**ISTR Panel Proposal**

**Data-Driven Regulation:  
Improving Nonprofit Governance, Accountability and Risk**

**Panel Co-chairs:** Dr Alasdair Rutherford, University of Stirling; Professor Carolyn Cordery, Aston Business School; Dr Diarmuid McDonnell, University of Stirling.

**Panel Abstract**

This is Part One of a two-part Panel Submission on “Data-Driven Regulation: Improving Nonprofit Governance, Accountability and Risk.”

[\*] Part One: Data-Driven Regulation: Regulators Collecting, Using and Sharing Data

[\*] Part Two: Data-Driven Regulation: New Opportunities Using Regulatory Data for Research

Nonprofit and specifically charity regulation is in flux. Stagnant or declining regulator budgets are the new normal and charities themselves are subject to increasing levels of public scrutiny. To meet these and other challenges, many regulators are shifting to an approach informed by risk assessment and analysis. This requires regulators to leverage their considerable data resources to better target their interventionist and advisory activities, and deliver their mandate.

Regulatory data reflects the culture and context in which regulation takes place. Varying across jurisdictions, the data held by regulators includes individual charity: characteristics, governance, financial data, trustee reports, complaints, investigations, outcomes, risk assessments and more. Data about charities is also held by other regulators, in fields such as care, housing, and tax authorities.

Until recently, relatively little nonprofit regulatory data was shared beyond lists of registered charities. Encouraged by increasing ‘open data’ movements, and in some cases government commitments to greater data sharing, it is becoming increasingly easier to access a range of both quantitative and qualitative data about charities and their regulation on a large scale. New nonprofit regulators are being formed, or reformed, and decisions are being taken about what data to collect, and how to use it.

In this panel we will, evaluate and critique the nonprofit regulatory data being made available around the world, with a particular focus on how this data is being used and how it can be used to improve regulation, governance, accountability or management of nonprofit organisations. In the first of two sessions, we explore how regulators collect, use and share data with examples from across a range of jurisdictions internationally. In the second session, we examine the opportunities to make use of these new data sources in answering critical research questions about the nonprofit sector.

In bringing these papers together, we seek to develop collaborations providing new insights into the culture and context in which regulators collect, use and share data and the challenges associated with these activities.

This is Part One of a two-part Panel Submission on “Data-Driven Regulation: Improving Nonprofit Governance, Accountability and Risk.”

[\*] Part One: Data-Driven Regulation: Regulators Collecting, Using and Sharing Data

[\*] Part Two: Data-Driven Regulation: New Opportunities Using Regulatory Data for Research

There are eight papers split across two proposed sessions, forming one panel.

# Session One: Regulators Collecting, Using and Sharing Data

## Redefining the Measure of Success: A Historical and Comparative Look at Charity Regulation

Professor Oonagh B. Breen, Sutherland School of Law, University College Dublin, Ireland.

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Accepting the traditional rationales for charity regulation, this paper explores the question of ‘how we regulate’ and the interrelated question of associated regulatory cost. It examines how we currently (or could better) measure the success of charity regulatory efforts, drawing upon the experiences of charity regulators in the UK, Ireland, Australia, New Zealand and Singapore.

Recent research investigating the longitudinal patterns of charity regulation across sixteen jurisdictions identified recurring common issues that over time and territory have not abated but rather require constant regulatory engagement and management (Breen et al, 2016). Charity problems and solutions come and go, as do Charity Regulators but such vacuums are inevitably filled with new variations on old problems and with new regulators. Understanding the nature of the problems faced is the first step towards crafting a regulatory solution. In situations of generic charity regulation ‘problems’, drawing on the wisdom and experience of both ancestral and peer regulators should provide us with richer possibilities to learn from previous successes and failures and, at the very least, not to repeat the mistakes of the past.

This paper examines the charity regulatory models in 5 countries across a number of headings, ranging from agency size and resources, annual budget, maturity of registration and enforcement processes, dissemination of key achievements to stakeholder constituencies and individual agency perspectives on successful regulation. It identifies the importance of a robust charity register, regardless of regulatory model used; considers the connection between good data streams and the need to engage in risk profiling; and the challenges presented by shrinking regulatory budgets for regulators.

Reviewing the rationale for charity regulation against the likely level of regulatory intervention required (whether at the investigation or enforcement stage) and staffing numbers across the various registration/investigation/engagement divisions in light of the achievements of those divisions may help to identify where regulatory effort is being placed and what is being counted as an outcome of regulatory success. The paper concludes that the budgeting challenge for policymakers and state funders when it comes to charity regulation may be one of walking the fine line between knowing the price of everything and the value of nothing. For regulators, avoiding the resourcing trap, known in other circles as the ‘non-profit starvation cycle’ in the context of charity regulation and oversight is essential and makes the process of aligning regulatory rationale, execution costs and measures of regulatory success ever more important.

## The Promise and Perils of Using Big Data to Regulate Nonprofits in the United States

Lloyd Hitoshi Mayer, University of Notre Dame, 574-631-8057, lmayer@nd.edu

Hudson Institute Centre for Global Prosperity (2015) The Index of Philanthropic Freedom 2015. Hudson Institute, Washington DC.

The United States is approaching a tipping point when it comes to the availability of data regarding nonprofit organizations. Until now such data were difficult to access and often incomplete, limiting their usefulness to both regulators and scholars. Three recent or likely future developments may dramatically change the amount, quality, and accessibility of such data, however.

One development is the decision by the federal government to release electronically the information contained in millions of electronically filed nonprofit tax forms. While the raw data provided requires significant work to make them truly accessible and usable, a coalition of private actors have already begun that process. A related likely development is a statutory requirement that most tax-exempt nonprofits file their tax forms electronically. While a legislative proposal along these lines has languished in the United States Congress for several years, the current tax reform effort may finally provide a vehicle for its passage. A third likely development is the launch of a “Single Portal” to facilitate state registration and reporting by charitable nonprofit organizations. While this effort has made only slow progress during the past decade, it is now finally moving toward completion.

This paper will explore the potential promise of these developments, the perils they present, and how to maximize the former while minimizing the latter. It will build on the existing literature relating to the regulation of nonprofits in the United States, which literature to date has not addressed the promise and perils of using such big data to enhance regulation. The promise includes the ability for not only regulators but also third parties to use these newly available data to spot important trends, identify indicators of legal noncompliance, and analyze the effects of different governance structures and practices. The perils include overreliance on information that may not be wholly accurate, other forms of incorrect or even intentionally wrong analysis that could unnecessarily harm the nonprofit sector, and privacy concerns. The paper will also seek to identify how the lessons provided by the United States experience could apply to similar efforts in other countries and vice versa.

## Benefacts: building a data infrastructure to support public policy for nonprofits

Patricia Quinn, Managing Director, Benefacts

In Ireland as in many developed countries, Government engages with civil society organisations at various levels – as regulator, policy-maker, funder and auditor. Until recently in Ireland - notwithstanding the scale of public spending (approximately 8% of all current expenditure by the Irish Exchequer) - there was no means for anyone to access reliable population information about a sector that relies annually on government for ~50% of its annual revenues. In collaboration with government and nonprofit partners Benefacts - a nonprofit company established in 2014 - has changed this, by building a data infrastructure for the Irish nonprofit sector and its stakeholders. Using regulatory data filed with public authorities, Benefacts has created a database of 20,000 nonprofits, updated daily and requiring no filing effort on the part of listed nonprofits.

Since 2015, Benefacts has been drawing on a variety of public open data sources to create a dataset of unprecedented currency, granularity and reach in the Irish context. The Database of Irish Nonprofits is derived from all of the files placed in the public domain by ~20,000 organisations that would be classified by statisticians as nonprofit institutions serving households or "NPISH". Fundamentally, Benefacts goal is to tackle the deep asymmetries of information that have bedeviled the nonprofit sector in its relationship with government for generations. Nonprofits are required to provide large volumes of data to multiple funders and regulators, and 'once-only' filing is just one obvious future outcome of the data infrastructure Benefacts is creating, with efficiency savings at the very least. More generally, putting more policy intelligence and more access to information in the hands of more actors – including the public, in whose name so much of this activity is undertaken – is seen as central to the balanced development of a more open and transparent environment for the operation of nonprofits in Ireland.

## Using regulatory data in public policy research on the third sector: reflections from England and Wales

Chris Damm and Chris Dayson, Sheffield Hallam University

Growing policy interest in the third sector since 1998 (Kendall, 2002; Haugh and Kitson, 2007) has led to the argument that it is now a 'terrain' that is 'governable' by the state (Carmel and Harlock, 2008) and there is now a need for different policy actors to 'account' for the policy decisions they make, especially when these affect the allocation of increasingly scarce public resources. This focus on the governance and accountability of the third sector as a 'field' of public policy has led to growing demand for rigorous public policy research.

Typically, public policy research on the third sector is commissioned to collect new primary data to provide insights into key public policy issues - either through quantitative methods (i.e. surveys), qualitative methods, or both - but rarely does it make effective use of routinely collected regulatory data, such as the Register of Charities and associated data resources. As such our start point for this paper is the argument that regulatory data is a currently underutilised resource in public policy research on the third sector despite its potential to enhance the governance and accountability of third sector policy making at local and national levels.

In order to progress this argument, this paper will present three case study examples of how we have applied regulatory data in public policy research on the third sector, to illustrate a range of different ways in which it might be used more effectively:

1. The long term evaluation of third sector capacity building interventions by the UK Government, through the development and implementation of a longitudinal matched-pairs approach

2. 'Mapping' the third sector at an area level, including income and expenditure patterns, activity types, and the distribution of staff and volunteers

3. Understanding the population of small charities in England and Wales, including spatial variations, patterns of activity, and financial health

For each case study we will provide an overview of the purpose of the research, the data sources and analytical approaches used, and the main findings. We will then provide critical reflections on the advantages and challenges of using regulatory data in public policy research; highlight some additional uses, including a range of data linkage opportunities; and make recommendations for policy, practice and regulation, and how public policy research using this type of data can improve the governance and accountability of policy making on and in the third sector locally and nationally.

# Session Two: New Opportunities Using Regulatory Data for Research

## New Data and New Insights: The Potential of Novel Data Collected by Regulators

Rutherford, Cordery, McDonnell

Until recently, relatively little nonprofit regulatory data was shared beyond lists of registered charities. Encouraged by increasing ‘open data’ movements, and in some cases government commitments to greater data sharing, it is becoming increasingly easier to access a range of both quantitative and qualitative data about charities and their regulation on a large scale.

Regulators collect a range of information about the organisations they regulate. Regulatory data reflects the culture and context in which regulation takes place. Varying across jurisdictions, the data held by regulators includes individual charity: characteristics, governance, financial data, trustee reports, complaints, investigations, outcomes, risk assessments and more. Data about charities is also held by other regulators, in fields such as care, housing, and tax authorities.

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In this paper we review the extent and variety of data available from nonprofit regulators. In particular, we identify opportunities to use new datasets to better understand governance, accountability and transparency. We provide some international examples, drawing on our own work, of the rich potential to gain new insights from linking and analysing administrative data. We identify real opportunities for interdisciplinary collaboration, combining accounting, social policy, law and data science in order to address important questions in novel ways.

## Linking non-profit data across government: an Australian example

Dr Natasha Cortis,

Senior Research Fellow, Social Policy Research Centre, UNSW Sydney, Australia

Like in other countries, paucity of high quality data has long hindered Australian non-profit scholarship, policy and regulatory capacity. Only in the last few years has it become possible to reliably depict the sectors’ size, characteristics, contribution, and sustainability, largely as a result of the data collection and dissemination efforts of Australia’s first dedicated charity regulator, the Australian Charities and Not-for-profits Commission (ACNC), established in 2012. The ACNC collects data from charities upon registration and through charities’ Annual Information Statements, and in doing so seeks to promote accountability and transparency whilst minimising charities’ reporting and compliance burden.

Public access to this comprehensive, living dataset expands capacity for evidence-based policy and regulation in Australia. To date, ACNC data has been used primarily to profile the size, activities, resource base and financial status of Australia’s charity sector as a whole (eg Cortis et al, 2016), and to explore characteristics and trends in particular areas and subsectors (eg Sayers and Mukherjee, 2016; McGregor-Lowndes, 2015) . However, there is much potential to use the data in wider, more creative ways, to build richer policy knowledge and scholarship. This paper offers an example of one such approach, involving innovative linkage of ACNC datasets with organisational data collected by another Australian government regulatory agency, the Workplace Gender Equality Agency (WGEA). WGEA requires annual reports by non-public sector organisations employing 100 or more employees, and while it does not cover the whole non-profit sector, it captures rich information about the employee characteristics and gender equality practices among major non-profit and private sector employers.

The paper will show how linking information collected by the ACNC and WGEA offers new insights into gender equality in Australian charities, and monitoring over time. Comparison with the private sector shows that although Australia’s charities are highly feminised, like in the private sector women remain under-represented in the leadership positions of charities, although gender gaps appear narrower than in for-profit organisations. The data also offers insight into women’s representation in governing bodies, and shows how different kinds of charities use various organisational policies and strategies to support gender equality. Overall, this provides an example of how large-scale collection of regulatory data from non-profits has policy and scholarly value that extends well beyond its initial regulatory intent, building knowledge and capacity for sector development in domains unanticipated in data system design.

## The comparative qualitative data studies from the statutory inquires in the UK and the statutory Kankoku in Japan

Masayuki Deguchi

Professor, MINPAKU

Japan has conducted a radical reform of Public Interest Corporations that have almost same tax-exempt and tax-deductible status as charities in the UK (Deguchi 2015). The Public Interest Corporation Commission (PIC Commission) has launched as an independent determination entity like the Charity Commission in England and Wales (Cordery& Deguchi 2017). PIC Commissions were conformed at both national level and 47 local governments’ level. The numbers of the total commissioners are 243 (7 from national and 236 from local) for only approximately 9500 PICs.

According to Japanese law, regulators receive annual accounting and activities reports from the PICs every year and conduct on-site inspection to all the PICs every three years. If the regulators have any suspicions about a PIC, they can issue a statutory query to the said PIC, or conduct irregular on-site inspections other than the regular one (Article 27, Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundations, AAPI). And if they still retain suspicions, they can issue a statutory Kankoku　(Recommendation) or statutory Meirei (Order). The regulators have to open both Kankoku and Meirei to the public (Article 28). Therefore, data of Kankoku and Meirei are accessible as qualitative data and can be analyzed.

This supervision is made by the information that is derived from annual reports, the regular on-site inspection, whistle-blowing, newspaper, or other governmental reports. The final penalty to the PICs is cancellation of their status (de-authorization). In this case the said PIC has to donate their assets to other PIC with same purpose or give them to the government.

Kankoku in Japan, therefore, has same nature as statutory inquiries in other English-language countries like UK and New Zealand. They can be comparative with Kankoku.

This research conducts international comparative studies of cultures of regulations using open statutory inquiries data including Kankoku in 2015 and 2016. Data are mainly qualitative ones in Japan, UK and NZ. The findings are that Japanese regulation is less proportionate, more paternalistic and more costly. All show the Japanese cultural strictness as regulatory measures to the PICs especially to small and medium size PICs.

## Natural Disasters and Charitable Giving: Do Religious Charities Have an Edge?

Joannie Tremblay-Boire, Georgia State University, Atlanta GA

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As the nonprofit/charity sector has grown rapidly in the last decades, media scrutiny of the sector has also increased, revealing mismanagement and sometimes outright fraud. Along with governmental law, private regulatory systems have emerged to govern the charitable sector’s accountability. One such mechanism is information-based regulation, whereby private actors provide user-friendly information to the public about charities in the hope that potential donors will direct their donations to well-managed charities. Charity Navigator, for instance, uses information that charities report to the IRS annually to produce an evaluative assessment of their accountability, transparency, and financial management.

How do donors use this information in their charitable giving, especially in response to natural disasters? To what extent do they look for other signals of reliability or effectiveness? In particular, do donors believe that religious charities are more reliable than secular ones and direct their donations to the former, all else equal? We expect that, because of time constraints in the aftermath of natural disasters, donors are more likely to rely on religious affiliation as a signal of trustworthiness.

We limit our analysis to FEMA-declared natural disasters in a given year for the 2000-2016 time period. Arguably, the demand for charitable donations will increase as more natural disasters take place in a given year. Hence, we normalize the donations by the number of disasters. Our dependent variable therefore is annual donations reported by a given national charity (as listed in Charity Navigator) on Form 990, divided by the number of natural disasters.

Our key variable of interest is the religious affiliation of the charity. In addition, our statistical model controls for charity characteristics such as rating by Charity Navigator, marketing expenses, and years of existence. We also control for the count of local- and state-level disasters because donations might be influenced by such local events. Finally, we control for the attention a charity has received though Google Trends data.

This paper is significant because it helps us better understand the factors that impact people’s decisions to donate to a charity, including ratings from charity watchdogs, reputation, and religious orientation. Natural disasters are an especially interesting setting for this research, as people might make their decisions to donate differently than in “normal” times. Furthermore, as disasters are poised to become more frequent and more powerful in the future, we must understand what drives donations to charities working in disaster-affected areas.