

## Commentary on the New Charity Undertakings Law: Socialist Modernization Through Collective Organizations

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**ABSTRACT:** China's new Charity Law represents the culmination of over a decade of planning for the appropriate development of the productive forces of the charity sector in aid of socialist modernization. Together with the related Foreign NGO Management Law, it represents an important advance in the organization of the civil society sector within emerging structures of Socialist Rule of Law principles. While both Charity and Foreign NGO Management Laws could profitably be considered as parts of a whole, each merits discussion for its own unique contribution to national development. This essay considers the role of the Charity Law in advancing Socialist Modernization through the realization of the Chinese Communist Party (CCP) Basic Line. The essay is organized as follows: Section II considers the specific provisions of the Charity Law, with some reference to changes between the first draft and the final version of the Charity Law. Section III then considers some of the more theoretical considerations that suggest a framework for understanding the great contribution of the Charity Law as well as the challenges that remain for the development of the productive forces of the civil society sector at this historical stage of China's development.

After almost a decade of discussion, the Chinese National People's Congress enacted its first Socialist Charity Undertakings Law (the "Charity Law").<sup>2</sup> The effort culminated in a consultation of drafts in late 2015 and early 2016. In 2015, Chinese authorities released an initial draft of a Charity Undertakings Law to which Chinese authorities invited commentary from both within China and from foreigners. In January 2016, Chinese authorities circulated a second draft Charity Undertakings Law to which they again invited commentary.<sup>3</sup> The Charity Law was thereafter amended and adopted by the NCP in March 2016, effective September 1, 2016.<sup>4</sup>

In announcing this important milestone in the development of the Socialist legal architecture for the People's Republic of China, Xinhua/China Daily focused on four measures of its importance and three measures of challenges.<sup>5</sup> The most significant portions of the new Charity Law touched on its broad definition of charity,<sup>6</sup> its efforts to simplify the registration and supervision system for charities,<sup>7</sup> its encouragement of public fundraising,<sup>8</sup>

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<sup>2</sup> 中华人民共和国慈善法 (Charity Law of the People's Republic of China), enacted March 16, 2016. My thanks to GAO Shan for his excellent assistance and his marvelous translation. English translation available here: <http://chinalawtranslate.com/2016charitylaw/?lang=en>.

<sup>3</sup> A Comparison between the first and second draft may be accessed here [http://www.backerinlaw.com/Site/wp-content/uploads/2015/06/Comparison\\_CUL1\\_CUL2\\_2016.pdf](http://www.backerinlaw.com/Site/wp-content/uploads/2015/06/Comparison_CUL1_CUL2_2016.pdf).

<sup>4</sup> Charity Law Article 112. See also, Ashwin Kaja and Timothy P. Stratford, "China Builds New Framework Governing Civil Society Organizations, Part I: Charity Law," Global Policy Watch (Covington & Burling, May 12, 2016) available <https://www.globalpolicywatch.com/2016/05/china-builds-new-framework-governing-civil-society-organizations-part-i-charity-law/>.

<sup>5</sup> See, "China's Charity Law takes effect Thursday," *Xinhua/China Daily*, Aug. 31, 2016. Available [http://www.chinadaily.com.cn/china/2016-08/31/content\\_26658510.htm](http://www.chinadaily.com.cn/china/2016-08/31/content_26658510.htm).

<sup>6</sup> Ibid. (charity includes efforts to help the poor as well as to advance education, culture, health care, sports, and environmental protection).

<sup>7</sup> Ibid. (charitable organizations to register only with local civil affairs departments).

<sup>8</sup> Ibid. (encouragement for charities to apply for permits to raise funds publicly, substantially loosening the current restrictions on broad fundraising among the populace). Xinhua noted: "Internet fundraising has become an easy platform for fraud, so the

and certain favorable tax preferences for charities.<sup>9</sup> These are meant to meet the challenges of charity in China—providing a means for supervising a growing number of social organizations, with an aggregate budget of over 104 billion yuan, and encouraging individual donations which lag behind those of the United States per capita.<sup>10</sup> Additionally, the Charity Law represents a decisive move toward public accountability through state supervision.<sup>11</sup>

Along with the Charity Law, the NCP also approved a regulation of Foreign Non-Governmental Organizations (FNGOs). But while charity organizations are now subject to local civil affairs departments, except to the extent of national legislation, foreign NGOs will put the supervision of foreign NGOs under the public security organs at the national, provincial or local levels.<sup>12</sup> Both represent an effort to organize the productive forces of and better manage the civil society sector in line with the basic national policies of pushing forward the development of Socialist rule of law, Socialist culture and Socialist environmental policies. Both seek to ensure that non-economic activity within China serve the state as its government determines and for the ends of state. But each takes a quite distinct approach to regulatory management. Both have been subject to positive and negative review in both China and the West.<sup>13</sup> Despite their relationship, the administrative coordination between these two regulatory frameworks has yet to be undertaken.<sup>14</sup>

These approaches mark both the great strength and the ultimate contradiction of the management of labor in the provision of public goods within a Marxist Leninist foundational conception of law, society and politics. The Foreign NGO Management Law treats foreign actors as a quasi state actor.<sup>15</sup> In contrast, the Charity Law treats

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law requires online charities to work with 13 websites approved by civil affairs authorities, including [www.gongyi.net](http://www.gongyi.net) under the Tencent Foundation.” Ibid.

<sup>9</sup> Ibid. (tax benefits for donors, both individuals and enterprises, with some permission for overseas donations to reduce import duties and value added taxes).

<sup>10</sup> Ibid.

<sup>11</sup> “There was very little public accountability,” said Rupert Hoogewerf, founder of the Hurun China Rich List. “When there’s fund-raising from the public, you have the right to know how that money is being used.” Megha Rajagopalan, “China set to introduce charity law though some unlikely to benefit,” *Reuters*, (March 10, 2016), available <http://www.reuters.com/article/us-china-parliament-charities-idUSKCNOWC0UB>.

<sup>12</sup> 中华人民共和国境外非政府组织管理法 People’s Republic of China Law on the Management of Foreign Non-Governmental Organizations’ Activities within Mainland China (Adopted at the 20th meeting of the Standing Committee of the 12th National People’s Congress on April 28, 2016). See also, “The Good – And Bad – About China’s New Charity Law,” *The Wall Street Journal* (March 16, 2016) available <http://blogs.wsj.com/chinarealtime/2016/03/16/the-good-and-bad-about-chinas-new-charity-law/>.

<sup>13</sup> For the Charity Law, see, e.g., Reza Hasmayj, “The Pros and Cons of China’s NGO Laws,” *The Diplomat* (March 23m, 2016), available <http://thediplomat.com/2016/03/the-pros-and-cons-of-chinas-ngo-laws/>. Jia Xijin, “Legislation for Foreign NGOs; how will the second boot land?” originally in Chinese in *Caijing*; English version <http://chinadevelopmentbrief.cn/articles/legislations-for-foreign-ngos-how-will-the-second-boot-land/>. Western criticism tended to focus on the effects of the new Charity Law on the creation of Western style civil society sectors in China. See, e.g., Josh Freedman, “China’s Charitable Turn?: How Beijing is Redefining the NGO Sector,” *Foreign Affairs* July 10, 2016, available <https://www.foreignaffairs.com/articles/china/2016-07-10/chinas-charitable-turn>.

<sup>14</sup> See, e.g., Dong Zijin, “Five Considerations Regarding the Charity Law,” *Alliance Magazine* (Herman Zheng, trans., June 6, 2016), available <http://www.alliancemagazine.org/blog/five-considerations-regarding-the-charity-law/> (“Thus, in spite of the Charity Law, foreign charitable organizations regarded as charitable organizations cannot be included in the Charity Law management. This would require organic links in the management system in order to achieve the necessary combination, and a delicate balance between the management of charities and foreign NGOs.”)

<sup>15</sup> See Larry Catá Backer, “Walls and the Symbolic Barrier in the Era of Reform and Opening Up” *Law at the End of the Day* (May 7, 2016), available <http://lbackerblog.blogspot.com/2016/05/larry-cata-backer-on-chinas-new-foreign.html>.

charitable organizations as Leninist labor cooperatives.<sup>16</sup> While both Charity and Foreign NGO Management Laws could profitably be considered as parts of a whole, each merits discussion for its own unique contribution to national development. It is easy to agree with NCP spokesperson Fu Ying that “the importance of the law ‘cannot be underestimated.’”<sup>17</sup>

This essay considers the role of the Charity Law in advancing Socialist Modernization through the realization of the Chinese Communist Party (CCP) Basic Line. That is, it examines the Charity Law from the perspective of its conformity to the CCP Basic Line with reference to the fundamental obligation of emancipating the mind, reform and opening up. “The general starting point and criterion for judging all the Party’s work should be how it benefits development of the productive forces in China’s socialist society, adds to the overall strength of socialist China and improves the people’s living standards.”<sup>18</sup> Considered from the perspective of the CCP line the Draft Charities Undertakings Law offers both challenge and opportunity. The key areas that merit further consideration include provisions dealing with corruption protection, the voluntary nature of service on charitable organizations and the role of foreign NGOs. “The law’s provisions affect not only domestic and foreign non-profits, but also a wide range of companies and corporate social responsibility (CSR) initiatives.”<sup>19</sup>

The essay is organized as follows: Section II considers the specific provisions of the Charity Law, with some reference to changes between the first draft and the final version of the Charity Law. Section III then considers some of the more theoretical considerations that suggest a framework for understanding the great contribution of the Charity Law as well as the challenges that remain for the development of the productive forces of the civil society sector at this historical stage of China’s development. The comments assume familiarity with the Charity Law.

## II. The Specific Provisions of the Charity Law.

The Charity Undertakings Law (draft) overall presents an important advance in Chinese rule of law. It is an important measure dealing with an issue tied closely to the direction and shape of socialist modernization, and as such, touches on sensitive matters requiring leadership from the Communist Party, especially as the CCP “unswervingly encourages, supports and guides the development of the non-public sector.”<sup>20</sup> My comments are focused on a reading of the draft Charity Undertakings Law both for coherence and for conformity to the Chinese Communist Party Basic Line. “The general starting point and criterion for judging all the Party’s work should be how it benefits development of the productive forces in China’s socialist society, adds to the overall strength of socialist China and improves the people’s living standards.”<sup>21</sup> In those respects the specific provisions of the Charity Law might be usefully studied.

### A. Chapter 1: General Principles

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<sup>16</sup> On the concept of Leninist labor cooperatives as they operate in Cuba, see, Jesús Crz Reyes and Camila Piñero Harnecker, “An Introduction to Cooperatives,” in *Cooperatives and Socialism: A View From Cuba* (Camila Piñero Harnecker, ed., Palgrave MacMillan, 2013). For critical analysis, see, e.g., Larry Catá Backer, “The Cooperative as Proletarian Corporation: The Global Dimensions of Property Rights and the Organization of Economic Activity in Cuba,” *Northwestern Journal of International Law and Business* 33(3):527-618 (2013).

<sup>17</sup> “The Good – And Bad – About China’s New Charity Law,” *supra*.

<sup>18</sup> Constitution of the Communist Party of China (“CCP Constitution”), General Program ¶ 9.

<sup>19</sup> Kaja and Stratford, “China Builds New Framework Governing Civil Society Organizations,” *supra*.

<sup>20</sup> CCP Constitution, *supra*, General Program (GP) ¶ 14).

<sup>21</sup> *Ibid.*, ¶ 9.

1. Articles 1 and 3 touch on the objectives of charity and charitable causes. And they link those causes with the promotion of social progress and the distribution of the fruits of social development. It might have been useful to more directly align the focus of Articles 1 and 3. Article 1 touches on the legislative *purpose*, which include developing the productive forces<sup>22</sup> represented by charity, the protection of charities and their stakeholders, and the promotion of social harmony. Article 3 *defines* charitable activities to include a broader scope of activity—enhancing sports, culture, education, environment, etc. One might read Section 1 as touching only on the laudable goals of building a harmonious socialist society.<sup>23</sup> Yet Article 3 also speaks to a number of other important objectives within the overall goals of socialist modernization. For example, it speaks to developing an advanced socialist culture;<sup>24</sup> environmental protection;<sup>25</sup> and in “taking economic development as the central task. . . country through science and education, the strategy of strengthening the nation with trained personnel and the strategy of sustainable development”).<sup>26</sup> Lamentably, Article 3 does not include charitable work furthering socialist ethnic relations and religious harmony, an important element of the CCP Line.<sup>27</sup> This later point is all the more important in light of the recent legislative efforts to manage the religious sector.<sup>28</sup> Much of the work of religious communities overlaps with those touching on the Charity Law and it might have produced a more efficient development of productive forces to have aligned both efforts. Likewise, it might have been useful to align the two sections to better reflect the CCP’s basic line for developing China’s productive forces through charitable efforts and in the definition of charity. More importantly, it might have better served the CCP’s political work if the connection between the CCP’s Basic line and the organization of the charitable works sector would have been more explicitly made. The reason is not merely to advance the CCP’s political work; it is as well to provide an ideologically sound basis for the exercise of administrative discretion that is built into the Charity Law itself.

2. Article 2 provides the basis for the centralization of the regulation of the charitable activities sector. Yet, Article 2 permits an open ended derogation of authority to manage. That may be lamentable, if only because of the possibility of policy incoherence without a strong leadership from the central authorities. It is useful to permit local variation, of course. But the essence of Socialist Rule of Law, erecting that cage of regulation to ensure a basic uniformity in the implementation of policy, is not furthered by a provision that appears to permit powerful provincial establishments to go their own way. Some efforts might be undertaken to ensure that all relevant rules do not conflict or overlap. Socialist rule of law is not advanced where in the rush to produce law many fail to relate to each other and create chaos rather than order. Article 6 is a partial but quite useful step in that direction. To this end, it may be useful to better understand the relationship between the scope of authority in Article 2 and the scope of jurisdiction accorded to the various levels of government specified in Article 6.

3. Section 4 correctly situates charity within social morals, the legal rights of others and the focus on public benefit. To the extent that the intent is to ensure that the charity sector does not become a business focused on profit making, then the provision makes sense. And, indeed, that should be an important interpretation reading sections 4 and 9 together. Yet Article 4 covers both individuals and charitable organizations regulated by the Charity Law; Article 9 appears to apply only to Charitable organizations. The provisions of Chapter 7 appear to make it clear that *the restrictions of Chapter 1 apply both to the charitable organizations that are regulated by the Charity Law and*

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<sup>22</sup> Ibid.

<sup>23</sup> CCP Constitution, *supra*, General Program ¶ 17.

<sup>24</sup> Ibid., ¶ 16.

<sup>25</sup> Ibid., ¶ 18.

<sup>26</sup> Ibid., ¶ 11.

<sup>27</sup> Ibid., §§ 10, 20.

<sup>28</sup> See, Religious Affairs Regulations Draft Revisions (Deliberation Draft 2016). Available (English) <http://chinalawtranslate.com/religious-regulations/?lang=en>

*the individuals who may be associated with them.*<sup>29</sup> But it may be too broadly rendered when it also suggests that people who devote themselves entirely to charity should do so without payment. To the extent it suggests that people work without pay, that itself might suggest a contradiction with the CCP's basic line on worker dignity and the avoidance of exploitation. More importantly, if only voluntary and part time efforts are permitted for individuals, without pay, then the utility of charity as an important means of developing mass culture, the development of harmonious society, and worker training, may be adversely affected to no good end. It might be worth permitting individuals who labor for charities to receive a fair wage.

4. Section 5 is a very useful provision. It is to be hoped that such planning will be undertaken strictly to advance the CCP's Basic Line. It might be useful, in that respect, to consider the development of a reporting mechanism so that these plans might be reviewed and approved by the appropriate level of government. In that respect Section 6 quite correctly emphasizes the need for coordination, but might also benefit by including an assessment obligation as well.

## B. Chapter 2: Charitable Organizations

1. Article 9 provides a valuable framework for managing charities. It is not clear, however, whether charities may acquire the necessary funds or property from individuals or organizations outside of China, and if so, the extent to which such contributions will be examined by the authorities.<sup>30</sup> But again, the provisions of Chapter 2 must be read in light of the more specific provisions of Chapter 7. That connection is not noted on the face of the Charity Law. That is a pity because it weakens the value of the Charity Law as a basis for strengthening Socialist rule of Law and Socialist democracy. By that is meant that ordinary people—the people who are likely enthusiastic to aid their country by providing charitable work through charity organizations—may not have the skills to read and understand a complex and subtle piece of legislation. *It is as important that legislation may be made accessible to individuals who are trying to comply with law as it is for the law to properly reflect and implement policy under the leadership of the CCP.* And indeed, effective communication from the people and to the people must be understood as an essential element of the mass line, of which the Charity Law provides an important expression.

2. Section 10 provides a reasonable approach to registration. Two additional considerations might be made: First, should a national registry of charitable organizations be maintained? Second, should an organization be given a chance to correct errors and omissions and apply again should its registration be rejected? With respect to the first, a national registry might be useful to reduce fraud and corruption, an important element of the Basic Line.<sup>31</sup> With respect to the second, the right to reapply is implicit but not explicit and it might help lower level governments better understand the law if this was made clearer. To that effort, it would be useful as well to give reasons for the denial of registration. The obligation to give reasons is useful in two respects. First it is an important element in the training of the people in the rules and policies of the CCP and the state. That is a basic obligation and an important element of the political work of the CCP. Socialist modernization and the creation of an advanced socialist society and civilization cannot be accomplished without constant efforts—in every action of the state and its officials in complying with their obligations—to educate the people and correct error. Deng Xiaoping was quite explicit in reminding CVCP cadres that it is important to distinguish between different types of error—to punish one kind and correct the other. And that insight, now part of the CCP General Program and the focus of the obligation

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<sup>29</sup> See Charity Law Chapter 7, §§ 61-68.

<sup>30</sup> This is discussed in more detail in Section II, *infra*.

<sup>31</sup> CCP Constitution, *supra*, General Program § 23.

to constrict a harmonious society, would be usefully applied here.<sup>32</sup> Second, the obligation to provide reasons for denials of registration would contribute to the campaigns against corruption and corrupt officials. Requiring such reasons would help senior officials manage junior officials, and it would aid the Central Commission for Discipline Inspection to do its work.

3. Articles 11-16, which touch on the organization of charitable entities, appear sound. One might consider a few points. First, it is assumed but never stated, that the General Assembly has the responsibility for ensuring assessment and improvement of charities, but their power to make that happen are unspecified in Article 11. Perhaps requiring the board of directors to submit annual detailed reports of activities to the General Assembly (and to the government at the level of charity registration) might make accountability stronger and reduce the temptations of corruption (Article 13). Those reports are now required to be made to the civil affairs departments; as well as to donors and the public as well, at least in modified form.<sup>33</sup> Moreover, the relationship is between donors (Article 15) and the management of the Charitable organization (Articles 11-12) is not clear. A conflict of interest rule is specified (Article 14), one that suggests that donors may acquire and maintain a leadership position in charitable organizations. Article 14 also specifies a rule against abuse of position. But it is not clear who has the authority to enforce this provision. At a minimum, certainly, the state has the authority. And for that reason reporting becomes even more important. But in order for the state to do its work, it may have to rely on denunciations made either by the recipients of charitable work or those hurt by the abuse of power. It is not clear how that may be accomplished. To the extent that such provisions are not encouraged, the work of the state in policing charities against abusive behaviors by donors and others will be impeded.

4. Article 13 provides that charitable organizations carry out their work in accordance with their charters. It is not clear who or how that provisions will be enforced. It may be useful to permit the members of the charity itself the right to seek enforcement from the civil affairs department, or it may be for the civil affairs department to investigate after complaint. Either way a specific mechanism would be useful.

5. Article 15 is important and necessary if foreign NGO work is to be aligned with the overall obligation to adhere to the CCP basic line, develop productive forces and ensure the path forward through socialist modernization of economy, politics, culture, society and environment. It is not clear, though it might be assumed, that a foreign NGO need only establish a local organ within China to meet the requirements of Articles 8-9. That is, once Chinese citizens establish a charity under Sections 9-10, that organization can be affiliated with the foreign NGO, receive funds and other materials from the foreign NGO and adhere to the foreign NGOs basic line as long as these transactions comply with Article 15 and there is no abuse of position under Article 14. This appears a necessary reading of §§ 10, 15 and 17. If that is the case, then Article 15 (supplementing the general policy of Article 4) suggests the limits of foreign NGO influence—which is no different than the ordinary requirements applicable to Chinese charities. That is, Foreign NGOs will be treated the same as Chinese charities and subject to the same rules and the same limitations to the extent they are formally registered within the Charity Law. That registration under the Charity Law should not be undermined or forbidden by the Foreign NGO Management Law, if the two are to be read together as a compatible whole. Lamentably, there is of yet no authoritative interpretation. Still, such a reading is not contrary to and may be the basis of a sound policy that accords with the CCP Line.<sup>34</sup> It is also central to the

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<sup>32</sup> “The Party strictly distinguishes between the two different types of contradictions those between ourselves and the enemy and those among the people and works to handle them correctly.” CCP Constitution General Program, ¶ 17 (Harmonious society).

<sup>33</sup> This is discussed in preliminary form in Chapter 8 (Disclosure and Information, Articles 69-76).

<sup>34</sup> CCP Constitution, *supra*, General Program ¶¶ 17, 25.

CCP's Basic Line of reform and opening up ("the basic state policy of opening up and assimilate and exploit the achievements of all other cultures."<sup>35</sup>

### C. Chapter 3: Charitable Fund Raising

1. The provisions on charitable donations are laudable and well written. However, they appear to emphasize collection mechanisms more effective in traditional systems and less useful in the great cities of modern China. Article 23 does provide a framework for internet fundraising,<sup>36</sup> but there is a danger in the regulatory approach taken. First the regulation is both too specific and too narrow. It suggests that the traditional approaches to donation can be transposed without much change to the internet sector. But that may not be true. Second, including the substance of internet based fundraising in the statute itself unnecessarily constrains administrative oversight of internet fundraising. This is because technology and internet based activities will tend to change very quickly—too quickly for regulation by statute to keep up. It might be better to provide an overall framework, for example that internet fundraising must adhere to the same standards as traditional fundraising, and then leave the technical details to oversight agencies that can more quickly respond to changes and challenges.

2. The heart of charitable fund raising efforts should, quite correctly, be included in the fund raising proposal. But currently that fund raising proposal is deposited with the appropriate civil affairs department (Article 24). It is not available to the public, and especially to those individuals and entities solicited for donations. That is an omission that might be usefully corrected. It is a simple matter to require such fund raising plans to be available on the internet site of the charitable organization. But that raises another issue: should all charitable organizations be required to maintain an internet website. I would suspect that the answer ought to be "yes" with a power in the civil affairs department to waive the requirement in special cases. The Charity Law, like other areas of policy, must move with the times.

3. Article 23 may create an unnecessary complication in an effort to ensure the appropriate division of jurisdictional power among civil affairs departments. Article 23 starts with a basic presumption that the most conventional forms of charitable fund raising (collection boxes and the organization of events) are necessarily confined to local conditions. The rule for registration follows this presumption. That was certainly the case when China was in a more primitive historical stage. But China is now a strong, modern, unified state. Chinese citizens are justifiably proud of their generosity and willingness to contribute to national progress wherever a need arises. This is certainly evidenced by donations for natural disasters. Yet the Charity Law itself appears written for a historical rather than a modern era. One wonders whether it would not be possible to reconsider the registration system to make it more compatible with the times. Otherwise charitable work for major projects will be impeded rather than enhanced. And indeed, the issue touches on concern about corruption more than the management of

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<sup>35</sup> *Ibid.*, ¶ 13.

<sup>36</sup> Charity Law Article 23 provides in part: "Charitable organizations using the internet to carry out fund-raising shall publish the relevant information on the charity information platforms unified or designated by the civil affairs departments. Charitable organizations registered with a civil affairs department at the provincial level or above may use their website to publish the relevant information." See also Article 27 imposing a limited obligation on internet service providers. Though it is not clear to whom the internet service providers owe the duty that is imposed.

aid—especially touching on the abuse of “donation” or “processing” fees charged by charities in national efforts.<sup>37</sup> Article 30 takes a step in the right direction, but is limited to “cases of emergencies.”<sup>38</sup>

4. Article 26 permit individuals and organizations without public fund raising certificates to cooperate with certificate holding organizations. This makes much sense and is an important opening up for the development of the productive forces of charitable giving. However, it is important, as well, to ensure the avoidance of corruption. To that end, it might be useful to require that all such individuals and organizations to be identified, and their relationship to the fund raising specified, at least in general terms. Such relationships should be subject to audit as well by the organization and by the state.

5. The Charity Law has not resolved an issue of fund raising—the authority of charitable organizations to solicit and use donations from abroad. There is no reason to limit the collection of charitable contributions from within China. Certainly Chinese charities ought to have the authority to make appeals for donations in other countries. While it is to be expected that such donations would be carefully regulated, and that one would expect such appeals and the property collected to be effected in a wholly transparent manner, there is no reason otherwise to restrict. This is especially the case where overseas Chinese communities might be donors. More importantly, it is not clear that the Charity Law provisions would apply to overseas fund raising. That, of course, is a consequence of the premises of Article 23 respecting the basic forms of fund raising. It would be useful, however, for the Charity Law to authorize and manage such overseas fund raising in ways that may be useful.

#### D. Chapter 4: Charitable Donations.

1. The provisions touching on donations substantially advance the regulation of donations in ways that are fair and quite necessary. Charitable donations must be made for charitable purposes (Article 34),<sup>39</sup> can consist of any form of tangible or intangible property,<sup>40</sup> must comply with safety health and environmental standards,<sup>41</sup> should execute donation agreements under certain circumstances,<sup>42</sup> and may not be used to publicize tobacco.<sup>43</sup>

2. Article 35 appears to legitimate the practice of direct charity. It may be necessary to dispel the idea that the Charity Law now deals with the only forms of Charity permitted. Indeed, that appears not to be the case. It bears emphasizing that the Charity Law regulates only one area of traditional charity. As we have seen other areas remain the subject of different regulations. To that extent, of course, regulatory coordination might be helpful, not

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<sup>37</sup> See, Quincy Yu and Jane Lin, “Use of Earthquake Donations Causing Concern in China,” Epoch Time (April 19, 2010). Available <http://www.theepochtimes.com/n3/1514255-yushu-embezzlement-distribution-of-donations-earthquake-relief-funds-china/>.

<sup>38</sup> Charity Law Article 30. It also provides for government to government coordination *but fails to specify the ability of charitable organizations to coordinate their efforts*. It may be possible to rely on the provisions of Article 26, to organize multi-charity efforts through the local charity as the leading organization. But the Charity Law is not clear about the scope and legitimacy of such practice or the legal requirements of such an effort.

<sup>39</sup> This requires Reading Chapter 4 in light of Chapter 1 and its general principles.

<sup>40</sup> Charity Law Article 36.

<sup>41</sup> *Ibid.*, Article 36. The Charity Law is unclear who has the burden of this obligation—the donor or the charitable organization. The easy answer, perhaps, is that charitable organizations protect themselves by requiring the donor to certify in accordance with Article 36.

<sup>42</sup> *Ibid.*, Article 37 (donation of proceeds from performance or activities), Article 39 (at donor request and in addition to the receipt required under Article 38).

<sup>43</sup> Some have argued that this public policy ban might be extended to other products. See, Foundation for Law and International Affairs Comments on the Charity Law of the People’s Republic of China (Second Draft) (1 February 2016) available <http://lcbackerblog.blogspot.com/2016/01/foundation-for-law-and-international.html>.



is not offered. In the case of Article 35, it would touch on the power of individuals or enterprises to directly donate to beneficiaries. Those donations might profit from some regulation—to avoid abuse and corruption—but in other respects would have little to do with much of the substance of the Charity Law.

3. The protection of rights under the Charity Law is inconsistent to some extent. Article 41 provides charitable organizations the right to bring a prosecution against donors who refuse to make good on their donation pledges. However, Article 42 requires donors to seek action from the civil affairs department in the event that charitable organizations abuse their agreement with respect to the disposition of donated assets. Mutuality in this case might serve both to produce equity and to minimize the burden of the state. Both Article 41 and 42 might have been revised to permit the civil affairs department to intervene, but to have permitted the donor or charitable organization to move forward to protect their rights.

4. The carve out for state owned enterprises in Article 43 may be necessary but is unfortunate. It is not clear why state owned enterprises might not conform their behaviors to generally applicable law. Otherwise, the Charity Law effectively becomes two charities laws, the first for the private sector and the second for the SOE sector. That might have been necessary during the formative stage of socialist modernization. It is not clear that the rationale supporting this bifurcation in the 20<sup>th</sup> century is applicable to the same extent in the 21<sup>st</sup> century. The only exception, perhaps, might be for enterprises that are connected to the military, for the obvious reasons of national security.

#### E. Chapter 5: Charitable Trusts

1. Anti-corruption protections must be at the heart of the Charity Law.<sup>44</sup> For this reason Section 48 is most welcome. However, it might be useful to elaborate on the nature of corruption and corruption activities for those entrusted with the objectives, work and property of charities. It is not merely a matter of conflict of interest, as Section 48 covers. It is also a matter of duty—here the duty to ensure that all charitable decisions are made solely to advance the objectives of the charity, in ways that conform with the overall objectives of socialist modernization, and that the directors of the charity can transparently demonstrate compliance with this duty. That touches on all aspects of the operation of the charity, as well as on the nature of the relationships among the members of the ruling councils of the charity itself. It is not clear that the Charity Law sufficiently deals with the issue of corruption in this respect.

2. Public interest trusts, permitted under Article 44 produce an ambiguity. Public interest is identified as a lawful basis for charitable activity under Article 3. The scope of public interest might be inferred. It must be according to law (Article 3(6)) and it may not “violate social morality, or endanger national security or harm societal public interests or the lawful rights and interests of other person.”<sup>45</sup> Mostly important, perhaps, public interest activities are charitable activities to the extent they “represent the core values of socialism and promote the traditional morals of the Chinese nation.”<sup>46</sup> This suggests both the scope of active organization of civil society providing benefits that may not conform strictly to the giving of property to the poor. At the same time it suggests the constraints on civil society activity—no political work, no work to reform the state or party system. But where the state determines that the activities of the civil society organ advances socialism or core values, then it may be encouraged to continue its work. At a minimum this suggests the sort of close working relationship between civil society and government that would coordinate and privatize state policies in a number of areas. And it conforms to the Leninist expectation that mass organizations work with and not against the vanguard party. At the same time it

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<sup>44</sup> CCP Constitution, *supra*, General Program ¶ 26.

<sup>45</sup> Charity Law Article 4.

<sup>46</sup> *Ibid.*, ¶ 5.

is important to understand the value of such civil society organs performing this task in the context of implementing in a vigorous way the important policy of emancipating the mind, of experimenting in the service of the state and of providing a vehicle for practicing the mass line.

#### F. Chapter 7: Charitable Services

1. Charitable services represents some of the most intimate aspects of charitable activity. These can range from the provision of medical care, to counseling and household services for those in need. But the provision of such services might be understood as putting the charitable organization in a public role. And that might require such organization to undertake special responsibility that might not be necessary where an organization operates in markets.<sup>47</sup> Thus the provisions of Chapter 7 are both necessary and welcome. There are two ambiguities that may merit additional consideration. The first is the pricing of the provision of those services, and the second is the voluntariness of those who provide the services.

2. First it is unclear why charitable services must be provided without compensation (Article 61). That inflexibility reduces the ability of a charitable organization to change its charging schedule, for example, based on the ability of a recipient to pay. The reason an organization might reduce charges rather than eliminate them, or charge differential fees based on ability to pay, might be necessary to stretch the provision of services, or to make their distribution more equitable. These fee structures could be reviewed and managed rather than prohibited—to better effect.

3. Second, it is not clear why those who provide these services might themselves receive no compensation.<sup>48</sup> Volunteer work is an essential means by which individuals can make donations to a charitable organization through the contribution of labor. It serves as an important supplement to fund raising for tangible and intangible property and is fundamental to the delivery of services. This is an important element of the Charity Law and the provisions are well designed to facilitate volunteering, protecting the volunteer, the charity and the beneficiaries.

*The ambiguity arises to the extent that the Charity Law might be read to prohibit a charitable organization from hiring staff for its own operations, and to pay them from out of the fund contributed by donors or raised in fund raising.* It is not clear that this narrow position fully embraces the CCP Basic Line of opening up and emancipation of the mind.<sup>49</sup> I have suggested that such an approach might hamper the full development of productive forces and thus create a contradiction with the core objectives of socialist modernization. This is particularly true with respect to the building of socialist harmonious society, socialist culture and socialist ecological leadership, all key elements of the CCP Basic Line. It is true that under traditional models, charity was thought to be an addition to the main work of individuals in contributing to society. But that ancient view fails to consider the importance of the *work of charity*, and the necessity of investing societal productive forces to produce substantial improvements to the lives of people who might then be better positioned to more vigorously contribute to the construction of a socialist market

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<sup>47</sup> Thus for example CHarity Law Article 62 protects the human dignity and privacy of beneficiaries.

<sup>48</sup> Charity Law Article 61 permits charitable organizations to “provide these services themselves or recruit volunteers to provide them, or engage other organizations with the relevant service expertise to carry out the services.” Article 63 notes the need for training of volunteers. Article 64 considers the scope of agreements for the services of volunteers.

<sup>49</sup> CCP Constitution, *supra*, General Program ¶13.

economy;<sup>50</sup> through training, socialization, and education), socialist culture;<sup>51</sup> socialist harmonious society;<sup>52</sup> and socialist ecological advancement.<sup>53</sup> It is useful, then, to consider permitting charities to hire and retain staff to further consolidate, improve and carry out their work. Indeed, it would seem that Section 11 of the Charities Law would itself require charities to press this point to improve their governance structures and the efficiency of their operations. Moreover, the hiring of staff is intimated in other sections of the Charity Law as well.<sup>54</sup>

This is particularly important if the charitable work of the organization is to provide work for people who are otherwise unemployable. In this sense, charitable organizations may be more effectively developing the productive forces that have been overlooked by the state and by private enterprises. In this role they serve an important function advancing harmonious society as well as socialist modernization through the production and distribution of wealth in a way that preserves human dignity. Of course, such efforts ought to be closely monitored by the state to avoid abuse. But the thrust for the charitable intent might nevertheless be encouraged. The second purpose of charitable organizations is provide for poverty alleviation, socialization and other productive work. That is, charities are legal persons that provide work opportunities for those who decide to work in the charity sector. “Charity” therefore can be understood in a very broad sense, as including all those activities that produce wealth. It is thus possible to say that a core role of charitable organizations is to produce wealth not only for society, but for charity workers as well. This second purpose is an important element of economic development, that is furthermore consistent with the political goals of developing productive forces, and using charitable organizations for the strengthening of a solid path toward socialist economy, socialist harmonious society, and socialist culture.

4. Lastly, the Charity Law is silent with respect to the exploitation of volunteers—especially those who may be coerced by their employers or by middlemen agencies. The Charity Law could further reduce opportunities for exploitation by specifying how recruitment of volunteers from an ‘organization with service expertise’ (article 57) should not involve any payments from the organization that requires volunteers, to the organization that provides them.<sup>55</sup> In addition, the charitable organization might be made explicitly liable for the medical and other services necessary to ensure the wellbeing of volunteers; perhaps empowering the state to enforce this obligation.<sup>56</sup>

### G. Chapter 8: Disclosure of Information

1. Chapter 8 is an important element of the Charities Law and is well written and comprehensive. But it lacks an important connection between the obligations of charities to disclose, and the obligations of local governments to make those disclosures public. Moreover, the Charities law does not impose local governments any obligations with respect to the good order of their management of charities, and no way for the masses to communicate with local officials respecting the work of charities. “The Party follows the mass line in its work, doing everything for the masses, relying on them in every task, carrying out the principle of “from the masses, to the

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<sup>50</sup> *Ib id.*, ¶ 14.

<sup>51</sup> *Ibid.*, ¶ 16 (to “raise the ideological and moral standards and scientific and educational levels of the entire nation so as to provide a powerful ideological guarantee”).

<sup>52</sup> *Ibid.*, ¶ 17 (“to create a situation in which all people do their best, find their proper places in society and live together in harmony”).

<sup>53</sup> *Ibid.*, ¶ 18 “that leads to increased production, affluence and a good ecosystem.”

<sup>54</sup> See Charity Law Article 13 speaks to the “salary and benefits of the staff of the charitable organizations” in their annual work and financial reports.

<sup>55</sup> This was an argument advanced by FLIA. See Foundation for Law and International Affairs Comments on the Charity Law of the People’s Republic of China (Second Draft) (1 February 2016), *supra*.

<sup>56</sup> *Ibid.*

masses,” and translating its correct views into action by the masses of their own accord.”<sup>57</sup> It is not clear how the Charity Law fully further develops and applies the mass line obligations to the operation of charities and to the responsibility of state organs in this critical arena. There might be room for improvement here. And that improvement itself can contribute both to socialist rule of law and democracy.<sup>58</sup> Local officials should be required to listen to the people in judging the effectiveness of charities and in considering proper management of charitable affairs. It ought to consider whether its own approach to charity disclosure is appropriate in light of mass opinion, appropriately translated as is its responsibility within the mass line itself. This is especially important with respect to the form of information (Article 69) and the content of disclosure (§ 70).

2. However, it is not clear that the information that must be disclosed would be sufficient to serve the purpose of ensuring protection against corruption and timely information to donors and beneficiaries. It is not clear why a charitable organization should not, for example, be required to make public its work and financial reports required under Article 13 to the public. Donors have access to much of this information at their request. And the state has the information. But public trust is built on a showing that the charity sector is behaving appropriately. There is very little reason to hide the financial information of these organizations that are built on public trust and a willingness of the public to trust the charitable organization with its donations. It seems unnecessary to restrict the transparency of charitable organization disclosure. And indeed, there is a sense that the Charity Law is moving in that direction.<sup>59</sup>

13. Article 76 on confidential information is important and correct. But in it lies a contradiction that the Charities Law does not yet overcome. That contradiction lies in the ability to use the broad categories identified in Section 78 as a *way to enhance the ability of officials to engage in corrupt activities with impunity*. That itself would constitute a severe breach of the CCP Basic Line, and should not be left unresolved without very good reason. Some facility must be created to ensure that Article 76 is not abused by corrupt officials. This would be especially important where corrupt officials might use their positions to operate through charities in ways that would hide their own bad actions. Tigers catch their prey under cover of darkness; they should not be allowed to feed with impunity on the donations intended to improve society. Senior officials should carefully consider the discretion built into Article 76 and build a cage of regulation around the discretion that they have provided—a discretion large enough so that any tiger can escape, and open enough so that even flies find its rules easy to avoid.

#### H. Chapter 9: Promotional Measures

1. Chapter 9 makes clear that the state is meant to help drive charitable activity in the local context. It is clear that charities are meant to respond to needs articulated by the state and to seek to meet these public obligations in the course of their work. These provisions are useful. But it might be worth considering that local officials may delay their duties. That delay could seriously impede the implementation of the law and the useful operation of charitable activities. Government officials who delay without cause ought to be subject to swift CCP discipline. Others ought to be disciplined appropriately and charities should be given the power to seek registration from a higher level of government where the failures of a lower level make registration, or operation, impossible.

2. It is not clear whether charitable organizations may engage in lawful charitable activities beyond those specified by a local government even when those activities are otherwise lawful within the meaning of Charity Law

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<sup>57</sup> CCP Constitution ¶ 26.

<sup>58</sup> CCP Constitution, *supra*, GP ¶ 15 “effective measures to protect the people’s right to manage state and social affairs as well as economic and cultural programs”)

<sup>59</sup> See Charity Law Article 73 (information connected to public fund raising); Article 74 (direct fund raising disclosure to donors); Article 75 (disclosure to beneficiaries).

Article 3. A reasonable reading of the Charity Law suggests that a registration should not be denied merely because a charitable organization does not seek to engage in activities identified by a local agency. On the other hand, there is little recourse to a charitable organization that is refused registration because they angered local officials by avoiding identified local charitable causes. In these cases it may be necessary to resort to the Central Commission for Discipline Inspection to do its work.

3. Articles 86 and 87 are laudable and reflect well on government.<sup>60</sup> But again, they might create an opportunity for corruption. Especially when combined with the secrecy rules of Article 76, Articles 86 and 87 can provide a large space where corrupt officials might operate with impunity. It is especially with respect to the entanglements of government officials, money and charities, that transparency must be much fuller. Alternatively, in such cases (Article 86 or 87 transactions)—local officials must be required to fully report on their activities to the next higher level of government—and to do so within a short period of time after they have engaged in such activity. In addition, the CCP disciplinary organs should be made aware and monitor such activities. It is only in this way that the state can truly achieve the excellent objectives of Article 88 (cultivation of charity culture).

#### I. Chapter 10: Supervision and Management.

1. Article 92 achieves the objective of ensuring that localities can adjust their regulations to local conditions. But the central authorities ought to be able to review and assess local deviations. A central data bank of local regulations should be maintained by central authorities, at a minimum. And the central authorities ought to make inspection tours of local operations periodically. This is especially important with respect to the powers exercised under Article 93.<sup>61</sup> The difficulty of Article 93 is that it is triggered by a suspicion that a charitable organization is violating the Charity Law. The Charity Law does provide a system of complaints or reporting and evaluation that would provide the necessary information to reasonably form a suspicion triggering inspection.<sup>62</sup> Article 95 is another step in the right direction.<sup>63</sup> The development of charitable industry standards is yet another useful step<sup>64</sup>—but one that will remain only a potential unless a mechanism is established for its invocation to start investigations. Here is an opportunity to extend the mass line in an area in which the people are intimately connected with the provision of services, and with respect to which the people can develop an intimate connection with the operation of the administration of law by state officials. It is a pity to let this opportunity remain unexploited.

#### J. Chapter 11: Legal Responsibility.

1. The Charity Law does a good job of allocating legal responsibility. Very useful is the definition of abuse of authority set forth in Article 108. An important innovation is the flexibility built into the Charity Law for the disciplining of charitable organizations under Articles 98 and 99. These permit the civil affairs department to issue warnings and provide guidance for corrective actions before sanctions. That is a valuable approach.

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<sup>60</sup> Charity Law Article 86 directs the state to provide charitable causes with financial support. Article 87 permits local governments to support charitable causes by purchasing their services and through other methods, with disclosure.

<sup>61</sup> Article 83 gives civil affairs departments at the county level and above certain powers of supervision and inspection.

<sup>62</sup> Article 97 of the Charity Law provides for individual or work unit complaints. But it is not clear that such complaints are protected against retaliation. And there is nothing to protect the complainant when corrupt officials are in league with the corrupt charity. These protective mechanisms would be useful in this regard. That is something that might be undertaken with the leadership of the CCP.

<sup>63</sup> Article 95 permits the establishment of a charitable credit record system.

<sup>64</sup> Charity Law Article 96.

2. It is unclear, however, whether society is best served by the limited nature of liability apportionment in the Charity Law. Left unexplored is the possibility of demanding that such organizations provide insurance against liability—or that the state serve as insurer with respect to small but valuable and rural charities. Certainly that would be fair where the state itself drives the form and scope of charitable work through its own policy directives. Yet the Charity Law leaves a vulnerable group exposed. Treating charitable organizations more like state owned enterprises—and ensuring appropriate support in the event of liability would be a step in the right direction. Of course, such support would not apply for intentional acts or corruption. For these the guilty individuals ought to be liable. But still, the provision of subsidy in the form of insurance of some kind would create greater incentives to provide the sort of activity that furthers development.

3. Article 108 provides a useful means of helping fight corruption—either by charities or by local officials. But it might be useful to consider the mechanics of public reporting. Might it be more efficient to centralize the collection of such complaints at the provincial level so that the more sophisticated machinery of the provinces might serve as a more efficient point for local discipline? Perhaps a better coordination of Sections 76 86-88 and 108 would produce a more efficient system against corruption.

### III. The Charity Law in Socialist Modernization.

In the development of the productive forces of the nation, one might consider two great obligations of both CCP cadres and members of state organs—the first is to remain true to the overall direction of the CCP, and the second is to remain faithful to the goals to which state organs are directed. Those obligations are clear. China must build itself up as it progresses from the primary stage of socialism to later historical stages. “In building socialism, the basic task is to further release and develop the productive forces and achieve socialist modernization step by step by carrying out reform in those aspects and links of the production relations and the superstructure that do not conform to the development of the productive forces.”<sup>65</sup> To that end, it is also clear that “The Party must respect work, knowledge, talent and creation and ensure that development is for the people, by the people and with the people sharing in its fruits.”<sup>66</sup> This is to be accomplished through all around work to advancing economic, cultural, social, political and ecological progress “in accordance with the overall plan for the cause of socialism with Chinese characteristics.”<sup>67</sup> These fundamental objectives serve to guide the review of the final version of the Charity Law.

With that as a guide, it might be important to consider the following overall points:

1. Is there a contradiction between the stated overall purposes of the Charity Law as set out in Chapter 1, and the overall objectives of the state to fully develop productive forces? The issue arises because it is not clear that a legal framework that narrowly defines charitable activity and forces its workers to labor for free can most productively meet its obligation to alleviate poverty (Art. 3(1)). There are no reasons produced to justify the very narrow definition of charitable enterprises as organized on a voluntary basis and there is no indication of why it is that free labor strictly adheres to the CCP line. The fact that people willingly contribute in many cases does not solve the problem but merely points more acutely to the contradiction.

2. A core element of socialist modernization is shared prosperity. That must be built on respect for and the dignity of labor and the working masses. Just as core Socialist values abhor the exploitation of labor by capital,

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<sup>65</sup> CCP Constitution General Program ¶9.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

so it should abhor the exploitation of people. This presents two issues. The first, which is dealt with in a sensitive and very useful way by the Charity Law, concerns those who labor in other ways and in their free time also seek to contribute to the great national project of socialist modernization through charitable works. That is, as the Charity Law recognizes a worthy and patriotic exercise that should be protected and recognized.

3. But there is another more important aspect, one lamentably overlooked. For some people, charitable work may present the principal or only way that they may be socially useful. It may represent their only means of employment. For those people, charitable organizations serve *two important purposes*. The first is recognized by the Charity Law—to engage in those activities specified in Article 3 for the benefit of people and social institutions outside of the charity itself. But the second purpose of charitable organizations—one not recognized or supported in the the Charity Law—is that charitable organizations also serve to provide for poverty alleviation, socialization and other productive work within its organization and for those who work for the charity itself. It is thus possible to understand that a core role of charitable organizations is to provide charity through its own work internally for its own workers. That important element of developing productive forces, that important task of using charitable organizations for the strengthening of a solid path toward socialist economy, socialist harmonious society, and socialist culture, appears wholly absent from the Charity Law. And it is unfortunate to lose this great opportunity to further the CCP’s leadership objectives through an unnecessary limitation on the conception of meaning of charity, the importance of reducing labor exploitation and of providing a means for advancing socialist goals.

4. As such, the principle of “voluntariness only” built into the Charity Law might usefully be reconsidered. No suggestion is made to eliminate the principle of voluntariness as a central element of charitable efforts, but rather to recognize that charity can be structured both externally toward objects of charity and internally toward reducing exploitation, helping people help themselves through work reasonably compensated and in this way serving as a better example of the value of the Socialist path toward improving the welfare of the people.

5. The issue of foreign charities must be considered. This issue might be usefully understood in two quite distinct aspects. The first involves the foreign funding of Chinese charities. The second involves the direct operation of foreign charities in China.

(a) *Foreign funding of Chinese charities should in the first instance be encouraged.* It serves as a measure of the growing importance of China in the world and opens the door to Chinese funding of charitable works elsewhere. And indeed, Chinese efforts to fund charitable causes outside China, especially in Africa, is a model to be studied scrupulously and admired. But it also underlines the importance of mutuality in these efforts. With respect to these funding efforts, careful disclosure and the usual supervision of Chinese charities ought to be enough. *But in the second instance, foreign funding may be more sensitive.* Here I refer to foreign funding that comes from foreign governments, public international organizations and the like. This represents funding of a distinct character and touches on sensitive issues of sovereignty and respect for the integrity of national political orders. Funding of charities by foreign public bodies might be best controlled and supervised more carefully and in some instances, according to law, restricted.

(b) *Direct operation of charities of foreign charities in China should in the first instance be encouraged.* Foreign charities that are strictly supervised in accordance with the provisions of the CUL2nd, for example, can do little harm and will contribute to the development of productive forces. In this case the law itself provides the basis on which foreign elements can be most usefully managed. Many foreign charitable organizations already serve the interests of China well even as they meet their own charitable objectives. That compatibility of purpose serves as the best reassurance of benefit—and well supervised by officials who act strictly but fairly and avoid corruption or personal aggrandizement, ensures sound operation. However, direct operation of foreign charities operated by or

funded through foreign governments might require stricter supervision. In the case of foreign charities that are controlled by foreign states or political bodies strict supervision is required and in some areas, according to law, restrictions imposed. Foreign charities that are funded in part by foreign governments require strict monitoring, but as long as they work within the CUL2d they might still be useful. Political organizations from foreign areas require much stricter control. But that requires a precise definition of the sort of activities that may be encouraged and those that might be prohibited. And it might usefully be written so that they appear consistent with the CCP line and understandable to foreigners who must be guided by its rules.

6. The CCP line suggests that it is necessary to draw a strict line between foreign charities, which when operating under law, contribute to the process of socialist modernization, and foreign civil society organizations whose work might be more strictly regulated with respect to its effects on internal politics. It might be less useful to conflate all foreign elements into one category; that would work to the detriment of socialist modernization. But it might be valuable to begin to distinguish, under law, between foreign efforts that are compatible with Chinese objectives and those that require more careful supervision. The issue of the foreigner has a complicated history in China. But history ought not to blind the vanguard from its primary task—to ensure that it draws on all resources for the great task of modernization. The CCP Line itself acknowledges the need to avoid the error of rigidity as the central element of opening up: “The Party must adhere to the basic state policy of opening up and assimilate and exploit the achievements of all other cultures. It must be bold in making explorations and breaking new ground in reform and opening up, make its reform decisions more scientific, better coordinate its reform measures and blaze new trails in practice.”<sup>68</sup> It is in this light that the Charity Law’s provisions ought to be read in the context of charitable organizations with ties to foreigners—one that correctly distinguishes interference from the imperative to learn where ever knowledge may reside.

7. The conceptualization of Charity, itself, may require substantially more thought as the Charity Law is implemented. That conceptualization is justifiably narrow and traditional, appropriate perhaps for the first effort to regulate the charity sector. Yet it is important to consider whether at this stage in China’s development, the ideal of charity has expanded well beyond its traditional conceptions. The CCP Line suggests that it has. That was made clear by expressions of that line in *Sange Daibiao*<sup>69</sup> and related elaborations of the CCP Line. Charity work has expanded in scope to include all aspects of the work of modernizing society. Charitable work represents the development of an important social productive force that is most effectively utilized when aligned with the political work of the CCP and the strategic needs of modernization. That, of course must be undertaken in accordance with law and under the leadership of the CCP. Yet, those conditions suggests an encouragement and management of such work, rather than of its marginalization. The Charity Law makes a good start in that direction. But its full implementation will require substantial work to coordinate the enthusiasm of organizations to contribute to advancement and the policies of state that help lead the people in that direction.

8. The Charity Law represents an important theoretical step in the construction of both the charity sector and socialist modernization beyond economic development. Both are essential as China moves into its next historical stage. But both are essentially closely intertwined with the political work of the CCP. It may be necessary for the CCP to provide leadership directly as it establishes the substance of the policy implicit in the Charity Law (as well as its related NGOP Management Law). The establishment of a vibrant and responsive civil society is both an administrative and a political project. Both the state and the CCP are necessary to its realization. Its successful

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<sup>68</sup> CCP Constitution General Program ¶13.

<sup>69</sup> See, Three Represents, News of the Communist Party of China, available <http://english.cpc.people.com.cn/66739/4521344.html>. Discussed in Larry Catá Backer, “The Rule of Law, The Chinese Communist Party, and Ideological Campaigns: Sange Daibiao (the “Three Represents”), Socialist Rule of Law, and Modern Chinese Constitutionalism,” *Transnational Law & Contemporary Problems* 16(1):29-102 (2006).



implementation will determine both the viability of civil society within China, and the extent to which China may serve as an influential stakeholder in the development of international approaches to the modeling of the civil society sector. To that end, moving the principles of the CCP General Program to the foreground will serve a useful function and advance the political work of the CCP in the context of developing a well regulated and useful civil society sector. Its importance must not be underestimated. But neither should it be over used. Socialist modernization is not just a matter of theory, but of its application. It will be necessary to exercise considerable discipline and restraint to develop a predictable, certain and consistent approach to the implementation of a regulatory environment in which civil society may rely on the state and the state may rely on its civil society elements in a joint enterprise to manage the development of society in an appropriate way. To this end, the draft Regulations for Social Associations<sup>70</sup> may help. But more guidance and regularity in implementation will be the real test for the value of the Charity Law and its related regulatory mechanisms.

9. Since the initial time of reform and opening up Deng Xiaoping wisely reminded both state and CCP of the dangers of the failure to emancipate the mind for the political work of the CCP and the success of administrative implementation of policy for the betterment of the people. He was especially sensitive to the connection between the undermining of democratic centralism and the rise of bureaucratism resulting from the over concentration of power.<sup>71</sup>

When people's minds aren't yet emancipated and their thinking remains rigid, curious phenomena emerge. Once people's thinking becomes rigid, they will increasingly act according to fixed notions. . . . People whose thinking has become rigid tend to veer with the wind. . . . Once people's thinking becomes rigid, book worship, divorced from reality, becomes a grave malady. . . . Our drive for the four modernizations will get nowhere unless rigid thinking is broken down and the minds of cadres and of the masses are completely emancipated.<sup>72</sup>

These important premises might well serve in the administration of the Charity Law as it moves from theory to practice. The Charity Law creates an important administrative machinery. It permits the administrative apparatus to drive the focus of charitable activity. It authorizes officials to manage and supervise the charitable activities of organizations, and it constrains civil society within a cage of regulation. All of these are worthy objectives. Yet the burden of regulation can fall unevenly on worthy projects and stifle important charitable efforts because the organization cannot afford the costs of administrative regulation. The reform and innovation that may be driven by patriotic civil society organizations can be diminished within layers of administrative discretion that values bureaucratic compliance over socialist modernization. The effective use of charitable organizations as a mechanics for a vigorous mass line campaign will be harder to achieve where charitable organizations become the passive instruments of local officials. Both CCP and state apparatus must institute techniques of vigilance and of correction, to ensure that the Charity Law can reach its potential—to serve as an effective internal mechanism for developing productive forces through the emancipation of the mind and opening up. In that way, the Charity Law might better serve as a valuable example of sound Socialist law making and of the value and soundness of CCP leadership in striving toward a vigorous socialist democracy in which all people, each according to their ability, can contribute to “develop charitable causes, promote the culture of charity and standardize charitable activities, as well as to protect

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<sup>70</sup> Draft Regulations for Social Associations Are Out, NGOs in China (August 3, 2016). Available <http://ngochina.blogspot.com/2016/08/draft-regulations-for-social.html>.

<sup>71</sup> Deng Xiaoping, Emancipate The Mind, Seek Truth From Facts And Unite As One In Looking To The Future (December 13, 1978), available <http://en.people.cn/dengxp/vol2/text/b1260.html>. Deng Xiaoping Theory is now an important element of the CCP Line. CCP Constitution, *supra*, ¶ 5.

<sup>72</sup> Deng Xiaoping, Emancipate The Mind, *supra*.

the rights and interests of charitable organizations, donors, volunteers, beneficiaries and others who work in the field of charity, while promoting social progress and distributing the fruits of social development.”<sup>73</sup>

#### IV. Conclusion.

China’s Charity Law should rightfully be praised as a great step forward in the principled regulation of an important sector of development of national productive forces. It represents an effort to integrate popular societal culture with the national objectives embedded in socialist modernizations. But the Charity Law must also be understood in a broader context. It represents as well an effort both to manage civil society and to harness its energy in the service of the state and of the political order’s fundamental objectives to move toward the establishment of a communist society in China.

And indeed, one can understand the move toward the management of NGOs in even broader terms. It represents a counter by states against what they see as the trans-nationalization of politics. That trans-nationalization runs parallel to the trans-nationalization of economic enterprise, represented by the globalization of production and supply chains. In a world in which production chains represent the most advanced forms of globalized economic regimes—regimes that exist beyond the state—it should come as no surprise that politics would seek to catch up.<sup>74</sup>

One can understand, both the need to manage Chinese civil society within the context of charity ideals, and the need to constrain foreign non-governmental organizations to ensure national control over its own development. Moreover, the decision to invite global comment also evidenced Chinese understanding of the global ramifications of its approach to the management of its civil society, and its importance in the global discourse about consensus standards for that management among states. This becomes more important as Chinese civil society try to emerge onto the world stage.<sup>75</sup> This essay considered the role of the Charity Law in advancing Socialist Modernization through the realization of the Chinese Communist Party (CCP) Basic Line. It considered both the substantive provisions as well as some of the more theoretical considerations which together suggested a framework for understanding the great contribution of the Charity Law as well as the challenges that remain for the development of the productive forces of the civil society sector at this historical stage of China’s development.

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<sup>73</sup> Charity Law Article 1.

<sup>74</sup> Larry Catá Backer, Ruminations 59: The Transnationalization of Politics, Civil Society and National Regulatory Responses, Law at the End of the Day (Dec. 24, 2015), available <http://lcbackerblog.blogspot.com/2015/12/ruminations-59-transnationalization-of.html> (“internationalization of politics is an organic process inherent in the processes of globalization itself”)

<sup>75</sup> See, e.g., Huang Haoming, China Association for NGO Cooperation, Strategies for the Internationalization of Chinese NGOs (2015) available <http://www.cango.org/en/showNews.aspx?id=672>.