

Relations between the Government and Nonprofit Organizations in China and the USA: An Overview

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Abstract

There are many aspects of the relationships between the government and Nonprofit Organizations/NPOs (and nonprofit groups) in both the USA and China. In this paper, we give a brief overview of some major issues. The situations described here is based on the research literature, personal experiences of the authors in the two nations, and qualitative interviews of a convenience sample of 50 NPO leaders in Beijing and in a few other places in 2010-2011.

Keywords: NGO, government, relation

1. Introduction

There are some key differences between the governments of China and of the USA. The government of the USA is more decentralized, with state and local (county, city) governments relatively independent of the central government. In China, the government is more centralized, with state and local governments carrying out central government policies, on the whole. In the USA there are general elections for the voting age population at different territorial levels, leading to leaders of the Executive and Legislative Branches of government at these levels. As a result, the activities of lobbying legislatures, political campaigning, and other citizen participation play significant roles. In China, there are also various aspects of democratic participation in the government at different territorial levels. Three key participative entities are the Party Congress, the Peoples' Congress, and the Chinese People's Political Consultative Conference (CPPCC). All of these involve election/selection processes from the municipal

to the provincial to the national levels. Citizen participation also plays a role as members of homeowners associations interact with government officials locally, and as NPOs in certain purpose/ goal areas, especially regarding the environment, [1] interact with government officials at the municipal and provincial levels seeking the betterment of Chinese society.

2. Recognition and Registration of NPOs by the Government

In the USA, NPOs are incorporated as legal persons only at the level of the 50 US states, not at the level of the federal/central government. Virtually any kind of NPO can seek and receive nonprofit corporation legal status for a small fee (less than USD\$ 100 in Florida, for instance). This can now be done online in many states. Only clearly harmful/illegal, terrorist, or revolutionary NPOs are likely to be denied incorporation.

In China, legal incorporation can be done at the level of a municipality, but an NPO becoming a legal person is difficult in practice, as the government is slow to grant incorporation as an NPO, often nonresponsive to NGO registration applications. Unlike in the USA, the incorporation and registration processes by government in China seem to be merged to a significant extent, rather than being independent processes handled by different levels of government and thus different agencies.

In the USA, an NPO must apply for official registration to the federal government Internal Revenue Service (IRS; the taxation department/ministry) for 501(c)(3) or other nonprofit status to avoid payment of income taxes and to obtain tax relief for donors to the

NPO. The IRS is quite lenient generally, but the events of 9/11/2001 and subsequent "Patriot Acts" passed by the US Congress have put more restrictions on IRS registration. Several 100,000 registered NPOs were removed from the list of registered NPOs recently for failure to file annual expenditure reports to the IRS for 3+ years, as part of a new, more restrictive law.

In China, the Ministry of Civil Affairs (MOCA) is the primary government agency concerned with registration of NPOs. Unlike the USA, China handles such government registration at the level of municipalities or even Districts within them. Since the relevant law passed in 1989, MOCA has required new NPOs to find another Ministry of government to partner with in order to be granted registration as an NPO. This has created a "bottleneck" (slowdown) to government registration for many founders of NPOs. As a result, many NPO founders have chosen to seek incorporation and official MOCA registration as for-profit companies in order to begin operations.

The Beijing MOCA office is now experimenting with relaxing the 2nd ministry requirement in several Districts. Since late 2011, a new regulation in Guangdong Province has permitted new NPOs to register only with MOCA, needing no second Ministry for acceptance. In China, registration as an NPO with MOCA does not guarantee tax-exemption, which requires further consideration by another government ministry that deals with taxes.

In the USA, Smith has estimated that perhaps 80-90% of NPOs (mainly local/grassroots associations) have NO government incorporation or IRS registration. [2]Other researchers

have found similar empirical results, but more of the order of 50%-60% as un-incorporated and/or un-registered NPOs. [3]These smaller, local associations tend to have few members (e.g., about 20 on average) and very small budgets (less than USD \$1,000 per year). Very few of the un-incorporated and un-registered NPOs have any paid staff (even part-time), but instead are run by volunteers.

In China, here are also MANY informal NPOs, again usually local/grassroots associations or grassroots service agencies. At the May 22, 2011, international Conference on the Third Sector and Public Governance at the Capital University of Economics and Business,

Prof. Li Jingpeng of Peking University suggested in his lecture that there may be 10,000,000 NPOs in China today. But the Ministry of Civil Affairs lists only about 500,000 NGOs in China recently. The rest of the NPOs in China (maybe 95%) are clearly the small, mostly volunteer-based, informal NPOs---often called "Grassroots Nonprofits." [4] There are no hard data yet, but research in process at the Chinese University of Hong Kong under the direction of Prof. Chan Kin-man, Director of the Center for Civil Society Studies, may help provide such data soon for a few places in China. Other research on NPOs in all Chinese provinces being performed by Prof. Zhu Jiangang, Director of the Center on Philanthropy, Sun Yat-Sen University, may also shed light on the issue. Thus, the proportions of informal vs. formal NPOs in China may well be similar to the situation in the USA and in other nations, with informal, unregistered local associations being 5-10 times as frequent as larger, registered NPOs (both nonprofit agencies and associations). Study of the history of associations around the world suggests growing similarities in the associational structures of contemporary nations.[5]

However, because China operates under a Civil Law system, activities not expressly permitted are by definition illegal. Current Chinese law thus declares all unregistered NPOs (usually small, local, grassroots associations) to be illegal. These NPOs are illegal NOT because of any harmful acts, but simply because they are not registered with the government. By contrast, the similar many millions of unregistered U.S. NPOs (also usually local, grassroots associations, as in China) are legal so long as they do not have significant annual budgets (more than \$5,000) and do not cause harm by breaking other laws. When the budget is \$5,000 or more per year, U.S. NPOs are required to register with the IRS, unless they are religious in purpose. The USA, thus, operates under a Common Law system, where anything is legal that is not explicitly forbidden by the government at some level of territory (local, state federal).

Associations tend to flourish in societies with more highly developed and modern social structures, largely irrespective of their cultures (although national culture has some significant effects). This is clearly demonstrated by Smith and Shen for two large panels of nations of the

world.[6] They used archival data on 84 larger nations (1,000,000 plus population) in 1977 and on 107 nations in 1994 with the dependent variable association measure being the number of international associations that people or groups in a given nation belong to. In an OLS multiple regression analysis, their theoretical model with eight predictor/explanatory variables accounts for 89% of the variance in both panels independently, corrected for sample size. No other theory explains anywhere near this very high level of the variation in national association prevalence, let alone with two large panels of nations at two distinct points in time many years apart. Note that the prior national association prevalence levels were NOT used as predictors in the regression analysis of either panel.

A more recent study of the prevalence of associations in most nations of the world by Schofer and Longhofer confirms and extends the research findings of Smith and Shen. [7] Schofer and Longhofer use data from an international directory on the numbers of larger, wealthier associations in 140 nations as their dependent variable to be explained. This is a much better measure of association prevalence than the measure used by Smith and Shen, who had no funding for their research. The number of nations studied was also about 30-65% greater. In addition, their study had true time series data for many years (1970-2006), and performed time series (panel) regression analysis.

Their results showed that association prevalence among nations was significantly explained by all of the following variables:

National wealth (log; GDP per capita);

Education (gross enrollment ratio in secondary educational institutions);

Population (log);

Democracy (based on a 21 point scale in the Polity IV data set of Marshall and Jaggers 2010);

Political stability (a weighted index of assassinations, strikes, riots, purges, etc.); [8]

State expansion (a complex measure of state fiscal activities and overall state structure);

World society linkages (number of international NGOs that citizens of a nation are linked to).

In their Model 3 (p. 565), the authors reported that the above seven variables explained 73% of the variance (R²). While not as powerful as the result found by Smith and

Shen (89% for two different panels of nations), this level of explanation is outstanding. The result is especially meaningful because it has causal implications, being based on time series (panel) regressions, not on one-time regressions as in Smith and Shen (2002). Note that the foregoing results, as with Smith and Shen, do not include the time-lagged dependent variable as a predictor (which would raise the variance explained to 83%).

The first four variables above essentially duplicate the key variables observed by Smith and Shen, while the final variable was the dependent variable of the latter authors. There were two or three other variables used uniquely in one or the other of the two studies, but the overall confirmation of results is striking. Both studies show we now know a great deal about the influences on association prevalence among nations.

3. Regulation of NPOs by Government

In the USA, registered NPOs are regulated both by the IRS, the Congress of the USA, and the Office of the Secretary of State (or equivalent) in the 50 US states. The main limitations require annual reporting of expenditures to the IRS, and filing of annual reports to the state in which an NPO is incorporated. There are limitations on the percent of an NPO's budget that can be spent on political campaigning or lobbying activities, if an NPO is to retain its tax-exempt status. But highly political and advocacy NPOs are permitted to exist. The vast majority of smaller groups (mostly grassroots associations) are essentially unregulated, except in the sense that all nonprofit groups, formal or informal, must obey federal and state laws, and county or municipal regulations.

In China, registered NPOs also must obey government regulations and file reports. NPOs in China must also generally refrain from political activities, but some kinds of NPOs (e.g., environmental NPOs) are increasingly engaged in political/advocacy activities (Jia 2011). Un-registered, local and informal nonprofit groups receive little regulation by government, but, as in any nation, must obey the laws of the land. However, as noted earlier, such un-registered NPOs are illegal *de jure* because not registered, even though they are seldom bothered by the government *de facto*.

4. Government Contracting with NPOs

In the USA and similar Western nations, government contracting for services with NPOs has become common in the past 30 years. This has been part of a more general process of “devolution” and decentralization in the West.[9] While lucrative for the nonprofit agencies receiving substantial funds, such contracting creates various forms of external control and even goal displacement for the NPOs involved. Nonprofit associations (vs. nonprofit agencies) rarely receive service contracts from government, but very large associations sometimes do get them. Local, grassroots associations almost never receive such contracts in the USA.

Theorists have argued that increasingly extensive government contracting with NPOs in many modern nations results from several factors (S. R. Smith and Gronbjerg 2010): In strongly market-oriented economies like the USA, NPOs arise to serve needs not adequately served by the market economy, particularly needs for services that may not be profitable for businesses (termed “market failure”). NPOs are also like to arise and provide services successfully where clients need to trust the organization (“contract failure”), and NPOs are seen as more trustworthy than businesses or even than government.

But in addition, NPOs arise to provide services in societies where the government does not have enough consensus on needs to provide certain services (“government failure”) or prefers to “privatize” certain services, using NPOs for service-delivery rather than government agencies. This privatization process has been strong in the USA and many Western nations for some decades.

In China, there has been increasing government contracting for services with NPOs in the past decade. The latter trend probably results in part from the increasing market-orientation of the Chinese economy, now having a successful “mixed model” (“socialism with Chinese characteristics”), rather than the prior central planning approach exclusively, as under Mao. This devolution or privatization process in Chinese society thus reflects government confidence based on the economic “miracle” of the past 30 years [10]The Chinese party-state has begun to see the value of NPOs for serving the needs of China’s large population in ways that the

government cannot do or chooses not to do any longer. However, the government is “going slowly,” having mixed feelings about NPOs, given the potentials of NPOs for stimulating future opposition to the regime. Future successes with government contracting and privatization, especially in the absence of significant regime-opposition by NPOs, are likely to lead to a strengthening of these trends in the next decades.

5. Pathways to Recognition and Registration for NPOs in China

Qualitative interviews with 50 NPO leaders in Beijing and in a few other places in China by the authors suggest some interesting pathways to recognition taken by NPO founders/leaders.[11]

MOCA as the Key Government Agency for NPO Registration:

The first pathway or step toward recognition by founders/leaders of new NPOs is commonly to approach the Ministry of Civil Affairs (MOCA) at some territorial level---usually the local District level. There are branches of MOCA at various territorial levels of government, from the central government in Beijing to Provincial, Municipal, District, and also Sub-district (“street”) levels. Authoritative decisions regarding NGO registration are usually made at the District level or higher.

Initial Contact with MOCA:

The most common initial government (MOCA) reaction to NPO founder queries or to full NGO registration applications reported by our interviewees was no formal reaction (hence, inaction) for many months, often more than a year. NPO founders usually saw the MOCA officials as delaying or ignoring requests and queries by them.

Three Main Pathways after Non-response by MOCA:

- Registration as a For-Profit Company.
- Becoming an Unregistered, Informal NPO.
- NPO Founders Give Up and their NPO Dies “Stillborn”

•Two Main Pathways Where MOCA Suggests Positive Action on NPO Registration Applications:

MOCA Invitation to Register as an NGO, Often Given to Selected For-Profit Companies that Are in Fact NPOs in Goals and Operations after Some Years of Operation; Founder and Informal NPO Activities Demonstrate

Worthiness to MOCA, which Invites the Group to Register Formally as an NPO, Usually after More than One Year of Observation.

Recent Quasi-Governmental Alternatives to MOCA NPO Registration:

- Communist Youth League (GONGO) recognition of selected youth NPOs, including student groups at universities.

- Recognition by a Municipal Volunteer Federation (e.g., Beijing Volunteer Federation/BVF).

- Recognition by other, Hub type GONGOs in major cities (e.g., Beijing Trade unions, Beijing Women's Federation, Beijing Science and Technology Association, Beijing Disabled People Federation, etc.).

6. Conclusions

The Chinese government, through its Ministry of Civil Affairs (MOCA), is generally very selective in accepting formal applications for registration as an NGO. Although no firm data are available, it seems likely from our qualitative study and studies by others that only a minority of such applications are responded to positively in a timely way by the MOCA.[12] This apparent “inaction” by the MOCA in responding to formal applications for registration as an NGO seems to be the result of a slow MOCA bureaucracy with insufficient personnel to deal with the large influx of NPO-registration applications, as well as government mixed feelings about NPOs, given the potential opposition some NPOs might foster.

The perceived inaction by the MOCA leads many NPO founders to choose the pathway or option of for-profit status and thus government recognition in order to get on with their operations and goal attainment. Unfortunately, such for-profit status brings many, serious limitations that hamper NPO efficiency and effectiveness. As a direct result, very large numbers of Chinese NPOs registered as “pseudo-for-profit companies” have much less socially beneficial impact than if they had been allowed by the government to register as NGOs officially.

The selective encouragement by MOCA of certain for-profit NPOs to register as NGOs after a period of observation occurs too late and too infrequently to do justice to all of the positive energy of China’s millions of social entrepreneurs and NPO founders, let alone tens

of millions of potential volunteers for these NPOs. This constitutes at present a great loss of potential services for Chinese society and the Chinese people, as they strive for betterment. The magnitude of this loss has not yet been accurately estimated.

All of the many NPOs whose founders/leaders we interviewed were fully dedicated to providing socially beneficial services as nonprofit service agencies in selfless devotion and in a conscientious attempt for the betterment of Chinese society. All the founders interviewed began their work in developing an NPO as volunteers, giving their time altruistically to help their community and the larger society. Maybe Chinese NPO founders and leaders can better express to MOCA the positive social value of NPOs than is currently the case. More effective ways are needed to demonstrate the positive value of the nonprofit sector in China.

The Chinese “economic miracle” of the past few decades has occurred in large part because the government decided to allow more “free market” activity in the Chinese economy in parallel with government central planning, as in heavy industry. A similar renaissance could take place in the nonprofit sector in China if the government embarked on fostering more “free nonmarket economy” activity in its nonprofit or “social organization” sector. The same kind of “parallel” approach used in the past three decades for the economy could be used to foster nonprofit sector expansion---perhaps more government-controlled GONGOs, but especially many more independent and grassroots nonprofit service agencies allowed to register as NGOs. Many true NPOs now registered as for-profit companies could be asked to re-register as NPOs, after screening by MOCA.

Deng Xiaoping successfully suggested that China would grow stronger economically and in other ways by pursuing this parallel economic development strategy. No one now doubts his wisdom in making this suggestion (which many resisted at the time). It is likely now to be in the interest of China to pursue a similar parallel development strategy for the nonprofit sector in order to achieve similarly beneficial effects.

Some key arguments are the following:

The non-market economy (nonprofit sector) can employ many more paid staff if it expands substantially. This will relieve pressure

regarding new jobs in China, as there will likely be some cutbacks in the manufacturing sector given the prospect of some future years of global recession.

Expanding jobs in the service agencies of the nonprofit sector will significantly help with jobs for young people, especially young idealists who are college graduates.

The expanded nonprofit sector service agencies can make money and deliver a wide variety of useful services, with corresponding substantial savings to the general budget of the government, because government agencies would otherwise need to supply those services at higher costs.

The government would still need to provide some funding for independent nonprofit sector infrastructure organizations that provide training for NPO founders/ leaders, linking of volunteers to NPOs which need them, applied research to improve the efficiency and effectiveness of NPOs, websites that provide usable knowledge for NPO and volunteer program leaders, etc.

The long Chinese tradition of cooperation has been undergoing a renaissance in recent years, and this cooperative spirit will help foster nonprofit sector expansion of service agencies.

Current President and General Secretary Hu Jintao recently stated the importance of Social Construction as China seeks to develop a Harmonious Society based on Socialism with Chinese Characteristics. New ideas are being sought from the people and Party leaders regarding how to combine economic, political, and cultural development simultaneously. The Party urges people to consider Social Development very seriously---new social forces to address new social problems in China, as a continuation of Social Reform. New social institutions are needed to deal with China's social problems, so as to promote more and better Social Development. The Voluntary Nonprofit Sector (VNPS) can play a vital role in China's Social Development.

For the past 30 years the Party and the government of China have emphasized economic development with astounding success, called the "China Miracle". Now the government is seeking a better balance of promoting BOTH economic development AND social development. This is being done in order to better satisfy all of the needs of the

people of China and for the general betterment of Chinese society.

Nonprofit organizations (NPOs---usually called NGOs) have a key role to play in this on-going Social Reform and Social Construction. By NPOs here we mean NOT only government-registered NGOs but also NPOs registered as for-profit companies AND the much larger number of informal NPOs with no formal registration at all, not even as "legal persons." A colleague has suggested the phrase, "Social enterprise with Chinese characteristics" when discussing nonprofit sector organisations in China.

The Party guides the people of China toward new social reforms, but the people lead. One aspect of this leadership by the people is the set of new ideas for social services and activities embodied in NPOs, both new ones and existing ones, both registered and informal ones. New ideas also come from Party and government leaders directly concerned with the nonprofit sector, particularly the Ministry of Civil Affairs (MICA).

The present general conclusion is that it is important to try to re-enact the Chinese economic sector "miracle" of the past 30 years also in the nonprofit sector. This re-enactment can be encouraged by focusing on the variety of useful social services provided by a myriad of registered and un-registered (informal) NPOs, new and old, that encourage and utilize the vast reservoir of altruism in Chinese NPO founders, leaders, paid staff, and volunteers.

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