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Classifying non-profit organisations in China: The history, logic and challenge of legislation

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The Research Project

Models of Co-operation between Local Governments and Social Organizations in Germany and China– Migration: Challenges and Solutions (LoGoSO Germany China) is a comparative research project of the Freie Universität Berlin, the Westfälische Wilhelms-Universität Münster and the Chinese Academy of Governance, funded by Stiftung Mercator.

This comparative research project looks at the co-operation between state and social organizations (SOs) in China and Germany. It focusses on social service delivery in the area of integration of migrating populations with special attention to the fields of education, employment, vulnerable groups and social assistance (incl. legal aid) as a crosscutting issue to all of the fields. Within this subject area, the project wants to identify different models of state-SO co-operation and analyze which models are successful and why and where this co-operation is problematic. It aims to capture the different models of co-operation in Germany and China, to analyze and compare the underlying structures and to show potentialities for development.

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Abstract: Classification is the foundation of legislation. The history of non-profit classification in China is short and the criteria are very unstable. Since the first laws were issued in the early 20th century, there has been only one general term for non-profit organizations (NPOs), which is “association”. Classification of associations, private non-enterprise units and foundations was not done for legal purposes until the late 20th and early 21st centuries, when three regulations were formulated and promulgated, one for each type of organization. Enactment of the *Law of the People's Republic of China (PRC) on Donations for Public Welfare* (1999), the *Charity Law of the PRC* (2016) and the *General Provisions of the Civil Law of the PRC* (2017) shows that the Chinese government is deepening and systematizing its regulation of non-profit entities. However, recent legislation such as the *Regulation on the Administration of the Registration of Social Organizations* (called the *Draft*) does not effectively connect the classification of organizations and legal persons with the laws above, nor use terms such as *charity* and *public welfare* in uniform ways. On the one hand, discussion of the classification of organizations, legal persons, public welfare and charitable entities shows that the classification of non-profit entities in China has always taken political classification as its core standard, and that the idea behind this approach is very coherent. On the other hand, the classification of non-profit entities is also constantly shaped by the social environment. There is always tension and some degree of rupture between the modern concept of charity introduced from abroad, the classification of legal persons, and the traditional Chinese culture of charity. Due to the absence of a law on non-profit organizations, it is difficult to establish connections and mutual coherence among the *General Provisions of the Civil Law of the PRC*, the *Charity Law* and the *Draft*.^①

Key words: classification of non-profits in China, legislation of non-profits, charity, non-profit organizations, totalism

1 Introduction

There is a long history of charity and charitable organizations in China (Leung, Angela Ki Che 2001; Fuma Susumu 2005). The modern association movement began to emerge at the end of the 19th century. Under the influence of western culture, the development of charities and associations reached a climax in the first

^① This paper was presented at the International symposium “Good Life, State and Society” held by the “Deutsch-Chinesisches Alumni-Netzwerk” at the Freie Universität Berlin, 6-8 December, 2018. I would like to express my gratitude to Professor Katja Levy for inviting me to join this conference.

half of the 20th century: benevolent societies and benevolent halls flourished, the Red Cross movement mushroomed and overseas NPOs such as the Rockefeller Foundation and the YMCA left their mark. However, from the early 1950s to the late 1970s, associations (including charitable organizations) lost their essence due to ideological and administrative changes and stopped their activities during the Cultural Revolution. After the Reform and Opening up, the state gradually withdrew from the social field, and then a new agenda for the development of associations was launched. The number of organizations registered with civil affairs departments has grown from 4,446 in 1988^① when accurate statistics became available to more than 800,000 today. In terms of organizational types, the single type of association has developed into the current three types of NPO: association, private non-enterprise unit (social service agency)^② and foundation. As for non-profit legislation, it has developed from the sole regulation on the registration and administration of associations in the 1980s into a legal system composed of the *Charity Law*, *General Provisions of the Civil Law* and many regulations. These reflect the great changes that have taken place in the social field. In the meantime, research on NPOs and charity has increased rapidly.

Although great achievements have been made in research on the non-profit sector in China over the past 40 years, there are also deficiencies in the following three respects: 1) research in political science, public management, sociology and other disciplines accounts for a large proportion of these achievements, but most results focus on developments affecting China's NGOs after the 1990s, few of which are discussed over a longer period. On the other hand, recent research on traditional Chinese charity has focused more on historical materials and texts, but lacks in-depth discussion from a perspective that incorporates social scientific theories. It can be said that there is a certain degree of fracture between these two approaches, which means that many studies lack insight into the problems existing in the current non-profit sector; 2) some studies use western concepts in a simple fashion, or focus on hot Chinese policy topics, or select different types of NPOs in different regions as research objects, and ultimately derive either optimistic or

^① This was the year that registration and administration of social organizations was put under the control of the civil affairs departments, and official statistics on nonprofits have been available since then.

^② In 1996, the central government proposed the term "private non-enterprise units", and the *Charity Law* promulgated and implemented in 2016 changed "private non-enterprise units" to "social service agencies". But the interim provisions on the registration and administration of private non-enterprise units from 1998 have thus far been neither revised nor abolished. These two terms are therefore actually the same thing.

cautious conclusions on China's non-profit development (e.g. Gao Bingzhong and Yuan Ruijun 2008:1-14; Wang Ming 2008:1-52; Gordon White 1993). However, the classification and differences behind these different conclusions are not deeply studied, nor are they consistent with the official ideas of management through classification; 3) terms such as "civil association", "social organization", "non-governmental organization", "non-profit organization", "charity organization" and "public welfare organization" change from time to time. The classification of non-profits is very complicated in general (Anna C. Vakil 1997; David Lewis and Mark Schuller 2017), but even more troublesome in China. However, officials, practitioners and academics seem to have an extraordinary ability to adapt and transform these terms with rich meanings and differences, and rarely distinguish between terms and facts in historical narrations. It may seem like everyone is saying the same thing when they use these terms, but that is not always the case.

In short, China's classification of non-profit organizations is deeply influenced by its traditional culture, by ideology, and by western culture. The classification-related ideas behind the bewildering array of terms need to be sorted out. In view of the various categories within China's non-profit sector, and the fact that different historical periods have different systems of discourse, errors can occur when studies based on partial categories are used to extrapolate indiscriminately to judgments about the whole. It is therefore necessary to discuss the classification of non-profit organizations from historical and internal perspectives in order to understand and solve the problems in the development of the non-profit sector in China.

As Radcliffe-Brown pointed out, "One aim of comparison is to provide us with profiles of classification. Without classification there can be no science" (R.-Brown 1960:2). Classification is the basis of research and governance. One interesting difference is that China's non-profit classification is closely related to ideology, policy strategy and local cultural cognition, and has very weak correlations with tax preference. Western classification of non-profit organizations is often associated with tax incentives, management, statistical social contributions and comparative studies (e.g. Marion R. Fremont-Smith 2004; Lester M Salamon and Helmut K. Anheier, 1996). Moreover, due to the late development of modern non-profit undertakings in China, non-profit classification is often entangled with politics and culture, while western countries often take these classifications for granted. Therefore, research on non-profit classification in China is also of important academic value for cross-cultural comparisons. This paper is a case study of non-profit legislation.

2 Confusing classifications

After the *Charity Law* (2016) and the *General Provisions of the Civil Law of the PRC* (2017) came into effect, it became increasingly urgent to revise the *Regulation on the Administration of the Registration of Associations*,^① the *Regulation on Foundation Administration*, and the *Interim Regulations on Registration Administration of Private Non-Enterprise Units*, which had all been operative on the lower legal levels for many years. To save the cost of legislation, the Ministry of Civil Affairs (MoCA) consolidated revision of these three regulations into one and issued the *Draft* on 3 August 2018. During the nearly month-long period for soliciting public opinion, the guiding thought of tightening up in the *Draft* triggered heated debate.^② If the *Draft* is viewed against the backdrop of how legislation on NPOs and charities has developed over recent years, the classification system and the connections among different terms still need to be discussed.

First of all, for the classification of organizations and legal persons, Table 1 shows that "non-profit social organizations" and "non-profit legal persons" (非营利性法人) in the *Regulation on the Administration of the Registration of Associations* and the *Regulation on Foundation Administration* are inconsistent with the expression of "non-profit legal persons" (非营利法人) in the *General Provisions of the Civil Law of the PRC*. The "non-profit legal person" in the *General Provisions of the Civil Law of the PRC* includes not only associations, foundations and social service agencies, but also large-scale public institutions. In addition, the "social organizations" (社会组织) in the *Draft* and the *Interim Regulations on Registration Administration of Private Non-Enterprise Units* cannot be found in the two higher-level laws of the *General Provisions of the Civil Law of the PRC* and the [Charity Law](#).

① This regulation was enacted in 1989 and amended in 1998 and 2016 respectively.

② For example, the 2016 Regulation on the Management of Foundations (draft) explicitly lowers the foundation threshold, encourages foundation development especially at the grassroots level, and lowers funding thresholds for foundations registered at the municipal and county levels. However, the draft in 2018 raises the funding threshold for foundation registration and abandons some of the previous experience.

Table 1: Classification of organizations and legal persons

<i>Draft</i>	“Social organization” includes 3 types of non-profit legal persons, including associations, foundations and social service organizations.	2018
<i>General Provisions of the Civil Law of the PRC</i>	<p>“Non-profit legal person” includes but is not limited to public institutions, social groups, foundations, and social service organizations.</p> <p>A foundation or a social service organization, among others, satisfying the conditions for a legal person and to be formed with donated property for public welfare purposes obtains the status of a donation-based legal person upon formation through registration in accordance with the law. A venue for holding religious activities formed in accordance with the law and satisfying the conditions for a legal person may apply for legal person registration and obtain the status of a donation-based legal person, subject to any provisions of laws and administrative regulations relating to the venues for holding religious activities.</p>	2017
<i>Charity Law</i>	“Charitable organization” means non-profit organizations that are formed in accordance with the law, comply with the provisions of this law, and are aimed at conducting charitable activities for the public.	2016
<i>Regulation on the Administration of the Registration of Associations</i>	“Association” means voluntary groups formed by Chinese citizens in order to realize a shared objective in accordance with their rules and to develop non-profit-making activities.	2016
<i>Regulation on Foundation Administration</i>	“Foundation” as mentioned in this regulation refers to the non-profit legal person established in accordance with this regulation by making use of the property donated by natural persons, legal persons or other organizations with the purpose of pursuing welfare undertakings.	2004
<i>Interim Regulations on Registration Administration of</i>	“Private non-enterprise units” referred to in these regulations are defined as social organizations that are established by enterprises, institutions, associations or other civic entities as well as	

<i>Private Non-Enterprise Units</i>	individual citizens using non-state assets and conducting not-for-profit social service activities.	1998
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Second, the question of how to define *cishan* (慈善, charity) and *gongyi* (公益, public welfare) is one of the most controversial issues in the legislative process for the *Charity Law*. In addition, some scholars, charity practitioners and officials regard *cishan* as traditional, palliative and negative, and *gongyi* as modern, sustainable and positive – but the *Charity Law* legislators view the two terms as synonymous. They divided *cishan* into a narrow sense and a broad sense of charity. The former “small” sense of charity revolves primarily around alleviating poverty, helping the old and the needy, and providing disaster relief. The latter “big” sense of charity covers not only the “small” issues above but also the promotion of education, science, culture, health, sports, environmental protection and other causes that enhance social and public activities and interests (The Internal Office at the Committee for Internal and Judicial Affairs of the National People's Congress, 2016:15). As such, *big charity* equals *public welfare*, although *small charity* and *big charity* are not used in the formal text of the *Charity Law*. In the *Draft*, however, *charity* and *public welfare* are sometimes used separately, while “*charity and public welfare*” is also used from time to time. These terms sometimes refer to the purpose of the organization and sometimes to the nature of the activity. Table 2 shows how the terms are used in different pieces of legislation. The *Draft* stipulates that the purpose of foundations is charity and social service agencies should concentrate on public welfare, but places no such stipulations on associations. According to the *Draft*, foundations are charitable organizations, but according to the higher-level *Charity Law*, there is an additional field of activity for foundations, namely “promoting the construction of public facilities”. That comes from the definition of “public welfare” in the *Law of the PRC on Donations for Public Welfare*. Compared to the field of “charitable activities” and “public welfare activities” in the [Charity Law](#), the scope of “public welfare” has more content related to the “construction of public facilities” and “other public and welfare services”.

Table 2: Different statements of the purposes and fields of “charity” and “public welfare”

<i>Draft</i>	<p>Foundations provide services including helping the poor and needy, giving relief to the aged, orphans, the sick, the disabled, and giving special care to disabled servicemen, and to family members of revolutionary martyrs and servicemen, giving salvage to the damage caused by natural disasters, disastrous accidents, public health incidents and other emergencies, in order to promote the development of education, culture, public health and sports undertakings, prevent and control pollution and other public hazards, protect and improve ecological environment, promote the construction of public facilities and other philanthropy undertakings. Social service organization with the purpose of pursuing welfare undertakings. The constitution of the foundation shall specify the nature of philanthropy of the foundation. The foundation registered by the registration administration organ under the State Council shall be mainly engaged in charitable organizations and other organizations that fund public welfare and charitable activities. Social organizations of philanthropy providing services including helping the poor and needy, helping the old and orphans, helping the ill and disabled, helping the ones suffered disaster, helping the students with financial aids, could be registered directly.</p>	2018
<i>Charity Law</i>	<p>For the purpose of this Law, “charitable activities” means the following public welfare activities conducted voluntarily by natural persons, legal persons and other organizations in manners such as property donation or provision of services.</p> <ol style="list-style-type: none"> 1) Helping the poor and the needy. 2) Giving relief to the aged, orphans, sick, disabled, and giving special care to disabled servicemen, and to family members of revolutionary martyrs and servicemen. 3) Relieving the damage caused by natural disasters, disastrous accidents, public health incidents and other emergencies. 4) Promoting the development of education, science, culture, health, sports and other undertakings. 	2016

	<p>5) Preventing and controlling pollution and other public hazards, and protecting and improving the environment.</p> <p>6) Other public welfare activities prescribed in this Law.</p> <p>For the purpose of this Law, "charitable organizations" means non-profit organizations that are formed in accordance with the law, comply with the provisions of this Law, and aim to conduct charitable activities for the public.</p>	
<p><i>Law of the PRC on Donations for Public Welfare</i></p>	<p>For purposes of this Law, the term "public welfare" includes the following non-profit activities</p> <p>(1) activities by community groups or individuals for disaster relief, poverty relief, or providing assistance to the disabled;</p> <p>(2) educational, scientific, cultural, public health and sports services;</p> <p>(3) environmental protection and public utility construction; and</p> <p>(4) other public and welfare services to promote social development and progress.</p> <p>For the purposes of this Law, the term "community public welfare organizations" refers to foundations or charities and other community organizations which are formed in accordance with the law and for the purposes of promoting public welfare services.</p>	<p>1999</p>

As a third point, it is also quite confusing that "charitable organizations" and "charity and public welfare social organizations" are used in the *Draft* at the same time. In the two higher-level laws, the *General Provisions of the Civil Law of the PRC* only uses the term "non-profit legal persons" without discussing "charitable organizations", while the [Charity Law](#) only uses the term "charitable organizations". The *Draft* stipulates that foundations should belong to charitable organizations. Clearly, not all the charitable organizations are foundations. In the *Law of the PRC on Donations for Public Welfare* (1999) foundations and charitable organizations are juxtaposed as public welfare organizations with substantial differences such as the requirement until 2004 for foundations to be approved by the Bank of China.^① This is quite different from the idea of treating all foundations

① Here is also the only place where "charities" and "charitable organizations" appear in this law. The law does not classify existing private non-enterprise units. This may be because around the 1997 Asian financial crisis, policy makers used private non-enterprise

as charitable organizations after the enactment of the *Charity Law*. As for the provision in the *Draft* that “charity and public welfare social organizations” can be registered directly, this is from the *Plan for the Institutional Restructuring of the State Council and Transformation of Functions Thereof* (2013) and official statements from the 3rd Plenary Session of the 18th CPC Central Committee. However, the field of activity for charity and public welfare social organizations is more narrow than that for foundations and charitable activities in the [Charity Law](#). In this situation, some charitable organizations cannot be registered directly as charity and public welfare social organizations according to the *Draft*. If “charity” and “public welfare” (philanthropy) are synonyms in the *Charity Law*, why is the designation “charity and public welfare social organizations” also used separately from “charitable organizations”? Or is the purpose of doing so to be consistent with documents from the central government?

In theory and after many years of practice, the knowledge of NPO classification and the definition of charity should be deeper, and relevant legal policy should be more stable. Unfortunately, the new legislation and especially the *Draft* are very vague. *Cishan* and *gongyi* are sometimes used separately and sometimes simultaneously in different laws and regulations, and policy makers do not distinguish between them. The lack of a basic classification will inevitably affect the development of NPOs and charities in the future.

NPOs can be classified by different standards, such as their nature, field of activity, and size, as well as by different tax-reduction policies. It is generally very popular to combine different categories in modern governance, but it is also very important to distinguish core standards from other standards of classification. The precedence accorded to standards reflects different principles of fairness and justice. Furthermore, the definitions of “public welfare” and “charity” need to be clear. It is difficult to understand non-profit legislative activities in recent years without exploring the logic behind classification and definitions. To understand the classification and definitions, it is necessary to examine the above legislative activities within a larger historical context.

3 Classification: evolution and tension

China has a long tradition of associations and charity. In the late 19th century, new Chinese words such as *association*, *foundation*, *public welfare* and *charity*

units as an important means of attracting social capital and therefore allowed them to earn reasonable returns.

appeared with modern meanings influenced by developed countries. *Private non-enterprise units* and other terms began to be used at the end of the 20th century. It can be said that the problems associated with classification are related to the divergent ways in which these terms have been understood in the process of localization. Over the course of a century, the classification of non-profit organizations has been built on four interwoven areas and lines of thought: 1) organizations and legal persons; 2) public welfare and charity; 3) politics; and 4) other classifications.

3.1 Classification of organizations and legal persons

In Chinese history the words *hui* (会), *she* (社), *hang* (行) and *dang* (党) have been used to indicate different types of associations. *She* (社) and *tuan* (团) are two different words in ancient Chinese. Archaeologist Yu Weichao (1988) pointed out that *she* is an ancient organization for worshiping the Dimu (地母, Mother earth). *Tuan* is an ancient village organization with the meanings of "basic residents' living units" and "military units" in different periods. At the end of Qing dynasty, *she* (社) and *tuan* (团) were synthesized as one term in the association movement.^① This term has long been the general designation for various NPOs and even early political parties from the late 19th to the early 20th century. Because of the rapid demise of the Qing Dynasty, the association legislation of its later period, which drew on western experience, was almost never implemented. In the early years of the Republic of China (RoC), the central government was marked by sharp social conflict, warlordism, and power vacuums, but there were also major developments in associations and charity. In 1929, China's first legislation on charitable organizations, the *Law on Supervision of Charitable Organizations*, was enacted. The government of the Republic of Nanjing (1927-1949) issued 28 special laws and implementational rules for associations (Xu Xiuli, 2006). In 1942 the Communist Party also promulgated regulations for registering associations. The systems of classification for legal persons in the Republic of China, which drew upon the continental law system, are still used in Taiwan.

After 1949 the classification system for legal persons in the PRC was abolished in mainland China. The *Interim Procedures on the Registration of Associations* promulgated in 1950 was the first law on civil associations after the founding of the PRC. While counter-revolutionary groups and associations incompatible with socialist values were abolished and dissolved, the establishment of associations

① Also called a shehuituanti (社会团体) or minzhongtuanti (民众团体).

was approved on the principle of political status. Associations had very little independence, the dissolution procedure was very simple, and the regulation of internal governance was particularly feeble. Associations include people's organizations, public welfare organizations, literature and art organizations, academic research organizations, religious organizations and so on. All the democratic parties and people's organizations of the Chinese People's Political Consultative Conference, organizations provided for by the central people's government in different laws and regulations, and organizations within government bodies, schools and the armed forces with the permission of their respective leaders do not fall under this jurisdiction. The regulation is not so much a classification for governance as it is a means to control and integrate associations on the basis of a high degree of isomorphism with the party and the state. In the words of Chen Jinluo, the head of the Bureau of Association Management of the Ministry of Civil Affairs (from 1988 to 1996), "The main purpose of these two regulations was to provide a legal and policy basis for cleaning up and dissolving the social groups in the village at that time... After the completion of the clean-up and rectification, the above two laws and regulations were no longer taken seriously, and the approval and registration of social groups were undertaken by relevant business departments respectively, and the unified registration system would no longer be implemented" (Chen Jinluo, 2018:197). This strategy played a major role in consolidating the new regime, but ignored the essential nature of associations and dissolved their identity consciousness. During the Cultural Revolution, associations ceased their activities.

At the beginning of the Reform and Opening up, the government shifted its focus from class struggle to economic expansion. The government gradually withdrew from social domains, and social autonomy was strengthened. The development of associations shed the interference of ideology and resumed a focus on a non-profit nature. Foundations emerged, but were subsumed into the category of associations by the government. In the absence of a dependable legal basis, multi-head managements and decentralized approval were common. In 1988, the year before the outbreak of political unrest, associations were under the unified administration of MoCA. Subsequently the *Regulation on Foundation Administration* (1988) and the *Regulations on the Administration of the Registration of Associations* (1989) were promulgated. The two ordinances still used *association* as the only category. However, under the category of non-profit

legal person established by the *General Principles of Civil Law* in 1986,^① these two kinds of organizations also clarified their non-profit identities.

In the 1990s the government pursued clean-up and rectification policies with the aims of inhibiting the trend toward bourgeois liberalization among associations, discouraging profit-oriented behaviour by associations in running enterprises, and banning organizations such as Falun Gong. Like the clean-up of civil associations in the 1950s, this one still had a political emphasis. For example, according to policy documents such as the "Notice of the publicity department of the CPC central committee and the ministry of civil affairs on the entrustment and management of workers' ideological and political work social groups", the China modern poetry society and the international qigong science federation were disbanded. On 6 December 1999, the speech by MoCA minister DuoJi CaiRang at the work conference on strengthening the administration of associations pointed out that the government would strictly examine new associations before their registration, let trade associations that adapt to the development needs of the socialist market economy register smoothly, and control these associations with a broad and only vaguely defined range of activities. It was prohibited to establish qi gong and kung fu laws, specific groups, clans or associations that are not conducive to national unity or are contrary to national laws and regulations.^② This was the official formulation of the classification of associations at that time, which was extremely concise and clear. If the management task for associations during that decade was to clean up and suppress them, it is clearly objective. To put it more precisely, normative and development work were going on at the same time. And the number of organizations had increased approximately 12.6-fold in the preceding 10 years.^③ To attract private capital to social services, the central government proposed the term *private non-enterprise units* in 1996. At that point in time, the category of associations, private non-enterprise units, and foundations was finally established. In 1999, the State Council decided that the People's Bank of China would withdraw from the foundation management system and hand over its approval and management functions to the MoCA. By the time the *Regulation on Foundation Administration* was enacted in 2004, foundations were still classified as associations. In 2004, the non-profit attributes of the three types of organizations were clear, but due to the low legal level of the three regulations

① The other three types of legal persons are official organs, public institutions, and enterprises.

② http://old.moe.gov.cn/publicfiles/business/htmlfiles/moe/moe_1041/200507/10704.html. (Last accessed: 2 April 2019).

③ The number of registered civil associations was 10,855 in 1990 and 136,764 in 1999.

and the low level of social awareness, it was difficult for the dual management system and the NPOs to fully enjoy the tax incentives, and the NPOs invariably faced multiple challenges in developing in healthy and orderly ways.

Since the 1990s the following additional changes have taken place: 1) the emergence of grassroots organizations with strong social legitimacy although only a tiny fraction have been able to be registered. Inspired by the World Conference on Women in Beijing in 1995, these organizations gained a clear sense of identity and became increasingly active as part of the social protection movement. Since the 18th CPC National Congress, the central government has attached great importance to community-based NPOs. Many grassroots organizations that were previously unable to register have done so successfully and have been able to obtain government funds. Thus fuelled, these organizations are increasingly active in communities; 2) in order to join the WTO, the government attached greater importance to trade associations. This emphasis continues to this day, for example in the direct registration of such organizations in the *Draft*; 3) the legal person category was re-divided in the *General Principles of Civil Law* (see Table 1). Of note is one of the new changes in this law which stipulates that a place of religious activities established in accordance with the law can apply for status as a donation-based legal person (捐助法人) if it meets the relevant requirements. But it is still being implemented.

3.2 Commonweal and charity

The word *cishan* (慈善) in Chinese is very close in meaning to that of charity and philanthropy. The term *gongyi* (公益, public welfare) entered Chinese culture at the end of the 19th century.^① Judging from the usage of *gongyi* in the *Regulations of Local Self-Government in Urban Township* promulgated in 1908, the term is equivalent to public welfare. In the original context, charity is not equal to public welfare, but is included within the latter. When literature in the late Qing Dynasty and the early RoC used these two words, it generally listed the term public welfare before charity, not the other way around. From 1949 to the 1990s, charity had negative and even superstitious nuances as well as other strongly derogatory associations. Because *public welfare* emphasizes government, welfare, and infrastructure expansion, it is rarely derogatory in Chinese.

① There is debate about whether the word is borrowed from Japanese or whether it originated in Chinese and then entered Japanese. But "public welfare" has entered both Japanese and Chinese from English (Wu Huanyu, 2018).

The use and promotion of “public welfare” at the end of the 20th century largely derived from the needs of the government and promotion by friendly foreign powers. Faced with the question of whether to accept international disaster relief assistance in the 1980s, the attitude of the Chinese government alternated between positive and negative responses. Since the end of the 1980s, international disaster relief assistance has continued to enter the country at high levels, especially in Hong Kong and Macao and by Taiwan compatriots and overseas Chinese (MoCA Bureau of Disaster Relief, 1998:52-56). However, since 1 April 1996, the regulations on the reduction of tariffs on donations by overseas Chinese and Hong Kong and Macao compatriots have also been cancelled. Since then, the level of donations from overseas Chinese has plummeted (see Table 3).

Table 3: Donations to alleviate poverty in the PRC (in billions of yuan or RMB)

	Donation funds	Domes tic	Overseas	
199 1	19.98898	13.460 87	6.5 3	Hong Kong, Macao and Taiwan 4.42 (67.2%)
				Chinese groups 1.43 (21.9%)
				Foreign governments and organizations 0.68 (10.9%)
199 4	5.65059	1.5537 2	4.0 9	Hong Kong, Macao and Taiwan 3.34 (81.7%)
				Chinese groups 0.57 (13.9%)
				Foreign governments and organizations 0.18 (4.4%)
199 6	13.24021	9.1135 4	4.1 3	Hong Kong, Macao and Taiwan 2.76 (66.9%)
				Chinese groups 0.63 (15.4%)
				Foreign governments and organizations 0.73 (17.7%)
				Hong Kong, Macao and Taiwan 0.02 (66.6%)

1997	2.22412	2.19528	0.03	Chinese groups 0.004 (13.4%)
				Foreign governments and organizations 0.006 (20.0%)

In response to the donation of customs duties and the inability of some recipients to pay customs duties, the NPC Standing Committee of the National People's Congress and the National People's Congress Overseas Chinese Committee began drafting the *Law of PRC on Donations for Public Welfare* in early 1996 and promulgated it in 1999. The purpose of the legislation was mainly for overseas donations and was directed primarily at overseas Chinese, Hong Kong and Macao compatriots instead of at mobilizing enthusiasm on the part of domestic donors. In addition, the law gives the government a twofold role. It is both the supervisor and the recipient of grants, or both referee and athlete. The use of *public welfare* in the law continues with the same sense of *public welfare* borrowed from Japanese a century earlier: that is, it includes not only charity but also infrastructure and social welfare. This leads to donations going to NPOs, and more so into the government system. It is not hard to understand why up to around 80% of social donations flowed into government accounts in the aftermath of the 2008 Wenchuan earthquake (Deng Guosheng et al., 2009).

In response to the shortcomings of the *Law of PRC on Donations for Public Welfare*, in 2005 the MoCA submitted a proposal to the National People's Congress and the State Council to formulate the *Law on the Promotion of Charity*. After the central document in 2013 emphasized the importance of charity, the legislative process began to accelerate and the law was handed over to the National People's Congress Internal Affairs Judicial Committee for drafting and promulgation and implementation in 2016. Before and after the legislation itself, there were quite a few arguments revolving around these two terms. In this law, *charity* has been expanded to approximate *public welfare*. The current popular view is that *charity* is traditional, *public welfare* is modern, and the latter is more derogatory than the former. But ironically, if this view is correct then the *Charity Law* has regressed vis-à-vis the *Law of PRC on Donations for Public Welfare* promulgated 17 years ago ?!

Table 4: Charitable organization classification statistics^①

Category	Number of publicly funded charities	Number of charitable organizations	Percentage of publically funded charities among charitable organizations
Foundation	707	3656	19.34%
Social group	405	871	46.50%
Red Cross	247	249	99.20%
Social service agency	4	233	1.72%

According to the *Charity Law*, registered associations, foundations, and social service agencies can be recognized as charitable organizations, and the foundations are all regarded as charitable organizations by the civil affairs departments. But in fact, the number of charitable organizations is currently lower than the number of foundations, and there are fewer charitable organizations with public fundraising qualifications (see Table 4). Many NPOs are not motivated to be recognized as charitable organizations, which indicates that there are still taxation-related and other policy obstacles.

3.3 Political classification

It is evident from the evolution of organizational classification that the attitude of the central government plays a crucial role.

With respect to enthusiasm, in 1950 the *Interim Procedures on the Registration of Associations* and the Ministry of the Interior's *Representation of Handling of Social Group Registration Work* emphasized that "the principle of approval should be based on political appearance (政治面貌)" and "registration of associations". This was also the process by which the new regime used its socialist values to judge and select the communities that existed at the time. After the NPOs were registered and managed by the civil affairs department in 1988, we can see that this management idea continues. In 1991, according to the leadership of the State Council the eight major groups participating in the Chinese People's Political Consultative Conference, such as the Association for Science and Technology and

^① Statistics are available as of 16 October 2018. <http://charitychina.foundationcenter.org.cn/home/cszz> . (last accessed: 10 November 2018).

the Communist Youth League, were not required to register in accordance with the *Regulations on the Administration of the Registration of Associations*. The *Draft* stipulates that the people's organizations participating in the Chinese People's Political Consultative Conference, those approved by the State Council to be exempted from registration, and the organs, organizations, enterprises, institutions, and social groups within communities shall be established by their own units or grassroots mass autonomous organizations. Three categories, such as groups within organs and within the community, are exempt from registration. This is almost identical to the organizations exempted from registration in the 1950 *Interim Procedures on the Registration of Associations*. In addition to the above government-run organizations, after 40 years of reform and opening up the government is increasingly aware of the important role of certain types of NPOs in social development. After considerable exploration, the central government proposed in 2013 that trade associations, science and technology organizations, charitable organizations, and urban and rural community service organizations can be directly registered as social organizations. The relevant provisions in the *Draft* are merely a repetition of the statement by the central government. Obviously, the policy classification of these four types of organizations does not follow the same classification criteria.

With respect to the negativity category, the attitude of the government is clear from the treatment of counter-revolutionary societies and foreign non-governmental organizations in the 1950s as discussed above, and the prevention of qigong, religious, ethnic and other types of organizations at the end of the 20th century. In 2013, the central government stipulated that political, legal and faith-based NPOs, overseas NPO representative offices, and three other types of organizations continue to use the dual management system. In short, as long as they are a threat to the regime, NPOs belong to the negative category. But it is not easy to provide a clear definition of the negative category. For example, some overseas NPOs attach importance to their positive role, while others see their negative role. As a result, in the summer of 2015 the management legislation regarding overseas NPOs generated heated debate (Han Junkui, 2017a).

Official statistics bear this out. For example, from 2007 to 2011 the annual growth rate of cultural associations and scientific and research associations was about 8%, and the growth rate of health and sports associations was also considerable. The number of agricultural and rural development associations increased by about 20 percent. However, the share of legal societies has been below 1.6%, and has been decreasing year by year. The proportion of religious associations is about

2%, and the number of international and foreign-related organizations is even smaller (Han Junkui, 2015a:344-7). In short, regardless of whether they promote or prohibit, the principles of central political classification are more coherent.

3.4 Other classifications

In addition to the three categories above, the government has adopted additional classifications by fields of activities. In the 1980s and 1990s, associations were divided into academic societies, trade associations, professional associations, and joint associations. This general classification, which is still in use today, has little meaning at the policy operation level. From 2003 to 2006, private non-enterprise units were divided into the ten categories of education, health, culture, science and technology, sports, labour, civil affairs, social intermediary services, legal services and other fields. In order to standardize and unify statistical management, the MoCA borrowed from the UN's international NPO statistical classification system, and proposed a new classification system at the end of 2006 that divided associations and private non-enterprises into 14 categories: technology and research, environment, education, health, social services, culture, sports, law, business and industry services, religion, agriculture and rural development, occupations and practitioners, international and foreign-related organizations, and others. To this classification of private non-enterprise units has been added the categories of the environment, agriculture and rural development, and international and foreign-related organizations. The remaining categories have only been given new names for the statistics (Han Junkui, 2015b).

Of the above four categories, the first category is basically stable. The 1986 *General Principles of Civil Law* has not been abolished but has little to do with practical operations such as charity, public welfare, and non-profit organizations. In addition, the new legal person system of 2017 has not yet been implemented, so it is not surprising that the term used in the *Draft* is determined by the central policy on social organizations. In contrast to current popular opinion, after the implementation of the *Charity Law*, the terms *charity* and *public welfare* in the second category are no longer at odds with the relationship between tradition and modernity, nor are they a simple inclusion relationship. The fourth category is only statistically significant at the technical level. Therefore, the most critical classification is the third one. Although the *Charity Law* has been promulgated and a new legal person system has been established, the attitude of the central government plays an important role in how it is implemented. For example, a venue for holding religious activities that is registered as a legal person can become a donation-based legal person like a foundation, but faith-based NPOs continue to

use the category of dual management. Charitable organizations are encouraged to develop, but the current number of charitable organizations is only increasing slowly due to the many limitations in taxation and fundraising policies. Resolution of these contradictions will depend on the central government's ability to provide accurate policy signals.

In addition, there have also been organizational classifications from the perspective of officials and people over the years. However, with the social transformation of governmental NPOs, and with grassroots organizations registering in the name of charity and obtaining government funding for purchasing services, this distinction is no longer significant.

4 Conclusions: Emerging from confusion

How should we understand the logic behind the complex approach to classification described above? Once the classification of non-profit organizations is put into the context of over a century of history, we can see the unstable relationship between the state and society. Despite the development of non-profit classification and associations in the late Qing Dynasty and the Republic of China, and the refinement of non-profit classification and the rapid increase in non-profit entities since the Reform and Opening up, the totalitarian explanation is difficult to maintain. Authoritarianism concentrates political power in the political sphere, so it is difficult to explain why political power sometimes enters the social sphere and sometimes leaves it. Therefore, some scholars adopt a cautious stance when using authoritarianism to explain Chinese politics (e.g. Andrew J. Nathan, 2003). The evolution of the above classification shows that the relationship between the state and society has been advancing and retreating over the past 100 years.

Professor Tang Tsou used the term "totalism" to describe the social revolution that China has undergone in the 20th century. Unlike totalitarianism, totalism does not include political systems and organizational forms in society, or seek to prevent or eliminate revolution. Instead, it starts from the state-society relationship, and only refers to the guiding concept that the political institution could invade and control every class and field in society at any time without any limitations. The freedom and rights of the individual or of the society are not protected by morality, the will of the people, legislation or the constitution. The scale and the content of free activity are decided by political authority. Apart from those under the direct or indirect control and administration of the state, there are only three other fields in a political society of totalism: 1) political authorities make policies according to

the needs of societal development, empowering independence for national units, mass organizations, social communities and individual citizens; 2) due to certain considerations of strategy and policy, political authorities temporarily refrain from controlling certain social behaviours; 3) fields that political authorities do not mind (Tang Tsou, 1986). Actually, these three fields are classifications. It could be argued from the previous evolution of classification that the government is taking a very consistent approach, such as supporting certain registration types without compulsory registration processes, as well as priority areas for development. It could also be argued that the government has certain strategical considerations with respect to e.g. non-corporate associations and religious charities. As for the large number of interest groups, instead of minding and restricting them, the government encourages their development. In this view, omnipotence is closely related to the history of non-profit classification in China. But then the question becomes what is the difference between totalism, totalitarianism and authoritarianism. Although Tang Tsou believes that totalism is different from totalitarianism and authoritarianism, as he expresses it totalism is closer to totalitarianism. I believe that from the perspective of China's reality, totalism is closer to authoritarianism or neo-authoritarianism. It is very difficult to differentiate between these three concepts. Moreover, in the absence of clear and accurate comparative indicators to be examined in a cross-cultural context, the application of these concepts to the interpretation of practice will always face deductive risks of one kind or another.

Leaving aside the differences among these three conceptions, exploring the classification of the non-profit field in China under a state-society dynamic is very interesting from the perspective of totalism. Obviously the concept of totalism still needs to be discussed. For example, the definition lacks the classification of "areas that political authorities strongly disagree with". More importantly, political authorities could not only participate in society at any time without any limitations, but also retreat from society on account of different needs and certain strategical considerations. However, there are no rules that determine when the government should advance or retreat. As a result, it is still difficult to establish a stable boundary between government and society. Political authorities are the sword of Damocles hanging above the autonomy of the non-profit sector all the time, which will remain the case for the foreseeable future.

Upon examining more than a century of classification of non-profit organizations, it is undeniable that China's classification in this area is increasingly accurate, and more complicated as well. Meanwhile, China's non-profit sector is growing.

However, if Tocqueville's (Tocqueville, 2010) classification is adopted, China is increasing the number of general associations that are encouraged, while the number of political associations or organizations highly related to politics is changing very little. The increase in the number of NPOs may mean that the government is relinquishing the management of some specific affairs due to a sharp increase in management costs, which in turn expands social space and autonomy. But Robert Dahl's idea of restricting the power of society is still worth examining in China. Because of policy incentives and resources, more non-profits are withdrawing from sensitive areas and focusing on service provision instead of advocacy. The practice of purchasing services in China in recent years can demonstrate this (Han Junkui, 2015c, 2017b).

In the short term, it should be the highest priority to begin implementing the NPO law. Afterwards, charitable organizations will be just a small part of NPOs. In this way, connections among the *General Provisions of the Civil Law of the PRC*, the *Charity Law* and the *Draft* could be made. Otherwise, there will still be discrepancies among the *General Provisions of the Civil Law of the PRC* which accords with the tradition of the civil law system, the *Charity Law* which emulates the Anglo-American legal system, and the *Draft* which is operative at lower legal levels.

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