

*The Counter-Associational Revolution:
The Rise, Spread & Contagion of Restrictive Civil Society Laws in Democratic States*

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Introduction

Why and to what extent are democratic states, including long-standing, consolidated democratic states, adopting legislation that restricts the ability of Civil Society Organizations (CSOs) to operate autonomous from government control?

Civil society, an amorphous term defined in numerous ways, is primarily composed of organizations established voluntarily by coalitions of individuals to advance certain shared interests, or to address common concerns, which can include virtually anything with the exception of profit-making (US State Department 2017; Wolff and Poppe 2015, 5; Ferguson 2012, 15–16). Civil society organizations (CSOs), the so-called “third sector” wedged between the state and the market, include advocacy organizations, student groups, cultural and sports clubs, social movements, community associations, philanthropic foundations, religious organizations, professional associations, labor unions, chambers of commerce, and informal voluntary groups, among others.¹ They include Human Rights Watch, Greenpeace, Doctors without Borders, Parent-Teacher Associations, and community babysitting clubs, but also the Ku Klux Klan, the Alt-Right, and the United Aryan Front (Carothers 1999). Perhaps the only thing that unites this disparate array of organizations is what they are not: their *non-governmental* and *not-for-profit* nature (Klotz 2002, 50; Risse-Kappen 1995, 3). Though their work often overlaps with the state and the market, and their collaboration is typical, their autonomy from both spheres, particularly the state, is what makes CSOs distinct (Szazi 2012, 17; World Movement for Democracy and ICNL 2012, footnote 1).

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¹ Civil Society Organizations (CSOs) and Non-Governmental Organizations (NGOs) are often used synonymously or interchangeably. However, CSO is a broader, umbrella term, while NGO is more specific: it is just one type among many types of CSOs. I intend for my research to focus on this broader category of not-for-profit groups that lie outside both the government and corporate sectors; as such I have chosen to use the term CSO.

Yet, in an increasing number of countries around the globe, representing all regime types, in all regions, with all levels of economic and military strength, civil society's autonomy from the state, their separateness, is being slowly chipped, and in some cases entirely stripped, away (Musila 2019; International Council of Voluntary Agencies 2018; K. Dupuy and Prakash 2017; K. Dupuy, Ron, and Prakash 2016; K. E. Dupuy, Ron, and Prakash 2015; Rutzen 2015; Carothers and Brechenmacher 2014). While this erosion of civil society's autonomy is accomplished in a variety of ways, many of which are illegal and extralegal in nature, an increasingly popular tactic is the law. Through the passage of legislation that imposes new restrictions on the ability of CSOs to operate free from government scrutiny and control, what I refer to as "restrictive CSO laws," governmental actors are gaining greater control over the non-governmental, not-for-profit sector and in ways that benefit from the veneer of legality. Not only are such laws appearing in countries where they might be expected -- Azerbaijan, Burundi, China, Egypt, Ethiopia, Russia, Zimbabwe, and countries throughout the Middle East -- but they are increasingly appearing in democratic states too, including fully consolidated democracies: Canada, India, New Zealand, Spain, Israel, Hungary, and Poland, just to name a few (Swiney 2019a, 2019b).²

Restrictive CSO laws, which are perhaps unsurprising in non-democratic states, are puzzling in the context of democratic ones, which have historically been the primary defenders, funders, and champions of a robust and independent civil society. Though less restrictive than their counterparts in non-democratic countries, their accelerating appearance within an increasing number of democratic states, and in a relatively short period of time, is a perplexing and growing concern among civil society activists, democracy observers, and a small, but growing number of scholars (DeMattee 2019; K. Dupuy and Prakash 2017; Chaudhry 2016; K. E. Dupuy, Ron, and Prakash 2015; Christensen and Weinstein 2013). While restrictive CSO laws vary in scope, intensity and content, they share a common goal at their core: the extension of additional *governmental* control over the *non-governmental* sector. Or, put another, a reduction in the level of independence among the intentionally independent voluntary sector.

² Poland adopted a restrictive CSO law in October 2017; and Hungary adopted one in June 2017. Though both could be characterized as 'unconsolidating' in recent years, both are characterized as "full" democracies according to the Polity IV project, a highly-respected and frequently cited database relied on by many political scientists. Both countries have received the highest score (a 10) on Polity's scale since 1990 (for Hungary) and 2003 (Poland), which means that qualify as the highest form of democracy, a "full" democracy.

Some recent examples of what one study referred to as ‘the governmentalizing of non-governmental organizations’ will illustrate the point (Craig and Porter 2006). In October of 2017, the Polish parliament approved a law that consolidates all power over CSO funding into the hands of a single individual appointed by the Prime Minister. This individual now controls the distribution of CSO funding, no matter the source, whether foreign or domestic (Human Rights First 2017).³ Under the new law, government actors get to decide which CSOs receive funding, and at what levels, effectively giving them control over which CSOs survive and which don’t. Many fear that this is leading to a more passive CSO sector that simply parrots the government’s own agenda in order to gain approval (and thus, funding), a reality that, if true, defeats a core purpose of an independent civil society, namely to hold government actors to account (Buldioski 2017).

In June of 2017, Hungary similarly passed a new law, which many compare to Russia’s restrictive 2012 Foreign Agent Law, requiring CSOs that receive (approx.) \$28,000 or more of their funding from abroad, no matter the source, to label themselves as “funded from abroad” on all publications. This label, in the Hungarian context as in the Russian state, is extremely stigmatizing and degrading to the sub-sector of CSOs that it directly effects, which include advocacy organizations that focus on exposing government corruption and human and civil rights abuses (Serhan 2017; Keszthelyi 2017). Similar laws were passed in Israel in 2016 and India in 2010, the latter of which has had devastating consequences for many CSOs, particularly human rights and environmental CSOs (Cyrill and Pitman 2017; Lis 2016).⁴

In the US in 2017, a policy was adopted requiring foreign CSOs that provide health care services to women and children to first sign a pledge promising not to perform any abortion-related activities, including those that involve educational opportunities or counseling, in order to

³ While some CSOs, particularly certain types of CSOs such as human rights and other advocacy organizations operating in countries inhospitable to the causes they are advocating, have historically relied on government funding for their existence, and while this implicates a debate about the genuine independence of such organizations, what I’m focused on here are not government funds, which a CSO can voluntarily choose to apply for and receive, but laws that attempt to control the distribution of funding to CSOs altogether (including from non-governmental sources) and that require all or certain kinds of funds meant for CSOs, such as foreign funds, to first flow through the government, which then gets to decide which CSOs get access to the funding and by how much. This type of law would constitute a “restrictive CSO law” for my purposes, rather than an a law dictating how a CSO could apply for and receive government funding, which in my view, preserves and maintains a CSO’s autonomy.

⁴ Since Prime Minister Narendra Modi took office in 2014, the 2010 law has reportedly been used to strip over 24,000 CSOs of their operating licenses, a number that continues to increase (Cyrill and Pitman 2017).

receive any amount of US health aid (Human Rights Watch 2018).⁵ This requirement has had a significant chilling effect on many NGOs that provide healthcare to impoverished families around the world and are dependent, for their existence, on US foreign aid (Rios 2019).

According to one affected NGO, this policy, which not only implicates “sexual and reproductive health services and abortion services, but it is also affecting nutrition, maternal health services, gender-based violence and all different types of things,” is “literally killing women” (Lieberman 2019). A study by the Kaiser Family Foundation found that at least 1,275 foreign NGOs and nearly 500 US NGOs have been negatively impacted, and specifically, their speech and activities curtailed, by this US policy (Moss and Kates 2017).⁶

In 2014, civil society organizations (CSOs) caring for refugees in Australia, including Save the Children and the Red Cross, were asked by the Australian Government to pay multimillion dollar bonds, or “performance securities,” in order to continue their work. These CSOs were then warned that if they publically spoke out against the government’s immigration policies without first seeking approval, their bonds could be forfeited, effectively buying their silence (Morton 2015). Save the Children refused to pay the bond, arguing that it was effectively a gag order, which is illegal under Australia law. As a result, they lost their government contract and were eventually forced to end their work on the island of Nauru, where Australia houses its refugees under controversial conditions.⁷ Upon their departure, the head of Save the Children remarked that “[i]ncreasingly, what we've seen both here in Australia and around the world is what I would describe as a significant diminishing of civil society's ability to speak” and act in ways that were acceptable in the past (Morton 2015).

And in Italy, after a restrictive policy was adopted by the government in 2017, various humanitarian CSOs dedicated to rescuing migrants found drowning or starving in the

⁵ Under the expanded Mexico City Policy, described as the “global gag rule” passed by previous republican administrations but this time “on steroids,” adopted by President Trump in January of 2017, foreign CSOs wishing to receive any amount of global US health funding, must first sign a pledge promising to not engage in any abortion-related activities whatsoever, including counseling or education (Michelle Goldberg 2017).

⁶ In addition to the expanded Mexico City Policy, thirty-five US states have proposed or adopted 100 laws imposing new restrictions on individuals’ and CSOs’ ability to protest in the past three years. See the US Protest Law Tracker, International Center for Not-for-Profit, available at <http://www.icnl.org/usprotestlawtracker/> (last accessed June 6, 2019).

⁷ Soon thereafter, a for-profit entity, Transfield Services, signed a contract with the government, taking over the roles previously performed by Save the Children, after agreeing to the government’s “gag clause” and paying the associated bond. The head of Save the Children announced, upon their departure from Nauru, that “[i]ncreasingly, what we've seen both here in Australia and around the world is what I would describe as a significant diminishing of civil society's ability to speak out” (Morton 2015).

Mediterranean sea along the Italian coast had their rescue vessels impounded, their staffs investigated for human trafficking, and their assets frozen after attempting to help undocumented immigrants safely come to shore (John 2019). These are only a few of the many examples of the spread of new restrictions on CSOs in historically strong democratic states.

The Associational Revolution

This seemingly contagious global phenomenon, whereby one state after another adopts legislation (which is often similar in content) restricting the autonomy of the non-governmental sector while transferring additional oversight powers to the government, began in earnest following the turn of the twenty-first century and has been gaining momentum and intensity ever since (Stephan 2017; Tiersky and Renard 2016; Wolff and Poppe 2015; K. Dupuy, Ron, and Prakash 2016; Carothers and Brechenmacher 2014). This evolving phenomenon seems to be a direct response to the “associational revolution” of the 1990s, which saw CSOs’ numbers, influence, and ability to shape international and domestic politics escalate to new heights (Sarah Mendelson and Glenn 2002; Mathews 1997; Salamon 1994a). The end of the cold war unleashed a surge of interest and support, and therefore resources, toward CSOs, which were viewed by democratic states in particular as trustworthy vehicles for proselytizing and institutionalizing the virtues of democracy worldwide (Lugar 2006). The global rise and spread of CSOs, along with the Internet, the defeat of communism, the rise of political and economic liberalization, and advancements in communication and information technology, were hailed as ushering in a hopeful new “age of civic empowerment,” whereby private citizens, acting in coalition outside of the state apparatus, would be able to participate alongside government actors in shaping their communities and destinies in the new millennium (Rutzen 2015).

CSOs seized this hopeful moment in their history: they proliferated domestically and internationally, successfully fought for involvement in traditionally state-based international organizations, and inserted themselves at all levels of global and domestic politics (Kundu 2017; Towns 2012; Carpenter 2011; Greenhill 2010). As the twenty-first century completed its first decade, the number of domestic CSOs had increased over 500 percent in over fifty countries, and in many countries, this number reflected a twenty-fold increase (Murdie 2014, 5). The number of international CSOs similarly escalated exponentially (Szazi 2012, 27), as did their level of participation alongside states in global UN conferences and other typically state-led events

(Clark, Friedman, and Hochstetler 1998).⁸ By 2016, the growth of new international CSOs (by sheer numbers) was significantly outpacing that of formal state-led international organizations, whose growth had stagnated (Abbott, Green, and Keohane 2016). This extraordinary rise in the number of CSOs around the globe was leading to what some political scientists described as “a dramatic shift in the institutional landscape” of global politics, with non-state actors, notably including CSOs, playing larger and more consequential roles in shaping the international political agenda (Id.). In the heyday of the associational revolution, some even referred to non-governmental organizations as rising non-state “second superpowers” (Moore 2003), which were ushering in a significant “power shift” in global politics whereby the “steady concentration of power in the hands [of states that] began with the Peace of Westphalia, is over, at least for a while” (Mathews 1997).

CSOs’ numerical growth has indeed translated into increased influence and power at both the domestic and international levels. At the domestic level, CSOs have proven capable of compelling states to make important policy and legal changes -- to institutionalize domestic watchdog institutions (Dongwook 2013), adopt certain policies (Murdie and Hicks 2013), enact and rescind specific laws (Brake and Katzenstein 2013), and amend long-standing constitutional provisions (Cole 2016) -- and inspiring large-scale social movements that lead to radical shifts in deeply-entrenched political and cultural norms.⁹ They have held governments to account, when citizens acting on their own, treaty commitments, foreign states, and IGOs did not or could not

⁸ Based on Article 71 of the UN Charter, NGOs are permitted to apply for consultative status within the UN’s Economic and Social Council (ECOSOC). In the first year that the accreditation system was operational, in 1948, only four NGOs were accredited; in 1993, this number rose to 418; and today, over 4,500 NGOs are accredited (see the UN’s “NGO Branch” website: <http://csonet.org/?menu=100>). One can also trace the rising influence of NGOs in international politics by examining the number of NGOs permitted to participate in the UN’s global conferences. In 1975, the number of accredited NGOs permitted to participate in the Women’s was 114; in 1985, it was 163; and by 1995, it reached 3,000 (Clark, Friedman, and Hochstetler 1998). According to the UN Commission on the Status of Women: “NGOs have been influential in shaping the current global policy framework on women’s empowerment and gender equality: the Beijing Declaration and Platform for Action” (UN Commission on the Status of Women 2017).

⁹ The US alone provides many examples. Environmental CSOs in the US sparked the environmental movement in the 1980s, and CSOs were also instrumental in catalyzing and leading the campaign to franchise women, the civil rights movement, and the marriage equality campaign, among others. Although arguably not as successful, the Black Lives Matter campaign has led to many legal and regulatory changes that have increased oversight and accountability of police officers, such as requirements for video camera installation in police cars. According to Salaman Lester, who wrote a landmark article on the rise of the non-profit sector in *Foreign Affairs* in 1994, “[v]irtually all of America’s major social movements, for example, whether civil rights, environmental, consumer, women’s or conservative, have had their roots in the nonprofit sector” (see p. 109). Globally, one can point to the abolitionist movement, the campaign to end Apartheid, the bans on landmines and wars of aggression within international law, the movement to end the proliferation of nuclear weapons, and most recently, the #MeToo movement as examples of successful CSO-led advocacy campaigns (Klotz 2002; Price 1998).

(Hafner-Burton 2008), and they have repeatedly named and shamed states into making important policy changes, such as withdrawing from colonial territories,¹⁰ replacing long-standing incumbents (Meltz 2016), ending the institution of slavery, adopting treaties, and even abandoning powerful weapon systems (Horowitz and Macdonald 2017; Quirk 2011; Price 1998).

On the global level, as the twenty-first century dawned, CSOs had become essential to accomplishing international development goals (Kundu 2017), instigators of norm creation and change (Towns 2012), agents of socialization (Greenhill 2010), key diffusers of global human rights norms (Keck and Sikkink 1998), recognized actors within international law (Szazi 2012), and catalysts of transformational shifts in global politics (O. Hathaway and Shapiro 2017). They were key actors in the global efforts to end slavery and Apartheid (Klotz 2002); they led the movements to ban wars of aggression, landmines, and nuclear weapons within international law (O. Hathaway and Shapiro 2017; Price 1998; Bolton 2017); and they launched global campaigns to raise awareness of violence against women, with the most recent manifestation of this being the #MeToo Movement, which many view as an enormous success (Gilbert 2017; Htun and Weldon 2012) (Htun and Weldon 2012).¹¹ In 2017, two CSOs, The International Campaign to Abolish Nuclear Weapons and the #MeToo Movement, became two more in the long line of CSOs to be awarded the Nobel Peace Prize and Time Magazine's "Person of the Year," respectively. In short, the associational revolution seemed to position CSOs as rising global leaders that stood, alongside states and their intergovernmental organizations, as influential independent actors in international politics.

Empowered by their elevated status, many achievements, and increasing resources, CSOs began to feel more and more emboldened to challenge the state's authority, including at the highest echelons of power. By mobilizing mass crowds, starting and organizing opposition movements, and publicly highlighting the weaknesses and ineptitude of existing regimes, CSOs were at the forefront of many citizen-led revolutions that resulted in the toppling of many long-standing incumbents (Meltz 2016; Cole 2016; Brake and Katzenstein 2013; Murdie and Hicks 2013; Wright and Escribà-Folch 2009). The color revolutions that swept the former Soviet states from 2003-2005, and later the Arab Spring uprisings that domino-ed their way through the

¹⁰ Algeria is just one example: here, coalitions of citizens banded together to form groups that fought their French colonial masters in the late 1950s- early 1960s, which eventually forced the French to withdraw and led to Algeria's independence in 1962.

¹¹ What I mean here is an enormous success in bringing visibility and awareness to the issue of sexual assault and violence against women, not unfortunately, in solving the problem.

Middle East and North Africa beginning in 2010, all led to dramatic shifts in the political status quo, and each, in various ways and to different extents, were led and organized by, and therefore blamed (by the affected governments) on, civil society.

The Counter-Associational Revolution & the “Closing Space” Trend

The rising power of CSOs, especially their ability to cause consequential political disruptions, did not escape the attention of states, including states far beyond the borders where such uprisings occurred. Indeed, this recognition seemed to unleash a powerful state-led counter-trend, the so-called “counter-associational revolution,” whereby states attempted to contain and minimize the influence that CSOs had achieved throughout the associational revolution of the 1990s (Rutzen and Shea 2006). While a variety of methods are used to accomplish this goal, including violence, harassment, and cooptation, an increasingly popular tactic of choice by states is the law, a less costly, even if more time consuming and complicated, strategy that can similarly lead to the weakening and shrinking of the civil society sector but with less risk of international outcry (Chaudhry 2016).¹² Beginning roughly in 2005, a cascade of new restrictive CSO laws began to appear in one state after another, a phenomenon so alarming in scope and spread that it was named by civil society activists and human rights attorneys for the effects it was having on CSOs: the “closing space” trend (Stephan 2017; Tiersky and Renard 2016; Wolff and Poppe 2015; Carothers and Brechenmacher 2014).

First identified as a systematic and global problem in 2006 (Gershman and Allen 2006; Carothers 2006), the spreading closing space trend reached “crisis” proportions by 2014 (Carothers and Brechenmacher 2014), and “emergency” status by 2017 (CIVICUS 2017a), according to civil society experts. Human rights defenders and civil society activists describe this global phenomenon in apocalyptic, even hysteric, terms: as a “disturbing” and “alarming” “existential threat” to civil society (Kiai 2013); a “global contagion” with unstoppable and

¹² The violent assault against CSOs is an enormous problem worldwide. Certain groups, such as Global Witness, which focuses on environmental civil society actors, as well as Civicus, track incidents of violence and other crimes inflicted on civil society actors, including targeted murder of CSO leaders, violent attacks, disappearances of activists, unlawful detentions, public vilification, forcible closures of CSOs, and other illegal acts. Recent research by Civicus confirms in its “Anatomy of the Global Crackdown” on civil society that activists being detained, protest disruption, and excessive force are still the predominate ways in which this crackdown is done. See their visual of this here: <https://monitor.civicus.org/globalfindings0417/>. I acknowledge the enormity of this problem, but it is not the focus of my research, which is specifically focused on the use of the *law* to restrict the autonomy of CSOs. I hope, in future research, to broaden my inquiry to include these other tactics used by states to repress the work of CSOs.

incurable force, which “threatens the viability of civil society organizations....vital to holding governments accountable and advancing human rights” (Center for Strategic and International Studies 2017); an all out “global war” on non-governmental organizations (Washington Post Editorial Team 2015); and an attempt to “choke out” civil society altogether (Human Rights Watch 2016). Hyperbole aside, a concerted attempt by an increasing number of states, including democratic states, to stem or reverse civil society’s autonomy and influence through the passage of laws, among other means, appears in fact to not only be underway, but gaining momentum (Rutzen 2015; Carothers and Brechenmacher 2014; Rutzen and Shea 2006; K. Dupuy, Ron, and Prakash 2016; Chaudhry 2016; Schuman 2017; Tiersky and Renard 2016; Wolff and Poppe 2015).

The small handful of organizations that closely track legal developments pertaining to CSOs have confirmed this trend. The International Center for Not-for-Profit Law (ICNL), a global leader in civil society laws around the world, has documented more than fifty countries that either enacted or considered measures restricting civil society between 2004 and 2010 (Rutzen 2015, 3). Between 2012 and 2015, they reported that more than ninety restrictive CSO laws were proposed or enacted (Id.); and by May 2018, they were reporting on the existence of 144 laws and regulations that had been proposed or enacted by seventy-two countries (International Center for Not-for-Profit Law 2018, 9).¹³ An article published by ICNL’s president in 2015 stated that the number of restrictive legal initiatives proposed or adopted doubled each year beginning in 2012 (Id. at 4); and an internal ICNL document, which tracks a broader array of legal instruments, reveals even higher numbers of restrictive initiatives: the emergence of 400 state-led legal initiatives (laws, decrees, regulations, key policies, and the like) that impose new restrictions on CSOs proposed or adopted since 2012.¹⁴ ICNL’s vice president for legal affairs describes the recent spate of restrictive CSO laws around the world as “a paradigm shift” for global civil society, which has seen its freedom to operate over the past twenty years significantly diminish (Id.).

¹³ The distinction between a “proposed” and “enacted” law is a crucial one, as I address in the “key definitions” section below (located in the broader Research Design section). My research will focus on adopted laws, though I am attempting to gather information on proposed laws (and proposal dates) as well. If I’m able to collect enough data on these proposals, I hope to expand my inquiry to include both. Also discussed below in the “key definitions” section is what precisely I mean by “laws,” which I expand to include anything that carries the force of law, such as certain policy pronouncements and executive decrees.

¹⁴ These mostly include adopted laws (including amendments to existing laws), but also include proposed laws, official policy statements, official regulations, and executive decrees, a broader category of legal initiatives than those captured in the other lower figures.

Civicus, another organization that closely tracks developments affecting global civil society, maintains a constantly-updated virtual map visually depicting the ever-expanding closing space phenomenon. A cursory glance reveals that countries with “narrow” or “open” environments for CSOs, the least restrictive categories, constitute the slim minority, and that countries with “closed,” “repressed,” or “obstructed” environments comprise the vast majority (Civicus 2019b). According to Civicus, only four percent of the human population currently lives in a country where civil society is able to freely operate, and in 111 countries, well over half of all nations, CSOs are under “serious attack” (Civicus 2019a). Though Civicus tracks all types of challenges faced by CSOs, legal and illegal, their research similarly confirms the “viral-like spread of new laws” snaking their way around the globe that attempt to minimize the autonomy and increase government oversight of CSOs (Sherwood 2015; Carothers and Brechenmacher 2014). According to their 2017 report, “when it comes to the freedom of association [the cornerstone freedom underlying the existence of CSOs] far more disabling laws and policies than enabling ones are being introduced” (CIVICUS 2017b, 3).¹⁵

The few scholars who have examined the closing space phenomenon not only confirm the rise in restrictive CSO laws around the globe but also their negative, and in some cases devastating, consequences (K. Dupuy and Prakash 2017; Chaudhry 2016). A variety of reports suggest that the percentage of states that have adopted restrictive CSO laws, notably including laws that restrict CSOs’ ability to access foreign funding, has risen sharply since 2013 (Laufer 2017; Schuman 2017; Rutzen 2015), and a mounting body of evidence suggests the dire consequences they are having on CSOs, which in some contexts is leading to the collapse of entire sectors of civil society (Chick 2017; K. E. Dupuy, Ron, and Prakash 2015; Digges 2015; Carothers and Brechenmacher 2014). A 2013 study, which examined the spread of restrictive foreign funding laws, found that at least 26% of the UN’s current 193 member states either prohibit or restrict CSOs’ access to foreign funding (Christensen and Weinstein 2013). Another 2017 study, building on this earlier study, found that the adoption of restrictive CSO foreign funding laws not only negatively impacts CSOs, but the adopting states too: indeed, adopting this

¹⁵ “Disabling” is a term often used by civil society activists to describe laws, and other instruments, that create an environment not conducive to a robust, independent civil society sector. For CSOs to flourish and reach their full potential, according to civil society activists, states should create an “enabling environment” conducive to their success, which would include a legal and regulatory framework that encourages and permits their independence and growth.

type of law was associated with a 32% decline in bilateral aid inflows to the state in subsequent years (K. Dupuy and Prakash 2017).

The variety of explanations often given or implied in discussions of the closing space phenomenon make intuitive sense when applied to non-democratic states. Of course non-democratic states would feel threatened by foreign-funded democracy promoting, or watchdog type, non-governmental organizations that threaten to upset the status quo. But the existing explanations tend to entirely overlook, or acknowledge but leave unanswered, the question of why democratic states are passing restrictive CSO legislation too. While often anecdotally noted in the course of discussing the broader closing space trend, to my knowledge there are no systematic scholarly attempts to explain why the legal backlash against CSOs is specifically occurring in democratic states, and in increasing numbers, the most puzzling aspect of this broader global trend. While my broader research agenda examines the explanatory portion of this perplexing, consequential, and to date, still largely unexplained global phenomenon, the current paper is largely descriptive and focuses on mapping the global landscape of restrictive CSO laws in strong democratic states. This paper asks to what extent are restrictive CSO laws appearing in democratic states: how many, where, and what types of laws are being adopted? What are the contents of these laws and how restrictive are they? Which groups, activities, or aspects of a CSO's organizational existence are impacted? In short, what is the full scope, spread, and intensity of the closing space phenomenon within the world's strongest democratic states? I conclude with some brief conclusions and thoughts on the implications of my findings, as well as a short discussion on the theoretical and empirical implications of my research.

The Neglect of Democracies

As previously mentioned, existing studies and reports that have examined the closing space phenomenon often note, but without further examination, that democracies are increasingly participating in this trend, which is frequently described as defying regime type, region and economic status (Wolff and Poppe 2015; Mendelson 2015; Carothers and Brechenmacher 2014). Moreover, those studies that do attempt to go beyond mere description, often narrow their scope significantly to examine only one type of law (K. Dupuy, Ron, and Prakash 2016; Christensen and Weinstein 2013), one type of state (typically developing, low and middle income states or states that engage in egregious human rights violations involving

physical integrity), and only certain kinds of CSOs (usually human rights and other advocacy NGOs) (Bakke, Mitchell, and Smidt 2018; K. Dupuy and Prakash 2017; K. Dupuy, Ron, and Prakash 2016; Chaudhry 2016; Christensen and Weinstein 2013). This small but growing list of academic studies present additional limitations too: one is an unpublished dissertation (Chaudhry 2016); one performs only “simple tests” in order to access the “facial validity” of the proposed explanations and is explicitly “not focused on indentifying causal effects,” which means that their conclusions are little more than educated hunches as to what is really going on (Christensen and Weinstein 2013, footnote 5); and all of them explicitly exclude established, wealthy, consolidated democratic states from their review (Chaudhry 2016, 13; K. Dupuy, Ron, and Prakash 2016; K. Dupuy and Prakash 2017).

The academic neglect of the closing space phenomenon among political scientists, particularly among International Relations (IR) scholars,¹⁶ is perplexing given the existing (and enlarging) bodies of literature on CSOs pertaining to their rising influence in both domestic and international politics (E. A. Bloodgood and Clough 2017; Murdie 2014; Murdie and Hicks 2013; Greenhill 2010; Price 1998); their participation in transnational advocacy networks, which can amplify their influence over states with their “boomerang” effects¹⁷ (E. A. Bloodgood and Clough 2017; Klotz 2002; Keck and Sikkink 1999, 1998); their rising status in international law, inter-governmental organizations, and traditionally state-dominated global events, such as major UN conferences (Stroup and Wong 2016; Szazi 2012; Htun and Weldon 2012); and the internal dynamics, organizational structures, and external incentives that shape their agendas (McGann 2005; Sarah Mendelson and Glenn 2002; Cooley and Ron 2002). Testifying to the increasingly robust literature on CSOs is the recent emergence of a much more nuanced and critical body of scholarship on CSOs, which are no longer assumed to be the unquestioned ‘paragons of virtue’ they were once thought to be (Murdie 2014; McGann 2005; Mendelson and Glenn 2002; Cooley and Ron 2002; Carothers 1999). Yet, political scientists, who clearly have the tools, expertise and interest in CSOs to thoroughly assess the closing space phenomenon, have largely failed to notice it altogether.¹⁸

¹⁶ I am still accessing if comparative politics scholars have considered the closing space phenomenon.

¹⁷ This refers to the ability of CSOs to amplify the pressure exerted on their own government by allying with CSOs in other states, forming a transnational network.

¹⁸ In a full-text search through six of the top IR Journals (*International Organization*, *International Security*, *International Studies Quarterly*, *World Politics*, *European Journal of International Relations*, and *APSR*), for all articles published since at least 1997 through to the present, the “closing space” phenomenon was mentioned in

The lack of scholarly attention to what appears to be an international trend led by states in response to the rising power of a non-state actor, typically a topic of paramount interest and concern among IR scholars, is all the more perplexing given that this phenomenon is predicted by various IR theories. Classical and structural realists, who are fixated on balance of power concerns, would expect states to rebalance, or push back against, a growing international imbalance in the distribution of global power or threats to their exclusive sovereignty (Waltz 2010). CSOs, which have successfully fought for participation alongside states in many international arenas and often act as ‘gap-fillers’ performing roles and offering services traditionally provided by states, should, according to realists, trigger a reaction by states (which indeed they have, as my research will highlight). Similarly, constructivists, who are interested in questions of identity and ideology in the shaping of global politics, should be intrigued by a phenomenon that raises fascinating questions about the changing identities and ideologies of many democratic states in the twenty-first century (Wendt 1992). Constructivists would likely point to the enduring power of certain international norms, such as state sovereignty, as well as the global wave of populist, hyper-nationalist leaders and parties who have risen to power in many democratic states in recent years, to explain why states are pushing back against transnational non-state actors who endorse causes that often transcend state boundaries and national interests. Yet, to my knowledge, neither realist nor constructivist IR scholars have taken on the challenge of explaining this exceedingly relevant and intellectually fascinating puzzle, which implicates both power politics and ideological concerns.¹⁹

passing (not discussed) once within the text (*see* Bell, Clay, and Murdie 2017, 20) and was mentioned in the title of one reference contained within a footnote in one other (*see* Nuñez-Mietz and García Iommi 2017). *Foreign Affairs*, another leading IR journal, is an exception; there, one author in particular (Sarah Mendelson) has written various times on the closing space phenomenon (“Dark Days for Civil Society” and “Putin Outs the NGOs”), and others, such as Daniel Wilkinson, have discussed the ways in which individual states are cracking down on individual types of civil society activists, such as environmentalists (“Ecuador’s Authoritarian Drift: Correa Cracks down on Environmental Activism”). In *International Organization*, arguably the leading IR journal, a search through all issues published since 1997 for the term “civil society organizations” yielded zero results, while a search for “civil society” turned up two articles. One pertains to a civil society success (the banning of landmines campaign), and the other only tangentially discusses civil society, and even then, it mostly addresses civil society’s positive contributions to society; neither address state-led efforts to restrict the autonomy of CSOs. In *International Security*, one article specific to Russia, (Russians’ Rights Imperiled: Has Anyone Noticed? by Sarah Mendelson, the same author mentioned above) briefly addresses Putin’s attempts to manipulate and harass the civil society.

¹⁹ I am still evaluating whether comparative politics scholars have similarly failed to examine the closing space phenomenon. Based on my preliminary research, it seems likely that area studies experts, who specialize in a particular country or region, have noticed this and commented on it, but as with IR scholars, not attempted to map its causes in a systematic way. (See, for example: Marc M. Howard. 2003. *The Weakness of Civil Society in Post-Communist Europe*. Cambridge, U.K. ; New York, NY: Cambridge University Press.)

Most of the existing explanations of the closing space phenomenon come from observers of and participants in global civil society, such as civil society activists and human rights attorneys, as well as a small handful of experts affiliated with think tanks or policy organizations (Wolff and Poppe 2015; Carothers and Brechenmacher 2014; Rutzen and Shea 2006). These individuals are understandably preoccupied with empirical realities rather than theory building, and tend to focus on the more extreme legislative examples adopted by the more high-profile authoritarian states, such as Russia, Egypt and China (Carothers and Brechenmacher 2014). While the spread of similar laws in other states is often acknowledged, their focus tends to be on understanding why individual states adopted a particular restrictive law or on tracking, rather than assessing and explaining, the broader trend (ICNL Civic Freedom Monitor, 2017; Civicus Monitor 2019). Moreover, these dedicated practitioners, who are often on the front lines observing and experiencing this trend, are typically focused more on combating this growing phenomenon than on explaining, mapping or theorizing its causes. Yet, the rich empirical-based assessments provided by civil society activists, when combined with the illuminating studies conducted by the small but growing number of scholars who have examined this topic, offer important insights for understanding the spread of restrictive CSO laws into democratic states.

Definitions & Methodology

In order to map the rise and spread of restrictive CSO laws in historically strong democratic states, I carefully reviewed and documented each of their CSO legal frameworks for a nearly thirty year period, from 1990 to 2018. Before fully exploring my findings, a few key definitions are in order. First, “Strong Democratic State.” My research captures only the most well established and consolidated democracies in the world, which as you will see from my complete list, includes some states that are arguably starting to fall outside the parameters of this definition, such as Hungary and Poland, whose democratic credentials have come into question in recent years (Freedom House 2019; M. Marshall, Gurr, and Jagers 2016).²⁰ To identify the strongest democracies in the world, I relied on the Regime Trends Dataset, which is part of the

²⁰ Note, however, that the Polity V project, which I depended up for my democracy scores, continues to rate Hungary and Poland as “full” democracies, which means they’ve received the highest score, a 10. Hungary has received a 10 since 1990, and Poland since 1992.

Polity V project conducted by the Center for Systemic Peace.²¹ This is a highly regarded and often relied upon database, especially among political scientists. Based on Polity's twenty-one point scale, which ranges from -10 to +10, a "democratic" state is one that receives a score of six or higher; a perfect ten corresponds to a "full" democracy.²² The Polity scheme consists of six component measures designed to capture the key qualities that comprise a democratic system of governance, which include method of executive recruitment (how the executive comes to power), constraints on executive authority, and political competition (M. G. Marshall 2018).²³ Usefully, neither the autonomy of the civil society sector nor respect for the freedom of association are specifically included in Polity's definition of democracy; one or both typically feature in other democracy measures, such as the one established by Freedom House.²⁴ This is fortunate, and one of the primary reasons I relied on Polity, as their exclusion of respect for the freedom of association in their definition of democracy eliminates the potential for spurious findings. Polity's user manual explicitly states, "we do not include coded data on civil liberties" (M. Marshall, Gurr, and Jagers 2016, 14).

The Polity IV Regime Trends dataset includes all "major, independent states in the global system," defined as states having a population greater than 500,000; this includes 167 nations. For each of these 167 states, an "annual polity" score is given for the years spanning 1800-2017, allowing me to clearly identify whether a particular country was a "strong democracy" in the years leading up to (and following) the adoption of a particular CSO law.²⁵ I confined my review to the years spanning 1990-2018, which includes the decade known as CSO's "golden age," the 1990s, followed by the eighteen years comprising the new millennium, when the golden age ended and began reversing course (Salamon 1994b; Mathews 1997; Rutzen 2015). To narrow my scope to the world's leading democracies, I identified all countries that obtained a score of at least 9 (so either a 9 or a 10, the two highest scores) for at least five consecutive years

²¹ Polity IV Project, Regime Trends, is available at <http://systemicpeace.org/polity/polity4.htm> (last accessed June 6, 2019).

²² I exclude laws passed by "democratic" states during times of martial law or in the aftermath of coups, such as occurred in Turkey and Thailand in recent years (despite maintaining their democracy status according to Polity).

²³ Monty Polity IV Project, Dataset Users' Manual, Political Regime Characteristics and Transitions, 1800-2017.

²⁴ Freedom House, Freedom in the World Report 2018, Methodology, available at <https://freedomhouse.org/report/methodology-freedom-world-2018> (last accessed June 6, 2019).

²⁵ I have emailed with the research center that created the Polity IV project, the Center for Systemic Peace, and inquired about updated regime scores for the years after 2013; I am still awaiting their response. Their website indicates that they are working on an updated version, Polity V, but does not specify when it will be released.

between 1990 and 2018. This list, which came to fifty-nine countries, comprises my population of designated “strong democratic states.”

For each of these fifty-nine “strong democratic states,” I carefully researched and documented their CSO legal frameworks, collecting *all* relevant CSO laws (proposed, adopted and withdrawn/rejected) that I was able to locate, including laws that appeared permissive, restrictive and neutral on their face. Following this review, I coded each law as either permissive or restrictive based on a human rights legal analysis, as previously discussed and further defined below; neutral laws were coded as permissive, as neutrality raises no issues from an international legal perspective.

The next term in need of definition is “restrictive CSO law.” To be labeled as “restrictive,” a law had to impose an additional *new* restriction on the CSO sector (or one sector of CSOs), or it had to in some way reduce its previous levels of operational, financial and/or legal autonomy in some meaningful way. Examples of “restrictive laws” include laws that impose new constraints on CSOs’s ability to access domestic or foreign funding; laws that require CSOs to obtain specific government permission before engaging in certain activities; laws that complicate the ability of CSOs to form by imposing additional new barriers to registering; laws that impose onerous new reporting obligations; and laws that restrict the ability of CSOs to engage in public demonstrations. Unfortunately, I cannot claim to have gathered every law conceivably relevant to CSOs, which no doubt includes a much broader universe of laws than the ones I located. Instead, I attempted to locate and isolate those laws that most directly address and impact CSOs and the things that stand at the core of their existence: their ability to form, operate, receive funding, and assemble. I did not include laws that only indirectly implicate, but do not directly address, CSOs, such as freedom of information, media, or criminal laws, which can impact the work of many CSOs, oftentimes in significant ways, but typically don’t address them specifically and directly.

I examined four types of laws in particular: (1) lifecycle or framework CSO laws; (2) assembly laws; (3) foreign and domestic funding laws; and (4) counterterrorism laws. Lifecycle laws, which are the primary laws governing the existence and operations of CSOs, include laws outlining the general formation, operation, domestic funding, and dissolution of CSOs; they also typically include reporting and auditing obligations, penalties for noncompliance, and detail the acceptable scope of activities that CSOs can engage in. Assembly laws include laws impacting

the ability of CSOs to hold public demonstrations and events, including protests and rallies. Funding laws govern how and under what conditions a CSO can receive funding, whether foreign or domestic, and how they can access other sources of support, such as through fundraising, philanthropy, and donations. Finally, counterterrorism laws, as the name implies, govern how CSOs must comport with new measures designed to prevent terrorism, money laundering, and terrorism funding. The latter category was the trickiest one of all, as it threatened to overwhelm my research and over-prove my point. Nearly every state in the world passed new counterterrorism legislation in the post-9/11 era; indeed, doing so was mandated by at least two different UN Security Council resolutions.²⁶ Many of these new laws impose new restrictions on CSOs, a topic unto itself to be sure (Hayes 2017). For my purposes, and the purposes of this paper however, I wanted to look at a broader phenomenon and, as such, was very careful when including counter-terrorism laws in my review. Only those that imposed meaningful new restrictions (or subtracted significantly from previous levels of autonomy), and that went beyond those restrictions considered legitimate under human rights laws were included in my review. Many new restrictions imposed by the new counterterrorism laws do not qualify as illegitimate under a human rights legal perspective.

By broadly defining ‘restrictive CSO legislation’ I overcome a key criticism of the existing literature on the closing space phenomenon, namely that it heavily focuses on foreign funding laws to the exclusion of all others. Focusing on only one specific type of law offers only a small and potentially misleading snapshot of the broader reality and the broader legal environment for CSOs, which are shaped and affected by many different types of law (Dupuy, Ron, and Prakash 2015). Despite that most of the scholarship on the closing space trend seems to focus on the passage of restrictive foreign funding laws, a recent study published in 2018 found that foreign funding laws constitute only 28% of the laws being passed that impose new restrictions on CSOs (International Center for Not-for-Profit Law 2018, 10). In contrast, the more foundational “lifecycle” laws constitute 47% of such laws, and another 25% impact the ability of CSO’s to exercise their right to freedom of assembly, so-called “assembly laws” (Id.). As shown below, my findings discovered a similar breakdown in the types of laws being passed

²⁶ These include Security Council Resolution 1373 (2001), which urged countries to implement a number of measures intended to enhance their legal and institutional ability to counter terrorist activities at home, in their regions and around the world; and Security Council Resolution 1624 (2005), calling on states to prevent incitement to commit terrorism. For more information, see the Security Council’s Counter-Terrorism Committee’s website, available at: <https://www.un.org/sc/ctc/about-us/>.

that impact CSOs, with foreign funding laws constituting only one, and a minority at that, of the types of laws being adopted that constrain the autonomy of CSOs.

I not only include formal “laws” in my review, but policy pronouncements, executive orders, and other official decrees that carry *the force* of law as well. As such, my definition of “law” is wider in scope than formal legislation adopted by a legislative branch according to the typical legislative rules. For example, a restrictive policy framework adopted in 2012 in Slovakia, a “full democracy” according to Polity, directly led to the de-registration of over 4000 “noncompliant” NGOs. This policy framework, which directly addresses CSOs, has the effect of law, and thus, is treated as equivalent to a “restrictive CSO law” in my analysis. For a policy to be included, however, the impact on CSOs had to be obvious and direct, as in the previous example; in other words, it had to directly address CSOs *and* directly affect their behavior or organizational existence without the need for further implementing legislation. An official announcement of a policy that, for example, asserts a need for greater oversight over the civil society sector, but does not require or trigger any specific actions in furtherance of that announcement, would not go far enough to be included as equivalent to a “law” in my review.

In most cases, whether a pronouncement carries the force of law or not is obvious, such as in Spain, which issues legally binding royal decrees, and in the US, which issues legally binding executive orders, both of which are well known. In other countries, however, this proved a bit more difficult to ascertain. In situations where I had any insecurity about whether to include the instrument/pronouncement in my review, I aired on the side of not including it. I also excluded local and state-level laws from my scope of analysis, and focused only on laws adopted at the federal/national level. State and local laws, which impact fewer CSOs, potentially open the door to a different and more parochial set of motivating factors not always relevant to, or just different from, those experienced by national governments, which face heightened international audience costs and different domestic pressures than those experienced by non-federal officials who are accountable to smaller constituencies. To be sure, this forced me to exclude certain highly relevant laws from my scope of analysis, such as the spate of recent laws proposed and adopted in US states that impose new restrictions on protest activities (International Center for Not-for-Profit Law 2017), and the similar string of restrictive protest measures adopted in certain Australian states (Ford 2017; Alexander 2014). Yet, scoping my project was necessary for both practical and conceptual reasons: searching for all sub-federal

laws is an infeasible project for one researcher working alone, and conceptually, as stated above, my sense is that different factors contribute to the passage of sub-federal and federal laws. There is one upshot to this (and my other exclusions), however. Because I was very conservative when choosing which laws went into my database for analysis, it can safely be said that, if anything, I understate the conclusion I reach below, namely, that strong democratic states, like their authoritarian counterparts, are also adopting restrictive CSO legislation and in surprisingly large numbers.

My third, and final, definition is for “Civil Society Organization” (CSO). By “CSO” I refer broadly to non-governmental organizations, both domestic and transnational, which are entities formed voluntarily by individuals to pursue shared concerns or interests, which do not include profit-making and are not accomplished through violence. This inclusive definition includes a wide variety of organizations, beyond just the more typically referenced “NGOs,” which are in fact only one type of CSO (which is why I prefer “CSO” over NGO). My definition does however exclude government created NGOs (GONGOs), as well as terrorist organizations and other criminal syndicates. I also exclude the media, which many consider part of civil society, as well as political parties; in both cases, I believe that different, and frankly more restrictive, rules should apply than those applied to the broader body of civil society organizations. For example, political parties should be prohibited from accessing foreign donations and their funding should be 100% transparent; but these rules should not apply to CSOs (as I’ve defined them), at least not as strictly, as doing so would violate human rights law and specifically, the ability of individuals to freely associate.

While a multitude of definitions have been proposed for “civil society organizations,” my definition focuses on the three most common features that tend to unite them (US State Department 2017; Ferguson 2012, 15–16; Wolff and Poppe 2015, 5; World Movement for Democracy and ICNL 2012, footnote 1; Keck and Sikkink 1999, 92). A CSO, in my view, must be non-governmental (not formed or operated by or on behalf of a government entity), non-profit (the primary purpose for forming and existing is not profit-making), and voluntary (founded by individuals who, on their own accord and through no compulsion or government imposed mandate, effectuated its creation in order to pursue shared interests or concerns). Some definitions include an additional element having to do with pursuing a “public good” (Cardinali 2018); but I have disposed of this element, in favor of a more expansive and inclusive definition

of CSO that includes organizations formed for any lawful purpose with the exception of only those purposes enumerated above (governmental, profit-driven, violence).

As such, my definition of “CSO” encompasses NGOs, voluntary organizations, professional associations, sports clubs, religious groups, unions, foundations, charities, and philanthropic organizations, among others.²⁷ The scope of my inquiry includes CSOs that are registered and work exclusively in one country (domestic CSOs) and those that work across borders (international or transnational CSOs),²⁸ and I remain agnostic as to their substantive focus. The CSOs that I include in my analysis can have any focus or purpose, and exist for any reason whatsoever, so long as their reason for existing is not profit-making and their goals are not carried out through criminal or violent means.

I began my search in 1990, a year that marks the start of a new era in international politics, particularly for CSOs, as it corresponds with the dawning of the “associational revolution” when CSOs proliferated globally, established themselves as legitimate non-state actors, and began to wield significant influence over the course of international and domestic affairs (Salamon 1994a; Mathews 1997). By starting my review in 1990, which also roughly corresponds with the end of the third wave of democracy, I was able to gather nearly thirty years of data, which allowed for variation and temporal patterns to appear, including key moments of particularly intense legislative activity. This time frame also allowed me to examine if certain key events in international politics potentially influenced passage of restrictive CSO laws, as has been suggested in other reports on the closing space trend, such as the 9/11 attacks, the color revolutions that swept Eastern Europe in the early 2000s, the Arab Spring that erupted throughout the Middle East in the years after 2010, or the passage of certain high-profile

²⁷ Different countries use different words for their CSOs (for example the US defines “nonprofit organizations” as including charitable or religious organizations, social welfare organizations, labor and agricultural organizations, business leagues, and veterans organizations). I have chosen to use “CSO” because, in my opinion, it’s the most general word that exists to define the civil society sector as a whole; its an umbrella term. Others have used NGO instead, but to follow this more standard practice would complicate my analysis as many countries distinguish between NGOs, charitable organizations, foundations, and other organizations within the law; an NGO will be its own distinct category with, at times, its own distinct law. By using the term CSO, I can allow these distinctions to exist.

²⁸ By “transnational CSO” I refer to a CSO that is based in one country but regularly carries out its activities in another country or countries (for example, Amnesty International and Human Rights Watch); a domestic CSO was founded in, and is based and exclusively operates in, a single country (such as most community groups).

restrictive CSO laws elsewhere, such as India's 2010 restrictive foreign funding or Russia's 2012 foreign agents law.²⁹

Findings

I collected and reviewed the CSO legal frameworks for the world's strongest democracies, as defined above. They include: Albania, Australia, Austria, Belgium, Bulgaria, Canada, Cape Verde, Chile, Comoros, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Lithuania, Luxembourg, Macedonia, Madagascar, Mauritius, Moldova, Mongolia, Montenegro, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan, Thailand, Trinidad & Tobago, UK, US, and Uruguay.

This is an unlikely list of states, a list that has, until now, been almost entirely overlooked by those who have examined the broader closing space trend. This is perhaps understandable. After all, each of the "strong democratic countries" included in my analysis has ratified the International Covenant on Civil and Political Rights (ICCPR), which codifies the freedom of association and is considered binding international law, nearly all are also signatories to a regional human rights treaty that similarly protects this right, and with rare exception, such as in Australia, each nation I reviewed recognizes this fundamental right in their national constitution.³⁰ Yet, my findings confirm that this trend is not isolated to repressive, authoritarian leaning countries, or to countries known for egregious human rights violations, or to countries with weak economies, as was previously assumed (Bakke, Mitchell, and Smidt 2018; K. Dupuy and Prakash 2017; K. E. Dupuy, Ron, and Prakash 2015). Moreover, my findings confirm that this trend does not implicate only one type of law, namely foreign funding laws, or one category of CSO (human rights and other advocacy organizations), but instead that it involves a broader array of laws and CSOs. Most fundamentally, my findings confirm that the closing space trend is a truly global phenomenon, one that transcends geography, GDP, regime type, development

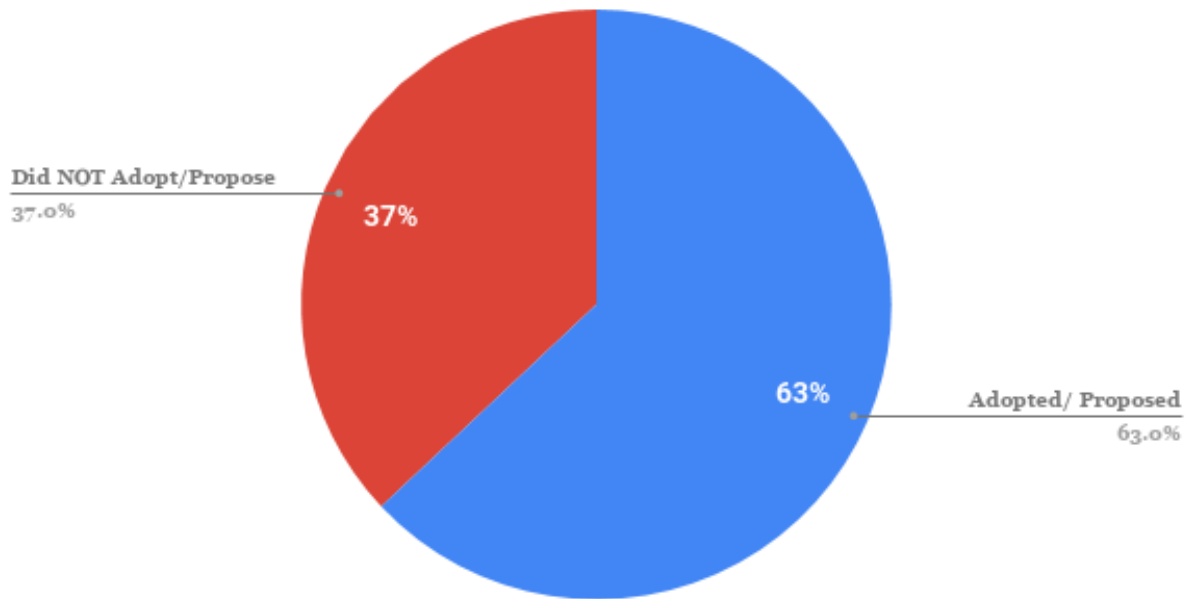
²⁹ It's possible that I will determine, in the course of this review, that going further back in history would provide additional context and insight; but for now, I plan to begin at 1990 and to end with 2017.

³⁰ The US is another exception. The right to association, though not explicitly in the US Constitution (unlike most other states in the world), was recognized as implicit in the US Constitution by the US Supreme Court in the case of *Roberts v. United States Jaycees* 468 US 609 (1984). See the official UN ratification table for the ICCPR here: <http://indicators.ohchr.org/>.

status, and most importantly, one that is not confined only to repressive, non-democratic regimes with histories of overt persecution and vocal condemnation of civil society actors.

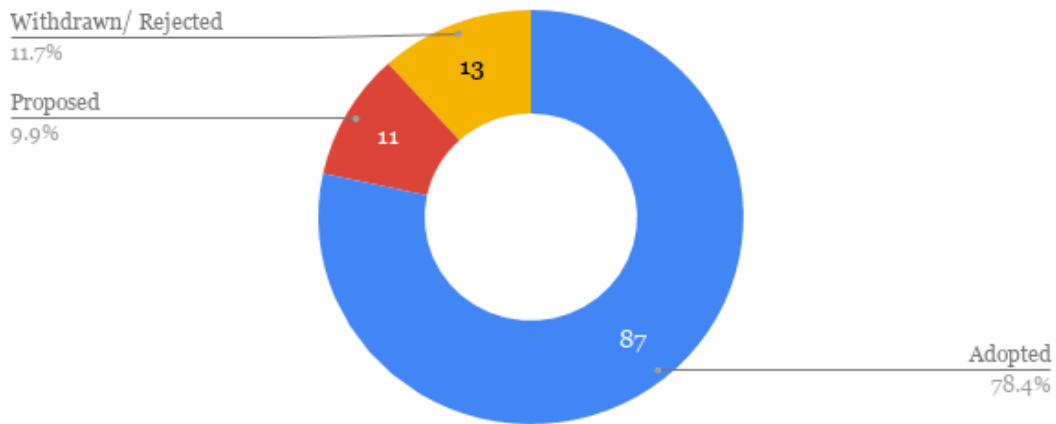
Quite to the contrary, my findings reveal that the world’s strongest democracies, in surprisingly high numbers, are – like their authoritarian counterparts – adopting restrictive CSO legislation (Swiney 2019b, 2019a). Indeed, thirty-four out of the fifty-nine democratic countries, well over half (58%), have adopted at least one restrictive CSO law since 1990. When proposed laws are added to this list, the total comes to thirty-eight states, or over 64%, of all “strong democratic states” (see Figure 1).

Figure 1: % of Strong Democratic States to Adopt/Propose a Restrictive CSO Law, 1990-2018



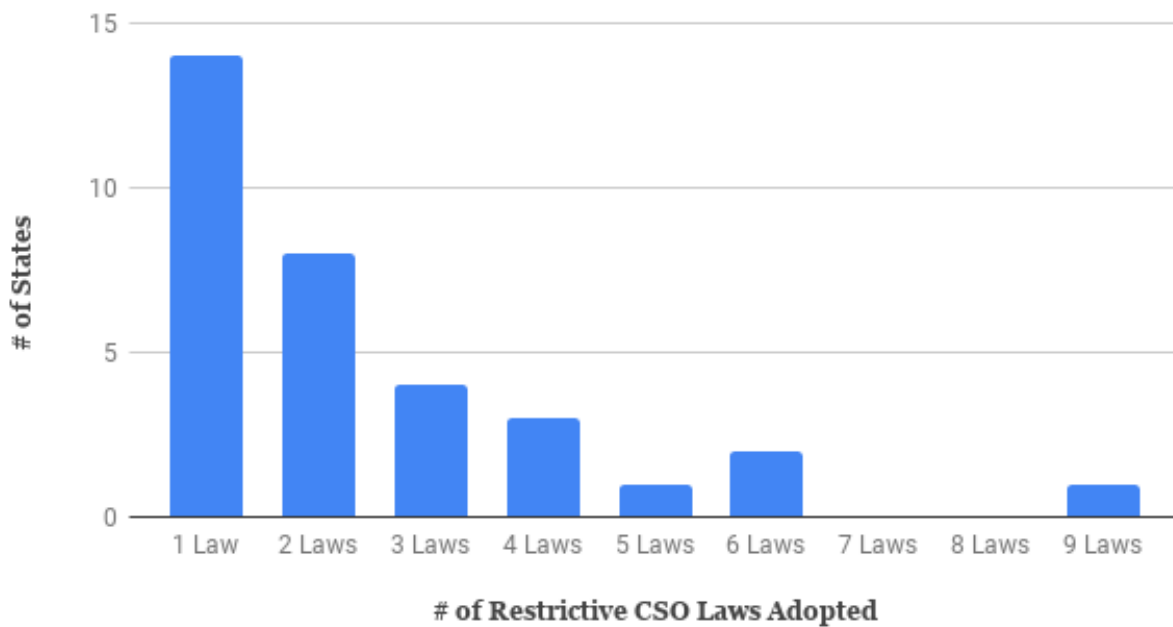
In total, I uncovered eighty-seven enacted laws, eleven laws still under consideration, and thirteen restrictive CSO laws that have been either withdrawn or rejected (see Figure 2).

Figure 2: Number of Adopted, Proposed & Rejected Restrictive CSO Laws in Strong Democratic States,



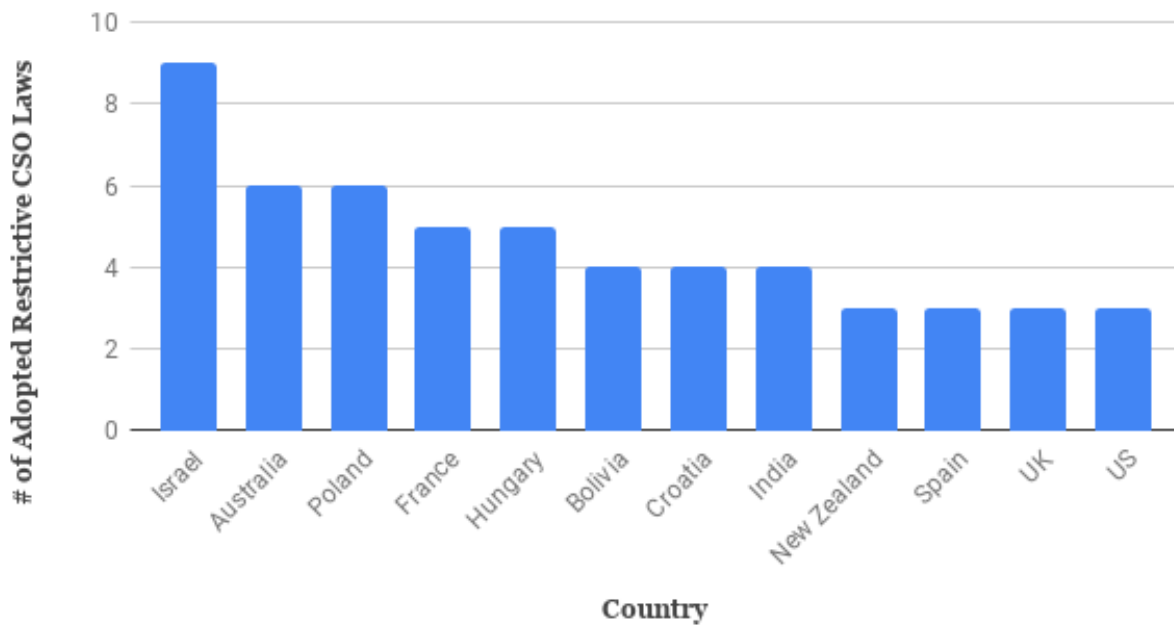
Among those states that have adopted a restrictive CSO law, nearly 67% (22 of 33) have adopted two or more restrictive CSO laws, and over a third of them (36%, or 12 of 33) have adopted three or more (see Figure 3).

Figure 3: No. of Restrictive CSO Laws Adopted



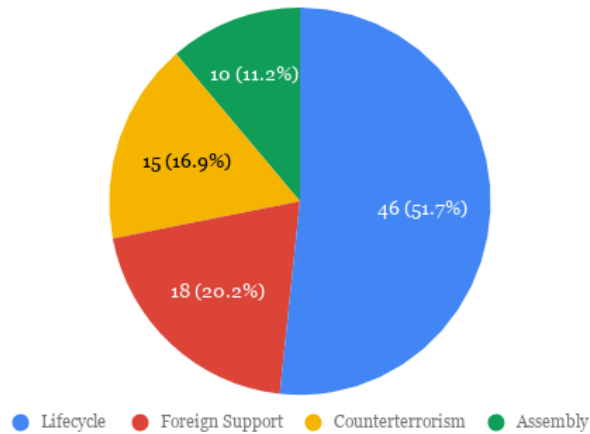
One state, Israel, has adopted a stunning nine such laws; while both Australia and Poland have adopted six, and France five. Bolivia, Croatia, and India have enacted four; and Hungary, New Zealand, Spain, the United Kingdom, and the US closely follow: each has adopted three (see Figure 4). Such patterns suggest that restrictive CSO laws come in clusters, or perhaps that the passage of one incentivizes passage of additional restrictions. In Hungary and India, for example, and in certain non-democracies, such as Russia, this has certainly been the case, with one law leading to additional laws, which oftentimes have the effect of stiffening the penalties associated with, or further constraining, the earlier law.

Figure 4: Adopters of Multiple Restrictive CSO Laws



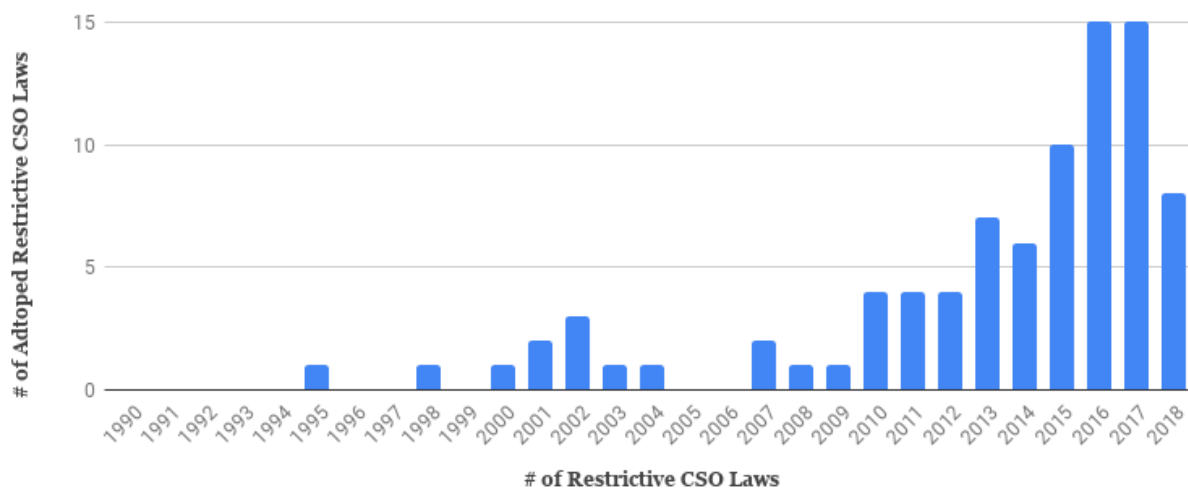
Of the adopted eighty-seven restrictive CSO laws I located, forty-six of them, the majority, involve lifecycle or framework CSO laws, which as defined above are the primary laws governing the existence, operations, domestic funding, and dissolution of CSOs. An additional eighteen laws pertain to CSOs' ability to access foreign funding, hire foreign employees, or form foreign affiliations. Finally, fifteen of the restrictive CSO laws are counterterrorism laws, and an additional ten involve assembly laws (see Figure 5).

Figure 5: Types of Restrictive CSO Laws Adopted in Strong Democratic States, 1990-2018



In terms of timing, the trend line is very clear and consistent: the proposal and passage of restrictive CSO laws in strong democratic states is a recent phenomenon; its not just a twenty-first century trend, but an even more recent (roughly) post-2010 trend (see Figure 6). The vast majority of the restrictive CSO laws adopted, sixty-two of the eighty-seven adopted laws, were passed from 2013 to 2018; and all eleven of the current proposals were proposed in 2017 or later, with the exception of one proposed in 2016. The years 2016 and 2017 saw the highest number of adoptions and proposals: 15 separate laws were adopted in each year, and 8 were proposed (and remain proposals) in the two years combined. Tracing the temporal arc of passage and proposals, one can also confirm that this trend is accelerating and gaining momentum within strong democratic states, as other reports on the closing space trend have asserted with respect to non-democratic states (International Center for Not-for-Profit Law 2018; Rutzen 2015). The 1990s saw very few new legislative restrictions placed on CSOs. In fact, in the entire decade, I was able to locate only three laws that imposed new restrictions on CSOs or subtracted from their previous level of autonomy, strongly suggesting that the 1990s were indeed a “golden age” for CSOs, at least with respect to their autonomy from state control in strong democratic states.

Figure 6: # of Restrictive CSO Laws Adopted Each Year Since 1990



The trend line revealed by the above figure confirms the relative newness and recent momentum behind the spread of restrictive CSO laws into democratic countries. The sudden decline in 2018 perhaps suggests that this trend has peaked or reached saturation point. Once laws are in place, after all, there is normally no need for passage of new or additional laws that accomplish the same goal. As such, the decline in adoption rates in 2018 does not necessarily suggest anything about the reversal of this trend, but instead, that this trend is well entrenched in most democratic countries and that the passage of additional new laws is no longer viewed as necessary.

In terms of geographic spread, all regions and continents of the world have been impacted by the spread of restrictive CSO laws in recent years, as previous reports confirm. And democracies are no exception. Among the world's strongest democratic countries, European countries adopted the highest number of restrictive CSO laws: twenty-two of the thirty-three democracies in Europe that my list, or two-thirds, have adopted a restrictive CSO law since 1990. All combined, these European laws total forty-six. The fewest restrictive civil society laws were passed in African democracies; indeed, only two of the six, or one-third, of the African democracies to qualify as a "strong democratic state" have adopted a restrictive CSO law. Falling in the middle between these two were Asian countries -- four (of seven) Asian democracies have adopted fifteen restrictive CSO laws -- and Latin American democracies -- five of the nine Latin American states that made the cut have adopted nine such laws. The two

countries from North America that made the list, the US and Canada, have both adopted restrictive CSO laws (eight laws in total). And finally, the only country from the Middle East to qualify as a “strong democratic state,” Israel, has adopted nine restrictive laws in the time period under review, the highest passage rate of any of the countries under review (see Figures 7 and 8).

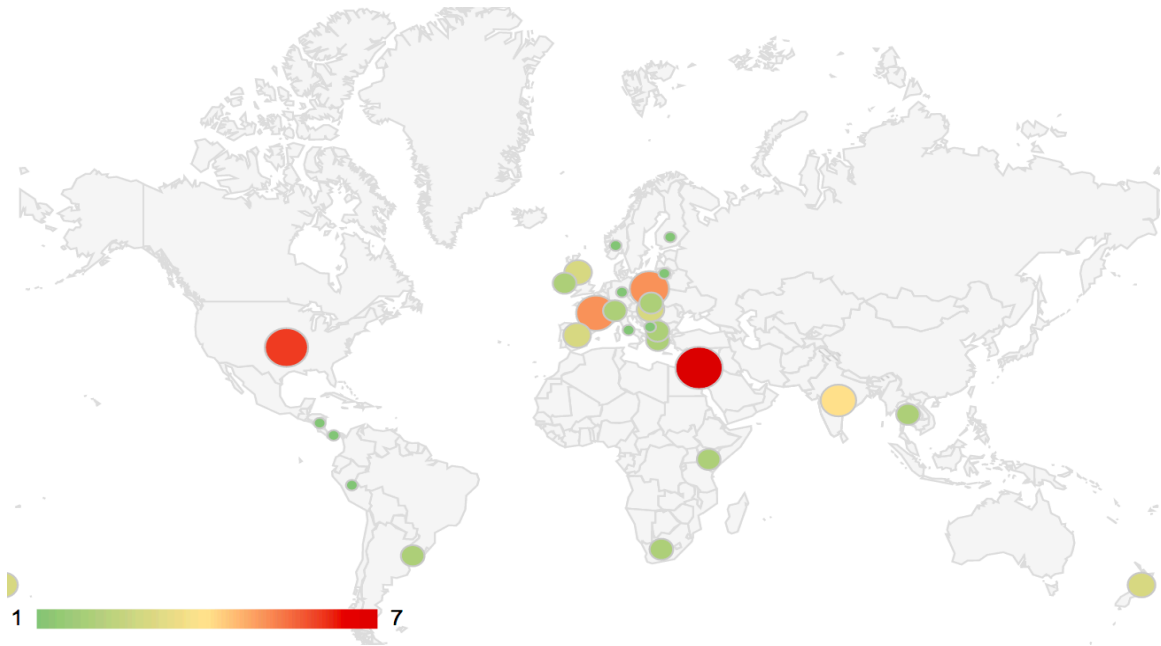
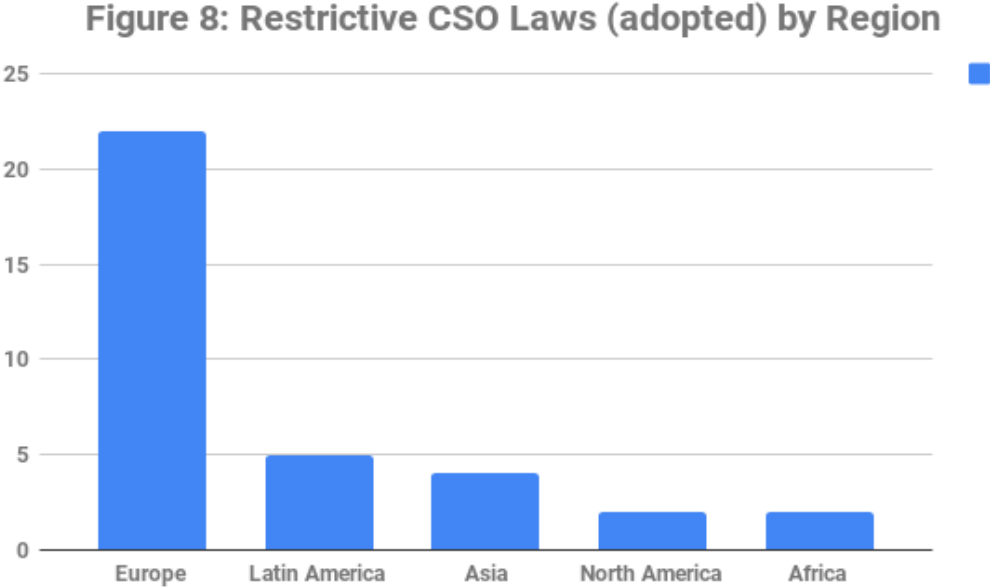
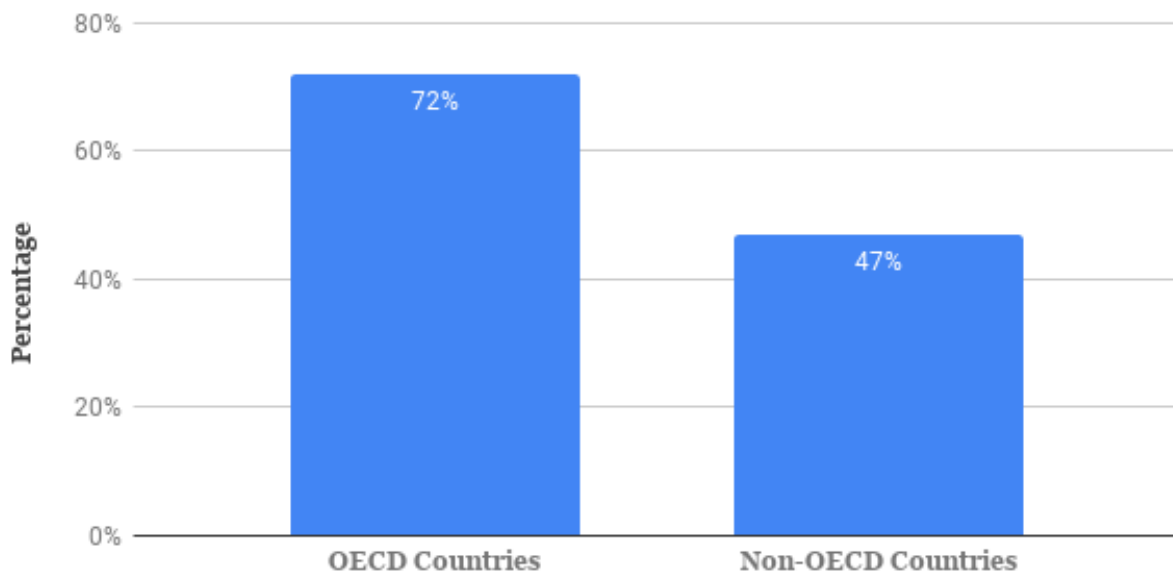


Figure 7: The Spread of Restrictive CSO Laws Globally.



Twenty-eight of the nearly sixty states that I reviewed are members of the Organisation for Economic Co-operation and Development (OECD), an intergovernmental organization focused on stimulating economic progress and world trade founded in 1961 and composed of thirty-five member states. Many consider the members of the OECD to be among the world’s wealthiest, strongest and most developed democracies in the world.³¹ Yet, twenty-one of the twenty-eight OECD states that made my list, nearly 72%, have adopted at least one restrictive CSO law. Among the remaining thirty-two states that are not members of the OECD, only fifteen of these states, nearly 47%, have adopted at least one restrictive CSO law, making the “top tier” OECD democracies (in my case selection) even more likely than the “lower tier” group to adopt a restrictive CSO law. My findings contradict, or cast doubt on, existing studies on the OECD countries that tend to assume that this elite club of states have uniformly strong and permissive CSO legal frameworks in place (E. Bloodgood, Tremblay-Boire, and Prakash 2013).

Figure 9: Percentage of OECD vs Non-OECD Countries to Adopt a Restrictive CSO Law



³¹ The reason why not all OECD states appear in my list of 59 strong democratic states is likely due to the fact that OECD membership is voluntary and because it’s focused on countries with strong economies. My rubric was entirely focused on regime type or political system (democracy) and nothing more, unlike the OECD, which abides by a different membership criteria.

Moreover, many of the countries typically included or cited as the highest performers with respect to the freedom of association or the robustness of their civil society sectors, appear on my list of those democratic countries that have adopted restrictive CSO laws. A recent survey found Norway, Sweden, Switzerland, Latvia, Estonia and Slovenia to be among the top 10% of performers on their respect and protection for the freedoms of association and assembly; and Denmark, Norway, Sweden, Finland, Germany, Switzerland, Ireland, Belgium, Greece and Slovenia to be among the very top performers on a measurement of Civil Society Participation (Silva-Leander and Noonan 2018). Such top performers consistently appear in other civil society indexes and measurements as well (e.g., CIVICUS 2019, 2017a). Yet, at least eight of these high-ranked and highly regarded countries have adopted at least one law imposing new restrictions on CSOs since the turn of the twenty-first century, with most of these laws being enacted in or after 2015. Only three of these highly-ranked states have not imposed new legal restrictions on their civil society sector: Sweden, Slovenia, and Estonia.³² Moreover, as previously stated, each of the countries I reviewed is a signatory of the key human rights treaty codifying the freedom of association, the International Covenant on Civil and Political Rights, which constitutes binding international law. Yet, in keeping with recent research, treaty ratification status does not, on its own, appear to influence a state's willingness to infringe on the freedom of association by proposing or adopting a restrictive CSO law (DeMattee 2019; Hathaway 2002).³³

Conclusions & Implications

My research findings confirms a claim that has routinely been alleged by civil society activists, human rights attorneys and political scientists, but until now, never empirically confirmed or explored. As such, the research and activist communities can now rightfully assert, and with full and documented proof, that the closing space trend has indeed spread into democratic states, including the world's strongest democratic states, just as it has done in authoritarian-leaning states and states with mixed regime types. Moreover, my findings confirm that this spread is a very recent twenty-first century phenomenon that seems to have taken off

³² Note that I did not include Latvia in my review of "strong democratic states."

³³ PhD Candidate Anthony DeMattee found, in a recent study, that ratification of human rights treaties does not prevent the adoption of laws infringing on the freedom of association without constitutional rules specifically making treaties equivalent to ordinary legislation, meaning that they become automatically binding upon ratification.

after 2006, gained momentum and then reached its peak in 2016 - 2017. Though it's still too early to tell whether these trend lines will continue in the coming years, and if the remaining twenty-five strong democracies that haven't yet imposed a new restrictive CSO law will so do in the near term, what is clear is that the rate at which such laws are being adopted or proposed in democratic states (64% to date) is keeping pace with, or according to some estimates, even rising above the percentages seen in less democratic states (K. Dupuy, Ron, and Prakash 2016; Christensen and Weinstein 2013; Rutzen 2015)

The implications of my findings are potentially profound if the effects of restrictive CSO laws in non-democratic states are any guide. In Ethiopia, for example, domestic human rights CSOs all but vanished in the years following passage of an extremely restrictive CSO law, the Charities and Societies Proclamation of 2009 (Dupuy, Ron, and Prakash 2015). In Azerbaijan, following passage of a series of restrictive CSO regulations in 2013-2014, which imposed additional administrative barriers and burdens on CSOs and their funders, most independent advocacy CSOs scaled down, discontinued their work, or left the country altogether (Safarova 2017). In Russia, following passage of the Foreign Agents Law in 2012, which requires CSOs that receive any foreign donations and are engaged in vaguely defined "political activities" be labeled as "foreign agents," a label akin to foreign espionage in the Russian context, has led many CSOs, particularly those engaged in human rights and government accountability, to self censor, limit their scope of activities, or voluntarily dissolve (The Council of Europe 2017). Recent reports suggest that over a third of Russia's CSOs have stopped operating, with many choosing to voluntarily dissolve rather than face the stigma associated with the 'foreign agent' label or the costs associated with challenging the label in court (Digges 2015; Kozlov 2017). In Bangladesh, recent reports suggest that in the wake of the 2016 Foreign Donations (Voluntary Activities) Regulation Bill's passage, a restrictive CSO law that places tight constraints on CSOs' ability to receive foreign funds, many CSOs, particularly smaller ones, have been forced to shut down due to insufficient funding, while the registration rates of new CSOs have dramatically declined (Islam 2017). These are just a few of the many examples. And these examples are not irrelevant to democratic states; multiple reports have suggested linkages or similarities between restrictive CSO laws passed in India, Hungary and elsewhere with Russia's foreign agent law (Serhan 2017; The Economist 2014).

Though we know less about the impact of restrictive CSO laws in democratic states, an emerging body of empirical evidence suggests that such laws are having similar, even if less severe, consequences. In India, for example, recent reports confirm that more than 24,000 CSOs lost their operating licenses following adoption of new, more restrictive amendments to the Foreign Contributions Regulation Act in 2010 and 2011 (Cyrill and Pitman 2017). The new amendments prohibit any organizations of “a political nature” from receiving external assistance and grant the government broad authority in prohibiting any CSO from receiving foreign contributions when deemed “detrimental to the national interest” (Wolff and Poppe 2015; Chaudhry 2016, 62–63). In Turkey, which is perhaps an unfair example because of the current political context, a series of executive decrees following the failed coup in 2016 granted the government broad authority to dissolve and control the actions of CSOs. Under these decrees, more than 1400 CSOs have been involuntarily shut down by government order (Armstrong 2017).

CSOs are not the only ones affected by restrictive CSO legislation. Also at stake is global democracy. Better understanding when and why democratic states impose additional restraints on their civil society sectors might also be critical to the preservation of democracy around the world. A multitude of scholars have linked the preservation of democracy to the existence of a robust civil society sector (Sarah Mendelson and Glenn 2002; Putnam 2000; Drucker 1995; Rice 2017). Harvard historian Niall Ferguson, for example, argues that the very rise and fall of nations, and specifically powerful, democratic Western Nations, can be directly traced to the existence (or lack thereof) of a strong civil society sector; indeed, “the decline of civil society, in part, explains the Great Degeneration” of the West, by which he is largely referring to the US and the UK (Ferguson 2012, 137-8). According to Ferguson, both the stagnation and growth of states are “in large measure” the result of “laws and institutions,” both are which are implicated in the closing space phenomenon (Id. at 10). Robert Putnam reached similar conclusions in his ground-breaking 2000 article, *Bowling Alone: America’s Declining Social Capital*, which was later turned into a best-selling book. In it, he argues that the strength of a democracy is directly linked to the active participation of citizens in independent civic organizations (Putnam 2000). Democracy suffers, he argues, when individuals bowl alone, or rather, when the civil society sector shrinks.

Recent research suggests that democracy is on the wane around the globe. For thirteen straight years in a row, Freedom House catalogued declines in global freedoms in its 2019 report, with established democracies dominating the list of countries reflecting setbacks (Freedom House 2019). Countries labeled “free” accounted for a larger share of the declines than at any time in the past decade, and nearly one-quarter of the countries experiencing declines were in Europe. This new reality stands in stark juxtaposition to earlier times; from 1975 to 2005, Freedom House recorded nearly 30 years of constant gains (Mark Goldberg 2017). The Economist’s Democracy Index, while a bit more optimistic, found evidence in their most recent report of ongoing and deepening disillusionment with democracy and dwindling numbers of people living under some form of democratic governance; indeed, it found that only 4.5% of the human population lives in a “full democracy” (The Economist 2019).³⁴ Though disputed by some (Bermeo 2016; Levitsky and Way 2015), these findings are supported by a growing body of scholars and policy analysts focused on democratic decay around the globe (Daly 2017a; Diamond 2017; Christensen and Weinstein 2013; Huq and Ginsburg 2017).

Perhaps the closing space trend, and specifically its spread into strong democratic states, is partly what is fueling this decline in global democracy, or perhaps, the decline in global democracy is fueling the closing space trend. Multiple scholars who support the democratic decay thesis have decried the lack of conceptual tools necessary for identifying the “early warning signs” that such decay is underway, as well as the lack of understanding of “the series of discrete and interconnected events and actions that often proceed undetected, of democratic backsliding” (Horowitz and Macdonald 2017; Daly 2017b; Bali 2017). At least one such scholar has pointed to the adoption of “ever–more expansive laws empowering the state to maintain law and order” as one such early warning sign (Horowitz and Macdonald 2017). My findings offer the possibility of doing both: identifying an early warning sign that democratic decay is indeed underway and identifying one of the typically undetected ‘interconnected events and actions’ that fuels democratic backsliding. Future research building upon the findings presented in this paper will, I hope, not only help to empirically map a puzzling twenty-first century global phenomenon, but theoretically contribute to our understanding of a potentially powerful transformation that seems to be afoot in global politics, one that threatens to reverse the post-

³⁴ The United States, as just one example, is no longer characterized as a “full democracy.” It was downgraded from its status as a “full” to a “flawed” democracy for the first time in the Index’s history in 2016 (The Economist 2016).

Cold war optimism in the power and spread of democracy, and with it, the power and spread of civil society's associational revolution.

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