarity about the end goals of regulation in terms of accountability (McCambridge, 2005). The complexity of nonprofit accountability due to multiple, sometimes conflicting, stakeholder relationships and the need for each individual organization to balance and prioritize these relationships in terms of mission is widely acknowledged as being at the heart of mixed objectives with respect to regulation (Ebrahim & Weisband, 2007). While many argue that tax benefits give nonprofit activities an unfair competitive advantage, case law justifies the advantages they are afforded in philosophical terms that depict nonprofits as part of a third sector that counterbalances the state and markets (Hopkins, 2011). Moreover, nonprofits are subject to the same laws as for-profit corporations in the private sector. Even with the same legal responsibilities, nonprofits face higher expectations for moral and ethical behavior accompanied by a lower tolerance for breaches in trust (Fleishman, 1999, pp. 172-178). This makes nonprofit accountability anything but a straightforward calculation (Brody, 2002). The dilemma is how best to target malfeasance and misfeasance without impinging on nonprofit independence (Dale, 2005).

The dual concern over the sector's special status in society and high expectations for accountability have stimulated debate over the focus of and the mechanisms for nonprofit regulation. Examples of recommended strategies have included strengthening laws, reforming laws, bolstering enforcement of established regulation, encouraging self-regulation, adding agencies for oversight, increasing reporting requirements, reducing protections, raising penalties, and mandating training and education (Brody, 2004, 2007; Fleishman, 1999; Fremont-Smith, 2004). The question remains as to whether regulation is equipped to meet expectations on all accountability fronts. Is the legal framework the appropriate avenue for implementing accountability mechanisms and meeting the range of nonprofit accountability demands, or is legal framework better equipped for expressing aspirations and setting boundaries rather than for securing ethical practices?

Most analysts recognize the legal framework as an important foundation for nonprofit accountability but only as a starting point, not as a means for controlling or guiding the sector (Ilchman & Burlingame, 1999; D. Rhodes, 2008; Strickland & Vaughn, 2008). A historical perspective on fostering and regulating the charitable sector supplies perspective with regard to exaggerated claims as to the capabilities of government regulation and the extent of abuse within the charitable sector (Fishman, 2007a). There is evidence that adding layers of regulation ensures neither compliance nor organizational integrity, and that too much regulation runs the risk of cultivating indifference, institutionalizing rigidity, and frustrating social goals (Howard, 1994).

Findings demonstate that the variables most impactful on the effectiveness and accountability of nonprofits relate to internal, as opposed to external, controls (Ilchman & Burlingame, 1999, p. 208). While laws and regulations are an important foundation, they are the minimum standard, or starting point, for establishing responsible practices and ethical organization culture. Internal controls are important for establishing policies, processes, and procedures that instill responsibility and build ethical organizational culture over time (Strickland & Vaughan, 2008). Achieving desired social norms initially requires the establishment of rules, processes, and practices that signal and enforce expectations, but participation in these processes over time is what ultimately advances the aspirational culture (Blake & Martin, 2006). Cultivating an ethical organizational culture is essential to genuine accountability, because within the constraint of legal and institutional order, individual values will inevitably be introduced and intentionally, or inadvertently, shape an organization's policy and environment (Box, 2007, pp. 205-6). Ensuring moral and ethical practices and effective programmatic outcomes is essential for nonprofit opertations because the sector is important to society and nonprofit activities directly impact the daily lives and wellbeing of their beneficiaries (Lingán & Hammer, 2010).

Promise and Problems of Nonprofit Self-regulation

The extent of nonprofit self-regulation is attributed in part to the inability of government to control fraud through regulation (Bothwell, 2001). Since the thirteenth century, norms and protective legal structures demonstrate the valued role of philanthropy in society, while attempts by governments to regulate charities have been unsuccessful at preventing opportunistic behavior (Fishman, 2007a). External regulation signals the manifestation of, or the framework for, social goals, but their institutionalization depends on the development and reproduction of practices. The process of instilling a normative orientation toward consideration for sector norms and values is a particularly significant task of self-regulation that is not unlike the establishment of ethical organizational cultures. In a free society, however, no amount of regulation, even when it is supplemented with vigorous self-regulation, will ever eradicate all nonprofit fraud (Dale, 2005).

Through self-regulation, the nonprofit sector has contributed to regulatory change either through invitation of government, advocacy efforts, or establishing best practices and standards. Congress and State governments have not only solicited the sector's input on nonprofit regulatory policy, but have also initiated and facilitated nonprofit involvement in self-regulation (Corbett, 2011; J. Smith, 2010). Through self-regulation, nonprofits seek to affect policy both by influencing law and regulation directly and public perception through the enhancement of sector practices (Independent Sector, 2005).

The extent that the legal framework is capable of effecting organizational responsibility is a critical issue due to the moral and ethical implications of nonprofit work. Self-regulation is critical for establishing ethical behaviors and organizations because it emphasizes the importance of active vigilance and proactive engagement in sector specific ethical issues that arise in daily operations within particular contexts (Feldman, 2007; Schminke, Arnaud, & Kuenzi, 2007). The legal regime sets boundaries and structures the sector so as to reinforce mission focus and public orientation, while organizational integrity and responsibility is possible only when internalized and performed by individual nonprofits (Strickland & Vaughn, 2008). Through nonprofit self-regulation, sector particpants identify and address ethical issues facing the sector by developing general practices that are adaptable to the specific missions of individual nonprofits (Independent Sector, 2007). In other words, self-regulation is a process of institutionalization that inculcates values and endows organizations and individuals with a disposition toward being governed by moral concerns that take a long-term view and measure benefits in terms of the effects on others (Gunningham & Rees, 1997, p. 381). The actual performance of individual nonprofits often depends on the efforts of organizations to embed principles and standards in their bylaws and practices (Corbett, 2011).

All that being said, problems associated with self-regulation are widely documented and provide evidence that self-regulation may be easier said than done. Independent bodies that monitor and rate charitable organizations apply inconsistent standards or overlook important accountability criteria (Silverman, 2004). Often there is much lip service paid to the need for coordinated efforts while actions fall short of stated goals (Berns, 2007). Voluntary codes of conduct have become more commonplace, but there is an important distinction between sincere and symbolic self-regulatory efforts, when the latter are merely geared toward quelling public criticism and can potentially do more harm to the sector (Arya & Salk, 2006; Irvin, 2005). Moreover, even when guidelines for conduct genuinely exist, they may be too weak to effectively prevent inappropriate behavior (Michaels, 2007). Lastly, and related to the discussion about the perceived strength of voluntary regulation above, even the best efforts may not be able to completely override or satisfy a public appetite for stricter regulatory requirements (Cook, 2005).

Still other issues relate to nonprofits' degree of participation or choice of involvement with self-regulation. Reliance on professional advice is limited to specific practices, standards, and compliance matters, and does not attend to alignment with an organization's purpose or mission. Although direct monitors of the sector may afford a broader assessment of standards, the range of their readership is limited (Ilchman & Burlingame, 1999, p. 205). Two disadvantages of private, membership-based regulation are that this form of self-regulation often relies on voluntary and unverifiable information from association members and that nonprofit leadership can choose accreditation organizations they feel they easily comply to without having to adjust their operating standards (Brody, 2004, p. 13). For small nonprofits the issue is often less about willingness and more about the inability to afford compliance (Brody, 2004, p. 13). One perceived shortcoming of self-regulation is the inability or unwillingness to impose sanctions on peer organizations. The concern for membership organizations is that their incentive to sanction violators is often in conflict with their primary interest in retaining members (Ortmann & Svítková, 2007, 2010). The weaknesses in self-regulation, however, signal not failure but point to areas where government can play a facilitative role (Sidel, 2005). But particular approaches that depend on government for strengthening self-regulation must be carefully evaluated. Strategies that directly involve government in self-regulation can run the risk of restricting nonprofit autonomy or involving government in nonprofit governance (Sidel, 2005).

Studying Nonprofit Self-regulation

The rapid development and prevalence of self-regulation in the nonprofit sector has stimulated research interest in understanding what drives and shapes nonprofit self-regulation. Definitions and typologies of self-regulation have changed over time, along with evolving ideas about regulation. Nonprofit self-regulation research has catalogued the incidence and forms of self-regulation. Other approaches use theory focus on and investigate the effects of particular relationships on the emergence, design, and effectiveness of self-regulation. To date, there is no convincing evidence or agreement about what constitutes effective self-regulation and no framework for organizing current data and future research (Obrecht, 2012).

Defining Nonprofit Self-regulation

The definition of self-regulation has changed over time. This reflects evolving conceptualizations and approaches to studying regulation. The nonprofit self-regulation literature is influenced by definitions of self-regulation used in regulation scholarship, where it is commonly understood as a coordinated effort by sector participants to impose and submit to regulation. However, many areas of regulation research focus on the connections and relationships between public and private regulation, whereas nonprofit research emphasizes particular models of self-regulation as alternatives to government regulation.

Self-regulation is currently considered to be the sum of formal efforts and processes that result in the establishment of a set of institutions or informal arrangements for effecting organizational behavior, with a key feature of self-regulation being that the standards and rules of conduct are set by industry level organization rather than a governmental or firm-level apparatus (Bies, 2010a, pp. 1062-1063; Corbet et al., 2014; Gugerty, Sidel, & Bies, 2010, p. 1029; Gunningham & Rees, 1997). Self, in nonprofit self-regulation, differentiates sector-initiated regulation from government regulation, although it generally is not interpreted as strictly independent from the influence of government. The concept of "self" is even more specific in that it is not a reference to the regulation of individual conduct or to automatic self-correcting forces as in the case of the "invisible hand" of the market (A. Smith, 1776/2010). Instead, self-regulation is concerted cooperation by sector participants as opposed to self-regulation established by an individual organization subject to its own internal enforcement. As such, research interested in self-regulation focuses on those initiatives that entail the efforts of two or more organizations that are neither government led nor induced but are based on the participation and work of nonprofit organizations (Lingán et al., 2010, p. 2; Lingán & Hammer, 2010, p. 3). However, while self-regulation is conceptualized as separate from government regulation, research often notes differences in the manner and degree to which self-regulation is stimulated or influenced by government (Bartle & Vass, 2005, pp. 19, 22; Warren & Lloyd, 2009).

Different definitions of self-regulation, both in terms of its evolution and the distinctions drawn, are relevant for understanding classification schemes that have followed. Such differences also underscore a gap with respect to advancing our understanding of the purpose and function of nonprofit self-regulation. Self-regulation is usually defined in terms of concerted efforts toward regulatory governance, specifying industry-level decision-making activity by sector participants. Yet, nonprofit research has not followed suit with legal and governance scholarship that interpret self-regulation as part of a governance process (Fiorino, 2006; Gunningham & Rees, 1997; NewGov, 2008). To date, such definitions have led to the development of typologies that categorize models of self-regulation and theories about the relationships that shape them.

Conceptualizing and Categorizing Self-regulation Research

Two fundamental issues the literature confronts are conceptualizing and categorizing self-regulation. Classification schemes have challenged our understanding of regulation and revealed the difficulty of categorizing regulation simply in terms of government and self-regulation. They also reflect different approaches to conceptualizing and studying self-regulation. The general view is that regulatory governance involves public and private institutions and interactions (Ayres & Braithwaite, 1992; Braithwaite & Drahos, 2000; C. Scott, 2004). This generates research on the policy conditions and relationships between private actors and government that determine the role of self-regulation in governance (Héritier, 2002; Héritier & Eckert, 2008, 2009). In the nonprofit sector, regulation is conceptualized in terms of its effects on sector autonomy and effectiveness. Thus, research focuses on various models of self-regulation that emerge and how these models stack up as alternatives to government regulation.

Classification schemes began by contrasting self-regulation to government regulation, explaining self-regulation as a voluntary nongovernmental form of regulation. Because no true dichotomies exist in practice, an industry's actual regulatory environment is found to reflect a mix of regulation that can assume incremental variations in co-regulation and mandated control depending on the degree of government involvement (Sinclair, 1997). The conception of dichotomous categories of pure self-regulation and "command and control" government regulation have given way to a regulatory continuum in which these pure types only represent forms of social control situated at opposite ends of a regulatory spectrum (Gunningham & Rees, 1997).

Typologies have evolved over time to include other dimensions of regulation such as levels, scope, type, and source of control. Bartle and Vass (2005) classify regulation according to the mix of private sector and government involvement, the level at which the source of regulation occurs, and the scope of its influence. These models of self-regulation are defined and classified more precisely to reflect actual practice, academic perspectives, and operational recommendations (Bartle & Vass, 2005, pp. 1-35). However, this image of a "continuum of regulation" becomes even less clear and begins to look more like a "regulatory mosaic" when nongovernmental sources of regulation are defined more precisely rather than being lumped into the "self" regulation category.

Other classification schemes have similarly revealed the complexity of self-regulation. They show that forms of nongovernmental regulation are not always initiated by industry participants. The full range of social regulation originates from the formal bureaucratic hierarchy, conditions and practices in the marketplace, and from culture and traditions present in the community (Lad & Caldwell, 2009). The concepts of level, scope, and source are not treated consistently in classification schemes.

Comparative analyses of nonprofit models of self-regulation worldwide initially emphasized structural elements of initiatives, but have since incorporated dimensions similar to those noted in the private sector self-regulation literature discussed above.[4] Without explicitly referencing government, self-regulatory initiatives are differentiated according to design based on the formality of their institutional structures and strength of their compliance mechanisms (Warren & Lloyd, 2009, p. 6). This approach relates the strength of various forms of self-regulation to their design. For example, third party accreditation schemes are considered to be formal self-regulatory initiatives with strong compliance mechanisms, while working groups are characterized by informal structures and weak compliance. And, peer assessment is considered moderate both in terms of formality and compliance strength (Warren & Lloyd, 2009).

More recently, classification schemes have begun to include contextual factors that explain the types of self-regulatory initiatives (SRIs) that emerge under various conditions. These classifications describe how sources of regulatory pressure, sector response, and structure of initiatives are all shaped by the institutional problems confronting a nonprofit sector. One approach takes account of how variations in institutional context based on resource availability, sector capacity, and relationship with government, factor into shaping the regulatory environment (Bies, 2010a). For example,

[4] One World Trust maintains a searchable data base of international, national, and regional level civil-society self-regulatory initiatives that is available online at http://www.oneworldtrust.org/csoproject/

according to Bies (2010a), the compliance model of self-regulation is categorized as formal initiatives that typically emerge as a reactive response to strong external pressures from government for more strident oversight, particularly in societies with emergent sectors and underdeveloped nonprofit legal regimes. In contrast, Bies (2010a) presents the professional model of self-regulation as a proactive, informal response to internal concerns regarding sector capacity that is more likely to occur in societies with well-established nonprofit sectors. In societies with established sectors and strong nonprofit regulation, Bies (2010a) argues that resource scarcity is associated with the adaptive self-regulatory model, which is characterized by moderate formality due to a combination of internal and external demands and the need to balance proactive and reactive responses. The classification scheme presented by (Bies, 2010a) is a new approach to categorizing self-regulation that goes beyond the government-nongovernmental dimensions by considering how competing pressures and problems conspire to shape regulatory responses.

Empirical analysis of the contextual factors underlying self-regulation has led to a better understanding of how actual nonprofit regulatory models manifest themselves and where they fall along the spectrum of public-private regulation. These findings inform the view that self-regulation is just one form of regulatory governance that falls on a continuum of potential nonprofit regulatory forms (Gugerty et al., 2010, p. 1029). In effort to develop this perspective, a symposium on nonprofit self-regulation proposed a broader classification scheme as a framework for self-regulation.[5] This framework draws on comparative analyses across regional settings and attempts to generalize models of

[5] The research generated by this symposium can be found in the December volume of the *Nonprofit and Voluntary Sector Quarterly, 39*(6).

regulation along a continuum ranging from mandatory to voluntary regulation based on the system, sponsor, and scope of regulation (Gugerty et al., 2010, p. 1030). This schematic organizes nonprofit regulation according to the following categories: legal regulation, government mandated association, watchdog organizations, donor led programs, accreditation or certification programs, associational membership self-regulation, and voluntary standards/codes of conduct. This typology revisits the public-private dimensions of regulation but adds the effects of sponsorship and scope on the level of "voluntariness". While industry, not government, set the standards in self-regulation, government and third-party sponsorship of self-regulatory models diminishes both the degree of participation and the voluntary nature of self-regulation. Government mandated self-regulation, third-party watchdog organizations, and donor led initiatives are examples of public forms of regulation that tend to be less voluntary and participatory, which may bolster the perception of strength without advancing intended goals of self-regulation (Cnaan, Jones, Dickin, & Salamon, 2011; Gugerty, 2008; Sidel, 2003; Szper & Prakash, 2011).

Classification schemes are important because they express what the literature focuses on with respect to self-regulation—in other words, they tell us something about what we look at in order to explain and understand self-regulation. The next section reviews research with respect to nonprofit self-regulation, which catalogues self-regulatory initiatives and explores the relationships that explain particular forms of regulation.

Emerging Self-regulation Initiatives

Classification schemes have led to a better understanding of the forms of self-regulation that are emerging in the nonprofit sector. In large part, they are based on empirical evidence relating to the occurrence and distribution of nonprofit self-regulation, and analyses of corresponding relationships and motivations that lead to and shape self-regulation.

The propagation of self-regulatory initiatives since the 1990s has exhibited diverse manifestations and uneven regional distribution despite sharing common objectives of strengthening public trust, improving sector capacity and learning, and protecting the political independence of nonprofits (Lloyd et al., 2010). However, the Middle East, North Africa, and Central and Southeast Asia have very limited self-regulation compared to Western Europe, Canada, and U.S. (Warren & Lloyd, 2009). Political, market, and nonprofit conditions underlie motives, goals, and capacity for self-regulation. Stable political environments tend to produce self-regulatory initiatives (SRIs) encouraging best practices and learning (Obrecht, 2012). In hostile political environments, self-regulatory initiatives emerge to counter state infringement on civil rights and political space of nonprofits (Gugerty, 2008). However, government antagonism with limited resources and nonprofit capacity stifles the emergence of self-regulation (Corbett et al., in press).

Globalization and devolution have amplified civil-society involvement in governance, impacting sector growth, accountability relationships, and public scrutiny (Gronbjerg & Salamon, 2002; Kettl, 2002). Nationally and regionally, however, differences with respect to nonprofit-government and stakeholder relations, market structure and resource environment, and sector infrastructure and capacity combine to determine what self-regulation responds to and how it is structured.

Bothwell (2001) identifies several trends associated with nonprofit self-regulation including calls for reforming government regulation, self-regulation via enhanced board governance, establishing codes of conduct, accountability standards, and principles of good practice (pp. 4-5). Other trends include accrediting organizations, government encouraged self-regulation, third party watchdog organizations, and accountability clubs. More generally, codes of conduct, certification schemes, information systems, working groups, and awards programs summarize the typology of self-regulatory forms that are known to exist (Warren & Lloyd, 2009). Of these, voluntary codes of conduct are by far the most common form of self-regulation, composing 65% of existing self-regulatory initiatives (Lingán et al., 2010).

Research centers on comparative analyses to map frequency, regional distribution, and structure of self-regulatory models, as well as the content and focus of compliance mechanisms (Lingán et al., 2009; Lingan et al., 2010; Lloyd et al., 2010; Warren & Lloyd, 2009). One World Trust currently maintains a database that profiles over 300 nonprofit self-regulatory initiatives (SRIs) worldwide and research library that tracks the state of nonprofit self-regulation globally. In addition to the global perspective, comparative analyses offers an in-depth picture of self-regulatory models in specific region or countries. For example, Sidel (2003) compared 17 national level self-regulatory initiatives across Asia, while Gugerty (2008) examined them across 20 countries in Africa. In Europe, Bies (2010a) examined the different effects of national legal, social, and economic environments on self-regulatory models employed by nascent and mature nonprofit sectors and how they become more alike over time. Focusing on the United States, Dale (2005) conducted a *Study on Models of Self-Regulation* in the Nonprofit Sector for the National Center on Philanthropy and the Law.

Taken in totality, this large body of empirical work catalogues sector-wide involvement in self-regulation, identifying the various features and functions of initiatives, sponsors, political and institutional contexts, as well as the practical reasons underlying nonprofit participation in self-regulation. Beyond surveying the landscape, theoretical approaches attempt to explain nonprofit motivations for participating in self-regulation, underlying relationships that affect the design of initiatives, and factors contributing the effectiveness of various models (Bies, 2010a; Gugerty & Prakash, 2010; Gugerty et al., 2010).

Empirical Approaches to Nonprofit Self-Regulation

Empirical approaches have contributed toward examining the effects and implications of nonprofit relationships in various contexts on the scope and focus of self-regulation. The approaches discussed in this section used theory in the identification of relationships to investigate and hypothesize about the effects of particular factors on self-regulation. These explorations also point to some important limitations and glaring gaps, raising important questions and avenues for future research.

Self-regulation has been examined from the perspective of collective action to both explain the forces initiating self-regulation and impeding institutionalization (Sidel, 2003). When viewed as a collective action problem, it was found that participation in self-regulation was triggered by a common threat or problem and that successful commitment and cooperation depended on strong standards and enforcement (Gugerty, 2008; Gugerty, 2010). The argument made in this approach is that the mechanisms needed to overcome collective action problems result in self-regulatory institutions that do not measure up to the goals of self-regulation. On the one hand, the presence of donor sponsored self-regulation, threats of government regulation, and scandals undermining public trust all had the effect of overcoming collective action problems in order to secure the cooperation and commitment needed to institutionalize strong standards (Bies, 2001, 2010b; Gugerty, 2010). In hostile political environments, for example, the problem of securing participation in a sector composed of diverse groups and interests was overcome by the threat of government regulation and government mandates for self-regulation, which then could be followed by sector-led national-level certification schemes. On the other hand, these mandated sector-led government regulation resulted in broad participation but weak standards, while national accreditation or certification schemes secured stronger standards and enforcement but only limited participation (Gugerty, 2008). Collective action problems were also credited with explaining multiple competing motivations and numerous overlapping self-regulatory initiatives (Sidel, 2010a).

External factors have been found to stimulate self-regulation, but it was also argued that the focus of self-regulation depended on the maturity of the sector. Principal-agent, resource dependency, and institutional perspectives were drawn on by Bies (2010a) to describe the different effects of competing motivations on self-regulation in emergent and established nonprofit sectors. From this perspective, it was shown that the focus of self-regulation depended on a society's nonprofit legal framework and attitude toward the sector, with established sectors focusing on legal compliance and responding shifting political environments, and nascent sectors focusing on professionalization, establishing legitimacy, and securing formal legal status and benefits. In her study, Bies (2010a) drew attention to the role of external pressures and sector infrastructure on the focus and scope of self-regulatory initiatives.

A collection of studies were reexamined from an economic perspective in order to posit links between external pressures and the emergence, design, and effectiveness of self-regulatory initiatives. This approach combined principal-agent and club theories to explain self-regulation as a collective effort to hold members to agreed standards so as to signal accountability to important stakeholders in order to benefit committed nonprofit actors and marginalize "bad actors" (Gugerty & Prakash, 2010).[6] It posited that some forms of self-regulation are stronger than others. It was hypothesized that the most effective type of self-regulation resembled an "accountability club" and is structured to restrict costs and benefits to membership. Through this lens it was argued that accountability clubs emerge to address expectations of external stakeholders and that the strength of standards and compliance mechanisms was dependent on the level of stakeholder oversight and enforcement. Accountability clubs were argued to benefit nonprofit members by clarifying and reinforcing external expectations via standards that address financial, governance, and mission accountability, and it is thought that they are more likely to emerge where it is possible to signal stakeholders (Reiser, 2010).

The accountability club lens was applied to explain variation in different areas of self-regulation. Subsectors such as health and education, which are traditionally subject to more government oversight and enforcement, were found to have more formalized

[6] This collection of previously published research is re-presented in an edited volume by Gugerty and Prakash (2010). Articles apply a common theoretical lens in order to focus on factors affecting the emergence, design and effectiveness of self-regulation. It explains SR as a club good subject to principal-agent dilemmas that shape collective action.

self-regulation in the form of accreditation (Bowman, 2010). And, despite the federalized regulatory structure in the United States and the proclivity toward influencing regulators at the state level, few state level associations were found because of the heterogeneity of nonprofit interests at the state level (Tschirhart, 2010). In addition, political activity perceived as a credible threat for increased government regulation was linked to broad-based support of self-regulation and the involvement of national level associations, such as the Independent Sector and Council on Foundations, in the sponsorship of sector level standards (Frumkin, 2010; Gugerty, 2010; Young, 2010).

From the accountability club perspective, it was hypothesized that sponsorship by national level associations has implications for design due to a tension between membership and strong accountability (Ortmann & Svítková, 2007, 2010). The argument made was that the need to recruit and accommodate a broad-based diverse membership leads to weak general standards and disinclination toward enforcement. Evaluating the effectiveness of initiatives from the accountability club framework found that national-level associations tended to be much weaker and less capable of instilling stakeholder trust than third-party accreditation/certification schemes (Gugerty, 2010).

The economic lens supplied by the accountability club perspective highlighted the role of resources, powerful stakeholders, and galvanizing problems. It pays less attention to internal pressures and processes, not to mention the importance of internal and external negotiation. Economic perspectives explain the pressures that lead to emergence and structure of SRIs in terms of resource needs and the demands made by external stakeholders. But they do not explain the role of normative frameworks, or the effects of change, learning, and adaptation. Evidence has shown that it is a mistake to assume a direct or clear link between external demands and the outcomes of self-regulation.

Empirical findings that defied predictions of the accountability club perspective suggested important intervening variables. Preexisting levels of social trust mediated the benefits of signaling credibility to donors via certification (Bekkers, 2003; 2010). And, rather than simply conform to external demands, accountability pressures led humanitarian agencies to "articulate their own vision, principles and standards by which performance should be judged" (Deloffre, 2010, p. 197). Thus, factors internal to the sector, such as ideas and norms or interpretation, also explain self-regulatory initiatives and their effects.

Another important finding was that self-regulation evolved as stakeholder relationships change overtime (Bies, 2010a; Sidel, 2005). Self-regulation exhibited stages as the sector adopted new information about the effects of past strategies, conditions in the nonprofit environment, and changes in stakeholder relationships (Gugerty & Prakash, 2010, pp. 295-296). In addition, models of self-regulation across regions began to demonstrate isomorphism as self-regulation became institutionalized due to coercive, normative, and mimetic processes (Bies, 2010a).

One question that remains is which stakeholders and intervention levels are best equipped to advance self-regulation. The literature reflects a general attitude that the intent of self-regulation is to bolster stakeholder confidence and concern over the best approach for achieving and measuring those ends in order to justify investment in self-regulation (Obrecht, 2012). It has been repeatedly demonstrated that government and markets play an important role in self-regulation. But if that influence involves direct control, then these relationships are predicted to reduce nonprofit independence and present a barrier to participation (Sidel, 2005). Nevertheless, links to government hierarchy have been found to be important for prompting and sustaining self-regulatory initiatives, while the type of link needed depended on policy areas and interest configurations (Héritier & Eckert, 2008).

Self-regulatory initiatives were linked to government hierarchy through threats of intervention, policies, or direct cooperation (Sidel, 2010b). Government stimulated the emergence of SRIs when there was a need for regulation and standardization in a particular subsector (Bowman, 2010), via legislative proposals for regulatory initiatives (Frumkin, 2010; Young, 2010), or due to limited regulatory capacity that undermines donor or public trust (Ortmann & Svítková, 2010). The problem is that government-allied regulation that conditions self-regulation on funding or regulatory action, such as tax-exempt status, is believed to run the risk of restraining nonprofit freedom and innovation (Sidel, 2005). In addition to the connections between government and self-regulation, the effects of third-party regulation have been examined.

Other sources of regulation besides government and self-regulation have been examined for their effects on nonprofits. The public, nongovernmental form of regulation provided by third parties has been hypothesized to be stronger in the sense that it is non-voluntary (Gugerty et al., 2010). At the sector level, watchdog organizations are presumed to provide donors and public valuable information. But drawing attention to the limits of information-based regulation, it was found that ratings did not influence donations (Szper & Prakash, 2011, p. 112). Cnaan et al. (2011) found that most donors do not use any watchdog rating (p. 392). Watchdogs, while appealing in the abstract, have not been shown to advance self-regulation in practice. And, while Bekkers (2003) found evidence that nonprofit certification correlated with increased donations, he also found that this correlation was dependent on preexisting levels of public trust. Certification only improved donations for groups that had high a degree of trust for the sector prior to certification, but it had no effect on other groups.

Despite the variety of accountability models and national contexts, a surprising level of agreement was found across initiatives on basic principles about what constitutes nonprofit accountability and effectiveness. However this consistency is not just deceptive, but also problematic because it reflects an overemphasis on external pressures to the exclusion of concerns internal to the sector. Economic perspectives focus on external factors, which dictate a need for regulatory mechanisms that redirect self-interest toward nonprofit goals. There are alternative perspectives, such as stakeholder theory and common pool resource theory. The former focuses attention on the mechanisms that promote pro-organizational motivations (Van Slyke, 2006). And the latter emphasizes conditions and practices that lead to sustained cooperation in the governance of common resources (Ostrom, 1990). Partly due to limited vantages points from which to understand self-regulation, there is much less consistency with respect to the treatment and interpretation of compliance mechanisms.

Seeking Effectiveness and Compliance

Accompanying the prevalence of nonprofit self-regulation is an interest in the compliance mechanisms that various initiatives employ due to mounting pressure for these initiatives to demonstrate effectiveness (Lingán et al., 2009). The general objective of self-regulation is to improve the effectiveness of nonprofits and, by extension, the sector. Research compared principles of effectiveness and models for compliance. A global examination of 136 initiatives found a great deal of consistency in the articulation of principles of effectiveness, which were found to involve internal and external accountability; ownership, partnership, and participation; transparency and good governance; learning, evaluation, and managing for results; independence, and respect (Lingán et al., 2009; Lingán et al., 2010). Research has shown that principles of self-regulation address the moral and democratic dimensions of nonprofit work and an awareness of the need to account for and balance multiple accountability demands. Research has also shown they reflect shared norms with respect to what it means to be an effective nonprofit. Successful self-regulation depends on the enactment of these principles in practice (Lingán et al., 2009; Lingán et al., 2010).

As previously noted, two problems for self-regulation are balancing accountability and addressing compliance. Ideally, successful self-regulation establishes and secures adherence to standards and principles that address the multidimensional nature of nonprofit accountability. The oft-made assumption is that there is a direct connection between strong self-regulatory initiatives, meaning those with strong compliance mechanisms, and self-regulatory effectiveness (Warren & Lloyd, 2009). But there is little agreement about what constitutes strong compliance mechanisms with respect to nonprofit self-regulation.

Nonprofits are accountable to institutional donors, governments that provide a legal and regulatory framework, beneficiaries, and the general public on which organizations depend for support in resources and time. Legal frameworks and formal structures aid in balancing accountability. One consistent finding is that without an established nonprofit infrastructure in place to support balanced accountability, self-regulatory initiatives are more likely to address the accountability concerns of powerful stakeholders (Lloyd & de las Casas, 2006). When nonprofit infrastructure is absent, self-regulatory initiatives primarily address the accountability concerns of stakeholders, such as governments, funders, and the public, who are capable of exerting influence; by extension, standards that directly address beneficiary accountability are few and often vague, due to the relative powerlessness of beneficiaries (Lloyd & de las Casas, 2006).

The challenges associated with balancing accountability underscore the role of power and the moral dimensions of accountability that have direct implications for the lives of beneficiaries (Lingán & Hammer, 2010). Governments generally view nonprofits as important policy players that need to prove accountability and legitimacy with respect to speaking on the behalf of beneficiaries just as donors expect them to demonstrate outcomes relevant to improving the lives of people for whom they seek to make positive change (Lingán & Hammer, 2010, p. 5). Nevertheless, there is a general lack of formal enforcement associated with self-regulation, which is typically left up to good will, and an uneven treatment of accountability dimensions. The main problem found to be associated with the lack of enforcement is that nonprofits have less awareness of expected practices (Lloyd & de las Casas, 2006).

Research has documented the intent, application, and occurrence of enforcement. Enforcement is thought to secure credibility by supporting the implementation of standards and principles. A compliance system is composed of a monitoring function and enforcement mechanism (Lloyd et al., 2010, p. 4). There is a wide range of formal and informal compliance mechanisms, including both proactive and reactive approaches that involve reporting and support along with graduated sanctions. Self-regulatory initiatives employ a wide range of strategies for addressing compliance that include voluntary commitment, complaints-based procedures, self-assessment, peer review, and third-party assessments (Lloyd et al., 2010). Still, only 47% of codes of conduct, which make up 65% of self-regulatory initiatives, contain a compliance system (Lloyd et al., 2010).

It is widely hypothesized that some models of self-regulation are stronger than others and that the enforceability of standards along with transparent assessments are essential contributors to effectiveness (Dale, 2005; Gugerty, 2009; Ortmann & Svítková, 2007). But has been little evidence of effectiveness or what contributes to effectiveness (Orbrecht, 2012). It is still not clear how enforcement contributes to nonprofit accountability. Participation in self-regulation has been shown to improve nonprofit transparency no matter what level of commitment is involved—e.g., voluntarily signing on to standards and principles, formal organizational training, or accreditation (J. Smith, 2010). The biggest problem associated with the lack of compliance systems is not that nonprofits escape punishment. Rather, without compliance mechanisms, organizations do not comprehend or have clarity about the actions and activities necessary to be in compliance with standards (Lloyd & de las Casas, 2006).

Addressing Gaps by Reframing Our Understanding of Nonprofit Regulation

This chapter reviewed trends affecting the nonprofit regulatory landscape, regulatory responses to these trends, issues involved in the debate surrounding nonprofit regulation, and current research on self-regulation. The objective is to demonstrate that while research has surveyed the regulatory landscape, gaps that remain center on how nonprofit regulation is conceptualized and the absence of a framework for capturing the range of issues and empirical findings with respect to nonprofit regulation. The section concludes Chapter Two by summarizing core findings and identifying persistent puzzles.

The literature review is meant to demonstrate that current gaps are not the result of a dearth of information about self-regulation but to how we frame nonprofit regulation to begin with. Missing in the nonprofit scholarship is a theoretical framework capable of reframing nonprofit regulation as a system of governance that depends on self-regulation. Government and self-regulation are conceptualized and studied as distinct options for regulation the sector. Yet, an accounting of the trends, issues, and research on self-regulation revealed a much more complex picture of the factors that affect nonprofit regulation and the varied roles of government and self-regulation. Scholarship has yet to integrate the sources, roles, and processes involved in nonprofit regulation. Neglecting the institutional context that explains the structure and functioning of the nonprofit sector results in oversimplifications of the strengths and limitations of government and self-regulation and contributes to difficulties associated with defining and assessing the effectiveness of self-regulation. This not only limits our ability to more fully appreciate the contributions of government, third party, and self-regulation, but also how these forms of self-regulation interact to reinforce or undermine nonprofit regulation overall.

The extant literature reveals common core findings with respect to nonprofit regulation. There is general agreement about trends changing the nonprofit environment and resulting regulatory pressures, as well as the consequences of this new regulatory climate. Points of agreement relate to implicit assumptions about the nature of the sector and the capacity of regulation for instilling responsibility. The main issues are that government regulation can potentially undermine sector autonomy and too many accountability demands overwhelm individual nonprofits, inhibiting flexibility and innovation. Nevertheless, government establishes rights, secures benefits, and provides formal structures that enable and protect participation in the sector. Practical limitations of government regulation include the availability of resources, the diversity of the sector, and the inadequacy of legal frameworks as a means to effect responsibility or moral decision-making.

Self-regulation emerges to respond to political, social, and economic conditions changing the sector's operational environment. Self-regulatory initiatives often interact with the formal legal regime in addition to elaborating diffusing standards and practices to address public trust, regulatory gaps, and sector capacity. As such, self-regulation assumes varied roles as opposed to acting as a substitute for government regulation. In fact, the sector has been shown to engage in self-regulation to interact with government in order to reform regulation and to advance the development of legal frameworks.

The remaining gaps involve the lack of agreement about the meaning of effective self-regulation and speculation about what constitutes strong self-regulation. Research still needs to investigate several areas including the rules that sector participants pay attention to and follow, the low occurrence of compliance mechanisms, the prevalence and effectiveness of informal enforcement mechanisms, factors that stifle self-regulation, and evidence that standards emphasize concerns of powerful stakeholders over those of beneficiaries. A broader conceptual framework is necessary for harnessing empirical insights and framing questions that remain.

Regulation is still understood as a form of external control that can be expressed in terms of public and private dimensions. This has focused attention on the role of powerful external stakeholder relationships for the initiation of self-regulation, as well as the development of standards and compliance mechanisms. Dicke (2002) and Van Slyke (2006) suggest approaching nonprofit–government relationships from the perspective of stewardship theory in order to consider ways in which pro-organizational motivations might suggest alternative methods besides, or in addition to, external control mechanisms for promoting accountability.

Contextual factors are called upon to supply the explanation for variation across self-regulatory initiatives, however they are not explicitly included as variables necessary for explaining the purpose or function of nonprofit regulation. Yet the literature repeatedly demonstrates that the nonprofit context is relevant for explaining not just the appropriate focus and function of regulation, but also the interdependencies between government and self-regulation. The nonprofit context supplies elements critical for explaining nonprofit regulation, including the nature of nonprofit activities, cultural factors, links between multiple levels and sources of rules, the involvement of participants in shaping regulation and translating formal rules into practices, and the effects of learning and change on the adaptation of regulation overtime. Inclusion of these factors is important for a more accurate depiction of self-regulation that can inform and guide explanations, expectations, and evaluations of nonprofit regulation. Failure to include these factors consigns self-regulation to a less defensible, weaker form of nonprofit regulation.

A conceptual framework is needed for integrating the issues and themes pertaining to self-regulation. Gaps relate to assessing effectiveness, understanding enforcement, and investigating compliance. Much empirical work is concerned with the effectiveness of self-regulation, yet little progress has been made in defining and measuring effectiveness (Obrecht, 2012). There is also much concern about the degree and strength of enforcement despite evidence of the diversity of enforcement mechanisms and multiple sources of regulation.

Nonprofit research also has yet to investigate compliance motivations of sector participants or identify the rules that they follow. Research on compliance motivations in the private sector suggests that those subject to regulation are motivated to comply based on a sense of obligation, reputational concerns, and consistency of rules with the problems they face more than by coercion or the likelihood of sanctions (May, 2005a, 2005b; Siddiki, Basurto, & Weible, 2012). Although many of these gaps are cited as areas for future research, the extant literature already thoroughly addresses the tradeoffs associated with particular models of regulation.

Chapter Three introduces the Institutional Analysis and Development (IAD) framework. It is a multitier conceptual map that provides a general language about how rules, physical and material conditions, and community characteristics occurring at multiple levels of analysis combine to affect the structure of an action situation, the interactions that occur, and outcomes that result (E. Ostrom, 2005; E. Ostrom, 2007, p. 46). Chapter Four discusses how theories of governance inform our understanding of regulation. It explains the IAD as an analytical approach that is consistent with both emergent notions of governance and characteristics of nonprofit governance. Chapter Five applies an institutional analysis to the nonprofit sector to explain the importance of self-regulation for nonprofit governance. The IAD framework offers a new lens on core issues and findings with respect to nonprofit regulation, and this method of reframing effectively illustrates the importance of self-regulation for regulating the nonprofit sector.

CHAPTER THREE. THE IAD FRAMEWORK AND NONPROFIT REGULATION

The Institutional Analysis and Development (IAD) framework was developed to examine how institutions facilitate collective endeavors, which can serve a variety of purposes other than strictly governmental or competitive objectives. The IAD is based on empirical work that explained the emergence and success of self-governing arrangements for sharing resources and solving common pool resource problems. The framework aids the analysis of a wide range of collective activities that fall on the spectrum between the ideal types of organization characterized as markets and states. It can also account for contextual factors identified as important for explaining the emergence, form, and function of the nonprofit sector. This would allow nonprofit regulation to be analyzed as "rules in context," or according to the match between the regulatory system and the nonprofit purpose and culture. Additionally, regulation can be organized according to sources of rules that constitute the sector, sector policies, and working rules that affect nonprofit practices.

The first section in this chapter introduces the IAD framework. It defines institutions as a concept and explains the analytical relationship between models, theories, and frameworks. Then it reviews the theoretical foundations and composition of the IAD framework. The next section discusses the utility of the IAD as a different lens for understanding the role of self-regulation in the nonprofit sector.

The Institutional Analysis and Development Framework

The IAD framework provides a common method and language for analyzing diverse institutional arrangements and for explaining how people use these arrangements to govern varied policy arenas and environments. It is designed to embrace complexity, rejecting the notion that institutions can be studied as ideal types or as functioning independently from the purpose they serve. Fundamentally, it is an alternative to thinking of markets and states as the sole basis for governance and the presumption that solutions to policy problems conform to strict theoretical boxes. The IAD framework emerged from Elinor Ostrom's interest in how people learn to cope with collective action challenges specific to common pool resources, which ultimately led to theory regarding the institutional arrangements involved in the governance and management of common pool resources (1990). The IAD framework is a general approach for investigating the complexity of public policy that in practice is rarely organized strictly in terms of privatization or government control, whether via ownership or direct regulation (E. Ostrom, 2005). More typically, governance involves nested levels of decision-making and institutional arrangements.

The IAD offers a way out of the box by supplying a method for examining how elements common to all institutions are uniquely configured. Thus, it is metatheoretical in that it incorporates insights gleaned from research investigating how people coordinate and control social activity into a general framework of elements that explain how people structure, change, and are affected by institutions (Kiser & Ostrom, 2000). As a framework, it does not attempt to make predictions about the configuration of institutions; rather, it allows researchers a way of thinking about what institutional elements are important for investigating a particular theoretical question (Schlager, 2007).

Institutions

According to the IAD, institutions are defined as the "human-constructed constraints or opportunities within which individual choices take place and which shape the consequences of these choices" (McGinnis, 2011, p. 170). In other words, institutions are the systems of rules that people devise to guide social interactions. Institutions, or institutional changes, do not directly impose on people yet they do influence shared understandings of communities of actors making decisions in a given situation (Kiser & Ostrom, 2000, p. 56). Composed of beliefs and values, normative practices, and regulative elements that are leveraged by resources and activities, institutions supply both the structure and meaning of social action (Scott, 2008, p. 48). They link political, social, material and physical, and economic processes (McGinnis, 2000). For analytical purposes, this means the locus of institutions resides beyond physical structures (e.g., the U.S. Capitol or New York Stock Exchange), specific organizations (e.g., Congress or city council), or formal laws and regulations (e.g., federal, state, and municipal laws, or agency rules) (E. Ostrom, 2010, p. 809). How a particular situation is governed depends on how institutional arrangements combine and interact with other societal institutions. Thus, governance typically involves nested institutional arrangements.

Models, Theories, Frameworks

The IAD is a theoretical framework employed to investigate systems of rules and norms that structure institutions, behavior within institutional arrangements, and changes in institutions, as well as in the effects of institutions over time. By isolating general elements and relationships common among theories, it can be used to examine how different governance systems enable people to solve problems (E. Ostrom, 2007, p. 26). But unlike theories that explain and predict behavior, the IAD framework in itself does not explain or predict what governance structure will emerge or how it will operate. As a general framework it can be used on its own or with related theories in order to facilitate an accumulation of knowledge, cross-institutional comparisons, and organization of analytical, diagnostic, or prescriptive inquiry (E. Ostrom, 2007, p. 26; Polski & Ostrom, 1999; Schalger, 2007, p. 293).

Frameworks, theories, and models are nested theoretical concepts that can engage a specific problem from different vantage points and with different levels of specificity ranging from the most general to the most detailed types of assumptions that a policy analyst can make (E. Ostrom, 2005, p. 27). Frameworks thus are useful for organizing inquiry. They bound inquiry and focus attention by specifying classes of variables and general relationships. Within a framework, theories explain relationships between variables and predict outcomes. Models, in turn, make very precise assumptions with regard to a narrow set of variables under certain conditions, and they can be used to refine theories (Schlager, 2007).

Theoretical Foundations of the IAD Framework

The IAD framework developed as the result of research efforts geared toward studying the effects of different paradigms on the conception of public administration and public organization (E. Ostrom, 1972; V. Ostrom & E. Ostrom, 1971). It resulted from an effort to overcome thinking of collective action in narrow terms to and explicitly acknowledge the many ways people organize. Markets and hierarchies are typically perceived as distinct institutional arrangements, requiring their own explanatory theory. In contrast, the IAD is a framework that guides theory by specifying what is going on in a particular policy situation.

The IAD framework grew out of work geared toward comprehending the institutional foundations of self-governance. As such, it is rooted in a political theory perspective that views institutions as undergirded by philosophical principles and normative values and as the primary mechanism by which people struggle with the challenge of implementing these principles and values in practice (V. Ostrom, 2008 in McGuinnis, 2011, pp. 169-183). Essentially, policy arenas are socially constructed realities that are created, and subject to change, as individuals manipulate rules that structure the incentives and deterrents guiding them toward achieving a pattern of results (E. Ostrom, 2007, p. 43).

The IAD framework is supported by a large body of empirical and theoretical work centered on explaining and understanding the numerous instances in which communities govern and regulate themselves in order to share common pool resources. It presents a different way of thinking of policy relating to social organization especially when activities do not fall squarely in either the public or the private realm (E. Ostrom, 1990, 2005). Central to this work is the belief that any theory of collective action is incomplete without a deeper understanding of self-governance, particularly with respect to the conditions that lead people to enter into self-governing arrangements and the practices they engage in to sustain cooperative activities over time. The governance structures that emerge depend on the challenges people face given what they are trying to accomplish, the norms and values they bring to this task, and the limitations and opportunities presented by the broader institutional environment. Rules are thus not independent but rather an important part of the context governing interactions in the policy situation.

The IAD pays special attention to rules. Institutions depend on rule systems to coordinate social action. Rule systems are comprised of formal and informal rules, norms, and strategies. Rules are not neutral or static. Instead they are shared understandings dependent on acceptance and action. Moreover, they are embedded within other rule systems, imbued with values, and subject to change as people adapt to their evolving environments and learn about what does and does not work. An institutional approach rejects traditional notions that collective action problems and organization have straightforward public or private dimensions. It does not begin with the assumption that people organize strictly according to the public or private nature of goods, that markets and hierarchies are the most efficient, or appropriate, forms of organization for mobilizing and sustaining collective efforts, or that behavior will be consistent across institutional contexts. Governance is expected to be contingent on particular institutional contexts and more interactive and varied than can be accounted for when focused on pure types of organization.

Composition of the IAD Framework

The composition of the IAD framework makes it a useful approach for analyzing the rule configurations and contexts that compose nonprofit regulation. As previously discussed, the IAD framework identifies broad categories of variables and the general relationships between these variables, which to some extent compose the basic components for institutional arrangements. The characteristics of these elements and how they combine are what ultimately distinguish one institutional arrangement from another.

In broad terms, the IAD framework depicts the policy context as directly exerting influence on a particular “action situation” by shaping the incentives and interactions that ultimately result in policy outcomes, which are then subject to evaluative criteria (Figure 1). The action situation is the research focus—the policy problem or area involving a specific question of interest. It is defined as the social space where people interact with one another for a variety of reasons that may involve solving problems, exchanging goods and services, sharing resources, exerting control, or engaging in conflict (Blomquist & deLeon, 2011). In the framework, the action situation denotes the conceptual unit used to analyze, predict, and explain behavior expected to occur given a particular institutional arrangement.

CONTEXT ⇒ ACTION SITUATION ⇒ INCENTIVES ⇒ INTERACTIONS ⇒ OUTCOMES

⇑ ⇑

EVALUATIVE CRITERIA

Figure 1. General overview of the IAD’s components. Adapted from *Understanding institutional diversity* (p. 13), by E. Ostrom, 2005, Princeton, NJ: Princeton University Press. Copyright 2005 by Princeton University Press.

The internal structure of the action situation, or process of interest, is broken down according to a set of variables whose values explain regular patterns of behavior and possibilities for change (Figure 2).

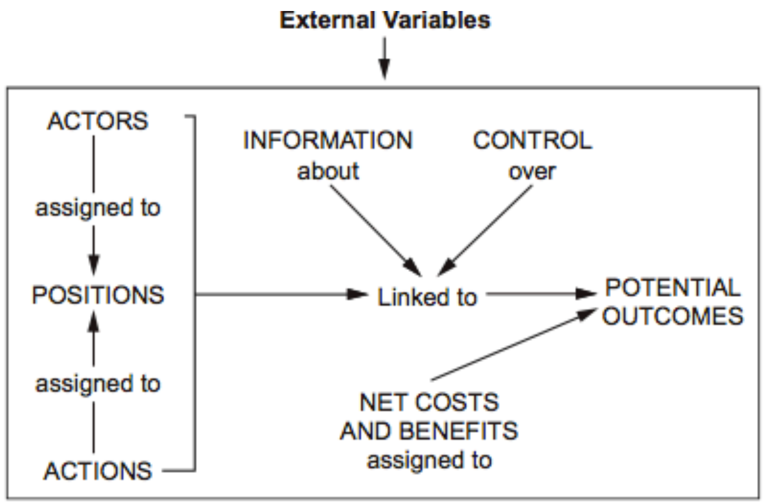

Figure 2. A close up of the action situation. Adapted from *Understanding institutional diversity* (p. 33), by E. Ostrom, 2005, Princeton, NJ: Princeton University Press. Copyright 2005 by Princeton University Press.

Building on Figures 1 and 2, Figure 3 supplies an expanded view of the relationship between internal variables that composing the action situation and the external variables considered to be part of the policy context.

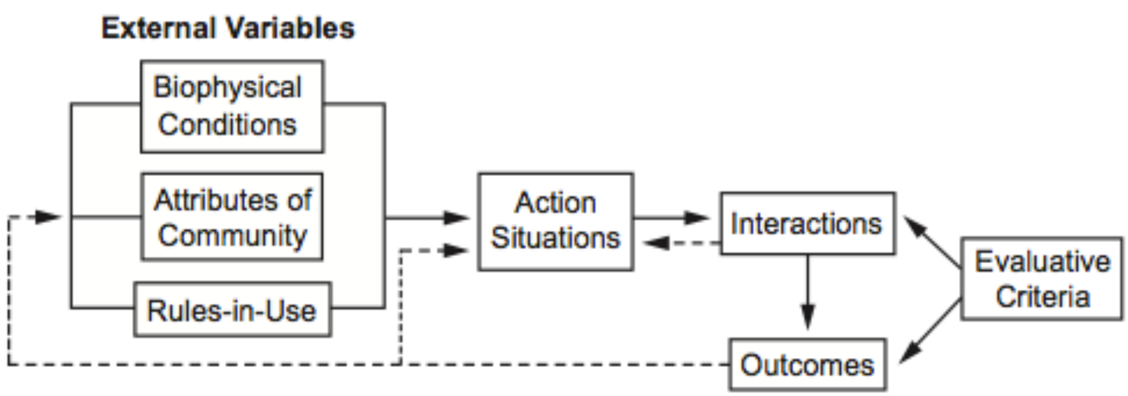

Figure 3. Institutional Analysis and Development framework. Adapted from *Understanding institutional diversity* (p. 15), by E. Ostrom, 2005, Princeton, NJ: Princeton University Press. Copyright 2005 by Princeton University Press.

Policy context. Whereas internal variables specify the structure of an action situation, the action situation is considered to be a set of dependent variables shaped by external factors. The immediate policy context is a particular social space that involves attributes of a relevant policy community, a set of challenges presented by the qualities and condition of the world serving as the primary focus of these actors' efforts, and rules that participants use to order their relationships (E. Ostrom, 2005). The relationships occur in an evolving process that results in institutional change as outcomes feedback to impact the policy context and the action situation. How the effects of outcomes and the process of collective efforts are perceived by participants depends on evaluative criteria. Policy and institutional change occur as a result of incorporating learning about what is, or is not, working and making adjustments to accommodate new conditions or circumstances. This dynamic may also be explored from different levels of analysis to understand the parameters affecting a given level of analysis or the cumulative effects of rules.

Multiple levels of rules. The IAD framework expands even further in order to illustrate that rules affecting a situation occur at several different levels of analysis. Constitutional, collective choice, and operational levels of analysis are shown in Figure 4. These are the most frequently analyzed types of rules, and they are categorized according to scope of decision-making activity. Rule levels are analytical distinctions between specific decision-making activities, such as constitutional, policy-making, and operational. Each level focuses on a different level of rules and rule-making activity that act in concert to influence operations.

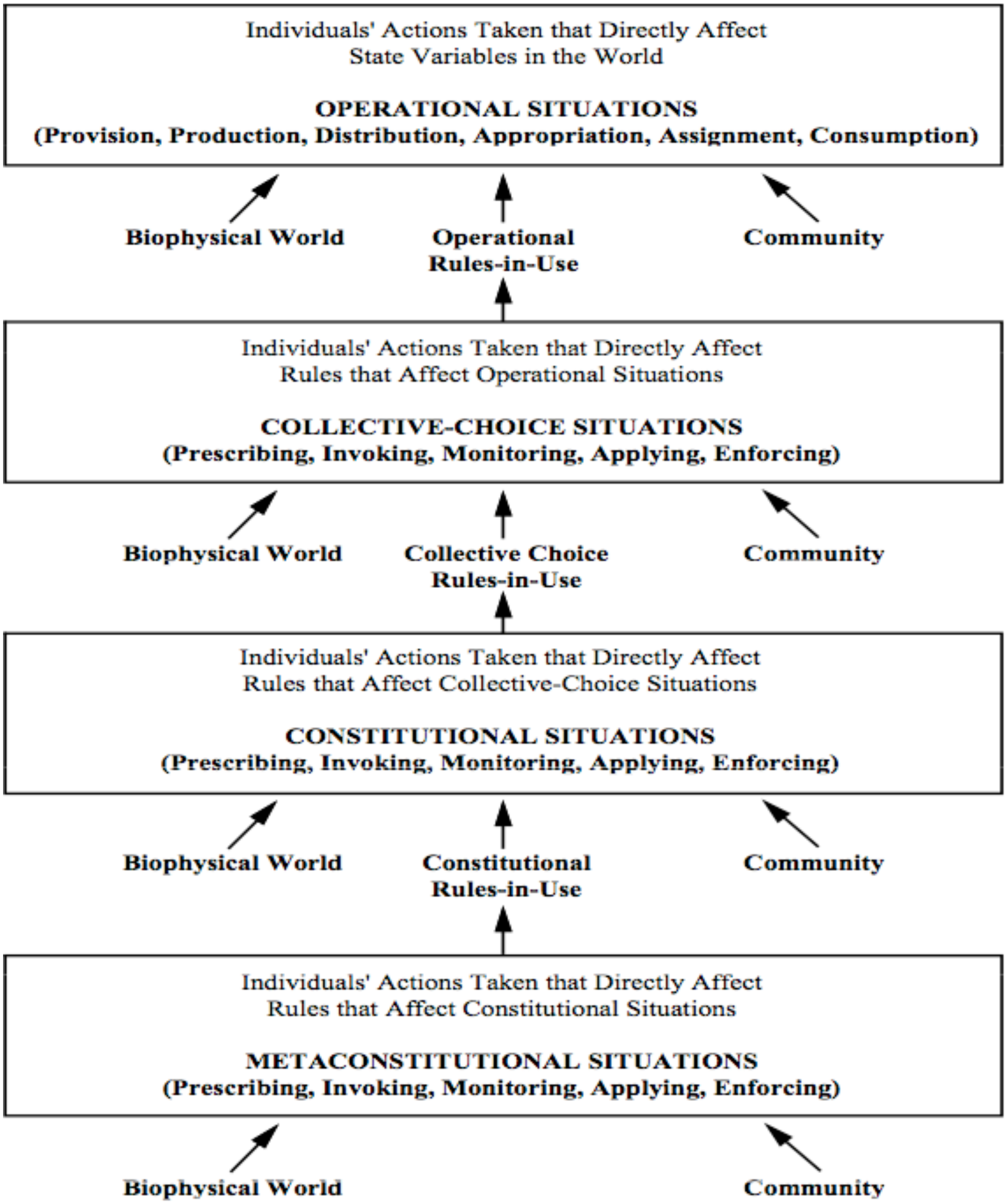

Figure 4. Levels of analysis and outcomes. Adapted from *Understanding institutional diversity* (p. 59), by E. Ostrom, 2005, Princeton, NJ: Princeton University Press. Copyright 2005 by Princeton University Press.

Rules set at one level establish the parameters within which the next level of rules must operate. The operational situation is the highest level of activity, with each subsequent level representing a deeper level situation that is increasingly more stable and difficult to change. What can be achieved at one level depends on the capabilities and constraints established by the rules at that level and those set at a deeper level. Operational rules are the highest level of rules, the set which, in conjunction with the other external variables in the policy context, directly influence decisions made by participants in day-to-day operations. Collective-choice rules establish policy affecting who is eligible to participate in operational activities and the process for altering existing operational rules. Constitutional choice rules are those concerning eligibility and the process for establishing, or changing policies. Meta-constitutional rules are less frequently studied but help to signify the perpetual nature of interdependencies approaching much deeper, more fundamental rules associated with culture or laws of nature. The methodological value of considering rule structures as involving multiple levels of analysis is that it facilitates research focused either on institutional change or on behavior resulting within a fixed set of institutional constraints. In addition to locating the level and scope of rules, the IAD framework can account for multiple sources of rules and the role of actors.

Multiple sources of rules and level-shifting. The IAD also supports empirical and theoretical investigations inquiring into the sources of rules and participant involvement in shaping rule structures. While Figure 4 demonstrates linkages between these rules and related levels of analysis, separate rulemaking levels do not imply formal settings or distinct sets of actors. Conceptualizing separate rules and rulemaking activity is an analytical device that does not necessarily involve different participants or separate arenas. Participants often shift levels to change the rules that they are subject to in the operational arena, particularly when they process new information that conditions in the policy environment have changed or they learn that their efforts are not producing the desired effects. In this way, actors are both rule-makers and rule followers (Ostrom, 2005). These levels *may* involve separate institutional arrangements, or they might represent the different levels of rule-making activity that occurs within a given institution or regular working relationship.

Level shifting occurs when individuals change internal policies regarding working rules, work within professional associations to formulate and disseminate new standards of practice, try to reform the legal or regulatory regime affecting them, or attempt to overturn current policy via the court system. Level shifting involves multiple sources of rules and different scopes of decision-making that rules address. This concept accounts for many potential venues for changing the existing rules. Figure 5 shows that rules affecting a situation may not only originate from more than one level, but also typically involve several formal and informal sources of rules existing at the same level. Moreover, the framework emphasizes the importance of considering informal forums along with formal venues for managing a sector, as well as their contribution in monitoring and enforcement. The significance of this point is that informal sources of rules, such as self-regulation, are analyzed as part of the regulatory system rather than as an alternative form of regulation or as occurring outside the regulatory process.

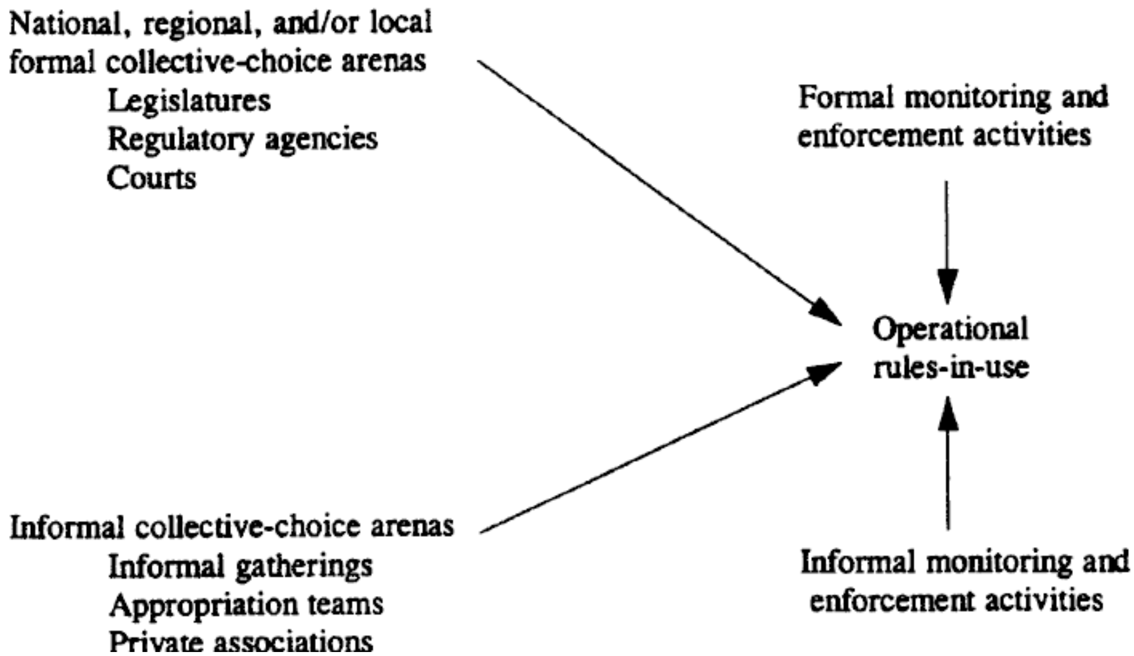

Figure 5. Relationships of formal and informal collective choice arena. The figure depicts how policy-making that affects day-to-day operations may involve more than one formal and/or informal collective choice arenas. Adapted from *Understanding institutional diversity* (p. 62), by E. Ostrom, 2005, Princeton, NJ: Princeton University Press. Copyright 2005 by Princeton University Press.

To summarize, the IAD framework takes a broader view of collective action than traditional theories, by incorporating important contextual variables and levels of decision-making activity that bear upon individual policy situations. Traditional theories view policy as occurring in a world with two types of goods, two optimal types of organizing for managing collective efforts, and dependent on a very narrow predictable model of behavior—the rational self-interested actor (E. Ostrom, 2010, pp. 644-645). Traditional approaches have not been successful at explaining the diversity that occurs within markets and states much less explaining what facilitates success for the range of organized collaborative efforts that resemble neither the form nor aspirations of ideal types of governance (E. Ostrom, 2010).

In conclusion, the IAD framework explicitly incorporates the structure of the policy situation, the relevant policy context, and different levels of decision-making, as well as related decision-making contexts, that impose upon and affect the success of collaborative policy efforts. It is a method for analyzing how a policy situation is structured by some combination of the rules in play, qualities of participants, and circumstances surrounding the task at hand. These variables bear on how people work together, what they are able to accomplish, and how they perceive the outcome of their efforts. Foundational theory suggests that long-term viability of collaborative efforts is greatly improved if participants have some level of autonomy, as well as a set of practices that supports their ability to monitor and adjust their institutions in order to integrate information about changes in the policy environment or the effectiveness of their efforts (E. Ostrom, 1990).

The Utility of the IAD Framework for Explaining the Viability of Self-regulation

The utility of the framework for the analysis of nonprofit regulation derives from both its composition and theoretical foundations. Theoretical foundations center on comprehending self-governance and the various forms of collective action people undertake along with the interactions they are meant to elicit. While arguments about nonprofit regulation invoke characteristics of the sector, theoretical approaches compatible with self-governance have not been developed or applied so as to explicitly account for these factors and relationships. The composition of the IAD framework organizes inquiry in a manner that could possibly account for the nonprofit context, multiple sources and levels of rules, and level shifting by participants to change and adapt institutional arrangements. The objective of this chapter was to discuss the IAD framework, which will be introduced in Chapter Five as an approach for reframing the debate surrounding nonprofit regulation.

In Chapter Two, literature on nonprofit regulation expresses the importance of self-regulation and, at the same time, a growing need to strengthen, assess, and validate its effectiveness. There is empirical evidence with respect to where self-regulation is occurring, the drivers of self-regulation, the various forms these initiatives assume, the nonprofit issues and concerns they try to address, and the type of compliance mechanisms they rely on. Empirical-driven research has focused on specific relationships to explain the emergence, structure, and effectiveness of self-regulation. Research suggests that the nonprofit context matters. Nonprofit context is important for explaining not only nonprofit operations, but also the issues nonprofit self-regulation responds to in different institutional settings.

The absence of a framework to connect the drivers of self-regulation with the conditions and characteristics of a particular institutional context expresses a barrier to evaluating effectiveness in terms of the particular focus and intended outcomes of self-regulation (Obrecht, 2012). As a method for comparing theoretical approaches and common features across cases, the IAD provides an opportunity to organize findings regarding the nonprofit resources, nonprofit community, and the formal and informal rules that govern relationships in the nonprofit setting.

Thus the IAD is a framework for relating government and self-regulation to the nonprofit context and for targeting whether the problems, or rules, in question involve nonprofit operations, policies, or constitutions. Rather than comparing different forms of governmental and self-regulation, we can understand how many forms of regulation combine to explain the structure of the sector. The nature of the sector prescribes a narrower role for government regulation that necessitates a larger role for self-regulation.

This chapter discussed the IAD framework. Chapter Four connects narrow conceptions of regulation to traditional theories of governance. The chapter briefly reviews regulation literature to make the point that governance theory matters to conceptualizations of regulation. The purpose is to demonstrate that traditional ideas about regulation not only oversimplify the purpose and function of regulation in practice, but also are insufficient for explaining nonprofit governance. Then the chapter discusses the IAD as an analytical approach consistent with developing conceptions of governance. The chapter concludes by discussing the characteristics of the sector that are relevant for explaining how it is structured and governed. In order to address a current gap in the literature, analysis of nonprofit self-regulation depends on making assumptions about the nonprofit sector explicit and choosing an analytical approach capable of accommodating those assumptions. Chapter Five applies an institutional analysis of the nonprofit sector to explain the importance of self-regulation for nonprofit governance.

CHAPTER FOUR. GOVERNANCE AND REGULATION

Nonprofit self-regulation research has yet to link the role of self-regulation with the nature of nonprofit governance. This problem is the combined result of how the nonprofit sector is analyzed and how regulation is conceptualized. Even though the nonprofit sector is defended as a distinct sector, nonprofit activities are typically analyzed according to what they have in common with, or how they supplement, government or markets (Lohmann, 1992). The tendency to focus on the public or private dimensions of the nonprofit sector is exacerbated by oversimplified conceptions of nonprofit regulation. Ideas about the purpose and role of regulation for advancing collective endeavors are strongly rooted in traditional theories of governance (Lad & Caldwell, 2009; E. Ostrom, 1990). Traditional theories of governance that inform ideas about regulation are not just out of step with the way regulation operates in practice, but also particularly problematic for understanding nonprofit regulation. Since the nonprofit sector resembles neither hierarchies nor markets, analytical approaches for examining self-regulation must account for other factors that set the sector apart.

The first section in this chapter reviews how traditional theories of governance influence conceptions of regulation in order to make the point that these ideas are out of sync with the purpose and functioning of regulation in practice, particularly with regard to the occurrence of and the role of participants in self-regulation. It also addresses changing conceptions of governance that alters notions of regulation in a manner that accounts for these factors, as well as interdependencies between government and self-regulation. This is relevant to the nonprofit sector in which self-regulation plays an prominent role and for which government regulation and market mechanisms run contrary to both the intent and the structure of the nonprofit sector.

The following section explains the advantages of IAD as an alternative approach for examining how rules are used in the process of governance. It is a theoretical framework more amenable to the analysis of nonprofit governance because it incorporates formal and informal processes and institutions that guide collective endeavors. The IAD can be used in policy analysis to examine and explain the intricacies of institutional arrangements as they occur rather than how they are depicted in traditional theories of governance.

The last section addresses characteristics of the nonprofit sector that must be accounted for in order to understand the role of self-regulation in nonprofit governance. The nature of the nonprofit sector is the implied basis for the broader debate surrounding nonprofit regulation. Currently, assumptions about nonprofit regulation are not consistent with analytical approaches used to study self-regulation. This section sets up Chapter Five, which applies more particularly an institutional analysis of the nonprofit sector to explain the viability of self-regulation for nonprofit governance.

Theories of Governance and Regulation Research

This section explores the gap between ideas about regulation stemming from theories of governance and what insight the literature offers about how regulation operates in practice. Juxtaposing regulation research with conceptions of regulation supplied by traditional theory underscores the inadequacy of these approaches for explaining nonprofit regulation in a manner that makes a case for the importance of nonprofit self-regulation. Policy analysis increasingly involves studying the role of regulation in governance. Although regulation is still narrowly understood as originating from government, new governance literature looks at the relationship between government and self-regulation in various policy arenas.

Literature on regulation demonstrates that traditional ideas regarding regulation are not consistently supported by research findings about how rules operate in practice to both enable and control collective endeavors, particularly those outside the realm of highly specific problems and organizational structures, such as hierarchies and markets. This is because traditional theories rely on simplified models of behavior and relationships occurring in specific situations, and because they fail to explain how people interact with or change the rule structures affecting them. This means that government regulation and self-regulation both fall short when nonprofit regulation is analyzed from the vantage point of traditional theory. In the nonprofit context, this perspective only serves to portray government and self-regulation in the narrowest of terms. Government regulation is overbearing and antithetical to the purpose of the sector while self-regulation is assumed to be a weaker form of regulation absent strong market incentives or the force of law (Dale, 2005; Gugerty & Prakash, 2010). Yet there is theory that supports a perspective on rules that is more nuanced than viewing them as external control mechanisms. People use regulation to facilitate collective action and sustain cooperation, and rules affecting behavior originate from many sources and address different levels of decision-making.

Traditional Theories of Governance

Traditional theories of governance continue to strongly influence ideas about regulation despite the challenges of both empirical evidence and theoretical perspectives. They are embedded with assumptions about individual behavior, collective action, and mechanisms of control that are not always made explicit (E. Ostrom, 1990). According to traditional theory, the appropriate governance model and regulatory strategy depend on the collective activity people are undertaking, particularly whether it has a public or private orientation. The two problems mentioned above immediately surface. First, the nonprofit sector is not adequately explained by, or accounted for, in theories of the state or firm. As a result, the second problem is that the traditional approach fails to accurately describe nonprofit regulation and the participation of the nonprofit community in regulation. Nonprofit regulation is particularly complex because even though the sector is composed of autonomous self-governing organizations, the sector is also characterized by significant interdependencies with the government and economy.

Assumptions regarding the source and function of rules are rooted in ideas about governance and control. Traditional theory views states and markets as the primary mechanisms for governing economic activity. This presents dichotomous choices between regulation that is associated either with the state and its use of centralized control or with laissez faire capitalism that is self-organized, self-policed, and self-sanctioned (Lad & Caldwell, 2009). Within this framework, the choice between governance mechanisms becomes dependent upon whether the nature of an endeavor involves public or private goods,[7] a calculation that is presumed to be uncontested, clear, and classifiable (Kaul & Mendoza, 2003). Individual behavior is assumed to be perfectly rational and predicated on the type of economic activity undertaken, which dictates whether the state or private interests organize this activity (Samuelson, 1954). The role government assumes, or should assume, in regulation then becomes a matter of perspective that dictates the application of either direct command-and-control regulation or economic devices. This oversimplification has been disputed but remains evident in analyses.

Several real-world inconsistencies preclude this simplified view of organization. Collective action problems people face when organizing a social or economic activity are not always classifiable along pure public or private dimensions; plus, collective action problems often assume characteristics attributable to technological, logistical, material, or physical challenges (V. Ostrom & E. Ostrom, 1977). Moreover, the logic of organizing based on the assumption of perfectly rational, predictable behavior has long been in dispute (Simon, 1955, 1991). Norms and values have proven to be just as, if not more, important for explaining whether social activities are organized in the public or private realm (Benson, 1994; Cowen, 1993; Cornes & Sandler, 1994; Malkin & Wildavsky, 1991). Analysis emphasizing formal institutions for governance underestimates the significance of informal rules and norms for explaining behavior (Denzau & North, 1994). Institutions also help draw distinctions between the challenges presented by a collective endeavor and the governance system people choose to coordinate their efforts (E. Ostrom, 2000a, 2000c).

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[7] For simplicity goods refers to the focus of economic activity whether this involves producing, providing, or sharing goods, services, or resources.

Although nonprofits are not governed by market principles, because they operate as private organizations, economic approaches are often defended as appropriate for explaining nonprofit behavior (Dollery & Wallis, 2003). But analyzing particular transactional relationships in the nonprofit sector is different than theorizing about nonprofit governance with an economic lens. Market mechanisms employed in governance derive from neoclassical economic theories, which focus attention on individual behavior rather than on group behavior or the interaction between various regulatory institutions (Gunningham & Reese, 1997). Individual behavior is presumed to be a function of self-interest and the public/private dimensions of the particular activity being undertaken. Individual behavior, in turn, is aggregated to predict the types of governance dilemmas likely to arise when people undertake collective activities involving public goods or shared resources (Hardin 1968; Olson, 1965). The assumption that people do not deviate from rational self-interested behavior regardless of the situation means we are unable to sustain cooperation in situations involving limited resources without some sort of external control. This means recommendations for policy options are likely to involve the use of regulation in order to restrict behavior and induce the contribution of tax dollars; they can employ economic tools, such as private property rights, user fees, and the enforcement of contracts, to establish the necessary conditions for facilitating regulation via market forces (Buchanan & Tullock, 1965; Coase, 1960, 1974). Without the force of law or such incentives to impose strong sanctions, self-regulation is presumed to be a weak mechanism for overcoming collective failure (Dale, 2005; Gugerty & Prakash, 2010; Ortmann & Svítková, 2010).

But traditional approaches that present governance options limited to a dichotomous policy choice between state control or privatization, as already noted, fail to account for the diversity of existing institutions and institutional configurations devised by people to facilitate and regulate all types of social activity (E. Ostrom, 2000c, 2003, 2010). E. Ostrom (1990) demonstrated the inadequacy of these options for explaining why and how people engage in self-governance in order to share and manage natural resources. Traditional approaches greatly oversimplified both the organization of society and how regulation operates in practice.

After all, society is not neatly organized according to distinct public and private activities. Private voluntary involvement in the provision of public goods actively took place long before Samuelson (1954) theorized that this type of activity was problematic and that the state was necessary to ensure adequate provision of public goods in the economy (Desai, 2003). Public and private concerns, moreover, are not fixed constructs but rather socially constructed by way of societal or policy choices. In other words, based on values, society inevitably makes political choices about what falls into the public realm irrespective of economic assessments of the "nature of the good," making it counterproductive to approach policy analysis as though collective activities had inherent characteristics that alone could dictate clear policy solutions with respect to governance (Malkin & Wildavsky, 1991). While there is merit to articulating the economic dimensions that challenge the ability to realize policy goals, it must be done within a framework that also accommodates choices that society makes about what to produce or provide and how (Kaul & Mendoza, 2003), not to mention what it values. The voluntary provision of public goods exemplifies a regularly occurring social and economic activity that differs in important ways from the public or commercial sectors. Furthermore, the complexity of public problems and governance landscape necessitates collaborations across political jurisdictions, private interests, and areas of expertise (Kaul, Conceicao, Le Goulven, & Mendoza, 2003). For all of these reasons, the rules employed in governance rarely fall in the sole domain of states or markets and more commonly involve complex and interdependent relationships. In sum, regulation tends to be much more interactive and multifaceted in practice than the way it is portrayed in traditional theories of governance.

Another problem involves inconsistencies between how traditional theories portray regulation and what the literature reveals about how regulation functions in practice. The oversimplification of governance not only is inaccurate but also lends itself to black and white ideological stances that overstate both the burden of government and the capabilities of market regulation (Cooper, 2009). A more realistic portrayal of the governance environment is one of a global mixed economy in which many of society's goods and activities have mixed dimensions that involve coordination characterized by interdependencies (V. Ostrom & E. Ostrom, 1999). This more complex view of the organization of society means that regulation cannot be clearly defined in terms of government control or market incentives.

Regulation in Practice

The new governance landscape has changed conceptions about the source, purpose, and function of regulation, due to devolution, globalization, the complexity of public problems, and public-private coordination (Gunningham, 2009; Gunningham & Rees, 1997; Héritier, 2002; Lad & Caldwell, 2009; Ruhl, 2006). It draws attention to oversimplified approaches for studying the purpose of regulation and how rules operate in practice. It also underscores the limits of resorting solely to government regulation when addressing "wicked" problems, the growing role of self-regulation for implementing public policy, and the policy interactions between various levels of government and private regulation. This has led to interest in the institutional arrangements used to coordinate governance, and how to make regulation responsive to new information, learning, and change.

The previous section noted the inadequacy of traditional theories of governance for explaining regulation. In practice, regulation is indeed complex. For the most part, rules are highly dependent not only on what people are trying to accomplish but also on how, or whether, people interpret, respond to, and incorporate rules. Additionally, regulatory pluralism is beginning to be seen as the norm in many policy arenas due to the wide range of policy actors involved in regulation either through monitoring industry activity, educating the public, and generating new standards of practice or by playing a part in initiating and informing government regulation (Grabosky, 2012, Gunningham & Sinclar, 1999; Scott, 2004). In general, regulation is increasingly seen as a dynamic and interactive process that derives from and is contingent upon different sources and levels of activity.

The way regulation is understood—what it is and how it works in practice—has analytical importance and policy relevance because it directly impacts regulatory prescriptions and expectations of what regulation can accomplish. Rules are important for regularizing interactions and are inseparable from institutional context. Hence, when we only consider formal rules and how they restrict behavior, we limit our understanding of regulation. Although regulation is commonly thought to be coercive, it plays as much a role in enabling social action as it does in constraining it (Scott, 2008, pp. 52, 136). Moreover, formal rules often reflect, or are reinforced by, normative structures. Thinking in terms of institutional logics allows for a consideration of how formal rules are intertwined with beliefs and norms (Andrews, 2011). It also cautions against policy strategies that presume institutional change is as simple and straightforward as changing formal rules.

Regulation is increasingly recognized as a dynamic, ongoing interaction between top-down external pressures and bottom-up initiatives and responses encompassing actors who interpret expectations, engage in sense-making activities geared toward reconciling external expectations with the need for identity maintenance, and establish practices that reflect an acceptance, modification, or revision of expectations (Dobbins & Sutton, 1998; Eddlemen, Uggen, & Erlanger, 1999). The real-life complexity of regulation makes sense when rules are recognized as a symbolic phenomenon that cannot impose directly on the nature of things in reality (V. Ostrom, 2008). As symbols, they are subject to human filters and processes. In order to effect change, rules must first be known and accepted, then, translated into new strategies or practices, and these new strategies must result in behavior that actually produces the desired outcome (Kiser & Ostrom, 2000, p. 56; Ostrom, 2000d).

Research on the limitations of government regulation, compliance motivations, and self-regulation reaffirms the overall dynamic involved in regulation and supplies insight into how rules affect behavior. A well-noted limitation of government regulation is resource scarcity relative to the enormity of activities subject to government oversight

(Fiorino, 2006). Another limitation is that legal frameworks are more effective at articulating policy goals, directing resources, reconciling disagreements, and allocating presumptions than they are for preventing bad behavior (Howard, 1994). Moreover, several negative consequences are associated with an overreliance on legal devices to prevent misdeeds. Relying too heavily on legal strategies not only fails to ensure compliance and organizational integrity, but also tends to cultivate indifference, frustrate social goals, and undermine organizational responsibility (Howard, 1994).

Compliance research explains what rules matter and why. The rules that most affect behavior are the ones that people understand, agree on, and follow. Findings suggest a complex relationship between rule structures and compliance motivations. The perceived appropriateness of regulations, involvement in rulemaking, consistency of rule components, a sense of obligation, and fear of social disapproval all affect levels of compliance (Siddiki et al., 2012). Moreover, awareness of violations by peer groups and the possibility of damage to peer reputation seem to act as stronger enforcement mechanisms, or deterrents, than stronger or more coercive sanctions (May, 2005a, 2005b; Winter & May, 2001).

The message is that people subject to regulation are far from passive or reactive when it comes to regulation. They have a sense of responsibility toward a working peer group and shared activity, and they display some investment in whether rules are consistent with this purpose. Another research focus addresses the importance of participation in shaping regulatory environments.

Regulation and Governance

The role of regulation in policy governance is similarly complex. It involves not just government and self-regulation, but also interpretations and responses of policy actors based on their knowledge and experience in a particular policy arena. In the private sector, a regulatory mosaic has emerged with government, consumer groups, industry and professional associations, and nongovernmental organizations, each viewed as legitimate sources of regulation (Lad & Caldwell, 2009). Research investigating the new governance landscape links different sources of regulation and levels of regulatory activity, which combine to govern various policy arenas. Comprehending regulation beyond the bounds of government requires considering actors as active rule-makers as well as rule followers (E. Ostrom, 1990). This means thinking about how we define regulation and explain the role of policy actors in shaping regulation.

Defining regulation. Regulation is defined here as the rules employed in the process of governance. This definition intentionally broadens the scope of regulation beyond formal rules to include informal precepts and norms that originate from sources other than government. The public administration literature generally interprets regulation as a specific policy tool at the disposal of government, which operates by setting limits on behavior and enforcing those limits by resorting to a range of coercive sanctions (P. Cooper, 2009, p. 212; Salamon, 2002). Government regulation refers to the rules[8] produced by agencies as the result of rulemaking processes that transform information into authoritative statements of law or policy (Kerwin & Furlong, 2011, pp.

[8] In the Administrative Procedure Act (1946): rule is defined as "the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy" (Kerwin & Furlong, 2011, p. 3).

3, 152). In contrast to this narrow definition, regulation should be described as increasingly dynamic, spilling over the boundaries of government to involve experts, political concerns of citizen groups, and the participation of those being regulated (P. Cooper, 2009; Fiorino, 2006; Kerwin & Furlong, 2011). Legal scholarship similarly confronts the idea that while government regulation may represent a specific set of rules and processes, the effectiveness of government regulation relies on how people understand and interpret legal expectations and the private regulations they promulgate in response to those expectations (Ayres & Braithwaite; 1992; Dobbins & Sutton, 1998). The connection and relationship between government and policy actors is reflected in this paper's definition of self-regulation.[9] Self-regulation is differentiated from automatic "self-regulating" market mechanisms (A. Smith, 1776/2010), and is understood as a concerted effort by policy participants in order to both respond to government regulation and shape the regulatory environment. Hence, the interaction between rules and the role of actors is important for understanding governance.

Role of policy actors. Participants at the industry or sector level, or within a policy area, frequently shape their own regulatory environments by interacting with government to inform government law and regulation and also by establishing and diffusing normative structures and best practices (Braithwaite & Drahos, 2000; Dobbins & Sutton, 1998; Fiorino, 2006). In many instances, government stimulates these interactions and self-regulatory initiatives due to uncertainty, the need for expertise,

[9] The definition of self-regulation was first provided in Chapter Two. Self-regulation is a concerted effort by policy participants. Self-regulation refers to formal efforts and processes performed at industry level by member organizations that establish and/or monitor compliance with written principles, standards, regulations or laws, usually industry specific, where enforcement, if any, is structured without government (Corbett et al., in press).

limited capacity, and/or public-private and intergovernmental collaboration. Government may initiate self-regulation by way of threats, incentives, or soliciting input.

Self-regulation is typically considered a reaction to governmental pressure or threats, yet it often serves as a proactive, adaptive, or cooperative regulatory device (Héritier & Eckert, 2008). In most cases, self-regulation is linked to government hierarchy in some manner, whether through the legislative process, bureaucracy, or judicial system (Bartle & Vass, 2005; Cafaggi, 2006; Héritier, 2002; Héritier & Eckert, 2008, 2009). How self-regulation links to and interacts with government regulation is dependent on policy goals and actors in a particular sector; but regardless of contextual variation, self-regulation has increasingly become a regular part of the policy process.[10] Relationships with government and the role government assumes in regulation have resulted in variations in both the form and function of self-regulatory initiatives (Bartle & Vass, 2005). Involvement in self-regulation serves several purposes, including raising sector awareness of legal requirements, establishing and institutionalizing norms, habituating good practices and moral conduct, and serving as a mediating institution between organizations and government (Gunningham & Rees, 1997).

Interactions between rules. Portraying governance differently also means that regulation is more than a simple choice between utilizing direct government regulation or market mechanisms. The private provision of public services, for example, may incorporate or resemble elements of market activity, but this does not justify the appropriateness or workability of regulating activities by way of market mechanisms. Just because they can be delivered privately, public services still cannot be equated with

[10] See NewGov: New modes of governance project for more on the role self-regulation in governance. Retrieved from http://www.eu-newgov.org/public/Research.asp

private services delivered in the commercial sector (V. Ostrom & E. Ostrom, 1999). The complexity of governance is accompanied by a need to reconsider regulation for a more accurate understanding of how rules help to structure and facilitate these interdependent relationships.

Again, the picture of regulation that begins to emerge does not comport with how it is portrayed by traditional theories of governance. Government regulation and self-regulation do not exist or operate independently, and the overall regulatory configuration does depend on the broader policy context. It is problematic from a policy standpoint to view government regulation as overly burdensome in comparison to highly efficient private sector approaches, because this ignores interaction between the sectors and often relegates policy decisions to an ideological debate over government regulation or deregulation (P. Cooper, 2009). The caricature of regulation interferes with a more subtle understanding of the dynamics involved, compartmentalizing regulatory options in terms of bureaucratic or market mechanisms.

Intractable social problems, environmental degradation, and internet security are just a few examples of policy areas that cannot be addressed solely by relying on regulatory tools falling strictly within the confines of market or state governance. The complexity of public problems has necessitated regulatory solutions that defy jurisdictional and sector boundaries and are capable of adapting to new information and changing conditions (Gunningham, 2009; Karkkainen, 2002, 2004; Ruhl, 2006). Good policy analysis and policy solutions, therefore, depend on understanding how public and private regulation are mutually supporting and then working with the interplay between government and citizens for creative approaches that enable rather than impede solutions to policy problems (Ayres & Braithwaite, 1992).

Regulation is both dynamic and contingent on policy actors and policy context. The challenge for regulatory policy, however, is moving beyond theories of the state and the firm and viewing governance as a mechanism for social coordination. This requires theoretical approaches and frameworks that can more realistically depict institutional interdependencies in order to serve as a basis for research and policy prescriptions.

Governance. Governance is an important concept for understanding how policy is formed, changed, and implemented. Governance is "the process by which the repertoire of rules, norms, and strategies that guide behavior within a given realm of policy interactions are formed, applied, interpreted, and reformed" (McGinnis, 2011, p. 170). Traditional views of governance as being associated with either the organizational hierarchy of the state or market mechanisms have given way to seeing governance as a form of social coordination that crosses institutional and organizational boundaries (R. Rhodes, 2000).

Public policy depends on the actions of governments, private for-profits, and nonprofits, making policy decisions institutionally dependent not only on other institutions but also on institutional arrangements "nested" within one another (Blomquist & deLeon, 2011, pp. 4-5). To capture these interdependencies, it is necessary to conceptually separate the structure and functions of government from the process of governance, which relates to the process of how public policy gets done in practice (Kettl, 2002, p. xii). In this respect, the concept of governance incorporates formal and informal processes and institutions that guide collective endeavors no matter what the role of government may be (Nye & Donahue, 2000). This typically results in a composite of activities involving multiple levels of decision-making and overlapping relationships.

This section made the connection between narrow conceptions of regulation and traditional theories of governance. It argues that analytical approaches relating to these theories are insufficient for understanding how regulation operates in practice and the role of regulation in governance. The next section continues and broadens the discussion of the IAD as an alternative and better analytical approach for explaining the role of regulation in nonprofit governance. The IAD is a theoretical framework used in policy analysis to explain and understand the intricacies of institutional arrangements as they occur rather than how they are depicted in traditional theories of governance. This approach accounts for the composite nature of nonprofit regulation, which involves the interplay between government regulation and self-regulation. The last section discusses the nature of nonprofit governance to illustrate the relevance of an institutional perspective for understanding the role of self-regulation.

The IAD Framework as an Alternative Lens for Understanding Governance

The IAD framework represents accumulated efforts to understand the nature of governance and how people devise their own systems of governance (Ostrom, Walker, & Gardner, 1992). As such, it is rooted in a political theory perspective that people create, employ, and change institutions in order to animate their philosophical beliefs and normative values (V. Ostrom, as cited in McGinnis, 2011, p. 170). The observation that people play a role in their own governance led to empirically tested assumptions about individual behavior, the nature of institutions, and the relationship between individuals and institutions. The overarching presumption is that policy relevant explanations of collective action are dependent on a deeper appreciation for human beings' involvement in and capacity for self-governance (E. Ostrom, 1990).

Individual behavior is presumed to be highly dependent upon the rules, norms, and relationships embedded within a particular situational and societal context rather than predictably rational or consistent across situations (Schlager, 2002). Likewise, institutions are not understood as external entities separable from policy actors. While institutions are seen as highly influential in structuring behavior, the role of actors and resources must also be accounted for in the creation, reproduction, and alteration of these structures over time (Giddens, 1979). For that reason, policy outcomes are the aggregate result of complex interdependent decision-making processes and relationships. This is the dynamic reflected in the IAD's microinstitutional approach, which is primarily concerned with the interplay between individual behavior and the institutional arrangements used to structure incentives and social interactions (Kiser & Ostrom, 2000, p.57; E. Ostrom, 2000d).

The argument presented here is that the IAD is a framework that can organize what is relevant for explaining nonprofit regulation and for understanding why regulation operates differently in the nonprofit sector than it does in the public and the commercial arenas. It offers a big picture view that helps clarify implicit and explicit assumptions underlying arguments and research relating to the restrictive nature of government regulation and the importance, as well as the presumed weaknesses, of self-regulation. The IAD framework thus offers a perspective on nonprofit regulation that confronts two problems that are currently barriers to advancing research on nonprofit self-regulation: it can help examine the interaction between government and self-regulation that is more in line with research about how regulation operates in practice, and it addresses a gap with respect to the absence of theoretical framework capable of linking the structure of the nonprofit sector to how the sector is governed.

Using the IAD affords a different approach for examining how rules are used in the process of governance. The previous section explained that traditional approaches depict regulation in terms of discrete forms of external control mechanisms—the tools used in governance—based on either direct government control or market incentives. It also drew attention to the shortcomings of traditional approaches by comparing the picture of regulation painted by governance theories with literature concerning how regulation operates in practice. The regulation literature draws attention to several important factors that are not explicitly addressed by traditional perspectives.

The achievement of intended policy outcomes is shown to depend on the match between rules and particular policy context, as well as on the interpretations and responses of policy participants. Furthermore, conceptions of regulation are changing, given the complexity of public problems and the changing nature of governance. These factors explain the challenges for government regulation, the extent of private regulation, and the growing interdependencies between public and private regulation in practice.

Governance structures that emerge to support collective activity are expected to take on varied configurations due to circumstances presented by a given institutional context. The IAD facilitates analysis of such diverse institutional arrangements used to guide a wide range of collective activities that are not meant to operate under government control, or as competitive markets. This is relevant to the nonprofit sector, for which government regulation and market mechanisms run contrary to both the intent and structure of the nonprofit sector. Despite sector interdependencies, the predictions traditional approaches make about what stimulates and sustains collective activity do not mesh with the nonprofit sector.

In contrast to traditional theories of governance, the IAD depicts rules as operating in tandem with a set of actors and resources in a particular policy context and subject to constraints and opportunities established by broader rule systems. Thus, it directs attention to the overlap and interaction between different sources and levels of rules. Collective activity does not occur solely under the direction and control of the state or market. Theory suggests that the success of self-governing institutions has to do not only with how a decision environment is structured, but also with practices that accommodate new information and learning regarding the outcome of efforts and recourse to institutions that allow participants to adapt and change accordingly (Ostrom, 1990).

Chapter Three introduced the IAD as a theoretical framework that can draw attention to institutional context in order to explain the structure and governance of the sector. The advantage of the IAD framework is that it can capture both how rules are used to structure interactions in the nonprofit context and the complex dynamic that the literature recognizes as inherent to the process of regulation.

The broader debate surrounding nonprofit regulation depends on the taken-for-granted assumption that regulation is different as it pertains to the nonprofit sector. Thus, it is important to make the nonprofit context an explicit factor when analyzing the composition of nonprofit regulation and the role of self-regulation. The next section discusses factors related to nonprofit governance that sets it apart form the public and private sectors. This section sets up Chapter Five, which applies more particularly an institutional analysis of the nonprofit sector to explain the importance of self-regulation for nonprofit governance.

Nonprofit Governance

Nonprofit self-regulation research has yet to link the role of self-regulation with the nature of nonprofit governance. The nonprofit sector resides at the intersection of public and private realms, and nonprofit governance is a means for translating abstract notions regarding the purpose of the sector into effective and ethical actions on the ground. Institutional context and organizational structure are the primary determinants of nonprofit motivations and behavior, which underscores the significance of social pressures, norms, and rules (DiMaggio & Anheier, 1990; Salamon & Anheier, 1992). It is these differences, rather than the similarities between the sectors, that have significance and analytical importance for nonprofit governance and its effect on operations (Allison, 1983; Rainey; 2009; Rainey, Backoff, & Levine; 1976).

The institutional foundations of the nonprofit sector are relevant for explaining what sets the nonprofit sector apart, how nonprofit organizations are structured, and the impact of legal frameworks, normative structures, and operational strategies on the functioning of the sector. It cannot be emphasized enough that nonprofit regulation extends beyond the formal legal regime and that the forms and sources of regulation governing the nonprofit sector are not independent from each other, the larger society, or nonprofit context. While nonprofits are subject to government laws occurring at all levels of government and government regulation—e.g., rules formulated by the Internal

Revenue Service, this formal legal framework also establishes sector autonomy and rights that limit the role of government regulation and elevate the role of self-regulation. Moreover, self-regulation takes on a different role in the nonprofit sector that is transformative in nature due to the demands of nonprofit accountability (Lloyd, 2005).

The nonprofit sector is an amalgamation of diverse institutions and organizations. This fact alone tends to be enough to explain the absence, impracticality, and undesirability of a comprehensive theory of the nonprofit sector (Ott, 2001). There are many different vantage points from which to understand the purpose of the sector, as well as the behavior of nonprofit actors and organizations. Historians, economists, sociologists, political scientists, psychologists, social psychologists, and anthropologists have presented a range of theoretical explanations for the existence and function of the nonprofit sector in society that sheds light on the distinctive qualities and dimensions of the nonprofit sector (Worth, 2013). The distinctiveness of the sector exists on multiple levels, with the purpose of the sector, or its place in society, serving as an important factor determining the characteristics of nonprofit organizations.

Historical perspectives depict the sector as serving a fundamental role in society that is associated with traditions relating to citizenship and charity (Arnsberger et al., 2008; Hall, 2001; Harris, 2010; Ott, 2001; Salamon, 1999). Rather than settle on an instrumental view of what nonprofits do in lieu of markets and states, the purpose and role of the sector occurs in relation to and inseparable from the rest of society (Brinkerhoff & Brinkerhoff, 2002; Hall 2001; Harris 2010; Salamon & Anheier, 1998; Young 2000). Documentation of social norms and legal systems dating from the 1200s are evidence of a general acceptance of philanthropy as serving a fundamental role in society (Fishman, 2007a).

In the United States, the philosophical basis for voluntary action is rooted in a distrust of government and cultural preferences toward coordinating private action for public ends, which serves as the foundation for democratic society (de Tocqueville, 2002). Associational activity that predated the republic, not to mention government's present day involvement in addressing many of society's needs, is now codified and formalized through law, regulation, and tax code (Arnsberger et al., 2008). Institutionalization of the sector has led to some defining characteristics of nonprofit organizations. They are private, voluntary, and self-governing entities that do not distribute profits but instead are organized to serve a specific public benefit (Salamon, 1999, pp.10-11). These characteristics underscore that similarities with the private and public sectors are not useful for understanding the nonprofit sector, since public and private dimensions combine to produce an analytically distinct sector (Lohmann, 1992).

The institutional foundations of the sector necessitate a nuanced understanding of regulation, which is critical for explaining nonprofit regulation and the role of self-regulation. Because nonprofits respond to, interact with, and are subject to a political-economic context, they are a product of multiple sources and types of social regulation. Hence, conceiving of regulation more broadly is essential for examining how rules combine to structure the nonprofit sector as an institution that depends on autonomy and independence even while the nonprofit operating environment is simultaneously enmeshed with government and markets. Doing so, however, requires an approach that can incorporate different sources and levels of rules that combine in the nonprofit context. This is a contribution of the IAD framework.

Analysis or argument about nonprofit regulation is inevitably based on assumptions about the fundamental nature of the sector and nonprofit behavior. Thus, analytical approaches must capture, and be consistent with, features relevant for explaining the nonprofit sector. The purpose and mechanisms of regulation are inextricably tied to theories about the effects of regulation with respect to the sector or individual nonprofits (Obrecht, 2012). A critical challenge is not to conflate macro and micro level questions relating to nonprofit regulation, particularly the role of regulation in facilitating the sector versus its ability to prevent, or protect stakeholders from, misdeeds and malfunction (Dale, 2005). The literature review in Chapter Two shows that the extant research focuses on the strengths and weaknesses of various forms of nonprofit regulation, while theoretical approaches explain how particular relationships influence the emergence of self-regulation and the effects of these models on individual actors. In contrast, an institutional analysis in Chapter Five explores the assumption that characteristics relating to the nonprofit sector better explain the role of self-regulation.

The next chapter applies an institutional analysis on the nonprofit sector to explain the importance of self-regulation for nonprofit governance. The IAD framework offers a new lens on core issues and findings with respect to nonprofit regulation, and this method of reframing effectively illustrates the importance of self-regulation for regulating the nonprofit sector.

CHAPTER FIVE. USING THE IAD TO REFRAME NONPROFIT REGULATION AND THE ROLE OF SELF-REGULATION

This chapter discusses and illustrates how using the IAD to analyze facets of the nonprofit sector better explains the role of self-regulation in nonprofit governance. This approach for understanding nonprofit regulation makes the purpose of the sector, as opposed to just its instrumental dimensions, the analytical focus of nonprofit regulation. Making the nature of the sector central to the analysis of nonprofit regulation helps to reframe both the extant literature and persistent analytical puzzles.

An institutional analysis examines how rules are used to address the practical challenges of implementing nonprofit activities in a manner that is consistent with the sector's philosophical basis for governance. This affords a perspective on factors in the institutional context that are relevant for explaining what sets the nonprofit sector apart, how nonprofit organizations are structured, and the impact of legal frameworks, normative structures, and operational strategies on the functioning of the sector. These characteristics elucidate the importance of norms, practices, and informal interactions for nonprofit accountability and effectiveness. It is the very nature of the sector that is thought to prescribe a narrow role for government and support the necessity of self-regulation (Brody, 2011; Freemont-Smith, 2004; Salamon, 1999). Thus, general features of the nonprofit sector explain commonalities with respect to self-regulation, while the differences of particular self-regulatory initiatives are better explained by variations in institutional context. This approach is similarly advantageous for explaining the effects of institutional change and the role of self-regulation for responding to new conditions.

The analytical challenge for studying self-regulation relates to complexity and diversity. The variety of nonprofit sectors, organizations, activities, participants, and self-regulatory initiatives operate in different social contexts. In addition, nonprofit governance involves multiple stakeholders and sources of regulation. Further, its laws and regulation, norms, and practices are influenced by varying cultural factors. Without recognizing all this complexity, scholarship in this area is often oversimplified and sometimes even quite misdirected and misleading.

This chapter describes how the IAD can guide analysis of nonprofit self-regulation by drawing attention to features that impact nonprofit governance and what this tells us about the role of self-regulation. The chapter will first describe the utility of the framework and then organize the analysis into three steps: specifying the action situation, identifying the contextual variables that explain the structure of the action situation, and delineating the composite nature of the action situation. Each step identifies institutional features that distinguish the sector and their significance for organizing and framing the extant literature with respect to nonprofit regulation.

An Institutional Framework for Analyzing Nonprofit Regulation

In this section, the IAD is described as a conceptual framework for organizing what is important about how the sector is structured, the effects of institutional change, and empirical evidence regarding the occurrence of self-regulation. The purpose is to link the role of self-regulation with the nature of nonprofit governance. The more immediate goal is to identify characteristics central to the structure of the sector and to use this as a basis for reframing the literature with respect to nonprofit regulation. If we start with the assumption that nonprofit sector governance is unique, then we can look at what the literature tells us about the role of self-regulation. This is a framework by which to consider how an institutional analysis can support empirical findings, can suggest a different interpretation, and/or can draw attention to questions we still need to ask.

The first step of an institutional analysis involves identifying the action situation along with the participants and the central issues that explain the desirable or undesirable effects pertaining to a policy problem. This includes clarifying the locus of a particular policy problem, relevant actors, and then identification of the resource conditions, cultural factors, formal rules, and normative structures that bear upon interactions occurring in the action situation and resultant outcomes (Polski & Ostrom, 1999). The next step is to focus on contextual factors by analyzing three factors that act in concert to explain the incentives and constraints shaping interactions that occur in the action situation. The contextual factors that will be examined are nonprofit resources, culture, and institutional setting. The purpose is to examine how rules are used to facilitate activities and whether these rules or rule changes are consistent with the particular resource challenges and the capacity, and orientation, of participants. The last step considers the composite nature of governance by accounting for the role of participants in shaping their working relationships and how this is accomplished via rules that originate from different sources and different levels of decision-making activity. The purpose of this step is to account for the combined effect of rules and the recourse participants have with respect to adapting governance structures.

The Nonprofit Sector as the Action Situation

To better understand the effects of nonprofit regulation, the action situation of interest is the nonprofit sector[11] and the community affected by the rules governing the sector. Identifying relevant actors requires consideration of the full range of decision makers who are equipped with varying levels of information and control with respect to sector outcomes. Who the most influential actors are in the nonprofit sector will depend on institutional design. For understanding regulatory challenges, the action situation is where to look in order to identify issues and concerns relating to the policy problem of interest or, in other words, the desirable and undesirable effects of regulatory change. Subsequently, the task will be to identify how the nonprofit context affects or changes relationships in the sector.

Identifying participants, the structure of their interactions, and regulatory challenges in the sector is an important move for explaining the role of self-regulation and the problems to which it is responding. It reveals that already interdependent sector relationships are becoming more intertwined and that emergent trends are altering the balance of these relationships. Nonprofit participants include numerous types or classifications of nonprofit organizations, volunteers, direct beneficiaries, lawmakers and regulators at all levels of government, the general public, government agencies that enlist nonprofit services, clientele, and corporate, government, nonprofit, and individual funders. This general list only begins to hint at the overlap with respect to stakeholder roles and interests. It does, however, underscore the complexity of nonprofit

[11] Depending on the analytical purpose the action situation, here the "nonprofit sector" could be narrowed further to a nonprofit subsector (e.g., education, healthcare), a particular nonprofit organizational form (e.g., foundation, public charity, or social welfare organization), or even a nonprofit sector in a particular country or region of the world.

accountability and the many potential sources of regulatory demands. More than identifying who is participating, it is important to note how participant interactions are structured.

The information and control nonprofits participants have over producing outcomes in the sector denote relevant dependencies and influential decision-makers. There are several distinctive features that characterize the structure of nonprofits and relationships in the sector. Participation in the sector is voluntary, organizations are autonomous in that they do not answer to owners or an electorate, organizations must be established to advance public ends, profits are designated for furthering mission, and they are run by voluntary governing boards—again not by those with a vested interest (Salamon & Anheier, 1992). The mission of the organization, broad based support, and governance structure are the basis for nonprofit status and tax benefits (Worth, 2013). Governing board members have legal obligations with respect to upholding mission, financial sustainability, and putting the organization above their own interests.[12] Donors and beneficiaries have very limited legal standing except in cases where nonprofits fail to uphold their mission.[13] The information and control that these stakeholders have is realized through informal mechanisms, such as those involving publicly available records or opting out of providing support. Many of formal laws and regulations relate to meeting standards for nonprofit status and transparency in the form of reporting requirements (Fremont-Smith, 2004). These features explain the distinct accountability structure of the sector and necessity of strategic efforts for prioritizing and achieving

[12] *Stern vs. Lucy Webb Hayes National Training School for Deaconesses and Missionaries* (1974) or the "Sibley Hospital Case" established the legal responsibilities of nonprofit governing boards summarized as the duties of care, loyalty, and obedience.

[13] In the Sibley the court found that the board's financial mismanagement did not personally enrich members or disadvantage the hospital but did fail to advance the nonprofit's mission.

stakeholder, mission, programmatic, fundraising, and financial goals (Ebrahim, 2003a). It also explains why in the nonprofit sector the emphasis of self-regulation is on balancing accountabilities and strategies for transformative organizations (Lloyd, 2005; Lloyd & de las Casas, 2006). Participant interactions in the nonprofit sector are structured so control is divided participant roles have built in dependencies.

The literature review detailed changes in the nonprofit environment as a result of globalization, demographics, government policies, and governance strategies that have greatly impacted the balance of sector relationships and, as a result, stimulated regulatory responses by governments, funders, third parties, and the sector itself. These changes and attendant regulatory responses have led to an increase in the size of the sector, the influence of government on sector operations, competition with the commercial sector, reliance on market practices, and funder's performance expectations (Brody, 2011, p. 48; Eikenberry & Kluver, 2004; Gazley, 2008; Gronbjerg & Salamon, 2002; Salamon & Flaherty, 1996). The concern by some is that the sector must navigate the impact of these trends so as not to jeopardize its distinctive qualities, public regard, and special advantages (Bok, 2003; Young & Salomon, 2002).

The IAD framework tells us that if we want to understand how regulation is affecting the sector then we must look beyond government regulation and take into account the full range of accountability demands or sources of regulatory responses that have affected nonprofit working relationships and practices. Some stakeholders, particulalry government and funders, have gained more sway in sector practices not just through regulation but also with respect to norms and standards of practice. The nonprofit sector has subsequently taken on increasingly complex accountability demands which are important for understanding the role of self-regulation. The accountability focus of nonprofit self-regulation is fundamentally different than it is in the private sector because it is not structured according to principal-agent relationships; rather the focus is on effecting transformative nonprofit organizations by addressing and balancing multiple competing accountabilty relationships (Lloyd, 2005). In fact, nonprofit involvement in self-regulation has been driven by several concerns including the need to address legal compliance, reform the nonprofit regulatory environment, build public trust, strengthen sector capacity, protect sector autonomy and its political space, and promote sector learning and information sharing (Independent Sector, 2002, 2005, 2007; Warren & Lloyd, 2009).

The Nonprofit Context

The three sets of factors that structure the sector are nonprofit resources, culture, and institutional setting, or rules-in-use. The nonprofit context makes up the institutional design of the nonprofit sector. Institutional design—sometimes more aptly described as "rules-in-context" or "rules-in-use"—shapes the behavior of participants in the nonprofit sector by affecting the opportunities and constraints that they have with respect to outcomes. In addition to explaining the structure of the sector, the nonprofit context is the main source of its regulatory challenges. In other words, rules governing the sector must account for both the practical issues relating to the sector's resource conditions and reflect or accommodate cultural factors. While they are expected to act in tandem, the contextual factors are particularly intertwined in the nonprofit sector. Rules, in the nonprofit sector, are not just used to facilitate nonprofit interactions; they are also essential for marshalling voluntary resources needed to support nonprofit activities.

General statements guided by this approach are fruitful for identifying factors that contribute to the sector's regulatory challenges, whereas analyses of models of self-regulation tells us more about the occurrence and effects of self-regulation in a particular institutional setting. The nonprofit context provides insight into how these factors, individually or in combination, could explain specific regulatory challenges and foci of self-regulatory efforts. But it also makes it clear that it is difficult to draw conclusions about the effectiveness of self-regulation by comparing particular self-regulatory initiatives without controlling for contextual factors.

Nonprofit Resources

In order to be effective, the rules governing a resource must be compatible with the nature of the resource and any other attendant qualities such as physical or material conditions (E. Ostrom, 1999, p. 44). Specifying the nature of the good identifies potential challenges that particular resource conditions pose for organization. The question therefore is whether the chosen governance system adequately addresses related resource challenges (McGinnis, 2011). Yet how a good is governed is not only a function of its attributes but is also based on how it is used and valued by society (Kaul et al., 2003).

The resource system the sector depends on is particularly distinctive due to how it is organized. The nonprofit sector is a socially constructed commons that pools private and public resources toward the achievement of various public ends (Lohmann, 1992). This is a distinctive arena in which collective efforts for advancing common values, beliefs, and ideas are mediated by the nonprofit sector, not by market mechanisms or state control. This system for providing and producing public goods depends on public and private support that derives from a general willingness and ability to contribute. It is highly dependent on formal and informal rules, traditions, norms, values, and trust. However, while formal rules cannot instill, motivate, or coerce voluntary behavior, they can provide the organizational infrastructure that supports and reinforces these activities (Anheier, 2005, p. 9; Van Til, 2000).

The IAD framework supplies a basis for understanding the importance of rules in structuring nonprofit transactions. This in and of itself is a significant contribution. It has been theorized that the nonprofit form acts as a substitute for government control and market incentives (Hansmann,1980; Weisbrod, 1988). However, an institutional analysis of the nonprofit sector has yet to be undertaken in order to provide evidence of the link between sector design and behavior (Obrecht, 2012). And, despite attempts to prove otherwise, there is still no evidence of any fundamental difference in the motivations of individual actors across the public, private, and commercial sectors (Obrecht, 2012). Pointing to this lack of evidence, many argue that we cannot presume organizations to be more trustworthy by virtue of nonprofit status and that features such as the non-distribution constraint are insufficient for securing accountability (Gugerty & Prakash, 2010; Ortmann & Schlesinger, 2003). Previous sections of this paper have, nonetheless, pointed out how rules do structure the sector in a manner that sets it apart from the public and commercial sectors. Thus, we can examine the ways in which this structure differentiates nonprofit purpose and behavior without making definitive statements that people in the sector are essentially different or that one set of rules rather than another can secure predictable outcomes.

Rules are critical for explaining how people structure their interactions. But it is the consistency between rules and what people are trying to accomplish that determines whether or not the rules they use effectively establish processes that enable them to adapt to change and sustain cooperation (E. Ostrom, 1990). The difference from previous approaches is that an institutional analysis neither presumes behavior nor focuses on a particular rule, set of rules, or mechanism; rather it looks at how rules are configured to organize incentives and working relationships.

The IAD helps situate literature regarding self-regulation as a response to the resource environment. Nonprofits need resources, and rules facilitate how they secure and use such resources. Nonprofits depend on trust and authenticity to obtain voluntary participation in the sector. The previous section identified trust building as one of the many drivers of nonprofit self-regulation; it also identified attention to balancing accountability as its distinguishing characteristic. Rules establish expectations and regularity with respect to behavior in the sector as trust builds over time. In the nonprofit sector, norms explain the basis for giving while formal rules both supply organizational form and stipulate the conditions for nonprofit transactions (Salamon & Anheier, 1992).

The presence or absence of rules in the structuring of nonprofit relationships can provide insight with respect to research that posits a connection between the sector's resource environment and the focus of self-regulation. Research that relates models of self-regulation to the resource environment could benefit from explicating the extent of rule systems for building trust and enabling nonprofit transactions. Self-regulation is presumed to take on either professional or adaptive orientation depending on the degree of resource scarcity and whether the sector is emergent or established (Bies, 2010a). In developing economies it is expected to specifically assume the form of certification schemes due to difficulty identifying authentic actors (Ortmann & Svítková, 2007). Emergent nonprofit sectors focus on securing supportive formal legal frameworks and benefits (Sidel, 2003). But even in countries with resources and an established nonprofit sector, accountability mechanisms have been found to do little to bolster donations unless there is some preexisting level trust toward the sector (Bekkers, 2003). It is also noted that self-regulation often starts out with broad general standards, which over time become more refined until the initial variety of self-regulatory initiatives eventually begin to demonstrate isomorphism (Bies, 2010a; Gugerty, 2008, 2010). But self-regulation fails to develop where there is corruption in government, resource scarcity, and less familiarity with the sector (Corbett et al., in press).

These findings can be better understood within a framework that accounts for the importance of norms, traditions, and formal institutions for facilitating nonprofit resource exchanges. It seems intuitive that self-regulation would focus on the rule structures that need the most development in a particular setting, whether that involves securing formal tax benefits and organizational forms, practices that build sector infrastructure, or establishing norms that build social trust and experience with the sector. From the perspective of the IAD, the conclusions drawn by this body of work can be tested and investigated further (Bies, 2010a; Gugerty & Prakash, 2010; Sidel, 2003).

The IAD provides a way of framing findings that opens up several avenues for future research by examining what combination of norms, practices, and formal rules are important for structuring the sector and how self-regulation contributes in building and/or supporting these rules systems. One avenue to pursue is to investigate how various sources of rules may skew the power different stakeholders have with respect to resources and how these relationships may in turn skew the accountability focus of self-regulation to favor the interests of some stakeholders more than others. This could have important implications for the interpretation of research findings. The application of self-regulation based on theoretical work that predicts that effective models of self-regulation have strong standards and enforcement (Gugerty & Pakash, 2010) may have negative consequences in practice—for instance, if standards and enforcement focus too heavily on the demands of government or dominant funders at the expense of balancing accountability. Similarly, evidence that there is a tendency for models of self-regulation to replicate (Bies, 2010a) could be treated as a point of concern, given that theoretical foundations of the IAD warn against duplicating rules systems indiscriminately across institutional contexts (E. Ostrom, 2007). A concern for duplication has significance for considering efforts by organizations like Maryland Nonprofits[14] that has developed and disseminated their own state-level model of self-regulation to other states. It would be worth investigating if there are ever conditions within which institutional context warrants duplication and diffusion of common standard and practices such as when self-regulation occurs within the same region, nation, or sub-sector.

Nonprofit Community

The nature of nonprofit activities establishes the significance of the nonprofit community and broader societal context for nonprofit regulation. This is a broad category that falls under the rubric of "culture," and it takes into account characteristics

[14] Maryland Nonprofits is a state level nonprofit membership association. The organization has begun to market its program, *Standards for Excellence: An Ethics & Accountability Program for American Nonprofits,* to other states in the U.S.

of the nonprofit community that are relevant for understanding how different groups of actors in the nonprofit sector interact. As mentioned, the nonprofit sector is based on traditions relating to charity, philanthropy, and civic participation (Ott, 2001). Other essential characteristics are those that affect the amount of social capital or social resources actors can draw on to coordinate activities (McGinnis, 2011). This includes participants' level of knowledge, skill, and experience with respect to cooperating in the nonprofit sector. In addition to characteristics relevant to nonprofit community, attributes of the broader social structure to consider are historical background, traditions, prevailing norms, values, beliefs, and socioeconomic conditions, as well as the political system and climate. These are all factors that affect the inclination and ability to organize sector activities.

The literature suggests many ways in which culture shapes the nonprofit sector and influences the occurrence of, and problems addressed by, self-regulation. Several cultural factors have already been mentioned. The formal rules and norms that govern the sector are inextricably entwined with the historical context of the sector in a particular society (Dimaggio & Anheier, 1990). A society's history and experience with the nonprofit sector influence prevailing norms, sector capacity, and the sector's legal framework. Socioeconomic factors and political system were previously described as factors that influence the sector's resource environment, because they contribute to whether there is a rule system in place to oversee and guide nonprofit transactions. Additionally, political system and climate are relevant for explaining the presence or absence of institutional structures necessary for large-scale support of the sector not to mention the nature of government-sector relationships that determine whether the public sector takes a supportive or antagonistic stance toward nonprofit sector activities. Even within a particular society, because of the sector's focus on public problems and its role in advocacy, government-nonprofit relationships can assume several characteristics and are always in flux (Young, 2000). The previous sections describe how these factors determine the development of the nonprofit sector and the problems that self-regulation seeks to address.

Several aspects of culture are yet to be explored as they pertain to self-regulation. Two areas worth further study relate to the role self-regulation plays in shaping the sector's regulatory environment and counteracting or modifying market practices. The literature review discussed how globalization, governance strategies, and demographics are altering the nonprofit environment. Many of these changes are reflected in public policy and are directly or indirectly impactful not just on formal policies that affect the sector but also on interactions the sector has with government and ideas about appropriate practices. Governance philosophy that has elevated privatization of public services and the employment of market strategies is noted as having decreased sector independence and contributed to a convergence of the sectors (Bok, 2003; Gronbjerg & Salamon, 2002; Salamon, 1995). Self-regulation research could benefit from closer examination of how well standards, practices, and evaluative approaches developed through self-regulation do or do not counteract pressures exerted on the sector to perform more like the commercial sector. Looking at the impact of new ideas and strategies, studies could also examine the effect of formal rules for creating hybrid organizational forms for a better understanding of how these structures change the nature of the sector.[15]

Further study is needed to examine how self-regulation is used proactively to shape the sector's regulatory environment, internal and external expectations, and internal operational culture. The effects of culture on self-regulation have for the most part been confined to studying and theorizing about external pressures and processes. There is also evidence that internal pressures as a result of nonprofit culture play an important role in explaining self-regulation. Deloffre (2010) found that humanitarian rights organizations did not simply respond to mounting external pressure, rather they used self-regulation to clarify norms and define standards and expectations to which they should be held accountable. They accounted for funder demands within the context of norms of independence and human rights priorities. In addition to learning more about how self-regulation is used by nonprofits to shape internal and eternal expectations, there is more to learn about how it is used to shape the regulatory environment.

Self-regulation is credited with playing a role in both establishing standards and shaping the formal legal framework. Self-regulation is presumed to emerge as a defense against direct or indirect threats by government (Gugerty, 2010; Warren & Lloyd, 2009). Yet self-regulation often interacts with government through the normal policy process. State governments have initiated and facilitated sector development of state wide self-regulatory initiatives by providing both the forum and funding (J. Smith, 2010).

[15] Many examples include the extent and effects of prominent court cases and business practices. *Citizens United vs the FEC* (2010) changed the rules affecting political involvement of some types of nonprofits in political campaigns. The later is exemplified by merging business ventures and contributions with business practices in the pursuit of social missions in the form of social entrepreneurism or the hybrid low-profit limited liability corporations or L3Cs (Borenstein, 2007).

Congress has invited sector representatives to develop recommendations for regulatory reform in addition to initiating self-regulation (Corbett, 2011). The sector also monitors legislative action, educates participates on rule changes affecting the sector, and advocates on behalf of regulatory policy.[16]

Another interesting area for study is the downward effect of self-regulation on changing formal rules and daily practices. J. Smith (2010) found that participation in self-regulation improved nonprofit accountability regardless of whether nonprofits informally committed to voluntary standards or committed to a formal accreditation. Her findings suggest that participation in self-regulation on its own improves nonprofit behavior. This suggests there is more to discover about the effects of awareness of peer-supported principles and standards on the practices of individual nonprofits. Currently, there is more support for the idea that compliance to standards of practice depends, instead, on the degree to which bad actors can be distinguished from credible actors (Gugerty & Parkash, 2010). Lastly, self-regulation is credited with the establishment of standards and practices. We still need to know more about how nonprofits translate standards and practice proposed by self-regulation into working strategies that change their own individual cultures (Corbett, 2011).

Rules-in-use

The full range of rules-in-use entails covering all aspects of the institutional context, including formal rules, sets of rights, and the norms, rules, and strategies participants regularly employ in practice (McGinnis, 2011). Alterations in working

[16] The *Independent Sector* is an example of a national level nonprofit association that has developed sector-wide principles of ethical practice and good governance, advised legislators on nonprofit regulatory reform, and continues to monitor, advocate, and educates nonprofit actors on the need for, or the effects of, proposed changes in nonprofit law and regulation.

relationships may be the result of changes in any one, or in some combination, of these sources of rules. Of these many sources of rules, it is the rules-in-use, not written rules, which make up an institutional setting (E. Ostrom, 2005). Formal rules may or may not be known, and the rules-in-use may be consistent, or at variance, with formal rules. Thus, norms actually respected by actors are more important than formal written rules for explaining what is happening and that effectively supply the incentives influencing their behavior.

To sum up, a nonprofit sector's existing institutional setting is made up of formal legal frameworks, normative structures, and informal rules and strategies that influence practices. It has already been explained that norms and traditions based on charity and philanthropy are the basis for the nonprofit sector. Government, through the legal and regulatory framework, formalizes the nonprofit sector by securing rights and benefits, establishing responsibilities and parameters for participation, and providing organizational forms to facilitate nonprofit activity. Normative structures and government policy also intermingle to affect sector practices. This is evidenced in the way governance philosophy and market practices have directly and indirectly influenced nonprofit operational strategies. This is happening through government contracts, funding, and informal interactions that arise in public service delivery and via elevated stakeholder expectations and assessment of nonprofit performance.

Thus specifying the nonprofit institutional setting is vital for studying the role and effects of self-regulation. It is more specific about whether we are talking about legal frameworks, norms, practices, or some combination of these. By explaining how the sector is structured and identifying the forces changing the structure of the sector, we can be more specific about investigating the rule changes that are consistent with sector operations and those likely to exacerbate the imbalance. For example, increased government regulation is seen as a problem for some both because it is burdensome and because it impinges on the sector's independence (Fishman, 2010; Sidel, 2010a). Yet government policy with respect to public service delivery has had and continues to have an enormous impact on the nonprofit environment, expectations of the sector, and nonprofit organizational forms and practices (Gronbjerg & Salamon, 2002). It is important to differentiate between the problems associated with government regulation and those associated with nonprofit-government interactions. Government regulation may mean costly and prohibitive reporting requirements or an intrusion on internal governance (Dale, 2005; Dandridge, 2011). Nonprofit-government relationships, contractual arrangements, and informal interactions can have a myriad of effects on sector norms and practices (Dicke, 2002; Gazley, 2008). Thus it is important to look beyond formal rules to grasp the true impact of rule changes in the sector.

This line of inquiry clarifies what self-regulation is responding to and whether efforts are effective for the particular problem. It also avoids the problem of oversimplifying weaknesses or strengths associated with government and self-regulation. For instance, the sector often resorts to self-regulation in the absence of formal legal frameworks, in an effort either to secure enabling structures or to acquire professionalism and legitimacy in lieu of a government regulation (Ortmann & Svítková, 2007; Sidel, 2003). Although there are contexts in which this is the case, it is inaccurate to characterize government regulation as a threat when the focus of self-regulation may be to develop regulatory frameworks and relationships with government. Likewise, there needs to be more clarity with regard to norms. While across contexts, self-regulation develops sector norms and practices, the reasons for this vary. The challenges for self-regulation may involve emergent sectors that lack capacity and infrastructure, high conflict settings in which the sector must coalesce to assert norms and protect their political space, or developed countries that need to maintain the sector's distinctiveness and bolster public trust due to widespread sector growth (Bies, 2010a; Deloffre, 2010). Institutional structures have been shown to have or not have some combination of formal structures and norms that dissuade large scale participation in the sector or present outright barriers for the development of nonprofit self-regulation (Spires, 2011; Warren & Lloyd, 2009). This is a point of opportunity for investigating the limits of self-regulation.

Given both the range and intertwined nature of rules affecting the sector, it is helpful to organize analysis of nonprofit regulation according to the governance processes and behavior that they affect. The different sources of rules that combine to govern the sector can be thought of in terms of the different functions they serve and how they are meant to affect nonprofit behavior. The next section addresses how to sort through nonprofit rules acting together in the process of governance and organizes them according to sources, levels, and rule changing activities. This enables us to differentiate between rules relating to sector formation, policy, and operations and the process by which rules are adapted or changed.

The Composite Nature of Nonprofit Governance

The previous section made the point that the sector's institutional setting is more than any one isolated source of rules. Government and self-regulation each serve to govern the sector. While self-regulation is increasingly prominent, its role varies and is often more nuanced than as a replacement for government regulation. The argument made in this dissertation is that a broader framework is necessary to comprehend the role of nonprofit self-regulation, which requires thinking about it in terms of how it fits into the scheme of nonprofit governance rather than how it stacks up in comparison to government regulation. In this regard, the IAD framework is helpful for both conceptualizing and organizing the complexity of nonprofit regulation. The concept of nesting directs attention to different levels of rulemaking within an institutional arrangement, the ways institutional arrangements reinforce or undermine one another, and level-shifting activities and interactions that facilitate or obstruct the efforts of nonprofit actors to adapt and change their regulatory environment.

Governance is a multi-scale composite and qualitative concept that involves sets of rules and activities, such as rulemaking, monitoring, and enforcement (Blomquist & deLeon, 2011). This is not a static but a process-oriented concept that involves nested relationships and interactions among and between different levels of rules and institutional relationships. The stability of rule-ordered relationships depends on developing shared expectations and understandings of rules (Ostrom, Gardner, & Walker, 1994). The presumption is that rule systems develop over time, not all at once. They are constituted and reconstituted as people gradually build working relationships, learn about what works, and continue to make adjustments and institutional investments (Imperial, 1999). Stable and effective rule structures not only depend on building trust but also require access to institutional mechanisms for adjusting strategies or adapting to change (E. Ostrom, 1990). In addition, the success of community level efforts is greatly improved when actors have recourse to, or the ability to create new, institutional arrangements in order to support their endeavors (Marshall, 2008).

The concept of change is an important theme for nonprofit self-regulation. Previous sections have addressed how changes in society and government policy have transformed the sector, leading to new regulatory challenges and regulatory responses. On the one hand, self-regulation is described as a response to this change environment (Bothwell, 2001; Warren & Lloyd, 2009). This response is not an unexpected, given that empirical evidence suggests that people can and do create new institutions to solve emergent problems or to find new strategies for existing problems (E. Ostrom, 1990). On the other hand, self-regulation itself evolves over time along with the development of government-nonprofit relations, sector capacity, and social, political, and economic institutions (Bies, 2010a; Gugerty, 2008; Gugerty et al., 2010; Sidel, 2003). The voluntary nature of the sector and its dependence on political, social, and economic institutions explain why the nonprofit sector is sensitive and responsive to the stability of these relationships. In the private sector, common drivers for self-regulation are risk, reputation, and learning (Haufler, 2001). Although the motivations are similar, the tasks are different due to the mission orientation of the sector, which dictates its accountability concerns (Lloyd, 2005). In addition to the legal, normative, and strategic mechanisms for change, this approach takes into account the different potential levels, sources, and processes involved in nonprofit regulatory change. Thereby what is distinct about nonprofit self-regulation.

In summary, rules that compose nonprofit governance originate from different sources, address different levels of decision-making activity, and depend on level-shifting interactions. This opens new avenues for investigating more specifically how nonprofit decision-making activities are impacted via legal frameworks, normative structures, and strategies. By taking into account the many sources of rules affecting sector operations we can also begin to ask how rulemaking, rule changes, monitoring and enforcement operates in the sector. This question involves thinking about how government, self-regulation, and third party regulation combine to affect the sector. Once we recognize multiple levels and sources of regulation, then the task is one of examining the linkages and interactions occurring between them.

Organizing Nonprofit Regulation According to Levels of Analysis

Rules governing the sector affect different processes and actions, and they originate from different sources. The previous section discussed how in some cases these rules are formal and in others they are expressed as informal norms and practices. All these rules can have an effect on nonprofit operations, but they do so by way of different decision-making methods and processes. So, analysis of self-regulation is more specific when distinctions are drawn between rule-making and rule-changing situations involving processes that constitute the sector, establish sector policy, or dictate day-to-day operations. This offers more clarity about what we are looking for and what we expect when analyzing the effects of self-regulation on the sector's regulatory environment.

By categorizing constitutional, collective, and operational rules, we think in terms of the rules that contribute to the formation of the sector, establishment of sector policies, and operational strategies. This is a more targeted approach toward identifying the source of regulatory challenges or problems. The rules that make up the sector determine the participants and processes involved in establishing sector policies. The norms associated with the sector are often deeply embedded in society and often impact the presence or absence of formal rules supporting the sector. It has already been stated that some institutional settings provide a formal framework for establishing the sector, while in other cases legal and normative structures are the target of self-regulation. In established sectors, changes in these rules have led to increasingly complex organizational forms (Young & Salamon, 2002). Some examples of how these changes can effect nonprofit interactions are evidenced in the advent of social entrepreneurialism and court rulings affecting political activity of social welfare organizations. These rules affect sector operations by determining the make-up of the sector and the range of allowable activities.

Collective choice rules are those rules that establish policies affecting sector operations. One example of how government regulation affects nonprofit operations is through the stipulation that nonprofits be run by governance boards according to formal bylaws. Self-regulation in some cases extends beyond legal expectations to establish policies that affect sector governance, fundraising, financial management, and ethical practices (Independent Sector, 2007). An area worthy of investigation, already mentioned, involves questions about how rules shaping nonprofit policy are translated into operational practices (Corbett, 2011). If the ultimate goal of self-regulation is to transform nonprofit organizations, this depends on knowledge about how these policies are incorporated into the daily practices and eventually the culture of nonprofit organizations (Strickland & Vaughn, 2008).

Looking at nonprofit regulatory structure in terms of levels of analysis stimulates thinking about self-regulation's locus of impact. Self-regulation is considered a source for informal policies that suggest voluntary adherence to principles, standards, and strategies for nonprofit operations. But how it affects nonprofit operations depends on whether self-regulation targets rules that shape the sector's formation, policy, or day-to-day operations. By conceptualizing rules as affecting different decision-making processes, it is possible to be more specific about the decision-making structures by which self-regulation impacts nonprofit operations. In addition to multiple levels of rules, the accountability structure of the sector means that collective choice rules, or the rules that affect sector policies, originate from several sources. The next two sections discuss competing sources of rules and the process for rule change.

Accounting for Multiple Sources of Regulation

Nonprofits are subject to multiple, and sometimes overlapping, rules, due to interdependent relationships that explain the sector's accountability framework. The previous section discussed how rules and rule-making activities could be organized according to whether they bear upon the make-up of the sector, policies that influence operations, or daily routines. Each one of these levels, or decision-making situations, is in turn comprised of several different rule-making arenas. Policy-making that influences the sector's day-to-day operations may, for instance, involve more than one formal and/or informal venue. This means that there are multiple venues for affecting nonprofit behavior, and it also means there are several venues by which to effect change. Taking this one step further, we can examine how different levels and sources of regulation combine to affect nonprofit governance.

The nesting of institutional arrangements is another aspect of rules that is overlooked when comparing models of regulation. The composite nature of governance explains how levels and sources of rules interact, reinforce, and/or conflict with one another. This is particularly relevant in the nonprofit sector in which there is no single identifiable principal-agent relationship. While this could in some cases also be said about the government and commercial sectors, the nonprofit sector is formally structured so as to be answerable to mission and dependent upon all stakeholder groups in order to accomplish this end. The sector must pay attention to and prioritize all of its stakeholder relationships if it is to secure cooperation and accomplish its mission (Ebrahim, 2003b). This analytical distinction assists in identifying both the totality of and individual relationships that the nonprofit sector seeks to address through self-regulation. In contrast, comparing models of self-regulation based on strength of standards and enforcement says little about the accountability relationships that are having the most impact on the sector or that are receiving the most attention within self-regulation. Another shortcoming of comparing models of self-regulation is that it does not explain how stakeholder involvement in monitoring and enforcement may complement, supplement, or reinforce self-regulatory compliance mechanisms.

Analysis of nonprofit regulation must take into account the sector's accountability structure. Nonprofit self-regulation is generally concerned with balancing these accountabilities and upholding common nonprofit principles (Lingán et al., 2009; Lingan et al., 2010; Lloyd, 2005). In addition to government regulation, the sector is subject to funder stipulations, third-party watchdog and rating organizations, and self-regulation. An important question is the extent to which accountability relationships are changing and whether self-regulation stabilizes these accountability relationships or reinforces a more dominant role for powerful stakeholders. Studies similar to Deloffre's (2010) may explain to what effect self-regulation serves as a mechanism for maintaining the nature of the sector in a changing environment. Another avenue to explore is the degree to which self-regulation causes the expectations of different stakeholders to converge or align. And, since a concern of self-regulation is to strengthen accountability to beneficiaries, a key research focus would be to monitor the stakeholder interests for which self-regulation establishes and enforces standards (Lloyd & de las Casas, 2006).

To date there have been no studies about the source and types of rules nonprofit actors pay most attention to, are unfamiliar with, or ignore. Nor have there been any studies to examine compliance motivations in the nonprofit sector. In the private sector, compliance is motivated by a sense of obligation and peer awareness of actions, while levels of compliance improve with participation in the rule-making process and perceived appropriateness of rules (May, 2005a, 2005b; Siddiki et al., 2012).

In addition to compliance motivations, there is still much to be known about compliance mechanisms in self-regulation. The majority of self-regulatory initiatives either do not have monitoring and enforcement or they rely on informal compliance mechanisms (Lloyd et al., 2010). Another feature of governance that involves nested institutional arrangements is that monitoring and enforcement can be supplied and supported by other institutions (Heikkila, Schlager, & Davis, 2011). In fact, the IRS transparency and reporting requirements, charity watchdog and ratings organizations, political forums, and the media each contribute to monitoring. Enforcement is evident inasmuch as voluntary support is affected by such monitoring. The role enforcement plays in governance is as a corrective device to sustain cooperation rather than primarily as a form of punishment (E. Ostrom, 1990). As stated previously, we still lack understanding about compliance motivations and what constitutes effective enforcement in the sector. Due to the voluntary nature of the sector, it is possible that enforcement could also occur when participants choose to opt out of the sector.

The take-away is that if we compare models of regulation, we consider how they stack up against each other. But if we look at how self-regulation operates within a system of nonprofit governance, then there are many more possibilities for investigating how rules combine in the sector.

Level-shifting Activity to Adapt Regulation

The concept of level shifting captures the process by which nonprofit actors respond to and effect institutional change through self-regulation. Chapter Three discussed how participants often shift levels to change rules that they are subject to in the operational arena, particularly as a result of processing new information that conditions in the policy environment have changed or upon learning that their efforts are not producing the desired effects. In this sense, actors are not just rule followers but also rule makers (E. Ostrom, 2005).

In terms of where to look as a point of policy change, the IAD framework takes into account the role of informal forums as well as formal venues for managing a sector, which includes monitoring and enforcement activities. Level shifting is a conceptual device for investigating why nonprofit actors initiate self-regulation and what venue they target in order to change internal working policies. The policymaking venue self-regulatory initiatives target depends on the source of policy change and the problem to be addressed. For instance, nonprofit self-regulation involves working within professional associations to both formulate and disseminate new standards of practice and advocate for reform of the legal or regulatory regime. Self-regulation affects internal policies regarding nonprofit practices with respect to fundraising, financial management, governance, mission driven performance, and ethical operations (Independent Sector, 2007). The establishment of sector level standards and principles also shapes expectations that stakeholders have of the sector and sector participants have of one another. Oftentimes self-regulation targets the sector's legal framework in order to secure rights, tax benefits, and formal legal structures (Sidel, 2003, 2010b).

This chapter has discussed self-regulation as a process that affects different levels and sources of rules. More can be learned about the different interactions that lead to self-regulation or rule changes as a result of self-regulation. Although level shifting is apparent in self-regulation, the mechanism by which it occurs is less clear. Linkages are the formal or informal patterns of interaction between different institutional arrangements that afford opportunities for adapting or changing rules (Heikkila et al., 2011). These linkages can be upward, downward, and/or lateral. There are ample possibilities for investigating the processes that allow or prevent nonprofits to shape their regulatory environment, negotiate their political space, influence other sources of rules that establish policies that impact sector operations, and alter working strategies. Investigating the formal and informal linkages between institutional arrangements can elucidate the processes and interactions that make it possible for nonprofits to adapt or change the rules affecting the sector and/or particular nonprofit organizations. Self-regulation is sometimes initiated solely by sector level efforts, but it can also be stimulated by government actions, which may involve incentives, convening panels of experts, or mandates (Gugerty, 2008; Sidel, 2010b). More can be known about the arrangements that facilitate these interactions to affect rules at all levels.

Chapter Summary

The purpose of this chapter was to describe how the IAD can guide analysis of nonprofit self-regulation by drawing attention to features that impact nonprofit governance and what this tells us about the role of self-regulation. An advantage of the IAD is that self-regulation is analyzed as part of the regulatory system rather than as an alternative to government regulation.

The analytical problem for explaining self-regulation is the complexity of nonprofit regulation. The makeup of nonprofit regulation depends heavily on norms and traditions and existing social, political, and economic institutions. The diversity within the sector and across institutional settings has resulted in not only many forms of self-regulation but also many different roles for self-regulation. To understand the role of self-regulation, we need to know how rules structure the sector, what factors change the nonprofit environment and relationships in the sector, and what are the effects of various regulatory responses. Despite the diversity, there are distinctive features of the nonprofit sector that explain the role of self-regulation. It is the very nature of the sector that prescribes a narrower role for government and supports a role for self-regulation.

CHAPTER SIX. CONCLUSION

The preceding chapters discussed the problem, addressed the objective of this dissertation, reviewed the extant literature, introduced the IAD framework, described problems associated with previous approaches, and presented a different kind of analysis of the research, as well as some of its implications. This chapter will begin with concluding remarks summarizing the totality of this dissertation and important limitations. Then it will offer some suggestions for future inquiry.

Concluding Remarks

This dissertation represents a move toward a new theoretical understanding of nonprofit regulation that accounts for the role of self-regulation in nonprofit governance. It attempts to resolve some of the academic and professional inconsistencies and disagreements with respect to regulating the nonprofit sector in a manner that addresses accountability while preserving the sector's role in society. It argues that the challenges presented by nonprofit regulation are related to how we conceptualize regulation. Framing regulation as a choice between government and self-regulation, as done in the past, emphasizes the limitations of such approaches rather than explaining how nonprofit governance occurs in practice.

I have proposed that a general framework was needed to account for the role of self-regulation in nonprofit governance. Absent such a framework, government and self-regulation are conceptualized and studied as distinct options or models for regulating the sector. Continuing in this vein neglects an opportunity to build a platform for organizing general factors relevant to explaining how nonprofit regulation structures and affects the sector. To address this gap, the Institutional Analysis and Development (IAD) framework was introduced as an approach for explaining and examining self-regulation as part of nonprofit governance.

Why Nonprofit Regulation Matters

Nonprofits are important players in public policy. They facilitate citizen involvement in advocacy, implement public services, identify and fulfill unmet needs in society, and directly affect the lives of beneficiaries. So while the sector serves a larger role in society, individual nonprofits advance particular missions that have meaning and impact on people's daily lives. The public, donors, volunteers, paid staff, government, and beneficiaries are all stakeholders who are invested not just in the missions nonprofits seek to achieve but also the methods by which they accomplish their purposes. Governments expect nonprofits to prove accountability and legitimacy with respect to speaking on the behalf of beneficiaries, just as donors expect them to demonstrate outcomes relevant to improving the lives of people for whom they seek to make positive change (Lingán & Hammer, 2010, p. 5). The impact of the sector and the fact that stakeholders invariably have unequal power and influence over nonprofits underscores the moral dimension and challenge of nonprofit accountability.

How to regulate the nonprofit sector in order to achieve confidence in accountability and at the same time preserve the sector's role in society is a question of great importance for the public, the government, and the nonprofit sector itself. The broader debate surrounding nonprofit regulation depends on the assumption that regulation is different as it pertains to the nonprofit sector. The very nature of the sector indicates the limitation of government regulation and a need for self-regulation (Brody, 2011; Freemont-Smith, 2004; Hopkins, 2011; Salamon, 1999; Warren & Lloyd, 2009). Government regulation is thought to be antithetical to sector autonomy, as well as an obstacle to flexibility and innovation. Self-regulation is considered to be more consistent with the autonomous nature of the sector, making it essential both for political independence and sector capacity. Nevertheless, the perception is that self-regulation is a weaker regulatory alternative, and the general tendency has been to increasingly rely on government regulation. The predominance of self-regulation in the nonprofit sector has, not surprisingly, been accompanied by analytical interest in its function and effectiveness as an alternative to government regulation.

Shortcomings of Previous Analytical Approaches

The problem with previous approaches is that they have remained rooted in narrow conceptions of both regulation and how regulation operates in the nonprofit context. Analysis of nonprofit regulation has not accounted for its complexity, as it exists in practice. Instead, the propensity has been to focus on the independent strengths and limitations of various elements of regulations rather than the overall effects of regulation on nonprofit governance. In fact, nonprofit governance involves internal governing boards, funder requirements, third-party monitors, self-regulation, and legal frameworks.

While all nonprofits have similar lines of accountability, they experience accountability pressures differently in each society. Traditions with respect to charity and civic participation, economic conditions, and the government's stance toward the sector determine the regulatory regime and the problems that nonprofits address via self-regulation. Governments essentially determine the structural integrity of nonprofits, their level of autonomy, the tradeoff between economic benefits and restrictions, and the degree of protection for donors and charitable assets (Pratt, 2005). At the same time, nonprofits are subject to voluntary governance boards, stakeholder oversight, and third party monitoring. Government policy and business practices affect nonprofits through working relationships. All the while, public perception influences participation in the sector and brings political pressure regarding nonprofit benefits and regulatory policy. The challenge for nonprofit self-regulation is how to marshal and balance accountability to effect change within the broader nonprofit operational environment.

Given the complexity of nonprofit regulation, there are several problems associated with continued focus on, or comparisons of, various forms of regulation without reference to a broader theoretical framework for understanding nonprofit governance. Primary shortcomings of this approach are that it overlooks the purpose of nonprofit regulation, concomitant sources of regulation, and how the sector responds, or contributes, to regulatory change via self-regulation. The absence of a framework also presents barriers to the advancement of nonprofit self-regulation scholarship, particularly with respect to compliance, effectiveness, and theory building.

Reframing Nonprofit Regulation

Reframing nonprofit regulation is of analytical importance because conceptions of regulation inevitably inform research methodology and ultimately influence regulatory prescriptions. So shown, the IAD framework conceptualizes nonprofit regulation as a system of rules to address sector challenges and facilitate successful collaborative efforts occurring within the nonprofit sector.

The application of the IAD to analyze facets of the nonprofit sector better explains the importance of self-regulation for nonprofit governance. It facilitates an examination of how rules are used to address the practical challenges of implementing nonprofit activities in a manner that is consistent with the philosophical basis of the sector and its governance. This approach for understanding nonprofit regulation makes it possible to integrate the purpose of the sector along with its instrumental dimensions in the analysis of nonprofit regulation. This focus helps to reframe not just the extant literature but also how we think about questions that remain.

This perspective sheds light on factors in the institutional context that are relevant for explaining what sets the nonprofit sector apart, how nonprofit organizations are structured, and the impact of legal frameworks, normative structures, and operational strategies on the functioning of the sector. These characteristics elucidate the importance of norms, practices, and informal interactions for nonprofit accountability and effectiveness. Looking at regulation this way, self-regulation is not an alternative to government regulation. Rather it is a viable component of nonprofit regulation due to the nature of the nonprofit sector, the composite nature of regulation, and the importance of sector involvement to effect good governance and ethical practices.

Implications

The benefits of this approach are that it offers a perspective on nonprofit regulation that accounts for the purpose of the nonprofit sector, the occurrence and relationship between multiple sources of regulation, and the participation of nonprofit actors in shaping the regulatory environment and responding to regulatory demands. Nonprofit traditions and activities make nonprofits unlike other public or private organizations, and yet they are deeply entwined and reliant on aspects of the broader society. Grasping the complexity of nonprofit governance helps us rethink several questions with respect to self-regulation.

By looking at the dynamic, composite nature of regulation we can account for the participation of all stakeholder groups in rule making, rule changes, monitoring, and enforcement. The purpose of rules is to coordinate and sustain cooperation in collective endeavors (E. Ostrom, 1990, p. 90). Governing these activities on a large scale, rather than just at the community level, depends on interdependent institutional arrangements (E. Ostrom, 2005). We can look at the roles of stakeholders in effecting sector participation, policy, and operational practices, as well as their contribution to monitoring and enforcement with respect to these areas. The impact of stakeholder actions on nonprofits is evident in trends that have impacted the sector's regulatory and operational environment via changes in public policy, public expectations, funder stipulations, and management ideology. Self-regulation by all accounts interacts with the legal framework, responds to and shapes the expectations of stakeholders, and establishes principles, standards, and operational practices. While these may be separate roles for self-regulation, they often are interrelated.

There is currently a great deal of interest in what determines the effectiveness of self-regulation. Effectiveness is often interpreted in terms of whether self-regulation changes stakeholder perceptions, sanctions bad actors, or responds consistently with problems that result from external pressures (Gugerty & Parakash, 2010; Obrecht, 2012; Ortmann & Myslivecek, 2010; Ortmann & Svítková, 2010). Given the range of concerns undertaken by self-regulation, it seems to me that we need to both broaden our definition of effective self-regulation and be explicit about what is meant by effectiveness. Generally, effectiveness is thought to be conditioned on compliance. But nonprofit monitoring and enforcement is informal, divided, and overlapping. Self-regulatory initiatives have various formal and informal assessments and corrective measures. The Internal Revenue Service, for instance, applies monitoring and enforcement through reporting requirements, transparency requirements, and by bestowing and revoking nonprofit status and benefits. Third party monitors improve transparency and information availability. Similarly, donors can choose to support nonprofits based on trustworthiness and performance. Large funders and government achieve this through grant stipulations or contracts. It hardly seems as though compliance mechanisms are absent in the nonprofit sector. If we think of self-regulation as an alternative to government regulation then we make the assumption that to be effective self-regulation must supply all of the standards, monitoring, and enforcement. However, reframing nonprofit regulation helps us to study compliance mechanisms differently. One of the concerns of self-regulation, for example, is to improve nonprofit accountability to various stakeholder groups who are also invested in monitoring and enforcement. The complexity of nonprofit regulation should frame how we both think about regulatory policy and identify sources of regulation that determine how the sector functions.

Limitations

There are important limitations associated with this dissertation as well as with the approach taken to analyze nonprofit regulation. The primary limitation is that the approach is conceptual and does not offer predictions about a nonprofit regulatory regime or definitive prototype for nonprofit self-regulation.

The primary limitation of the IAD with respect to studying nonprofit regulation lies in its approach as framework. Frameworks are not theories and thus cannot be used to make predictions or definitive statements about what will happen (Schlager, 2007). The IAD framework was developed as an analytical tool to avoid oversimplifications in analysis serving as the basis for policy recommendations (Ostrom, 2000b). Its utility lies in mapping out what is relevant for understanding nonprofit regulation, rather than making predictions about what will happen within a given regulatory regime or providing definitive prescriptions regarding the most appropriate regulatory strategy in a particular social context or subsector. That said, the IAD is particularly helpful in diagnosing problems associated with regulatory change. For instance, the IAD focuses analyses such that it is possible to identify when regulation is inconsistent with nonprofit activities and culture, as well as the source and level or rules associated with a specific problem.

Another limitation of this approach is that it does not offer a definitive statement about self-regulation or a particular type of self-regulation that applies in all cases. This dissertation focuses on the broader questions about the nature of the nonprofit sector and the role of self-regulation. The argument that self-regulation is essential to nonprofit regulation is by no means an argument that self-regulation should be the only form of nonprofit regulation, that self-regulation is "good" in all cases, or that it is less fallible than other forms of regulation just because it is consistent with self-governing structure of the nonprofit sector. In fact, devising rule systems is in itself a collective action problem that presents a myriad of issues associated with unequal power, resources, and participation, as well as resistance to change (Imperial & Yandle, 2005). This approach is more suitable for framing what is going on, or for identifying policy changes that are causing imbalances in stakeholder relationships. Rather than providing a model, this approach by contrast cautions against theoretical approaches that attempt to build a case for particular models of self-regulation. Even though there are common general goals with respect to self-regulation, different societal contexts have resulted in a diverse range of self-regulatory initiatives.

Other limitations of this approach are due to the inherent limitations of the IAD framework and to limitations with respect to applying this framework to nonprofit regulation. The IAD is approach to economic governance, particularly governance of common pool resources. Intellectually it is an approach that has ties with in New Institutional Economics and the political economy. And, other than this dissertation, it has not been applied to nonprofit regulation. The IAD is compatible with economic theories that have been applied to the study of nonprofit self-regulation. However, its foundation in common pool resource theory has not been tested for applicability in the nonprofit sector. As such, an important limitation is that it may underemphasize, or not capture, elements essential to understanding nonprofit governance. In fact, it may put too much emphasis on economic incentives to the exclusion of more collaborative incentives such as those highlighted by stewardship theory. Lastly, there may be resistance toward the application of the IAD within the sector due to lack of familiarity, complexity, and inability to prescribe solutions. These are limitations worthy of further investigation with respect to the applicability of the IAD framework for the analysis on nonprofit regulation.

Future Lines of Inquiry

The analytical approach and reconceptualization of nonprofit regulation present several opportunities for future research. The utility of the IAD framework is that it facilitates a broader view of the nonprofit regulatory landscape that can direct new lines of inquiry and address persistent gaps in the literature. Particular areas in which future research can advance nonprofit self-regulation scholarship are theory development, effectiveness, compliance, and diagnosing the implications of regulatory change.

The first important avenue is theory development. The IAD framework can be used to compare theories or identify relationships relevant for theory development. The nonprofit sector is still often analyzed according to how the sector intersects with, or relates to, markets or the state (Lohmann, 1992). The sector's institutional context and organizational structure differentiates sector motivations and behavior from the private and public sectors (Dimaggio & Anheier, 1990; Salamon & Anheier, 1992). These factors determine the sector's purpose and accountability structure (Lloyd, 2005; Lloyd & de las Casas, 2006) and also explain how self-regulation develops and what it responds to (Warren & Lloyd, 2009). But theory specific to the nonprofit sector is needed to account for relationships integral to explaining nonprofit regulation. So far, the reliance on economic theory, particularly principal-agent relationships, focuses primarily on the influence of powerful stakeholders, neglecting strategic efforts to meet mission, uphold norms and values, and address the needs of beneficiaries (Deloffre, 2010; Ebrahim, 2003a). The failure to apply or develop theory consistent with the sector affects how we study compliance, effectiveness, and regulatory reform.

A second line of inquiry for future research is how to define and assess the effectiveness of self-regulation. Reframing regulation is a first step toward a new understanding of what "effectiveness" means as it pertains to self-regulation. Current barriers relate directly to narrow conceptions of self-regulation. Efforts to measure effectiveness of self-regulation have focused on simple changes in total fundraising and the presence of strong standards and enforcement mechanisms that increase the costs and benefits of participation (Bekkers, 2003; Gugerty & Prakash, 2010). As has been discussed in this dissertation, self-regulation is more complex and dependent on societal setting. Nonprofits engage in self-regulation for a variety of ends: to change legal frameworks, improve practices, maintain norms, and adapt to change (Deloffre, 2010; Lloyd et al., 2010).

The problem with studying the effectiveness of self-regulation is related to the limited use of theory and the absence of frameworks that explicate the factors that should be taken into account (Obrecht, 2012). To this end both the IAD framework and related theory—common pool (CPR) theory—address a much broader range of factors. CPR theory explains practices that contribute to robust self-governing arrangements (E. Ostrom, 1990, p. 90). The IAD can be used to examine linkages employed in self-regulation to interface with legal structures and affect the practices of individual nonprofits. There are still many questions with respect to the process by which self-regulation changes legal frameworks and principles and how standards espoused by self-regulation are translated into nonprofit practices (Corbett, 2011; Independent Sector, 2005; J. Smith, 2010).

There is also still much to be investigated with respect to compliance in the nonprofit sector. Compliance motivations and compliance mechanisms are areas that have yet to be investigated thoroughly. Research would benefit from a better understanding of the factors that lead to compliance in the nonprofit sector, not to mention the sources of rules to which nonprofit actors pay most attention. Applying analytical tools associated with the IAD, research on compliance motivations in the private sector has found that the appropriateness of rules, a sense of obligation, and involvement in rule making are all contributors to compliance (May 2005a, 2005b; Siddiki et al., 2012; Winter & May, 2001). I think this line of inquiry would be particularly valuable with respect to advancing scholarship on the effects of self-regulation.

The low occurrence of compliance mechanisms in nonprofit self-regulation is another area ripe for investigation. The accountability structure of the sector and the incidence of compliance mechanisms raise questions about whether monitoring and enforcement may function differently in the nonprofit sector. Monitoring and enforcement are not necessarily intended for punishment but to sustain cooperation, by providing mechanisms for monitoring changing conditions, adherence to expectations, and for taking corrective action (E. Ostrom, 1990). While a self-regulatory initiative is thought to have a compliance mechanism if it has some form of monitoring and enforcement, many initiatives only have one or the other, none, or informal mechanisms (Lloyd et al., 2010). Interestingly, involvement in self-regulation has been shown to improve transparency of organizations regardless of the compliance mechanism in place (J. Smith, 2010). In any case, self-regulatory initiatives with strong enforcement mechanisms only affect a small portion of nonprofit organizations (Gugerty & Prakash, 2010; Lloyd et al., 2010). An important feature to consider when investigating nonprofit compliance is that nonprofits must effect mission related goals and balance accountability to multiple stakeholders (Lloyd, 2005; Lloyd & de las Casas, 2006). Given the totality of institutional arrangements involved in governance, monitoring and enforcement can also occur across institutional arrangements (Heikkila et al., 2011). Nonprofits are generally monitored by third-party and rating organizations, and enforcement may occur as a consequence of funder stipulations, contractual arrangements, and performance evaluations. Due to the moral implications of nonprofit performance, an important ongoing concern of self-regulation is how to better attend to accountability to beneficiaries and the consequences of sector outcomes (Ebrahim, 2003a; Lingán & Hammer, 2010; Lloyd, 2005).

One last significant line of inquiry is diagnosing implications of regulatory change. The IAD is also a useful tool for mapping the consequences of regulatory changes, because it dissects nested relationships of rules affecting establishment, policy, and operations (E. Ostrom, 2005). This is an area that can be particularly valuable to the sector due to interdependencies with government and the economy. The literature review identified many trends altering the nonprofit sector's regulatory landscape. Increased government regulation is in many cases a problem for the sector, but is also primarily a consequence of changes in public policy, market practices, globalization, demographics, and changing attitudes with respect to philanthropy. All these factors change the balance of stakeholder relationships as well as impose new rules, norms, and strategies on the sector. A more nuanced understanding of changes in the sector's institutional setting can better inform nonprofit regulatory policy and sector involvement in self-regulation.

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