

**MISSING BY A MILE:
THE FUNCTIONING OF NON-GOVERNMENTAL ORGANIZATIONS
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The nascent and incipient character of modern Non-Governmental Organizations (NGOs)¹ in China has been attenuating in the recent past, with many of them showing signs of exotic maturity and with meritorious results. Nonetheless, a few paradigmatic wrongs trammel and deactivate the configuration of NGOs and their legal context, therefore occluding their ability to valiantly capture popular acquiescence. This paper intimates that, if NGOs in China can be reshaped and responsibility steered clear of the current prime constraints and contradictions, rule of law in China can be contingent on NGOs activities. The authors of the paper conclude that, a realigned and universalized Chinese NGOs context can be facilitative in inventing and purveying a definitive conceptual armoury for monitoring and evaluating the rule of law ubiquity in China.

Key words: China, NGO legal context, NGO context, rule of law, NGOs, NGOs activities

**НЕ ДОСТИГАЯ ЦЕЛИ:
ФУНКЦИОНИРОВАНИЕ НЕПРАВИТЕЛЬСТВЕННЫХ ОРГАНИЗАЦИЙ
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Несовершенство и проблемы роста современных неправительственных организаций (НПО) в Китае постепенно уходят в прошлое, многие НПО демонстрируют в настоящее время признаки зрелости и вполне достойные результаты деятельности. Однако некоторые существенные ошибки подрывают систему НПО и нормативные основания их деятельности, поэтому они так и не получили столь необходимой общественной поддержки. В статье отмечается, что правопорядок в Китае может измениться благодаря деятельности НПО, если они будут перестроены и им будет предоставлена возможность участвовать

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¹ Many Chinese generally refer to registered NGOs as «Social Organizations» (shehui zuzhi); however the term Social Organizations is also used to refer to a category of NGOs (shehui tuanti).

в управлении с тем, чтобы избежать действующих ограничений и противоречий. Авторы приходят к выводу, что переработанное и универсализированное регулирование китайских неправительственных организаций может способствовать созданию и обеспечению функционирования механизма для мониторинга и оценки правопорядка Китая.

Ключевые слова: Китай, неправительственная организация, правопорядок, деятельность НПО

1. Introduction

The praxis of rule of law is an antiquarian concept that has long been tangential with legal institutions that make possible the rights and freedoms of citizens, while also guaranteeing them¹. But for the rule of law notion to be ubiquitous, it must seat comfortably with supporting institutions such as NGOs². This paper inscribes the relationship between NGOs and the rule of law, and also problematizes the relationship in China, in order to reconcile the indeterminacy of this relationship in the Chinese context. The routinization and the fecundity of NGOs activities in China have not been profound enough to segue left out social spaces into the rule of law. This is due to the prevalence of a constellation of prime concerns, and that tends to generate a wave of other multi-patterned negative energies afflicting NGOs in China today, and which denote that the operationalization of NGOs in China is facing some serious challenges and profound strains. Some of the intrinsic and extrinsic drawbacks that plague NGOs in China include: legal issues, funding, accountability, public perception, management, human resources, and political risk³. In order to explicate the blurring of the Chinese NGO context by these problems, the paper turns its lens on three prime concerns with wide ramifications, namely: financial sustainability constraints, human resource challenges and inadequate NGOs legal context. They tend to recur with extraordinary frequency, and which better explicates the paucity of the discordance between NGOs activities and the rule of law in the Chinese context. The goal is to cast the deep-rootedness nature of the maladies afflicting NGOs in China, while also searching for the nostrum that will insistently intervene to lustrate these seemingly insoluble contradictions.

2. Fusing NGOs and the rule of law: A legal theory perspective

The interpenetration and entanglement of NGOs and rule of law are not only imperative for social progress of the society but also complimentary to state efforts that glue and imbue the rule of law construct. The expressions NGO and rule of law are a locus of numerous and contested claims all over the world; so what set of values do we assume in this terms? The general consensus is that NGOs should be oriented to have institutional existence, be non-profit, voluntary and independent from government, and also function for the public interest⁴. When it comes to rule of law, the concept is quite pompous and staggeringly hard

¹ Nilovich F. A. Institutions of the rule of law – A law-enforcement and Russia // *The Rule of Law State: Theory and Practice*. 2015 April 17. URL: <http://www.pravgos.ru/en/stati/instituty-pravovogo-gosudarstva-v-zakonotvorchestvo-i-pravoprimenenie-rossii>.

² Frye T. Corruption and rule of law // *Aslund A., Guriev S., Kuchins A. Russian after the Global economic crisis*. Washington, 2010. P. 79–94. URL: https://piie.com/publications/chapters_preview/4976/04iie4976.pdf.

³ Lau C. S. Running ahead: China NGOs // *Quarterly Journal of Ideology*. 2009. Vol. 31. № 3 & 4. P. 18. URL: <http://www.lsus.edu/Documents/Offices%20and%20Services/CommunityOutreach/JournalOfIdeology/NGOsInChinaarticle.pdf>
<http://www.lsus.edu/Documents/Offices%20and%20Services/CommunityOutreach/JournalOfIdeology/NGOsInChinaarticle.pdf>.

⁴ Prodi R., Kinnock N. *The Commission and Non-Governmental Organizations: Building a stronger Partnership*. European commission discussion paper. Brussels, 2000 // URL: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52000DC0011>.



to evaluate and promote. Nonetheless, the United Nations articulates a «thick» definition of rule of law so as to inure communities with substantive ideals such as democracy and human rights; and that refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards¹.

The NGOs, the state and the market should have a triumvirate that should be characterized by organic harmony and balance, and in the process help establish rule of law². Nevertheless, with the atomization of state power and the travesty of the market in modern times³, NGOs are now primed to not only act as gap-fillers but also as crescendos that will relentlessly bring to the surface a consistent reproduction of the rule of law narrative⁴. But how are NGOs conscientised and seen to be as germane agents of rule of law?

To start with, NGOs often manifest themselves as defenders of powerless communities through advocacy, since they tend to have a more in-depth knowledge of social, cultural and political contexts that characterize local communities⁵. One can, therefore, infer that, NGOs through advocacy advance rule of law by empowering previously marginalized groups to migrate into spaces where they can hold those in positions of power accountable⁶. For the rule of law is a principle of governance that requires all persons, institution and entities, public and private, including the State itself to be accountable to laws, and which are consistent with fundamental human rights⁷.

When political and the market forces are constrained to bridge the society with the state, it's the NGOs that occlude the gap through provision of goods and services⁸. By doing so, they advance justiciability of economic, social, cultural rights, besides facilitating the marginalized and poor communities to live in dignity, and therefore nurture the values that support the establishment of the rule of law⁹. In times of disasters and calamities, NGOs escalate sustainable peace and security by corroding extreme suffering, through material and logistical support that ratchets up non-ephemeral improvement and reintegration of victims. As such, NGOs are seen as fostering the re-establishment of rule of law by injecting quality that reconfigures the society to be stable, and to thrust more priests and guardians of the rule of law.

NGOs are also associated with transformative roles that intensify rule of law, such as civic education. Civic education is a rallying banner around which amnesiac mindsets are

¹ *Tamanaha B. Z.* The history and elements of the rule of law // Singapore Journal of Legal Studies. 2012. P. 232–247.

² *Shah A.* Non government organizations on development issues // Global Issues. 2005. June 1. URL: <http://www.globalissues.org/article/25/non-governmental-organizations-on-development-issues>.

³ Ibid.

⁴ *Ashley J. S., He P.* Opening one eye and closing the other: The legal and regulatory environment for «Grassroots» NGOs in China today // Boston University International Law Journal. 2008. Vol. 26. № 1. P. 30–95. URL: <http://www.bu.edu/law/journals-archive/international/volume26n1/documents/29-96.pdf>.

⁵ *Lang R.* The role of NGOs in the process of empowerment and social transformation of people with disabilities // Selected Readings in Community Based Rehabilitation Series 1: CBR in Transition / ed. by M. Thomas, M. J. Thomas. Bangalore, 2000. P. 1–20. URL: http://english.aifo.it/disability/apdrj/selread100/ngos_empowerment_lang.pdf.

⁶ Rule of law and democracy // Rule of Law Alliance. URL: <http://rolalliance.org/rol-alliance-impact/rule-of-law-democracy>.

⁷ What is the rule of law? // United Nations and the Rule of Law. URL: <https://www.un.org/ruleoflaw/what-is-the-rule-of-law>.

⁸ See: *Ashley J. S., He P.* Op. cit.

⁹ Economic, social and cultural rights // ASF. URL: <http://www.asf.be/action/economic-and-social-rights>.



re-awakened and re-framed, and so that they can appreciate the essence of rule of law values such as equal rights, freedom, democracy, common good, and that also facilitate mobilization of enormous interest in active political participation¹. In addition, civic education articulates and justifies cognitive skills that nurture effective synthesis of political and civic information, leading to a peaceful and resourceful influence of debate on public issues². Hence, civic education sponsors responsible citizens and empowered communities, so that they can seriously scrutinize and challenge a predominant executive, and also re-engineer repressive and superfluous legal and institutional frameworks. It's also such citizens who can negotiate for the rule of law paradigm, such as installment of governance where decisions taken by the government are founded in law, and where all citizens are protected from arbitrary decisions³. NGOs are therefore bound up with the primary currents of rule of law, and which immerse methodologies and orientations that not only nudge the praxis of the rule of law, but also the internalized theory of the rule of law.

In the arena of research, NGOs open up rich and non-trivial interventions that regularly assert the rule of law through valuable research outcomes. When research wangles new information and communication technologies such as mobile phones, online mapping and remote sensing, NGOs recasts and angles them towards pulverizing events that eclipse rule of law, such as impending disasters, human rights abuses, and political repression among others⁴. Therefore, NGOs are able to problematize and rearticulate the rule of law by addressing urgent societal and structural issues, which fuel and perpetuate inequality, antagonism and stifle good governance. NGOs also torrent communities that have reached cul-de-sac in their poverty, with established research interventions such as better nutrition guidelines, integrated pest management, water purification technologies among others⁵; in order to transcend and surpass back-breaking poverty which often attenuates the rule of law by rendering otiose valuable visions such as justice, human rights, and freedom. Research is also tangled with the rule of law when NGOs lobby for more research in a particular areas that promote rule of law such as promotion of democracy, legal reform etc; when they commission research to campaign against human right abuses, gender equity among others; when they use research outcomes in campaigning for poverty alleviation and good governance; and when they cooperate with academic researchers in research undertakings that touch on the concept of the rule of law⁶.

3. Constraining NGOs Financial Sustainability Containing the Rule of Law

It has always been perceived that the perennial loci of contestations facing NGOs in China are government control or high demand for social services, but it's the paucity of financial sustainability that is most stifling and more interminable⁷. What comes to light is that most NGOs have stepped back from the seductive appeal of financial sustainability due to intemperate lack of accountability and transparency, with only 30 percent of registered

¹ Civil Society and NGOs // International Organization for Migration. URL: <https://www.iom.int/civil-society-ngos>.

² Ibid.

³ Promoting good governance // Global Development Research Centre. URL: http://www.gdrc.org/u-gov/doc-oecd_ggov.html.

⁴ Makri A. Science and NGO practice: Facts and figures // SciDev.net. 2013. May 22. URL: <http://www.scidev.net/global/capacity-building/feature/science-and-ngo-practice-facts-and-figures.html>.

⁵ Ibid.

⁶ Halffman W. NGO and research // URL: <http://halffman.net/thst%20topics/NGO%20research.htm>.

⁷ The index of philanthropic freedom 2015 // Hudson Institute. Centre for Global Prosperity. URL: <http://www.hudson.org/cgp>.



NGOs meeting basic international standards for transparency and disclosure¹. Moreover, the wealthy class of Chinese entrepreneurs is explicitly and implicitly identified with maximization of economic and political interests through philanthropy², hence they are seen as incapable of sustaining NGOs financially³. China is also defamiliarised with the weighty weaponry of a mature corporate philanthropy, and which is quite imperative in increasing choices and broadening opportunities for NGOs⁴, but it's viewed more as a marketing strategy rather than charity⁵. Financial sustainability of NGOs in China is also hindered by the fact that, it's at the provincial and sub-provincial levels and not at the national level that we have many complex rules and requirements that require the approval of foreign donations, and most of which tend to emerge suddenly⁶. The implication is that the Chinese NGOs legal context ends up drawing a line between funding available to foreign NGOs and domestic NGOs⁷, with more opportunities being guided and centralized in the latter than in the former⁸. China is also characterized by policies that require NGOs to have high expenditure rates, and of at least 70 % of the previous year's assets, therefore constraining the growth of endowment and therefore financial sustainability of NGOs⁹. The regulations in China also limits and direct where NGOs funds can be invested, leading to the concentration of assets in less risk-averse but low earning investment options, and therefore advancing further financial resource insecurity due to low income that is realized from such assets¹⁰.

NGOs in China can, therefore, be construed as confined in cut-throat competitive environment for the meager financial resource, and that magnifies expose to casuistry and manipulation by donors. As such, NGOs will always stand to constrain the rule of law, since they cannot project disinterested inquiry of an impartial actor. Impartiality is a fundamental precept at the heart of rule of law, and it guarantees equality of treatment as well as ensuring that the public does not have any grounds of concern in decisions made by NGOs¹¹. When the Chinese NGO legal context targets and privileges funding of domestic NGOs than it does to foreign NGOs, it undermines the rule of law by propelling widespread transplantation and submersion of inequality. The starting point of rule of law in any country is that every individual or institution is entitled to the same level of dignity and respect, and should also have same rights and obligations¹². The maladies of financial sustainability

¹ Huang Y. Why has philanthropy failed to take off in China? // The Diplomatic magazine. 2014. May 31. URL: <http://thediplomat.com/2014/05/why-has-philanthropy-failed-to-take-off-in-china>.

² Shoujin Z., Caccamo M. Review and revision: Theory and practice of corporate philanthropy in China // Journal of International Business Ethics. 2013. № 6 (1/2). P. 42–56. URL: <https://search.proquest.com/docview/1478018215?pq-origsite=gscholar>.

³ Schmitt K., Leisinger K. M. Corporate Responsibility and Corporate Philanthropy. N. Y., 2011. P. 15. URL: http://www.un.org/en/ecosoc/newfunct/pdf/leisinger-schmitt_corporate_responsibility_and_corporate_philanthropy.pdf.

⁴ See: Shoujin Z., Caccamo M. Op. cit.

⁵ Johnson P. D., Saich T. Values and Vision: Perspectives on Philanthropy in 21st Century China // The Ash Center for Democratic Governance and Innovation. URL: https://ash.harvard.edu/files/ash/files/valuesandvision_perspectivesonphilanthropyin21stcenturychina_english.pdf.

⁶ Sidel M. China // ICNL-NGO law monitor. 2011. February 17. P. 10. URL: <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044379.pdf>.

⁷ Wrest S. Funding China's civil society-tax incentives, donation law, and the role of foreign charities. // China Business Review. 2017. January 13. URL: <http://www.chinabusinessreview.com/funding-chinas-civil-society-tax-incentives-donation-law-and-the-role-of-foreign-charities>.

⁸ Ibid.

⁹ See: Johnson P., Saich T. Op. cit.

¹⁰ Ibid.

¹¹ Neate F. The rule of law: Perspectives from around the globe. L., 2009. P. 112.

¹² Ibid. P. 14.

have also exacerbated endemic corruption and financial scandals in Chinese NGOs¹ since employees become subjected to income and job certainty. As such NGOs facilitate the containment of the rule of law by being vehicles of corruption, a vice which favours discretion and arbitrary decision making, rather than rule following². More importantly, financially constrained NGOs in China will always have a proclivity to spend much of their time reaching the subterranean concrete for more donations, and consequently, they cannot serve to focus and augment NGOs activities, and that often correlate with the rule of law.

4. Straitened Human Resources: Juxtaposing NGOs and the Rule of Law

The existence and operationalization of NGOs in China is highly constrained by lack of appropriate human resources, and as evidenced by the 2012 Conference Board report, which underlined the fact that NGOs lack experienced talent, ready and willing to work for them³. To start with, there is lack of robust training and familiarization with work processes that concern NGOs, and which is attributed to sub-standard recruitment processes that tend to invite weak candidates⁴. In addition, very few skilled people consider pursuing a career with Chinese NGOs because of low pay, and which makes it impossible or very difficult to raise a family⁵. Problems of low pay can be explicated by the fact that NGOs development is still at its infancy, and therefore the average salary is not attractive⁶. Working for NGOs in China is also not seen as prestigious and in vogue with modern corporate trends since it's estimated that 70 % of employees in the NGOs sector are young women whose employment does not have a high status in the society, and their job tenures are characterized by a high turnover⁷. More to that, the working conditions of most Chinese NGOs are also perceived as incapable of attracting and retaining highly qualified male and female employees⁸. As such, working for NGOs has not gone mainstream, and very few graduates and professionals would settle down for a career in them⁹. Another drawback to Chinese NGOs human resource capacities is lack of adequate or underdeveloped volunteering capacity, therefore NGOs cannot effectively tap the influence and the social value of volunteer service, and which has the propensity to strengthen social capital, rebalance the economy and address inequalities¹⁰. Matters are further worsened by the fact that NGOs face the challenges of human resource development individually and try to change the image of the sector for their own good, but that's a slow and fragmented approach to bringing the change the NGO sector desires¹¹.

There is no doubt that human resource constraints have accelerated legitimacy crisis in Chinese NGOs, therefore overpowering and stifling the rule of law. According to rule of law

¹ See: *Ashley J., He P.* Op. cit.

² *Santos A.* The World Bank's Uses of the «Rule of Law» Promise in Economic Development // *The new law and economic development: a critical appraisal* / ed. by D. Trubek & A. Santos. N. Y., 2006. P. 253–300.

³ See: *Johnson P., Saich T.* Op. cit.

⁴ *Murrell B.* Corporate philanthropy index (China) // Think Consulting Solutions. URL: <http://www.thinkcs.org/chinese-corporate-philanthropy-index>.

⁵ *Kolhoff D.* Non-profit incubator // *On the Ground*. 2016. January 10. URL: <https://onthegroundngo.com/2016/01/10/non-profit-incubator-shanghai-china>.

⁶ See: *Murrell B.* Op. cit.

⁷ *Merkle A., Li Ding.* Talent the key to developing the social sector in China // *Stanford social innovation review*. 2017. September 11. URL: https://ssir.org/articles/entry/talent_the_key_to_developing_the_social_sector_in_china.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ United Nations Volunteers Programme. State of volunteerism in China 2011-Engaging people through ideas, innovation and inspiration. Bonn, 2011. P. 1–24.

¹¹ *Ibid.*

theorist John Rawls, institutions can only be legitimate when they are well-ordered and people enjoy minimum rights to sustenance, formal equality and security¹. By corollary, the legitimating function of the rule of law can be assumed as presaged in Chinese NGOs, since human resources are not guided by a common good conception of justice². When Chinese NGOs acquiesce in the sub-standard recruitment of human resources, they fail to meet the standards that recruitment rules must satisfy. As such, NGOs undermine the rule of law by engaging in norm-setting that challenges the legality of universal norms and standards. Another take to this problem is that, lack of suitable to the purpose and competent work force has obviated fodder and catalyst for weak internal governance, and which therefore becomes predisposed to changing the rules as they desire and not following the appropriate procedures. The rule of law requires that every power that creates or enforces rules be seen as limited by law³; hence NGOs in China cannot vociferously tout themselves as a bulwark against vigilantism. The collective phenomenon of ill-prepared and less qualified personnel in Chinese NGOs has also meant that they cannot synchronize with democratic management mechanisms, therefore obscuring energy and force of the «NGOs empire»⁴. That way, they cannot effectively seek to serve or prioritize the interests of the people they serve, hence the egregiously harmful financial scandals in the recent past. The doctrine of rule of law is intimately bound with the practice of democracy since democracy promotes responsibility, reciprocity, trust and the embodiment of the will of all⁵.

5. Limitations of NGO legal context: trifling NGOs and rule of law consonance

In the last few decades, the government of China has been liberalizing the legal context in order to realize broader governance initiatives, such as civic participation and rule of law⁶. But despite such laudable efforts, more palpable initiatives are needed to gap-fill the existing legal lacuna in the NGOs context. It has come to light that there is need to appropriate corporate philanthropy in China beyond its current significance since there is a yawning discrepancy between China's economic prosperity and the magnitude of a charitable donation⁷. Corporate philanthropy should, therefore, be enshrined in law so that corporate organizations in China can wake up to wider social responsibilities, and in a way that ensures that the whole idea gets integrated into Chinese business culture⁸. China also needs specific regulations and laws to embrace millions of miscellaneous informal NGOs, that can't qualify national registration or official documentation at lower levels of government, but are condoned because they have enormous public benefit⁹. In the realm of volunteering, China

¹ See: *Tamanaha B. Z. Op. cit.*

² *Ibid.*

³ *Karla W. S. Civil Society in China: The legal framework from ancient times to the new reform era. N. Y., 2013. P. 10–11.*

⁴ See: *Ashley J. S., He P. Op. cit.*

⁵ *Olatunji F. O. Democracy and the challenge of the rule of law in developing democratic society // Journal of Integrative Humanism. 2014. March. P. 18–26. URL: <http://rcmss.com/2014/IntegrativeHumanism/DEMOCRACY%20AND%20THE%20CHALLENGE%20OF%20THE%20RULE%20OF%20LAW%20IN%20DEVELOPING%20DEMOCRATIC%20SOCIETY.pdf>.*

⁶ *Hu C., Chen F., Horsley J., Stern R. The state of NGOs in China // Brookings Institution. 2016. December 16. URL: <https://www.brookings.edu/blog/up-front/2016/12/15/the-state-of-ngos-in-china-today>.*

⁷ *Tiezzi S. Can China's new charity law fix a dismal donation rate // The Diplomat magazine. 2016. March 17. URL: <https://thediplomat.com/2016/03/can-chinas-new-charity-law-fix-a-dismal-donation-rate>.*

⁸ *Balch O. Indian law requires companies to give 2 % of profits to charity. Is it working? // The Guardian newspaper. 2016. April 5. URL: <https://www.theguardian.com/sustainable-business/2016/apr/05/india-csr-law-requires-companies-profits-to-charity-is-it-working>.*

⁹ See: *Karla W. S. Op. cit. P. 247.*



suffers from lack of laws to protect volunteers when they are participating in volunteering services and lack of clear regulations for different kinds of volunteer groups¹. Hence, NGOs in China cannot be influenced effectively by volunteer service, and which is imperative in complementing human resource capacities. In addition, the immediacy for self-regulation codes of good practice is also very palpable in China more than ever before, with the recent financial scandals denoting ineffective oversight in the NGO sector². Such «soft laws» would facilitate NGOs in China to institute their own regulatory mechanism, as a way of making known their good intentions, sound values, and the ability to be accountable for their actions³. Self-regulation codes of good practice have the potential to legitimize the NGOs sector in China, by limiting the reputational damage that has been caused by the unaccountable behaviour of some NGOs, and in a way that fortifies internal governance⁴.

With a limited legal context, NGOs in China cannot be idealized as a «magic bullet» that can target and fix problems in the society, and in a way that infuses the rule of law. To start with, the inadequacy of the legal context has ensured that the current legal framework projects illegal exceptions, thus NGOs working outside the realm of law constrain the widespread acceptance of the rule of law. The rule of law embodies equal subjection of all to ordinary law, and the absolute predominance of ordinary law so that there is no opportunity for arbitrary authority⁵. When the legal context fails to nudge and mature corporate philanthropy, the culmination is stymied NGOs activities, leading to shielding of individuals and institutions from achieving broader outcomes and therefore constraining the rule of law. The rule of law is an enabling framework for the society to achieve broader outcomes through the advancement of their own interests, enablement of other development goals, and to go about their own daily life; thus contributing to conflict prevention, peaceful dispute resolution, gender equality and tackling of discriminatory practices and laws⁶. Moreover, when China is seen as lacking relevant laws and regulations that govern how NGOs relate to the society, the authorities and to each other, the establishment of rule of law is seen as fore-shadowed. According to legal scholar Lon Fuller, the law must exist in order to institute the rule of law⁷. The rule of law, therefore, thrives only when it can limit institutions such as NGOs through pre-existing, clear, and known laws; and when it can also require them to accept and abide by these rules⁸. Lastly, an inadequacy of laws in the Chinese NGO legal context hinders varying forms of recognition in the NGOs context such as equal freedom, respect for a diversity of viewpoints, among others; since enforcement of specific laws related to these norms of justice is lacking⁹. Justice cannot exist without the rule of law since

¹ See: United Nations Volunteers Programme.

² See: *Karla W. S.* Op. cit. P. 321–340.

³ *Aramide O.* NGO self-regulation // Nigeria network of NGOs. 2017. April 26. URL: <http://nnngo.org/portfolio/ngo-self-regulation>.

⁴ Ibid.

⁵ *Neate F.* Op. cit. P. 52.

⁶ Rule of law policy approach: UK Department for International Development policy paper final version. URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306396/policy-approach-rule-of-law.pdf.

⁷ *Barnet R. E.* Can justice and rule of law be reconciled? // Harvard Journal of Law & Public Policy. 1988. Vol. 11. № 3. P. 597–624.

⁸ See: Rule of law policy approach.

⁹ *Desai D., Berg L. A.* Overview on the Rule of Law and Sustainable Development for the Global Dialogue on Rule of Law and the Post-2015 Development Agenda. N. Y., 2013. URL: <http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Global%20Dialogue%20Background%20Paper%20-%20Rule%20of%20Law%20and%20Sustainable%20Developme...pdf>.

rule of law ensures the neutrality of principles and that justified rights have the appropriate form, therefore confronting social conflict by promoting social harmony¹. Moreover, one can also allude that the rule of law is undermined and therefore justice, when individuals cannot avail themselves the laws related to NGO context due to inefficiency of the state to induce and enact such laws; incompetency of the legal profession to challenge such legal vacuums based on constitutional rights; or failed recognition of international legal instruments.

6. Conclusion

The outcome of this paper is unanimous that the idea and the fact of NGOs has profound implications on the rule of law, and has the potential to export the rule of law construct if NGOs are assiduously fortified and rationalized. As expected the findings of the study show that the Chinese NGOs cannot significantly be associated with the rule of law, most probably due to lack spotlighting, diagnosis and debate on embryonic structures that hold them back. The paper also shows that Chinese NGOs legal context is incapacitated in influencing NGOs significantly, and so that they become a powerful gravitational force in the rule of law spaces. The overall implication is that the correlatives of NGOs and rule of law with Chinese characteristics become hard to entrench in the Chinese context.

Given the above major impediments, the paper suggests that there is need to forward the concept of modern strategic philanthropy to private wealth holders in China, and which underscores high awareness of institutionalized philanthropy²; embracement of philanthropy to advocate policy change and therefore influence government action; deployment of impact investing in social echelons; exploration and utilization of the profit motive in solving complex social problems³. Consequently, the Chinese NGO context would register innovation and predictability of donations to NGO causes. In addition, there is also a need to promote conscious, constant and voluntary philanthropic spirit for public good. Previous studies indicate that donations to NGOs are not sustainable since they are irregular and tend to balloon when national disasters occur⁴. It has also been observed that the socialist state welfare system in China eroded the culture of charity⁵; hence the Chinese have been conditioned to be takers and not givers. Therefore there is a need to rearticulate a modern concept of philanthropy in China, and in a way that ensures synchronization with Chinese characteristics of benevolence; so that individuals and communities can be reshaped to be relevant and receptive to philanthropy that underscores anonymity and tackling of long-term social problems in communities⁶. China also needs to facelift the Chinese domestic legislation in order to protect and enhance philanthropic rights; and so that that philanthropists are protected, and that modern developments, old cultures and attitudes do not constrain philanthropy. The exponential growth of NGOs in China has been instrumental advancing their revenue insecurity, and therefore the alternative idea of further accentuating marketisation and commercialization should be spotlighted, in order to diminish donor dependency and

¹ See: *Barnet R. E.* Op. cit.

² *Williams B.* Why philanthropy matters to your practice // Barron's. 2017. July 10. URL: <http://www.barrons.com/articles/why-philanthropy-matters-to-your-practice-1499706339>.

³ *Bishop M.* Philanthropic practices // Stanford social innovation review. 2011. Summer. URL: https://ssir.org/book_reviews/entry/do_more_than_give_leslie_r_crutchfield_john_v_kania_mark_r_kramer.

⁴ *Russell C.* The state of philanthropy in China // CKGSB Knowledge. 2015. May 18. URL: <http://knowledge.ckgsb.edu.cn/2015/05/18/society/the-state-of-philanthropy-in-china>.

⁵ *Juncadella L.* Are philanthropic causes taking off in China? // Azureazure. 2014. URL: <http://www.azureazure.com/philanthropy/philanthropy-in-china>.

⁶ Ibid.



conversion of Chinese NGOs into social enterprises¹. What is also evident is that NGO management boards need to be given more leeway on where NGOs funds can be invested, so that prolific income generating streams can be harnessed, while the government focuses on risk mitigation aspects in such endeavours².

When it comes to the realm human resource constraints, capacity development in Chinese NGOs is rudimental and therefore at primary stages. However, the study observes that positive progress has been registered through such initiatives as the Executive Management program for NGOs leaders by Philanthropy Research Institute in cooperation with the University of Indiana; Project 1000 to provide 6 month part-time training to 1000 NGOs, among others³. Much more need to do, and NGOs in China can easily blur and overcome capacity constraints by thread weaving a veneer of cooperation with foreign NGOs, so as to ensure transposition of skills and expertise, sharing of best practices, and drawing on a wealth of experience that suggests solutions to complex issues touching on NGOs⁴. Review of current NGOs regulations that stipulate limits for payroll expenses to 10 % should be heightened⁵ so that NGOs can attract experienced talent, ready and willing to work in for them through better remuneration⁶. In addition, Chinese NGO should vociferously: establish links with reputable domestic and foreign companies to offer effective training that is well tailored for Chinese NGOs; search and tap high quality pro-bono services to ameliorate capacity development; encourage skills-based volunteering programs in Chinese NGOs in order to improve corporate skills in such areas as project management, marketing, communications, bookkeeping and financial controls, and which are severely underdeveloped in Chinese NGOs⁷; amplify Chinese annual charitable fairs so that international tech companies can be tapped to provide affordable training solutions, softwares and hardware⁸; optimize utilization of the upcoming concept of Chinese NGOs incubators, to propel human resource training and assessment⁹.

The paper also suggests that it would be plausible and imperative to displace banal Chinese NGO legal context through borrowed clothes of rule of law reform, so as to ensure reform that is specific to the NGO sector. This would be a very comprehensive solution, and that would have instrumental and intrinsic importance in forging, re-ordering and re-allocating legal priorities so that a quintessential NGO context can be registered. It would also facilitate particularized grievances and concerns from NGOs and citizens to be channelled directly into the legislative or executive decision-making process, and so that persistent de-

¹ Lane A. 2012: China Social enterprise report. Hong Kong, 2012. URL: https://www.bsr.org/reports/FYSE_China_Social_Enterprise_Report_2012.PDF.

² See: Johnson P., Saich T. Op. cit.

³ Sobhani E. W., Dai D. The changing landscape of NGOs in China // CAF America Connections Blog. 2014. August 8. URL: <https://www.cafamerica.org/ngos-china>.

⁴ Baird N. The role of international non-governmental organizations in the universal periodic review of pacific island states: can «doing good» be done better? // MJIL. 2015. Vol. 16. № 2. P. 576. URL: http://law.unimelb.edu.au/_data/assets/pdf_file/0010/1687789/Baird.pdf.

⁵ See: Johnson P., Saich T. Op. cit.

⁶ Scradar A., Zhang M. Corporate philanthropy in China: A practioner's guide for foreign donors. The Conference Board Initiative on Corporate Philanthropy 2012 December 10. P. 42. Report № R-1505-12-RR. URL: <http://www.avpn.asia/wp-content/uploads/2013/01/Corporate-Philanthropy-in-China.pdf>.

⁷ Ibid.

⁸ Miller K. Philanthropy in China: The time is now // Stanford social innovation review. 2012. September 17. URL: https://ssir.org/articles/entry/philanthropy_in_china_the_time_is_now1.

⁹ Xiao Y., Yunxing R. Non-Profit intermediary support organizations in China: The case of NPI. Maryland, 2014. URL: http://www.umdcipe.org/conferences/GovernmentCollaborationShanghai/Presentations/Xiao_Ruan_Presentation.pdf.

iciencies in the Chinese NGO legal context can be re-casted or decimated decisively¹. The gist of the reform process would be that many opportunities would be availed legally for NGOs to «nail their colours to the mast» so that they don't become an amorphous animal, while also ensuring that the state does not have the leeway to hurry them up the hill and down the dale.

Lastly, this paper contributes to the discourse of monitoring and evaluating the rule of law in China by suggesting that, if pressure of various dimensions can be mobilized to bring about a Chinese NGO architecture with deflected impediments; it would be possible to inaugurate a new weighting for the rule of law rubric, and one that differs from others in that rule of law fanning out from NGOs activities would be directly measured. This study discovered a few intrinsic and extrinsic variables with significant impact on NGOs activities, and therefore the rule of law, and which can function as indicators of a rule of law index. They include the extent of efficacy of internal leadership; extent of promoting of philanthropic rights; and the extent of optimization of foreign and local donations. These variables match most of the current indicators in the rule of law area, in that they belong to the categories of structure, input and process, and which further points to the need for further research to come up with outcome indicators². They can also be regarded as bottom-up indicators since they look at the needs for NGOs to function effectively so as to infuse the rule of law³. The idea is breathlessly novel and would be the best monument of rule of law in China, however further research is needed in order to concretize it, and in a way that will occlude impoverished visions of rule of law.

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¹ *Trebilcock M. J., Daniels R. J.* Rule of law reform and development: Charting the fragile path of progress. Cheltenham, 2008. P. 16.

² *Gramatikov M., Frishman M.* Measuring the rule of law, justice and fundamental rights: Concept paper. The Hague, 2013. P. 19.

³ *Ibid.*



Gramatikov M., Frishman M. Measuring the rule of law, justice and fundamental rights: Concept paper. The Hague, 2013.

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