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Party, State, Civil Society and Covid-19 in China

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Abstract: In China, the story of Covid-19 and the relationship between government and civil society is not a sharp break from the past. China has long guided and controlled the development of civil society organizations, and that has not changed in the Covid era. Instead, the Covid era is a story of a continuation in restrictive policy, and responses to Covid have utilized those existing policies and regulatory framework rather than developing new policies for the Covid era. The Chinese story may thus somewhat different from others in this special issue. China is certainly not a story of, in the words of our issue editors, when “pluralist and social democratic visions fade.” The Chinese Party-state’s permission for the reemergence of some kinds of civil society organizations in China since the early 1980s has never been marked by pluralist and social democratic visions. Instead, it has been marked by Party and state control, and clear choices on what kinds of organizations to facilitate and which kinds to repress. That control-based framework has accelerated since the current administration came into office in 2012. Covid has neither upset that restrictive framework nor substantially altered it. Instead, the framework of differentiation and constraint employed by the Chinese state has adapted, in some ways, to the need to control Covid and to control public mobilization on it and against the Party-state. In this brief article we outline the framework of differentiation and constraint that the Chinese Party-state uses to control the Chinese nonprofit sector, and mention a few ways in which that framework has been used in the Covid era.

Keywords: China, civil society, Covid-19, NGOs, philanthropy

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1 Introduction

The relationship of the Chinese state to its nongovernmental sector, and to the overseas nongovernmental organizations that work in China, is the key issue in the molding, growth and development of that sector since the 1980s. The role of Chinese civil society in the current Covid era is not a sharp break from the past, though it illustrates some of the tensions and constraints that have grown over the past decade and more.

China has long guided and controlled the development of civil society organizations, and that has not fundamentally changed in the Covid era. Instead, the Covid era is a story of a continuation and acceleration in restrictive policy, and responses to Covid have utilized those existing policies and regulatory framework rather than developing new policies for the Covid era.

The Chinese story may thus somewhat different from others in this special issue. China is certainly not a story of, in the words of our issue editors, when “pluralist and social democratic visions fade.” The Chinese Party-state’s permission for the reemergence of some kinds of civil society organizations in China since the early 1980s has never been marked by pluralist and social democratic visions. Instead, it has been marked by Party and state control, and clear choices on what kinds of organizations to facilitate and which kinds to repress. That control-based framework has accelerated over the past decade and beyond.

Covid has neither upset that restrictive framework nor substantially altered it. Instead, the framework of differentiation and constraint employed by the Chinese state has adapted, in some ways, to the need to control Covid and to control public mobilization on it and against the Party-state. In this brief article we will outline the framework of differentiation and constraint that the Chinese Party-state uses to control the Chinese nonprofit sector, and mention a few ways in which that framework has been used in the Covid era.

1.1 Civil Society in China in the Current Era

In the 1990s and the 2000s, there was frequently a sense in China that policy toward social organizations and civil society was contradictory, forever in the process of formulation, subject to conflict in the central policy apparatus, and falling behind rapid developments in society. In particular, while the Party-state was always in charge, state control versus some sense of nonprofit autonomy seemed frequently on the table, playing out on a range of themes and based on types of organizations (Kang and Han 2008).

Little of that sense of contestation and calibration remains, both before and during the Covid era. The current policy project toward civil society has been intentional, rapidly developed, intently focused on control and restriction, and oriented toward directly molding, through policy and law, the precise type of domestic and overseas social organizations and civil society that the Party and government wish to see function in China in this era (Fu and Distelhorst 2018; Sidel 2018).

In the space available here we cannot discuss all aspects of this centralization and restriction of control that accelerated in 2012 and after. We will discuss several important aspects of that turn toward virtually complete control over the social organization sector and how that has played out under Covid. In particular, those are:

- The policy and regulation of the domestic social organization and charity sector through Party documents and the Charity Law (2016); and
- The significant restrictions and controls on the work of overseas NGOs and foundations in China, through the restrictive and control-focused framework of the Overseas NGO Law (2016).

2 The Policy and Regulation of the Domestic Social Organization and Civil Society Sector, Through Party Documents and the Charity Law (2016), and its Implementation in Covid Time

When the current administration came into full power in 2012, the draft of an omnibus Charity Law was already well advanced. That process had begun back in the 1990s, and some would date it to the late 1980s, when initial, short regulatory documents on the sector began to appear. By 2014 and 2015, what had emerged after fierce debate over many years was a draft law that cheered proponents of more flexibility and autonomy for social and charitable organizations (Spirens 2020).

Under that draft, and under the text of the Charity Law that emerged from it in 2016, registration and activities were made textually easier; fundraising was better established as a prerogative for some social organizations; and ideas of self-governance (to go along with state regulation) were more advanced. The most optimism came from a sense that under the Charity Law, and despite

remaining very extensive state controls, the process of legalization for many Chinese social and charitable organizations would be made easier.

But there was hope that the long-drafted Charity Law would temper some of the rapidly rising control initiatives, or at least serve as a textual basis for retaining some of the autonomy and legalization that the Law seemed to promise. And so the Law was passed in 2016.

The results since 2016 have been viewed pessimistically by almost all Chinese organizational leaders, activists, and academics. While there is a textual route to registration and legalization in the Charity Law, in practice that has been very difficult for many Chinese groups. The number of registered groups since 2017 is considerably below what many Chinese social organizations and leaders had hoped (Spire 2020).

Civil affairs bureaux and other responsible units around the country have clearly been told to go slow on the facilitative aspects of registration and legalization under the Charity Law. It has been particularly difficult for grassroots and unregistered organizations to obtain registration and recognition – dashing one of the original hopes for the Charity Law (Zheng 2020).

2.1 Implementation and Policy in Covid Time

None of these restrictions have changed in the Chinese Covid era, which began in late 2019. There has been no letup in constraints on the formation and legalization of Chinese social and charitable organizations. If anything, according to reports from China, local civil affairs bureaux have been even more restrictive in the implementation of the Charity Law and related regulation.

That is not to say that Chinese social organizations have had no role to play in the response to Covid in China. As we have shown in some recent writing, and others have shown, Chinese nonprofits and charitable organizations have been active in Covid response. But these responses have been permitted under highly restrictive conditions, and those restrictions have not been ameliorated in this special time (Ministry of Civil Affairs 2020a, 2020b). At the same time, and we and others have shown, despite heavy restrictions, civil society still shows strength and vitality in emergency service, funding, volunteering, mutual aid, in-kind donations, and perhaps even, occasionally, policy advocacy (Cheng et al. 2020; Dong and Lu 2020; Hu and Sidel 2020; Miao et al. 2020; Yu 2020; Zhang and Guo 2020; Zhang, Shen, and Yu 2020).

Chinese social organizations have provided services in Covid time in regions of China that have been hit by the virus. Chinese foundations have supplied funding to state-approved implementing organizations. Most of those have been emergency response authorities and their affiliated charities. Some Chinese social organizations,

national and local, have worked with state agencies, medical institutions, and foundations by delivering materials and services and assisting in epidemic prevention and control. Many individual Chinese have engaged in volunteer and mutual aid activities, but under restrictive policies in place that limit the autonomy of these activities and keep them subject to state controls (Hu and Sidel 2020).

In general terms, as a number of scholars are showing, Chinese social organizations have generally been less able to be active and autonomous in their responses to the Covid emergency (certainly compared to the situation after the Wenchuan earthquake in Sichuan in 2008) due to the state's increasingly restrictive policies (for a discussion of the 2008 situation, see Xu 2017 and Shih and Deng 2011). If the period after Wenchuan in 2008 was a high water mark for autonomous activities by Chinese NGOs, the constraints on those activities and the broadening restrictions on advocacy and other work by Chinese nongovernmental groups have been accentuated in the Covid era. And yet, at the same time, Chinese nonprofits have responded with creativity and activism, at times, to the stronger constraints upon them in this era (Hu and Sidel 2020).

Fundraising is an interesting example of the relationship between preexisting, restrictive state policies and responses in the Covid era. A significant amount of fundraising for Covid emergency response has taken place in China since early 2020. But because fundraising has been a highly restrictive field since (and before) the Charity Law was adopted in 2016, the recipients of fundraising for Covid response in China have been highly constrained. In Wuhan, Hubei Province, for example, the epicenter of the Chinese Covid outbreak, the national Ministry of Civil Affairs assigned five state-affiliated foundations to receive and distribute donations to Hubei. In other words, other Hubei groups were generally not allowed to receive donations directly in response to Covid (Hu and Sidel 2020).

While these fundraising policies were not always as restrictive in other parts of China, even elsewhere there have been constraints on the organizations that may seek and accept donations for Covid relief. In particular, permits have been allowed to collect private donations, generally in line with existing national fundraising regulations (Zhang, Shen and Yu 2020). Those charities permitted to raise funds for COVID relief include primarily public foundations (mostly state-affiliated) and a handful of major social service NGOs. These fund-raising eligible organizations are allowed to raise money online through 20 Internet platforms assigned by the Ministry of Civil Affairs. These are not new policies under Covid. They are more often the application of earlier, restrictive policies (in this case on fundraising) that have been maintained and adapted (and, in the case of Hubei, even strengthened) for the Covid era (China Philanthropy Research Institute 2020; Hu and Sidel 2020).

As we have written elsewhere, one of the features of the 2020 COVID crisis in China is the relatively significant flexibility and privilege given to state-affiliated

charities and foundations to act in the crisis, as shown in donation collection and service provision. Those are vetted organizations, subject to extensive reporting and supervision requirements. So the Chinese governance system in effect has it both ways – encouraging civic activity by groups that are considered flexible compared to government departments, while retaining control over major actors.

Other areas of Covid response, such as volunteering, show the same reliance on preexisting restrictive policies and regulation – and were not liberalized for use in Covid time. Mutual aid, which has played an important role in Wuhan and other areas of China hit by Covid, has generally been led by grassroots NGOs, volunteer groups and community-based networks. But here too, despite high levels of citizen action, there are significant limits. In Wuhan and elsewhere these mutual activities must be approved by local Party or government agencies. And the restrictions go further – in a number of areas, neighborhood-based mutual aid was in fact directly organized by local Party or neighborhood committees, making it less autonomous but not necessarily detracting from the spirit and commitment of those organizing mutual aid and those receiving it (Hu 2020; Hu and Sidel 2020).

That which is not allowed pre-Covid is usually not allowed in Covid time either. Policy advocacy is a good example. Independent policy advocacy is at its weakest point in China in many years, the result of political and regulatory policy that began much earlier and accelerated in recent years. There has been extensive censorship of independent advocacy on Covid on Chinese social media. And yet there have been counter-responses from below, including expressions of respect for Dr. Li Wenliang, who sought to provide information in medical circles about the virus very early in Wuhan and was disciplined for it before his death, and citizen advocacy for the rights of women health care workers and vulnerable populations.

And yet, and we and others have pointed out, there is some hope. Volunteer groups – even when they must be vetted, approved and closely supervised by the Chinese state – have shown real ability to act and to provide mutual aid. Active NGO networks, coalitions and partnerships have also emerged during the crisis. Despite more constrained policy, some Chinese nongovernmental organizations have continued to seek autonomy and creativity in their work.

3 Restrictions on Overseas NGOs and Foundations, and Implementation in the Covid Era

If the restrictive framework of the domestic nonprofit sector has impeded autonomous responses to Covid in China, the same has certainly been the case for the responses of overseas NGOs and foundations. Few such groups have been able to

respond usefully to the Covid crisis in China. As with the domestic organizations, this is because of preexisting restrictions – in particular China’s Overseas NGO Law, adopted in 2016 and effective in 2017 – not because of new Covid-related restrictions on foreign nonprofit activity. The preexisting framework has been used, largely unchanged, to limit what foreign organizations can do in China during the Covid crisis.

Beginning in 1978, China began to welcome the return of foreign NGOs, foundations and other charitable groups to work in China. The policy and regulatory environment that greeted those groups when they arrived in China was gradually more complex but also somewhat permissive. China wanted and needed foreign expertise, it believed, and so, in a process repeated over the years, regulatory and policy barriers to entry and operations were considerably lower when Chinese policy was to welcome such groups and use their knowledge, expertise, and funding.

At times over the ensuing several decades, there was more scrutiny, and more controls – particularly in the first several years after the Tian’anmen events of 1989, when more conservative policy actors in China singled out foreign NGOs and foundations for blame for “peaceful evolution” and for, in their view seeking to weaken or bring down the Chinese Communist Party. Periodic such suspicion and more restrictive policies toward foreign nonprofits occurred at several other points, but the policy pendulum generally swung back toward a more *laissez faire* attitude until about 2012. Many overseas nonprofits found various regulatory pillars under which to legalize, or to remain in the shadows, continuing to work in China. Subnational policies sometimes differed, providing an arbitrage opportunity for some overseas groups (Batke 2019; Jia 2018; Shieh 2020; Sidel 2018).

One reason why China was able – or felt able – to employ a relatively tolerant attitude toward foreign civil society groups was because of the organizational and bureaucratic strength of security ministries within the Chinese government and Party – particularly the Ministry of State Security and the Ministry of Public Security. While the forward-facing policy was often one of welcome, Party and government leaders had confidence that they would know of real problems through the security ministries, and could deal with such issues as they arose.

This relatively benign framework was never without problems. But it began to shift toward a much more controlled framework after 2012. An earlier and somewhat more relaxed attitude toward overseas nonprofit groups, as with domestic social organizations and other nonprofit groups, was replaced with significantly more controls.

3.1 Tightening Over Time, and then More Quickly Over the Past Decade

The new restrictive framework toward overseas NGOs and foundations did not occur in a policy vacuum. Adding to the impetus for that shift, though, was concern that had been held for many years in some sectors of the Party and security agencies over the role of NGOs and foundations in the “color revolutions” that had occurred across Central and Eastern Europe, the Arab world and North Africa, and the Hong Kong Occupy Central (Umbrella) movement. It is still not fully clear whether the “color revolutions” and related concerns directly motivated more restrictive policies toward domestic and foreign NGOs, or were merely an excuse for new restrictions. But they were regularly cited as a key reason for more controls.

There were other reasons as well. The Chinese Party leadership sought to centralize a control policy toward overseas civil society groups in one place, and that was identified as the Ministry of Public Security. Active policy development thus moved upward, from the provincial level where some of it had migrated in earlier years, and from a range of central ministries, into and upward into Public Security. The central Party also sought to break funding and collaboration chains between some overseas (including Hong Kong and Taiwan) NGOs and foundations and activist advocacy NGOs in China, which were separately under pressure as well in the Xi Jinping era.

The Party sought to discourage overseas NGOs and foundations from working closely with government and nongovernmental policy groups in Beijing and at the subnational level. And the Party sought to bring together disparate streams of regulation and security attention on Hong Kong, Taiwanese and other groups in one overall, more strictly controlled structure. It was that concern about Hong Kong and Taiwanese influence and ties to domestic advocacy groups in China that resulted in the Law governing not just “foreign” NGOs, foundations and other entities but the wider category of “overseas” organizations, a definition that explicitly included Hong Kong and Taiwanese NGOs and foundations (Shieh 2020; Sidel 2018).

3.2 Achieving Comprehensive Control Through the Overseas NGO Law

Public Security was then charged with drafting a national framework law to exercise control over the registration and activities of overseas NGOs, foundations and other nonprofit groups, and proceeded to do so during 2014. With minor

changes discussed below, the National People's Congress enacted the *Law on the Domestic Activities of Overseas Nongovernmental Organizations of the PRC* (Overseas NGO Law) in April 2016, and it became effective on January 1, 2017 (ONGO Law 2016).

The Overseas NGO Law has prescribed an entirely new and comprehensive framework for the regulation of overseas NGOs, foundations and other nonprofits in China, breaking with the past availability of multiple potential regulatory homes for overseas nonprofit groups. In basic terms, such overseas groups that are organized in nonprofit form must either register an office in China (by working with an approved Chinese partner), or report “temporary activities” generally lasting one year or less (also by working with an approved Chinese partner) through the Ministry of Public Security. In regulating registration, operations, fundraising, employment of staff, acceptable activities and a range of other matters, China's framework is considerably more comprehensive than the policy initiatives of some other countries in seeking to restrict and control foreign funding coming into their countries (ChinaFile 2019; Sidel 2020).

After almost four years of implementation of the Overseas NGO Law, its impact is now becoming clear. For a number of reasons, it has proven difficult for many overseas nonprofit groups to continue work in China – in many cases because they have difficulty getting agreement of a required Chinese partner to either apply to register an office in China, or to file their notification of “temporary activities.” Chinese partner organizations, usually government agencies but in some cases government-organized nonprofits or other groups, have had little incentive to partner and become responsible for the activities of foreign NGOs, foundations or other groups that may operate in multiple Chinese provinces and/or in multiple fields.

And yet a significant number of overseas NGOs and foundations have indeed registered or filed temporary activities under the Law, so Chinese policy is considerably more nuanced than merely “closing space” and forcing the overseas civil society community out of China.

Instead, China is seeking to mold the overseas nonprofit sector that works in and with China, just as it is seeking to mold the domestic sector. That molding focuses on encouraging some organizations that focus on service delivery (including innovative forms of service delivery); requiring all organizations to be legalized in some form (and making that process more complex); discouraging or repressing a wide range of advocacy and grassroots organizations; and keeping closer tabs on what both domestic and overseas groups are doing.

At the beginning of October 2020, some 547 overseas organizations have registered offices in China under the Overseas NGO Law, and some 2,967 temporary activity filings have been made (ChinaFile 2020). For those organizations that

have successfully negotiated the office registration or temporary activity process, that legalization came with considerably more restrictions than they may have operated under in the past. The Chinese Party and government's controlling and molding agenda, under the unified control of the Ministry of Public Security, has been quite successful in the first two years of the implementation of the Overseas NGO Law (Fabian, McBean, and Schroeder 2019; Fulda 2019; Sidel 2020).

The first several years of the implementation of this new framework (2017–2018) have resulted in rapid overall control of the overseas NGO and foundation sector in China effectively passing to the Ministry of Public Security, exercised through Chinese partner agencies and by the Ministry and its provincial agencies as well. A new stage in this process has begun – having achieved rapid control of the situation, the Ministry and Chinese partner agencies are now focusing on a more gradual series of attempts to mold the programmatic agenda of overseas NGOs and foundations. For some organizations, the Ministry and partner agencies have encouraged them to become involved in China's "Belt and Road" internationalization initiative, often alongside domestic Chinese NGOs and other groups that are "going out" into the world (Fabian, McBean, and Schroeder 2019; Sidel 2020).

The results of this hardening of policy are now clear. We see the seeming paradox of increased legalization leading to less freedom of movement; less programmatic freedom; less opportunity to interact and work with advocacy, unregistered, informal or dissident groups; increased pressure to nationalize staff or staff leadership in China; and, at times, increased pressure to nationalize status into a Chinese entity. Legalization has its costs, and they can be significant. That is the price of the great benefit of legalization under the Law: Staying and working in China, under more restrictive conditions.

3.3 Implementation and Application in the Covid Era

Once again, a specific and restrictive framework to control the work of a group of NGOs and foundations was well in place in China before Covid hit – in this case, overseas NGOs and foundations.

That framework was brought to bear to constrain the work of overseas NGOs and foundations in the Covid era. In general, new regulations and policies were not enacted – the existing, comprehensive, restrictive framework for overseas NGOs and foundations, well-established since it came into effect in 2017, has served to limit the role that these organizations can play. In previous tragedies, including the Wenchuan earthquake in 2008, special provisions were put into place by central Chinese authorities to facilitate foreign assistance in relief and recovery. Twelve

years later, when Covid hit, there was much less – in fact very little – facilitation of the work of overseas NGOs and foundation and other nonprofits to assist.

Even where relief activities have been permitted, the overseas (including Hong Kong and Taiwan) NGO and foundation community been generally not been able to move beyond immediate relief and supplies to facilitate research and the asking of broader questions by Chinese academics and social activists – again in some contrast to 2008 after the Wenchuan earthquake. The results are increased constraints in overseas nongovernmental responses, consistent with the constrained policies before and especially since the enactment of the Overseas NGO Law in 2016, and a restriction of what responses are allowed to pure relief assistance.

In that sense, China may be different from some of the other case studies in this special issue. In some other countries, new policies may have been put into place to either restrict or encourage giving and activity by overseas NGOs and foundations and other actors to assist in Covid response. That is not the case in China – the existing restrictive framework was sufficient, and was not significantly modified.

That is not to say that no activity in Covid response has taken place by overseas groups. Some foundations and other groups – most notably the Gates Foundation and some others – have found ways to give for Covid policy response and amelioration in China. But in general, overseas NGOs and foundations have not been significantly active in Covid response, and that has been implemented through the existing policy framework.

4 Conclusion

China is a prototypical example of the “strong state” that our editors discuss in their introduction to this special issue. And the particular kind of strong state that China is has spent a number of years, particularly since 2012, putting in place a control-based and restrictive framework toward both domestic and overseas NGOs, foundations and other nonprofits and charities doing work in China. And then Covid hit. As China ramped up its Party and state-directed responses to Covid, it saw a role for civil society groups, citizens, and companies – primarily in helping to provide services and in raising funds.

But those roles were subservient to state activities, and directed by the state. The Covid era has not brought new autonomy to Chinese civil society. That was usually accomplished not through Covid-specific policy measures or Covid-specific regulations but through the application of preexisting, comprehensive, restrictive policies and statutes that have limited the role of civil society organizations in China, particularly since 2012.

In a strong state like China, the lesson of Covid for civil society action may be that a state that is not ambivalent about its policies toward civil society, and which puts strong, restrictive policies in place in pre-crisis times, can find those frameworks able to guide their policies toward civil society when a crisis such as Covid hits. The Chinese structure of authoritarian arrangements toward the charitable sector can adapt to even a major shock to the system, such as Covid-19.

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