CHAPTER THREE

LEGAL DEVELOPMENTS PERTAINING TO CIVIL ORGANIZATIONS

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Laws and administrative regulations are the swaddling clothes in which civil organizations have been nurtured and raised.¹ These swaddling clothes have nurtured China’s civil organizations, guaranteeing their legality. As civil society’s swaddling clothes, a legal system that does not change to meet the needs of the times would only restrain civil organizations’ growth. Rapid growth on the part of civil organizations has represented a constant set of new demands for legal development. Many characteristics of these rising civil organizations: their increasing scale, the diverse array of entities, their increasing independence, their maturing capacities and growing social influence, have all driven legal developments in relevant areas. The process of improving legal frameworks for civil organizations has involved both subjective activism and

¹ The concept of “civil organizations” (民间组织) used in this chapter refers to the group of Chinese non-profit organizations comprised of social groups, foundations, people-run non-enterprise units and other entities, i.e. China’s third sector organizations. Most of these organizations receive legal status as civil entities by registering or filing with Civil Affairs departments. Others do not abide by the legally mandated process for registering and filing, yet objectively they too exist as civil organizations. Still other legally registered organizations, such as public-interest public institutions, rural economic cooperative organizations and unions that, while not technically within of the scope of civil organization administration, still substantively resemble the third sector and not the other two sectors. Thus, this chapter’s emphasis on laws and administrative regulations concerning these organizations, and its bringing into view their main points is an attempt to help readers acquaint themselves with the entire background and framework behind legal developments in China’s third sector. “Civil organizations” are a phenomenon, a piece, a concept that have been produced during the thirty years of the Reform and Opening and that must not be overlooked. It must be noted that since the Seventeenth National Congress of the CCP, the term “social organization” (社会组织) has replaced “civil organizations” in many usages. However, because in the law the concept of social organizations has not yet formed definite connotations and denotations and because scholars have not yet arrived at a consistent understanding of the “social organization” concept, this author continues the use of “civil organizations” and, in some contexts, occasionally uses the concept of “non-profit organizations” as well.
objective passivity. Legal developments around civil organizations have constantly sought balance in the dichotomous relationships between promoting development and strengthening administration; relaxing controls and effective norms; service provision and practical supervision; basic trust and prudent caution.

Looking back, systematically, the project of analyzing and researching laws related to civil organizations, the project of offering parameters in the legal system within which to research the birth and growth of China’s civil society is a worthy and challenging task indeed. Even answering the question of which laws and administrative regulations are part of the civil organization legal system is difficult; a mature legal system is after all an organic and indivisible network. Therefore, this chapter focuses mainly on four parts: the Constitution on citizens’ basic freedoms, the main tenets of Organizational Law, the main tenets of Tax Law, and other relevant laws and regulations. While this review is a reflection on history, hopefully, it can also guide future efforts in legal development.

1. **Constitutional Regulations on Citizens’ Basic Freedoms**

The state of civil organizations in a society reflects to a certain extent that society’s citizens’ rights, citizens’ freedoms, and the society’s autonomy. Laws concerning civil organizations cannot depart from constitutional regulations and guarantees of citizens’ basic freedoms. Comrade Mao Zedong once wrote that “the People’s freedoms of speech, press, assembly, association, thought, beliefs, and health are the most important freedoms”; “without People’s freedoms, then there is no true National People’s Congress truly chosen by the people; there is no clear course; and making the nation’s people feel they have a clear, definite and correct path forward will increase the nation’s people’s positivity.” This speech from Comrade Mao Zedong to a certain extent embodies the relationship between the Constitution and social groups and other civil organizations.

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2 In a June 14, 1954 speech to the Central People’s Government Commission’s 30th Plenary Session entitle “On the Drafting of the Constitution of the People’s Republic of China”, Comrade Mao Zedong said “a group needs articles of incorporation and a nation also needs articles of incorporation. The Constitution is such a general articles of incorporation, a great, fundamental law. Using this form of great, fundamental law, fixing in place the principles of people’s democracy and socialism; giving the nation’s people a clear course; and making the nation’s people feel they have a clear, definite and correct path forward will increase the nation’s people’s positivity.” This speech from Comrade Mao Zedong to a certain extent embodies the relationship between the Constitution and social groups and other civil organizations. Yang Jingyu/Yang Jingyu, 法治实践中的思考/fa zhi shi jian zhung de si kao, (Beijing: zhong guo fa zhi chu ban she, 2008) 6. (Reflections Amidst Implementation of Rule By Law)