

GRASSROOTS NGO REGULATION AND CHINA’S LOCAL LEGAL CULTURE

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Law-landing ideology and rhetoric has been increasingly evident in China since the end of the Cultural Revolution. In conjunction with decades of rapid and prolific legal institution-building, this has provided rich data for scholarship on the trajectory of China’s legal system, and the nature of rule and order in modern Chinese society. Yet a solely law-centric approach to state regulation is not apposite to painting a complete picture of how order is maintained in the distinctly non-legal Chinese culture. Drawing on fieldwork investigating non-state Chinese orphanages, I argue that the survival and proliferation of such quasi- or non-legal grassroots non-government organizations is indicative of, and premised on, both the unwieldy and fragmented nature of the Chinese state, and several defining points of distinction of law as a cultural notion in the Chinese context. These include a marked preoccupation with legitimacy over legality, and paternalistic discipline and discretion over impartial adjudication. An increased appreciation for China’s local legal culture has far-reaching implications for the ways in which both legal academics and practitioners engage with the Chinese legal system, which is best approached without constraining preconceptions about how law is used and regarded in local contexts.

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I. INTRODUCTION

What is the role of law in modern China? This question is of increasing importance to observers and practitioners, as China's economic, cultural and political influence has grown exponentially in recent decades. Foreign direct investment in China is on the rise,¹ its leadership is playing an increasingly prominent role in regional and global diplomacy and politics,² and the United States has announced a rebalancing of its strategic focus towards Asia and China in particular.³ More recently, with the 2012 People's Republic of China (PRC) leadership transition, and high-profile legal/political cases such as the Gu Kailai affair,⁴ China's emerging and evolving legal system continues to be widely scrutinized. Back in 1996, China's President Jiang Zemin adopted a new official policy of ruling the country in accordance with law, and establishing a

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- 1 Kevin Zhang, *What Explains the Boom of Foreign Direct Investment in China?*, 54(2) INTERNATIONAL ECONOMICS 54 (2001).
 - 2 David Shambaugh, *Reforming China's Diplomacy*, COPENHAGEN DISCUSSION PAPERS, ASIA RESEARCH CENTRE (2010).
 - 3 Christian Le Miere, *America's Pivot to East Asia: The Naval Dimension*, 54(3) SURVIVAL: GLOBAL POLITICS AND STRATEGY 81 (June-July, 2012).
 - 4 Andrew Jacobs, *China Defers Death Penalty for Disgraced Official's Wife*, THE NEW YORK TIMES (Aug. 20, 2012), <http://www.nytimes.com/2012/08/21/world/asia/china-defers-death-penalty-for-gu-kailai.html>.

socialist law-ruled state (*yifazhiguo, jiansheshubuhuiizhuyifazhiguo*),⁵ a policy that is now incorporated into the PRC Constitution.⁶ Such law-lauding ideology and rhetoric has been increasingly evident in China since the end of the Cultural Revolution in 1976 and, in conjunction with decades of rapid and prolific legal institution-building, has provided rich data for ample scholarship and discourse on the trajectory of China's legal system, and the nature of rule and order in modern Chinese society. This body of literature offers insight into China's legal evolution and development, and is a useful framework for exploring the nexus between law and order in Chinese society.

However rather than focusing on central Party-state rhetoric and policies, this article approaches the question of law's role in China from an underutilized perspective, namely that of local state-society relationships. Further, it explores and challenges the legal/illegal binary presupposed by many Chinese legal studies, and its aptness in the Chinese context. Based on empirical research of a set of 'illegal' NGOs, namely privately-run, unregulated grassroots orphanages, I argue that ground-level observations of local understandings, expectations and practices relating to law and order reveal a context best characterized as non-legal, being legitimacy-centric rather than law-centric. Formal law is not regarded by local Chinese actors in a way that is necessarily familiar to Western observers. Local NGOs acting beyond the limits of legally acceptable behaviour regard themselves, and are commonly regarded by local state and social actors, as legitimate; the legality of their existence and actions are not regarded as central to that legitimacy. The existence of such non-legal NGOs is not regarded as problematic, and is premised not on an organization's ability to abide by formal laws, but rather on an ability to regard informal rules and norms regulating their relationship with the state. The prevailing 'legal sensibility' in China, as visible at the local state-society interface, resonates more with themes of paternalism and discipline, rather than law-centric ideas of legality and rule of law.

5 Randall Peerenboom, *Competing Conceptions of Rule of Law in China*, in *ASIAN DISCOURSES OF RULE OF LAW: THEORIES AND IMPLEMENTATION OF RULE OF LAW IN TWELVE ASIAN COUNTRIES, FRANCE AND THE US*, 109 (Randall Peerenboom ed., 2003).

6 *ZhonghuaRenminGongheguo.Xingfa* [People's Republic of China Constitution], (Mar. 14, 2004), art. 5.

I begin in Part I by introducing the rule-of-law perspective on law and order in modern Chinese culture. I discuss how the (arguably Western) tendency to approach spaces of order from such a law-centric perspective is not conducive to painting a full picture of the Chinese context. From there, I turn to the empirical data, focusing on the experiences of informal, 'illegal' or 'quasi-legal' grassroots NGOs as local governments utilize non-legal, legitimacy-centric, paternalistic norms, institutions and processes to structure local order and oversight. Part II introduces China's civil society landscape and the case study NGOs, and Part III presents findings related to their interaction with local government, largely beyond the NGO framework established by law. These findings, discussed in Part IV, demonstrate that studies of China's legal history, culture, evolution and future development benefit from attention to the underlying culturally-contingent/specific expectations and assumptions about the proper role and function of law in maintaining social order. Despite thirty years of law institution building and legal reform, central law-lauding rhetoric has only begun to penetrate China locally, and the lack of a culture of legality, as presented below, must be considered and accounted for when dealing with questions of Chinese regulation, law and policy.

II. RULE OF LAW AND LEGAL CULTURE

China's post-Cultural Revolution legal system, which had to be established from scratch following the complete dismantling of all legal processes and institutions during the 'ten year turmoil',⁷ has been pieced together in a remarkably short time. Over the past thirty years, the Chinese Party-state has been gradually but surely moving towards more law-lauding ideology, at least rhetorically, including an official policy, introduced into the PRC Constitution in the 1990s, of ruling the country in accordance with law.⁸ In this fascinating, rapidly changing, and often contradictory context, scholarship on the trajectory of China's legal system, and the role of law in this new China, abounds.⁹ The main empirical issues addressed

7 China's Great Proletarian Cultural Revolution, instituted by Chairman Mao in 1966, is commonly referred to as the 'ten year turmoil', due to the widespread economic, political and social chaos experienced during the decade of revolution.

8 *Supra* note 6, at art. 5.

9 *See, e.g.*, RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW (Cambridge Univ. Press, 2002); Karen G. Turner et al. (eds.), THE LIMITS OF THE RULE OF LAW IN

in this field include the retreat of the Party-state, the evolution of the legislature, judiciary, legal profession and administrative law regimes, and the nexus between rule of law and economic development, democracy and human rights. The 'law and order' meta-narrative is visibly played out in Party discourse, Five-year Plans,¹⁰ Constitutional evolution and the astounding pace of development of the formal legal system.

The basic distinction made in studies of the role of law in maintaining order is between rule by, and rule of, law:

*Whereas the core of rule of law is the ability of law and legal system to impose meaningful restraints on the state and individual members of the ruling elite, rule by law refers to an instrumental conception of law in which law is merely a tool to be used as the state sees fit.*¹¹

In China, the distinction has proved difficult to make empirically (which is nicely reflected in the lack of a linguistic distinction, both concepts generally translated as *fazhi*, literally 'law-ruled'). While generally scholars are in agreement that the direction of legal reform over the last three decades has been away from rule by man and towards rule by law, the extent to which rule of law is in fact emerging, and its optimal nature and role in the Chinese context, are matters of much debate in the literature.¹²

CHINA (U. of Washington Press, 2000); Eric Orts, *The Rule of Law in China*, 34 VAND. J. TRANSNATL. L. 43 (2001); Albert Chen, *Toward a Legal Enlightenment: Discussions in Contemporary China on the Rule of Law*, 17 UCLA PAC. BASIN L. J. 125 (1999-2000); Yufan Hao, *From Rule of Man to Rule of Law: An Unintended Consequence of Corruption in China in the 1990s*, 8(22) J. OF CONTEMPORARY CHINA 405 (1999); Cao Jianming, *WTO and the Rule of Law in China*, 16 TEMP. INT'L & COMP. L. J. 379 (2002); Larry Diamond, *The Rule of Law as Transition to Democracy*, 12(35) J. OF CONTEMPORARY CHINA 319 (2003); Pat K. Chew, *The Rule of Law: China's Skepticism and the Rule of People*, 20 OHIO ST. J. ON DISP. RESOL. 43 (2005); Geor Hintzen, *The Place of Law in the PRC's Culture*, 11 CULTURAL DYNAMICS 167 (1999); Zhiping Liang, *Tradition and Change: Law and Order in a Pluralist Landscape*, 11 CULTURAL DYNAMICS 215 (1999); Karen Turner, *The Criminal Body and the Body Politic: Punishments in Early China*, 11 CULTURAL DYNAMICS 237 (1999).

10 The 'Five Year Plans' of China are a series of political decisions, setting social and economic development initiatives and priorities for the PRC. The first was promulgated in 1953; a new Five Year Plan is due for the 2016-2020 period. See, e.g., Cindy Fan, *China's Eleventh Five-Year Plan*, 47(6) EURASIAN GEOGRAPHY AND ECONOMICS 708 (2006).

11 PEERENBOOM, *supra* note 9, at 8.

12 See, e.g., Teemu Ruskola, *Law Without Law, or Is "Chinese Law" an Oxymoron?*, 11(2) WILLIAM & MARY BILL OF RIGHTS J. 655 (2003).

The voluminous literature on rule by/of law in China is useful for delving into the empirical question of the nexus between law and order in Chinese society. The focus of many studies of Chinese law and order is fixed on the most visible manifestation of the working out of that nexus, namely institution-building, rhetoric and policy at the central/top level of the Party-state. Chinese and foreign scholars alike have put forward a vast array of opinions and descriptions, from conservative to liberal, on how the macro legal culture of China continues to be shaped by these winds of change blowing from Beijing and (purportedly) throughout China. The rule of law question has been asked through the lenses of globalisation, modernisation and economic development. I begin not with these meta-narratives, but instead ask what expectations, meanings and traditions relating to law and order (which I will broadly term Chinese legal sensibility) are evident at the level of local relationships between officials and citizens? Traditional and historical cultural factors in which Chinese conceptions of law and order are grounded have been discussed in depth in the literature,¹³ but tend, like the rule of law debate generally, to be examined at the level of the elite rulers and power-holders. In this article, the focus shifts from official, state-endorsed conceptions of law and order, to the experiences and expectations of citizens in society. With regard to the former, opinions diverge in the literature on whether and to what extent the Chinese polity possess a notion of law that is consistent with that required by rule of law. William Alford, for example, argues that “the principal state architects of China’s post-Cultural Revolution law reform project have a genuine ambivalence toward their undertaking”.¹⁴ Michael Dowdle, on the other hand, argues that any such ambivalence “manifests itself in practice, not conception. Normatively, the Chinese, including the leadership, are overwhelmingly consistent in proclaiming the supremacy of law over other forms of political authority and over private interests”.¹⁵ The debate would benefit from greater attention to

13 The most notable works include PEERENBOOM, *supra* note 9 and the 1999 special edition of CULTURAL DYNAMICS, with contributions from (inter alia) William Alford, Geor Hintzen, Karen Turner, Michael Dowdle, Carine Defoort and Randall Peerenboom, and Zhiping Liang. See, also, THOMAS STEPHENS, ORDER AND DISCIPLINE IN CHINA: THE SHANGHAI MIXED COURT 1911–27 (Univ. of Washington Press, 1992).

14 William Alford, *A Second Great Wall? China’s Post-Cultural Revolution Project of Legal Construction*, 11 CULTURAL DYNAMICS 193, 198 (1999).

15 Michael Dowdle, *Heretical Laments: China and the Fallacies of ‘Rule of Law’*, 11 CULTURAL DYNAMICS 287, 301 (1999).

popular legal sensibility, as manifested in civil society and its engagement with low-level officials. At this local interface between state and society, ordinary citizens and government officials bring their own traditions and histories to their engagement with the legal system and the officials who represent it.

By moving in this way from the macro to the micro, texture is added to our understanding of the ideologies and traditions in which 'law and order' concepts in China continue to be grounded today, and a contribution will also, reflexively, be made to the bigger picture themes of rule of law and legal consciousness.¹⁶ Empirical grassroots studies have potential to shed much light on the extent to which Beijing's winds of change, including the state's "verbal homage to the sanctity of law",¹⁷ are penetrating the local sphere. In fact, the local picture painted herein is one in which law is not supreme, either in practice or rhetorically, and many features of even a thin conception of rule of law are missing. However, as it will be shown, even though the 'real' rules of engagement between the case study NGOs and the state have more to do with legitimacy, connections and 'saving face' than with many of the features of even a thin conception of rule of law, the picture that emerges is not one of "lawless chaos".¹⁸ The local snapshot presented herein is one imbued with themes of paternalism, game-playing, give-and-take, suspicion and subordination. Above all, it is one of order – not, admittedly, a type of order associated with rule of law and its threshold requirements such as predictability and certainty, but order nonetheless. My aim is not an ideological defence of, or policy recommendation regarding, this local picture, but a re-examination of the law-order nexus locally and what it tells us about notions and ideas about law and order in Chinese culture and society.

This approach to 'law and order' is closely tied to 'law as culture', which seeks a more meaningful construction of law situated in its total social context. In order

16 The term 'legal consciousness' is common in socio-legal studies – for the purpose of this paper, I adopt a simple definition, namely 'ways in which ordinary people... understand and make sense of law' (Patricia Ewick and Susan Silbey, *Conformity, Contestation, and Resistance: An Account of Legal Consciousness*, 26 NEW ENG. L. REV. 731 (1991-1992), at 731.

17 PEERENBOOM, *supra* note 9, at 217.

18 Compare with Hintzen, *supra* note 9, at 169 (arguing that the picture that emerges on examining the social realities behind 'China's vociferous legal aspirations' is 'one of lawless chaos, where status, connections and money set the 'real' rules').

to investigate a culture's dominant underlying beliefs about and meanings of law, Clifford Geertz advocates a "hermeneutic tacking between two fields", broadly, culture and law, allowing light to be shed on the mutually constitutive relationship between the two.¹⁹ Law is not studied as a semi-autonomous phenomenon, but is viewed as partaking of concepts that extend across many domains of social life, and analysed as "an extremely characteristic part of the entire social fabric".²⁰ In approaching this 'law as culture' nexus in the Chinese context, a common starting point is to examine Confucian and/or Socialist traditions, and to draw a connection with the emerging legal system of the past thirty years.²¹ For example, scholars often draw attention to the Confucian emphasis on harmony, and its deeply embedded preference for *li* (rites or rituals) over *fa* (law) as the means of attaining political order. The latter is far less exalted in status and only "grudgingly accepted as a necessary evil" in the face of the failure of ritual order.²² Confucian political discourse is tied to a strong paternalistic tradition "in which the ruled are expected to defer to mother and father officials (*fumuguan*) much as children defer to their parents".²³ Paternalism, hierarchicalism, and a preference for customary or informal systems of dispute resolution are seen as hallmarks of Chinese culture, in addition to the very great importance placed by society on *guanxi* (personal networks) and *renqing* (human feelings, obligations or empathy), and particular/substantive justice over general/procedural.²⁴ The rise of Socialism in more recent history did little to interrupt the continuation of these themes, and "further called into question the normative basis of law".²⁵ Law under Mao was seen as "an instrument to strengthen a paternalistic state", and continued to be "held in low esteem as a means of achieving social order".²⁶ Geor Hintzen similarly presents three continuing and distinctive aspects of Chinese culture, namely the persistent normative force of the family model in social life; the notion of power and its consolidation in the hands of individuals rather than in institutions; and

19 CLIFFORD GEERTZ, *INTERPRETATION OF CULTURES* (Basic Books, 1973).

20 *Id.*

21 PEERENBOOM, *supra* note 9.

22 Carine Defoort and Randall Peerenboom, *Law and Order in China*, I, 11(2) *CULTURAL DYNAMICS* 131, 132 (1999).

23 PEERENBOOM, *supra* note 9, at 9.

24 PEERENBOOM, *supra* note 9, at Chapters 2 and 3.

25 Defoort and Peerenboom, *supra* note 22, at 132.

26 PEERENBOOM, *supra* note 9, at 47-48.

an 'essentialist' view of reality that leads to 'concretisation' of general policies (that is, the working out of policy implementation details after the promulgation in formal law and policy of higher-level general principles). Hintzen argues that owing to these three aspects of Chinese culture, "[formal] law cannot fulfil the same abstract, general and directly binding role as it does on the basis of western scholasticism" and in fact never did play such a role in China.²⁷

Such studies usefully demonstrate the by now well-canvassed point that if rule of law is to develop in China, it will be in a particularly Chinese context and so will have particularly Chinese characteristics. Having regard to the impact of cultural factors on the modern Chinese legal system is an imperative aspect of a meaningful depiction of law's role, whether the role is labelled 'rule by law' or 'rule of law'. However, a potential shortcoming of such a law/culture framework is that it presumes that, so long as the context is accounted for, it is possible to identify ideas, concepts and institutions comparable to those of the West, which we might term 'legal'.²⁸ With regard to the aforementioned meta-narrative of China's developing legal system, a narrative defined and coloured in recent decades by central state attention to the law and order nexus, this does not seem to be a problematic assumption. However, in looking at the *local* ideas, concepts and institutions of China, an approach is needed which allows for the possibility that a different type of ideology may also be relevant.

In this vein, Thomas Stephens, in his study of the Imperial Shanghai Mixed Court,²⁹ questions whether a law-centric framework is apposite in the traditionally disciplinarian context of China. Stephens presents two contrasting modes of social control, the "adjudicative/legal," and the "disciplinary/parental", arguing that traditional Chinese justice fits the latter mould more than the former. The Western adjudicative/legal model involves "rigid, universal, specific imperatives" applied to all equally.³⁰ In a disciplinarian system, order excludes law, and is rather characterised as "the harmony of pattern arising spontaneously from within.

27 Hintzen, *supra* note 9, at 178.

28 STEPHENS, *supra* note 13, at viii.

29 This court's mandate was to apply Chinese law to Chinese residents of a foreign enclave in Shanghai.

30 STEPHENS, *supra* note 13, at 4.

The idea of predetermined, rigid, universal imperatives governing conduct and imposing order from without is not there”.³¹ This denotes more than just paternalism, but a uniquely Chinese presentation of self, both individually and collectively, as embedded in a “group-hierarchical society” in which “right conduct consists in doing what is commanded”,³² and the emphasis is on “[o]bedience to superiors in a hierarchy of authority”.³³ Stephens argues that a disciplinary theory is necessary and appropriate when studying order in China because

*it provides an alternative framework of principles in terms of which a much more credible and convincing picture of Chinese processes of dispute resolution and the enforcement of order can be projected than any that is possible in terms of the principles, concepts, and vocabulary of familiar Western legal systems.*³⁴

Stephens’ thesis demonstrates the important, and often overlooked, point that there are different ways of thinking about order in China, some of which do not coincide with the Western underpinnings of law, legality and rule of law. Stephens’ theory is an important contribution to my theoretical framework, for while I agree with Geor Hintzen that “cultural values are of determining influence for the way law is viewed in a society”,³⁵ it is important that the question of how law is viewed is approached without constraining theoretical preconceptions.

III. CASE STUDY – GRASSROOTS ORPHANAGE NGOS

In the remainder of this article, I turn to the question of how law, order and legal culture are experienced and evidenced locally in the interactions between local officials and ‘illegal’³⁶ grassroots NGOs engaged in orphan care. Through in-depth interviews and participant observation, I gathered data from a particular field of grassroots NGO activity, namely the care of orphaned and abandoned children. What follows is an introduction to the landscape of Chinese NGOs

31 *Id.* at 8.

32 *Id.* at 18.

33 *Id.* at 5.

34 *Id.* at xii.

35 *Id.* at 167.

36 Terms such as ‘legal’ and ‘illegal’ are definitionally problematic in the current context, where the laws and rules relating to unregistered orphanages are ambiguous. The term ‘illegal NGO’ is used as a shorthand which includes quasi- or non-legal organizations, as discussed further below.

generally and non-government orphanages more specifically, and the grassroots orphanages which comprise the case studies for this research project.

1. China's Civil Society Landscape

The concept of a non-governmental organization is, in China, loaded with meanings not necessarily apparent or obvious to outside observers. The literal translation of 'non-governmental organization' is *feizhengfuzuzhi*, which can also be taken to mean 'anti-government organization' (*fei* meaning both 'non' and 'anti'), a linguistic nuance which aptly reflects the perceived tension between the emergence of civil society organizations and the preservation of China's communist political ideology. Through the promulgation, beginning in 1989 with the regulations on 'Social Organisations' (*shehui tuanti*), of a number of new laws relating to charities and NGOs, the Chinese government has evinced its concern with maintaining tight control over the newly emerging state-society relationship,³⁷ and both domestic and foreign NGOs continue to face significant practical obstacles to achieving recognized legal status despite a clear framework providing for their registration. In fact, given the tight control maintained by government over NGOs, whether 'civil society' can be said to have emerged in China is debatable. Chinese NGOs operate on a spectrum of autonomy from state bureaucracy, with government-organised NGOs functioning at one end of the spectrum and grassroots NGOs at the other. Government-organised NGOs (GONGOs, also known as officially organised/top-down NGOs, as compared to popular/bottom-up NGOs) are "citizen-led efforts from organisations that are nominally independent, but in fact are often established by and retain close ties with the state".³⁸ A great deal of 'cascading' oversight of bottom-up NGOs occurs using top-down NGOs as intermediaries. The demarcation and isolation of 'state' from 'society' is thus particularly problematic in China, where so many 'social' organisations are in fact a creation of the state.

37 Qiusha Ma, *The Governance of NGOs in China since 1978: How Much Autonomy?*, 31 NONPROFIT AND VOLUNTARY SECTOR Q. 306 (2002). See also Jillian Ashley and Pengyu He, *Opening One Eye and Closing the Other: The Legal and Regulatory Environment for "Grassroots" NGOs in China Today*, 26 BOSTON UNIVERSITY INTERNATIONAL LAW JOURNAL 29 (2008); Tony Saich, *Negotiating the State: The Development of Social Organisations in China*, 161 CHINA Q. 124 (2000), in relation to Social Organisations in particular.

38 Ashley and He, *supra* note 37, at 32.

It remains the case that most NGOs in China today, and the majority of the interviewees for the current study, are not registered with the relevant government department (Ministry of Civil Affairs, hereafter 'MCA'), and can be described as unofficial, grassroots NGOs (*caogenzuzhi*). According to the MCA, at the end of 2008 there were approximately 415,000 registered NGOs in China,³⁹ most of which are widely assumed to be GONGOs. In interview, one provincial Charity Federation Director told me that the numbers of unregistered charities in China are 'comparatively low'.⁴⁰ However, it is commonly estimated that there are between two and eight million NGOs in China, meaning the vast majority are operating outside of the formal legal structure.⁴¹

2. Orphanage Grassroots NGOs: History and Operations

The grassroots NGOs interviewed for the current study all care for orphaned and abandoned children. Since the Cultural Revolution, during which time foreign mission workers were ejected from the country and private orphanages either closed or appropriated by the state, presumptively only government organisations have the right to operate orphanages or foster homes in China. Today, however, there are a large number of non-government orphanages and homes caring for children across China.⁴² These organisations constitute an alternative, parallel and

39 CHINA NPO WEBSITE, <http://www.chinanpo.gov.cn/web/listTitle.do?dictionaryid=2201> (last visited Nov. 30, 2009). According to Ashley and He (*supra* note 37, at 41), these figures represent a significant number of new registrations since 2006, when there were 186,000 Social Organizations, 159,000 Private Non-Enterprise Units (PNEUs) and 1,138 Foundations [these are the three types of registered civil society-type entities available under the Chinese NGO framework].

40 Interview with Xi Jieming, Director, Shandong Charity Federation, in Jinan, China (Sep. 21, 2009).

41 Interview with Madam Leng, founder and director of Star Village, in Beijing, China (Aug. 9, 2010) - estimates between 2 and 7 million actual NGOs in existence; Interview with Father Thomas, founder of Chinese orphanage support organization Wagner Foundation, in Beijing, (Aug. 11, 2010) - estimates between 6 and 8 million non-registered or commercially-registered NGOs.

42 The surveyed sector includes both Chinese-run orphanages, caring for children directly surrendered into their care, and foster homes, most of which are run by foreigners, caring for children fostered from state institutions for short or long term treatment and guardianship. This article focuses solely on the former; see Anna High, *China's Orphan Welfare System: Laws, Policies and Filled Gaps* 8 U. OF PENNSYLVANIA EAST ASIA L. REV. 126 (2013)] for an overview of both types.

often unacknowledged system of care to the state-operated welfare institutions, which care for only a small fraction of China's orphans.⁴³

There are no official estimates on the number of unregistered private orphanages in China. Many are associated with the underground Catholic church; many have experienced disapproval and harassment from local officials due to the nature of their work. All of my seven primary case study orphanages (introduced below) were able to list at least three or four other private orphanages in their respective provinces of which they were aware, despite the fact that networks of mutual support among the homes appeared weak to non-existent. My informants also included two Western individuals, Father Thomas and Charles Kramer, who represent organisations involved with advocacy and support of Catholic private orphanages across China – both estimate there are hundreds of orphanages run by Catholics alone across China. It is clear from my fieldwork that informal orphanage operations are abundant in the provinces visited, as actual or perceived gaps in the state's provision of welfare result in efforts to supplement the formal system with bottom-up, local initiatives. Such private orphanages are very often founded out of necessity following the discovery of one or more abandoned children in a particular region. This is particularly typical of church-run orphanages – it is very common for abandoning parents to leave their children near church buildings, or for children found in public spaces such as bus stops or by the roadside to be brought by those who find them to known Christians in the area, in the absence of state-provided alternatives. Over time, large numbers of foundlings come to be cared for by overwhelmed parishioners, before being brought together under the supervision of church leaders for central care. Other orphanages are established as a planned response to a perceived need in one's community, becoming, over time and as word spreads, regular recipients of abandoned children.

43 According to Chinese government statistics, as of 2006 there were 573 000 orphaned children in China, of which 66 000 are in the care of state welfare institutes (*Guanyu yijiaqinggu'erjiuzhugongzuo de yijian* [Joint Ministerial Opinion on Strengthening Orphan Relief], Ministry of Civil Affairs et al. 2006). It may be that the total number of orphans is under-reported, given that many orphaned and abandoned children, including those resident in most of the private orphanages interviewed, do not possess *hukou* [residency permits] and are thus unlikely to be included in official statistics.

There appear to be a number of reasons why the children at private orphanages do not end up being cared for in the state welfare system. Many rural areas are prohibitively distant from the nearest state orphanage, most of which are in urban locations, and theoretically only service urban populations. One of the case study orphanages, Star Village, cares for children of prisoners, who are, in any case, not eligible for upkeep in welfare institutes. Dr Shang, the leading scholar on China's vulnerable children, notes that while "theoretically, the state is the sole welfare provider to vulnerable children in China", at the same time "state policy in rural areas is not to take direct responsibility for supporting [vulnerable] children" where, again theoretically, such children are cared for by "traditional family and kinship networks, and *wubao*".⁴⁴ The actual experience in rural areas, however, does not always marry to the theory of central policies. Dr Shang explains that although many rural orphaned children are protected by *wubao*, there are a number of deficiencies in the system that render it often ineffectual and inadequate as a means of care provision.⁴⁵ Kinship and *wubao* networks are proving inadequate to protect rural vulnerable children; in the absence of state institutions, grassroots private orphanages have therefore evolved to address in part such inadequacies.⁴⁶

3. Methodology and Data

This research project is the culmination of numerous trips to various foster homes and orphanages in China carried out between 2005 and 2010. Using those homes as a starting point of contact, the subjects of study were approached

44 Xiaoyuan Shang, Xiaoming Wu and Haiyan Li, *Social Policy, Social Gender and the Problem of Infant Abandonment in China*, YOUTH STUDIES 4, 126 (2005). *Nongcunwubao* or the 'Five Guarantees' is a 'rural community-based welfare system that provides the five guarantees of free food, clothes, fuel, health services, and education or funeral arrangements as appropriate for the elderly, sick and disabled as well as for orphans who are not only unable to look after themselves but also have no one legally responsible for their welfare: Xiaoyuan Shang, *Looking for a Better Way to Care for Children: Cooperation between the State and Civil Society in China*, 76(2) SOCIAL SERVICE REVIEW 203, 206 (2002).

45 Xiaoyuan Shang, Xiaoming Wu and Yue Wu, *Welfare Provision for Vulnerable Children: The Missing Role of the State*, THE CHINA QUARTERLY 122 (2005).

46 Further, a number of my informants believe that even where a state orphanage is within reach of an abandoning parent, some are reluctant to leave their children at such institutions due to a fear of being caught by the state and sanctioned for the crime of abandonment.

based on personal introductions. This eventually led to contacts with Chinese-run orphanages.⁴⁷ The bulk of my data was gathered on two research trips, in 2009 and 2010.⁴⁸ The seven case study orphanages which informed the current article are introduced in the table below.

<i>Pseudonym</i>	<i>Location*</i>	<i>Description</i>	<i>Children</i>
Guanghui	Beijing/Hebei	Catholic church-run private orphanage	90
Our Lady's	Beijing/Hebei	Catholic church-run private orphanage	113
Good Shepherd	Shanxi	Catholic church-run private orphanage (closed in 2008)	40
Home of Joy	Shanxi	Church-run private orphanage	75
Rainbow House	Beijing/Hebei	Previously church-run private orphanage, now recognized by MCA as official provider in area	79
Star Village	Beijing/Hebei	Part of national network of homes caring for children of long-term prisoners	130
Chen Anhui	Anhui	Individual-run private orphanage	200

Following interviews with representatives of various private orphanages in 2009, in 2010 I spent several weeks each at Guanghui and Our Lady's Home for the Handicapped, both of which are homes for orphans and foundlings run by nuns of the unofficial Catholic church, in order to better understand day-to-day life and the experiences of resident children and sisters. In addition, in-depth interviews were carried out, on both field trips, with representatives of five other Chinese-run private orphanages. Home of Joy, Rainbow House and Good Shepherd Home are also associated with underground churches, although Good Shepherd is no longer in operation as its managers recently moved to Beijing to pursue a foster home model. Rainbow House, located in a town very near to Guanghui, is an

47 Private Chinese orphanages, and particularly those associated with underground churches, are, for reasons explored below, very often wary of associations which could attract the attention of local authorities, making access difficult, and largely dependent on *guanxi* (relationships, connections) with trusted, long-standing friends of the orphanage concerned.

48 See Appendix A for list of interviews.

important case study, as the orphanage has succeeded in establishing a partnership with the MCA, following years of independent, unsupervised operations. The remaining homes are not connected with religious communities – Star Village is a home for the children of long-term prisoners, and its founder, Madam Leng, has actively sought government support and cooperation for many years since its founding; Chen Anhui is an independent orphanage, supported by a network of expatriate volunteers.

IV. FINDINGS – GOVERNMENT REGULATION OF THE SECTOR

Most Chinese private orphanages operate without formal registration as charitable organisations or welfare homes, often without legal status and without any kind of formal state regulation or oversight. Further, they are operating in a field (privately-run, unregistered institutions for orphans) the legality of which is ambiguous at best. Dr Shang in *Welfare Provision for Vulnerable Children* cites central policy as stipulating that only state-run welfare institutes may lawfully care for orphaned and abandoned children in China, based on an interview with an official from the Ministry of Civil Affairs.⁴⁹ It is somewhat problematic to make such a broad statement – ‘government’ is a cumbersome entity in China that does not always present a unified front. However, certainly the evidence of both Chinese and foreign informants was that local and provincial level officials frequently refer to their operations as ‘illegal’ or ‘not allowed’, usually on the basis of an assertion that only the government can care for Chinese orphans.⁵⁰

An apparent dilemma thus arises. It is beyond the capability of local governments to take over the responsibility of caring for the children currently housed in private orphanages. However, the existence of such homes is legally and, at times, politically problematic. The passive approach of local government is to ignore the formal legal rules and allow private orphanages to play a role, often significant, in child welfare. Despite their lack of legal status, complex transactional relationships exist between local government and the operators of private orphanages, and the expectations of such operators appear to be met

49 *Supra* note 45, at 122.

50 For a more comprehensive review of statutory references to the care of orphans, see [forthcoming UPenn EALR article – Fall 2012].

fairly regularly, as legal rules are marginalised in favour of informal norms and processes. A combination of government oversight and back-turning exists in this regulatory space, widely spoken of in China as the 'one eye open, one eye closed' approach.

Before presenting the empirical evidence relating to government interaction with the Chinese private orphanages, the unwieldy and layered character of Chinese government must be noted, as well as the fact that 'government' is itself a contentious and ill-defined notion due to the nature of its bureaucracy, and due to the blurred state/society boundary that the GONGO system entails. 'Government' in China is an exceptionally cumbersome entity, with vast internal political space. Vertically, such space often results in *de facto* devolution of central powers to provincial and local levels, with great variance in implementation of central policies, including, notably, in relation to regulation of the NGO sector (birth planning policy implementation is another pertinent example).⁵¹ Horizontally, the potential for inconsistency and confusion in relation to policy and responsibilities among departments and bureaus is great, and the effect of this confusion at the level of implementation is compounded by the power of central departments and Party offices to issue circulars with equivalent or superior status to codified laws.⁵² In light of such multidimensional space, it is overly reductionist to construct 'the state' or 'government' as a monolithic and homogeneous entity. Accordingly, it may be difficult to draw inferences about 'government' attitudes and intentions. In presenting evidence of discrepancies between law and practice, and the different experiences of the case studies in their interaction with state officials, account must be taken of this cumbersome nature of government in China and the concomitant potential for disconnect and confusion between different levels of government.

51 See KAY JOHNSON, *WANTING A DAUGHTER, NEEDING A SON* (Yeong & Yeong Book Co. 2004), at 163 (noting how fierce resistance to central birth planning policy at local level led to marked differences in implementation); and Haiyan Li, Xiaoyuan Shang and Jianpeng Cheng, *An Analysis of Reasons Behind the Abandonment of Orphans and Disabled Children in Beijing* (*Beijingshi Gucun Ertong Bei Yiqi De Yuanyin Fenxi*), *BEIJING SOCIAL SCIENCES* 4, 154–155 (2004).

52 See CHAK KWAN CHAN, KING LUN NGOK AND DAVID PHILLIPS, *SOCIAL POLICY IN CHINA: DEVELOPMENT AND WELL-BEING* (The Policy Press: Bristol, 2008) at 9; Xiaorong Li, *License to Coerce: Violence Against Women, State Responsibility, and Legal Failures in China's Family-Planning Program*, 8 *YALE JOURNAL OF LAW AND FEMINISM* 145, 150 (1996).

Turning to the nature of interactions between orphanages and government officials in particular, one must keep in mind the different priorities and preoccupations which dominate the different vertical layers of state institutions, as well as the different political cultures which operate in different localities across China. For example, Will Peters, an American businessman who founded a grassroots foster home for Chinese orphans, and has worked extensively with Catholic orphanages for many years, postulated that the overarching priority of central government is ‘the extent to which they complete the theoretical plan – their laws, regulations and policies, even though they are kind of a construct’.⁵³ It is arguable, and supported by the empirical findings about the nature of private orphanage relationships with officials and departments, that the central government is generally more concerned with appearances, and the symbolism of a legal/regulatory landscape which ostensibly confines the care of orphans to state orphanages. We might speculate that such a concern with an appearance of control over orphanages relates to the potentially high political cost, in terms of the legitimacy of birth planning policies, that would be involved in acknowledging activities broadly associated with the problem of infant abandonment, such as private care of foundlings, or admitting that the problem is of such a scale that private homes are apparently needed to supplement state welfare.⁵⁴ The rhetoric of central control over all church and NGO activities would also appear to be in need of protection. Local officials, on the other hand, seem to be negotiating a delicate balance between on the one hand the top-down pressure to maintain at least the appearance of compliance with formal law and policy, and commitment to the ideas they symbolise, and on the other hand the bottom-up pressure of pragmatic considerations.⁵⁵ The evidence from the field is that there is a broad correlation between formal registration (*dengji/zhuce*) of private orphanages and engagement with provincial/central level authorities; whereas informal recognition

53 Interview with China Orphan Relief founder/CEO, in Beijing, (Aug. 25 2009).

54 The existence of private orphanages is seen by many in the field as a partial testament to the true extent of abandonment in China, a phenomenon the Chinese government has a vested interest in underemphasising due to its nexus with China’s controversial birth planning policies.

55 For an excellent sociological account of the resultant “symbiosis” between the state and grassroots NGOs, see Anthony Spires, *Contingent Symbiosis and Civil Society in an Authoritarian State: Understanding the Survival of China’s Grassroots NGOs*, 117(1) AMERICAN J. OF SOCIOLOGY 1 (2011).

(*chengren/renke*) and oversight (which encompasses a spectrum of relations from supportive to hostile, including shutting homes down or heavily impinging their ability to continue functioning) occurs at the local level. The discussion below is arranged accordingly.

1. Attitudes to Legality: Ideological and Functional

The recognition/registration distinction was prominent in the discourse of orphanage operators. It became apparent early on in the field that a legal/illegal distinction is very rarely drawn in the language used by interviewees, meaning that the legal/illegal binary presupposed by many studies of China's law/practice gaps is not entirely apposite in the local Chinese context. Questions about whether private orphanage work is regarded by those in the field as '*hefa*' (compliant with law), '*feifa*' (contrary to law) or having no relation to law would almost always elicit discussions about the various ways, formal and informal, in which government is willing to engage with the private orphanages. This appeared indicative of a general lack of preoccupation with 'legality' in either an empirical or ideological sense, and was a notable point of contrast with foreign interviewees, who seemed on the whole more articulate on the issue of legality of non-government orphanage work. Indeed 'legality' is, empirically, a difficult notion to pin down in this area of activity, and, given the vague state of the legislative framework relating to Chinese NGOs, is much more problematic to define here than is often the case in many Western⁵⁶ contexts.

Ideologically, there was a far greater emphasis observable in the field (which is mirrored in the scholarship of Chinese NGO specialists),⁵⁷ on the attainment of legitimacy than legality. Legitimacy is defined by Gao Bingzhong, an influential Chinese NGO scholar, as "being recognised or accepted because of being judged

56 In using terms such as 'Western' and 'Chinese', I am in agreement with Diane Hoffman and Guoping Zhao, who argue that such usage can lead to "unwarranted generalization, leading to monolithic comparisons that erase internal differences", but that they might nevertheless be carefully used as 'heuristic devices to illustrate broad cultural contrasts' (Diane Hoffman and Guoping Zhao, *Global Convergence and Divergence in Childhood Ideologies and the Marginalization of Children*, in *EDUCATION AND SOCIAL INEQUALITY IN THE GLOBAL CULTURE* 3, 3 (Joseph Zajda, Karen Biraimah and William Gaudelli eds., 2008).

57 *NGOS IN CHINA AND EUROPE*, ch. 2–7 (Yuwen Li ed., Ashgate, 2011).

or believed to be in conformity with certain rules". This definition accords with Suchman's, widely adopted in Western organisational theory scholarship: "Legitimacy is a generalised perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions".⁵⁸ Of course, semantically and conceptually the concepts of legitimacy and legality are closely related, with the former often being used in a particular sense to mean 'conformable to law' (the more general sense being 'conformable to rules or standards') – this is also the case when one considers the Chinese terms for legitimacy, *beli* and *hefa*, literally 'complying with truth/reason' and 'complying with law' respectively. However while compliance with legal rules is one aspect of legitimacy, as will be explored herein, I argue that legality (or what we might call 'legal legitimacy') is not of central importance vis-à-vis grassroots Chinese NGOs. It is thus useful to consider other aspects of legitimacy that may not be contingent on or related to an organisation's legal status. In this vein, Gao helpfully deconstructs legitimacy into four aspects: political legitimacy, social legitimacy, administrative legitimacy and legal legitimacy.⁵⁹ Political legitimacy depends on the political correctness of an organisation's agenda and actions. Social legitimacy refers to congruence with the expectations and norms of society, and accordingly being recognized and accepted socially. Administrative legitimacy involves being recognised and accepted by a bureaucratic system, while legal legitimacy denotes recognition and formalisation through legal institutions (such as, for example, legislation relating to NGO registration). These are influential interpretive concepts in Chinese NGO literature, which raises the question of how much value is placed on the various

58 Mark Suchman, *Managing Legitimacy: Strategic and Institutional Approaches*, 20(3) ACADEMY OF MANAGEMENT REVIEW 571, 574 (1995).

59 Bingzhong Gao, *The Question of Legitimacy of Social Organisations*, CHINA SOCIAL SCIENCES 2 (2000), translated in Junkui Han, *International NGOs in China: Current Situation, Impacts and Response of the Chinese Government*, in *NGOS IN CHINA AND EUROPE*, 35 (Yuwen Li ed., Ashgate, 2011). Organisational theory literature includes numerous different 'legitimacy typologies', such as resource/moral/cultural (David Ahlstrom and Gary Bruton, *Learning from Successful Local Private Firms in China: Establishing Legitimacy*, 15(4) THE ACADEMY OF MANAGEMENT EXECUTIVE 72, (2001)) and pragmatic/moral/cognitive (Suchman, *supra* note 58). While organisational and business management scholarship has some relevance to NGO studies, and recognizing the overlap of other legitimacy 'types' with Gao's four categories of legitimacy, Gao's model is adopted herein due to its proven aptness vis-à-vis the study of Chinese NGOs.

facets of legitimacy, including but not limited to legal legitimacy (or legality), by the various actors, both state and non-state, at the level of grassroots NGO activity.

The idea of legality as a source of enhanced legitimacy deriving from some measure of formal, documented interaction with and approval from state authorities was lacking among Chinese interviewees in the sector; that is to say, legal legitimacy was not considered a necessary aspect of or precondition to attaining political, social or administrative legitimacy. On the other hand, many interviewees would raise the higher normative force of a felt moral calling to care for orphans, when the legality of their work was discussed – for example: “Home of Joy is completely faith-based – we operate strongly based on what we believe in. We want to do what is best for the kids, we’re not necessarily trying to get around the system”.⁶⁰ This perhaps indicates that legality is not wholly a matter of no concern, but rather is subordinated to this more pressing consideration. None of the interviewees appeared to regard their work as illegal, although all acknowledged their lack of registration, and, in many cases, recognition, and were unwilling to state equivocally that their work is approved or permitted:

I don't think they think about themselves as illegal. They are doing something because the government has not arrived to do it themselves. Society has this need, so somebody has to take over the care of the abandoned children, and this was not being done by government. Sure, the government says that only the state can care for orphans. But caring for people is not illegal.⁶¹

[Sister Qin, founder, when asked if Guanghui's work is legal] So it is contradictory...we hope the Chinese government can soon replace this thought towards this group of people, we hope they can really understand that we are rescuing children...We hope that the laws will improve and strengthen more and more. Their law says this – that orphanages are government's responsibility, but implementation is at the grassroots.⁶²

[Madam Meng, founder of Huiling Disability Services, on unregistered NGOs generally] It's like the red/green/yellow of traffic lights. We're in the yellow light zone.⁶³

60 Interview with volunteer coordinator of Home of Joy, in Shanghai, (Oct. 13, 2009).

61 Interview with Guanghui project manager, in Hebei, (Jul. 9, 2010).

62 Interview with Sister Qing, manager/co-founder of Guanghui, in Hebei, (Jul. 13, 2010).

63 Interview with Madam Meng, Huiling, in Beijing, (Aug. 5, 2010).

When the issue was framed in terms of relationships with state officials, on the other hand, there was evidence that all interviewees had contemplated the functional and instrumental consequences of legality/legal status or lack thereof, both advantageous and otherwise. Broadly, the three main areas in which increased government engagement with the private orphanages could potentially lead to changes in operational outcomes are funding, the problem of *hukou* [residency permits] for children of unknown parentage, and the regulation of standards of care. The language used by interviewees is most telling here – generally, the idea of *recognition* of their work (*chengren*) was spoken of as desirable; *registration* in a formal/legal sense (*dengji*/注册) generally was not, and questions about the latter were often treated as referring to the former. The preoccupation with recognition seemed to equate with a desire for acknowledgement of the charitable, benevolent and philanthropic intentions of the homes, the hard work of the volunteers who staff them, and the general legitimacy of their work despite a lack of ‘papers’ or formal association with government. More specifically, most operators expressed a belief that recognition by local authorities would lead to better financial support, and assistance in resolution of the *hukou* issue. ‘Registration’, on the other hand, seemed to be tied up with historically problematic relations with ‘authority’ and ‘government’, as explained by two foreigners with many years’ experience with the Catholic orphanages:

*The sisters are not used to dealing with the people of government. History tells them that always they were abused by government [as Christians]. I tell them, but you are doing social work – you are taking care of children. You have to be stronger with them! You have to ask them for help. But they are afraid to go to the government, afraid to go to the [GONGO] Disability Federation – they’re afraid to knock on doors. This story, this history, is on their shoulders. They’re so afraid.*⁶⁴

*Government is an enemy, because of their control of religion, rather than a partner in their provision of services. They’re not looking to engage with government. Leave me alone. You have nothing to give me except trouble...From a church point of view, there’s no going to the government asking for engagement. It’s more ‘We’ve identified a need, we will get on with it and it won’t involve the government’.*⁶⁵

64 Interview with visiting Italian physiotherapist, Guanghui, in Hebei, (Jul. 10, 2010).

65 Interview with Father Thomas, Wagner Foundation, in Beijing, (Aug. 11, 2010).

With two exceptions, the interviewees were noticeably unconcerned with their lack of legal status, other than insofar as it has an impact on the *hukou* and funding issues raised below – this ambivalence is exemplified in the following quote from Sister Chen at Our Lady's:

*Ah, being unregistered...it's not like they will say 'you're unregistered so we are going to trouble you'...it's just that sometimes, I feel that the children do not enjoy the rights they should enjoy, it seems like they are lacking a little.*⁶⁶

Moreover, the language used by many of those homes indicated that increased government oversight is associated with the imposition of external, hard-to-meet standards, a disincentive to seeking legality. Father Thomas, speaking of unsupervised Catholic orphanages generally, explained that legality is viewed as unbeneficial because “[i]t would just be *māfan* [trouble]. It would give poor managers more trouble. I don't see how it would be onerous for good managers, though”. Home of Joy, for example, expressed concern about whether ‘legalisation’ would be in their best interests, as that would mean many state regulations would become applicable. Others similarly expressed concern that ‘legalisation’ could in fact hinder their ability to carry out their work free from government interference and regulation – “Operating unregistered works well for us – if we were regulated, we couldn't do what is needed on the ground. We want to make things happen”.⁶⁷ The only time interviewees expressed concern about the lack of standards of care in their field of activity was, on occasion, in relation to other homes.

Only two of the homes, Star Village and Guanghui, expressed frustration regarding their inability to attain registration. Given that the other homes perceived a connection between registration and the imposition of external standards, it is relevant that both Star Village and Guanghui also expressed greater confidence in their standards of care and transparency of operations. Star Village referred to this as a ‘self-discipline’ issue – given the organisational and administrative capacity of this national movement, it is unsurprising that they did not believe registration would greatly impact on their work (other than perhaps by enhancing their social legitimacy, and thus assisting with community fundraising efforts).

66 Interview with Sister Chen, co-founder of Our Lady's, in Hebei, (Jul. 21, 2010).

67 Interview with volunteer coordinator, Chen Anhui, in Shanghai, (Oct. 4, 2009).

2. Central and Provincial Regulation (Formal)

'Our government, they won't acknowledge us. We go and knock on doors, but not a single department will act for us. They will not pay us any attention. They say it would give them too much trouble'.⁶⁸

Dr Shang uses Guanghui as an example of the difficulties faced by Chinese-run private orphanages in achieving formal registration. Although established in 1988, it was not until 1994 that an incoming director decided to address Guanghui's lack of legal status (and the attendant lack of *hukou* for resident children – below) by seeking registration:

Since 1994, Nun Qin has written more than 70 letters to several government departments: civil affairs (minzheng), religion (zongjiao), united front (tong zhang), public security (gongan), political consultative conference (zhengxie) and people's congresses (renda), at different levels. Most departments were friendly and sympathetic to her efforts. However, for various reasons, none of them had the power to give the home a formal registration within the current legal framework, which stipulates that only government organisations have the right to run children's homes and that it is illegal for private individuals and organisations to run such facilities. Children cared for by [Guanghui] have to grow up without formal registration. The oldest 'child' in the home is now 20, but he still cannot obtain a formal registration (hukou). Nun Qin has also tried to argue with the local civil affairs department that if it cannot give her home legal status, the government should take over the home and look after the children. This suggestion was ignored. Although both the local government and the church know that [Guanghui] has no legal status, the local government has no intention of closing it or taking over its administration. To assume responsibility the local government would have to provide caring services to 87 disabled children.⁶⁹

Although the practical ramifications of operating as a non-entity are significant, among the seven Chinese private orphanages interviewed, five have no recognised legal personality in China. Father Thomas and Charles Kramer, familiar with the majority of church-based orphanages in Eastern China, both report that none of which they know have been able to attain registration. Only Rainbow House and Star Village have any formal legal status in China, and of the remaining homes, only Guanghui has actively sought registration, which is

68 Interview with Sister Qin, manager/co-founder, Guanghui, in Hebei, (Jul. 13, 2010).

69 Shang, Wu and Wu, *supra* note 45, at 131.

reflective of the generally ambivalent attitude to 'legality' observed in the sector. In none of the cases was government approval sought as a precursor to beginning orphanage operations. Rather, attention to formal permission and sanction of operations, if given, was always an afterthought, often given only after years of operation demonstrated the practical shortcomings of working outside of the state welfare system. Star Village, which has all but given up on NGO registration and is instead registered as a commercial enterprise, indicated that it was only after many years of operating as a non-entity that they turned their attention to 'legalising' operations by obtaining some sort of official status in China; Rainbow House, similarly, struck up a partnership with government after two years of operating as a non-entity.

Central policy on the establishment of private orphanages is, as introduced above, ambiguous at best, and complicated in the case of church-based orphanages, where in many cases the legal status of the associated church is itself questionable.⁷⁰ Dr Shang's statement that only state-run institutions may lawfully care for abandoned and orphaned children in China must be qualified, in light of the Social Welfare Institutions Interim Measures,⁷¹ which appear to provide a mechanism for privately-run orphanages to be established on condition of being granted a 'certificate of approval'.⁷² Further, given the lack of a definitive, express prohibition on caring for orphans privately, it would appear that a second pathway

70 A large number of Chinese private orphanages are run by the Catholic church, which experienced decades of persecution and suppression under Mao's rule following the founding of the PRC. The Vatican, during this time, called for the faithful in China to resist cooperation with the newly established Chinese Catholic Patriotic Association (the only state-approved meeting of Catholics, and the leaders of which denounced the Vatican), meeting in unapproved congregations in houses across China. In this way, the 'underground' Catholic church evolved. The public/underground distinction which originated during Mao's rule continues today, although in a blurrier manner, and is mirrored in the Protestant church system. *See, further*, RICHARD MADSEN, CHINA'S CATHOLICS: TRAGEDY AND HOPE IN AN EMERGING CIVIL SOCIETY (U. of California Press, 1998); Fenggang Yang, *The Red, Black and Grey Markets of Religion in China*, 47 THE SOCIOLOGICAL Q. 93 (2006).

71 *Shehui fulijigouguanlizhanxingbanfa* [Social Welfare Institutions Interim Measures], Ministry of Civil Affairs, (Dec. 30, 1999).

72 *Id.* art. IX, although it is difficult to state definitively whether, on obtaining a certificate of approval under the Measures, the home is then still considered to be independent, or effectively becomes appropriated into the state system, as the experience of Rainbow House demonstrates (below).

to formal recognition for Chinese operators exists, namely that of registering as a Private Non-Enterprise Unit (PNEU).⁷³ However, for the time being, registration following either pathway is not a realistic option for most private orphanages, with the obstacles to both types of formal approval being closely related. The first and most immediate barrier is that of securing the cooperation and assistance of a government department. At some point, an applicant orphanage must obtain the agreement of a government department to act as a professional supervising unit (PSU – colloquially known as a *‘popo’* or mother-in-law) and to take on political, as well as some degree of financial, responsibility for the actions and work of the orphanage in question. This has proved impossible for many private orphanages, due to their lack of political capital and financial resources. Secondly, in addition to the PSU/supervising department problem, both the Social Welfare Institutions Interim Measures, and the PNEU Regulation, include what in practice amount to minimum capital requirements which must be met.⁷⁴ Other than Rainbow House, which appears to enjoy relative financial stability through private donors, none of the interviewed orphanages are able to meet the financial criteria. A third barrier to registration is the lack of administrative capacity to comply with the procedures and conditions – indeed, many of the orphanages were unaware of official processes for registration, let alone of how they might go about an application (this is unsurprising given both the ambiguity of government policy in the sector, and the administrative isolation of the rural homes themselves). This last point is also made by Saich in relation to Social Organisations, noting that bottom-up initiatives by “poorer sectors of society” are hampered by the NGO laws, which make registration “difficult for those groups that lack good connections and a relatively sophisticated organisational apparatus”.⁷⁵

Although Rainbow’s manager, Mrs Moses, was unclear about under which state policy or measure their approval was granted, given that the relationship is with the MCA, it is likely that it was formalised according to the Social Welfare Institutions Interim Measures or a related implementing/subordinate regulation. This has led to their registration (*zhuce*), something none of the other homes have

73 *Supra* note 39. PNEU are defined as social organizations carrying out social service activities of a non-profit nature: *Minbanfeiqiyedanweidengjiguanlizhixingtiaoli* [Provisional Regulation on Registration and Management of Private Non-Enterprise Units], (Sep. 25, 1998), art. 2.

74 *Supra*, note 71, art VII; and *supra*, note 73, art 8.

75 Saich, *supra* note 37, at 132.

been offered or able to achieve. Mrs Moses relates the evolution of her orphanage's ties with government as eventually progressing from a relationship of suspicion and wariness, to one of support and trust:

It is run by the church, but we have received very official government approval and recognition. They saw our good work, the rescue effort, that we help so many children, and our good operations, and now our relationship with the government is especially good...

...At first, the government did not understand our work, because it was a Christian orphanage. So they had opinions about this, and were always calling on us [to ask questions], and when we started up it was very difficult, there was a lot of misunderstanding. It was very difficult to do our work in the face of this opposition. As a new orphanage, you couldn't yet see our achievements, we only had a few children. But slowly they came to feel that we were caring for the children very well. Step by step, they began to see that our work was of high quality, that we were helping to transform the children's lives, and so over time, the relationship improved. They currently are very supportive of us caring for even more children at the orphanage. They [local authorities] do not have any way of rescuing these stray children, they can only rely on our home. And they see that if these children were outside of our home, living as strays, this would be a very big problem for the community. Currently [our city] only has our orphanage, there is no government orphanage, so they support us a lot – the Public Security Bureau, the Civil Affairs Bureau, the government officials, they are all extremely supportive, and hope we can continue to help even more children.

Government support of Rainbow House appears to be limited in practice. Financially, government grants are nominal, and cover the living costs of roughly one child per year. However a number of important local officials provide private donations to Rainbow House, and photos of such officials posing with the children they sponsor are displayed prominently in Rainbow House's foyer. This is a telling indication of the most valuable aspect of Rainbow House's ties with government, the security and social capital/practical advantages the home derives from its personal relationships or *guanxi* with local authority figures, and their public endorsement of the home's work. Mrs Moses spoke proudly of the visits Rainbow House receives from such officials, and the strings they will pull for the home (for example, calling local schools to ensure the children are admitted). The other major advantage of state approval is that the home itself has a *hukou* or household registration, and thus is itself, in effect, a legal entity. This means that when children arrive at Rainbow without *hukou*, they can be registered with the Bureau of Household Registration under the home's *hukou*.

Star Village, the home for children of prisoners (which is not affiliated with a church), has applied annually for fourteen years to its provincial MCA for registration as a charity, but has been unable to find a PSU willing to support its application. Guanghui faces the same obstacle, and Sister Qin, its manager, also expressed frustration and resignation at the government's unwillingness to act as PSU:

We have been to them many times about this, but they just think it is too much trouble – they don't want to supervise us. So we are caring for so many children, and every day we have to contend with so many issues, and we just don't have the energy any more.⁷⁶

The solution at Star Village has been to register as a commercial entity, something which is clearly incongruous but reportedly a very common creative alternative to achieving an operating structure conducive to the needs of a charitable organization. In 2005, for example, the Tsinghua University NGO Research Centre estimated there were between 100 000 and 200 000 NGOs registered with the various State Administration of Industry and Commerce (SAIC) bureaus nationwide.⁷⁷ Anecdotally, the Chinese government is well aware of the trend, and some interviewees consider commercial registration an advantage not only for practical reasons relating to banking, visas and finance, but also because business is 'a language the Chinese understand',⁷⁸ the implication being that philanthropy and charity is still widely regarded with suspicion in Chinese society. Commercial registration is often more convenient than acting as a non-entity, and provides at least a veneer of legitimacy to an organization by vesting it with legal personality. However such organisations are clearly acting outside the mandate of their SAIC licenses, and possibly in violation of policies and laws relating to the care of orphans, meaning it is difficult to say whether such an approach renders the private orphanage in question any more 'lawful' than an orphanage operating as a non-entity.

Interviewees agreed that finding a PSU is difficult for private orphanages, but attributed this to different factors. Star Village's campus director, a retired

76 Interview with Sister Qin, manager/co-founder of Guanghui, in Hebei, (Jul. 13, 2010).

77 Tina Qian and Nick Young, *Rule on Names Starts to Close Door to NGO "Businesses"*, CHINA DEVELOPMENT BRIEF, <http://www.chinadevelopmentbrief.com/node/74> (last accessed Jan. 14, 2010).

78 Interview with Chinese lawyer for foreign foster homes, in Beijing, (Sep. 5, 2009).

Chinese army officer, believes their inability to find a PSU department relates to the fact that children of prisoners, unlike orphans, are not a recognised class of welfare recipients; however generally (with the exception of Rainbow House), the orphanages which *do* care for orphans and foundlings have had no more success than Star Village in securing registration. It appears that, apart from the fact that many orphanage operators themselves do not regard the pursuit of registration (or indeed informal recognition) as a priority, registration prospects depend on the *mafan* (trouble/burden/labour) which potential supervisory departments believe would result from formalising their oversight of the sector.

A number of factors are relevant here: the case of Rainbow House demonstrates that where an orphanage is providing high-quality care for children in a transparent way, and provided that the home is demonstratively financially independent, and provided further that the department concerned is not threatened or wary of the home's operators for reasons relating to religious or political activities, it could in fact be politically favourable for such an orphanage to be formally recognized, and a partnership struck up, in response to needs left partially unaddressed by state-provided social welfare. The provincial MCA in Zhengmin, where Rainbow House is located, has effectively appropriated the work and outcomes of Rainbow House, and the political benefits thereof, without concomitantly incurring any additional financial burden, and very little supervisory responsibility or accountability.

The perceived standard of care being provided by various unregistered orphanages would thus seem to be a key factor in the registration prospects thereof, even beyond the obvious connection between care standards and the orphanage's ability to meet the capital requirements. Charles Kramer, an Italian charity worker with many years of experience aiding church-based private orphanages in improving their care standards, believes such standards are central to understanding state-orphanage relations, or lack thereof:

The government should somehow recognise the sector, but I can also see the fear of government in managing structures that are very poorly run. How can they present themselves to the outside world, and say 'this is recognised', but leave the children in these conditions?... You can understand government somehow now – if they register these private homes, they

*have to guarantee they are doing the right thing. So they have to find a way – to close, or to allow registration. Registration means more responsibility for government in terms of the practices in these homes.*⁷⁹

*If the government register you, you become their responsibility. But if you're not registered, they can say "Oh it's fine, you can't blame me, it's not my responsibility that things have gone wrong".*⁸⁰

There is an obvious problem in a regulatory system in which those organisations providing the best quality care, and thus in less need of supervisory, technical and financial support, are 'legalised', and those in which standards are low, and mortality rates high, are permitted to continue operating 'under the radar', but this appears to be the state of the Chinese private orphanage system.⁸¹ Of course, the religious proclivities and history of the associated church are also factors in the development of orphanage-state relations, however the experience of Rainbow House, also run by a church organisation, demonstrates that this is not necessarily an insurmountable barrier to formal registration. What seems more pivotal is the balance of, on the one hand, the political 'face' to be gained by adding well-run, relatively good-quality institutions to a provincial MCA bureau's portfolio, and the administrative burden and political risk of taking on some degree of responsibility for the work thereof. Added to this is the potential for financial claims to be made upon a department which has granted approval to run an orphanage. Although Rainbow House, despite being registered for almost ten years, does not rely on government funds to continue its work, a number of other unsuccessful applicants attributed government's unwillingness to oversee their work in part to an unwillingness to incur potential financial liability for their resident children.⁸²

79 *Ibid.*

80 Interview with Beijing Normal University researcher, in Beijing, (Aug. 5, 2009).

81 A recent study of 'black' (unregistered) schools for children of migrants in Beijing reports a similar conundrum faced by such schools. The vast majority are unable to be registered as private schools, due to sub-standard conditions, but are unable to access funding to improve those conditions due to their lack of registration: Charlotte Goodburn, *Learning from Migrant Education: A Case Study of the Schooling of Rural Migrant Children in Beijing*, 29 INTERNATIONAL JOURNAL OF EDUCATIONAL DEVELOPMENT 415 (2009).

82 Interview with co-managers, Good Shepherd, in Beijing, (Jul. 25, 2010); see also interviews with Our Lady's, Will Peters and Mercy House.

The political costs and benefits of registration are, of course, bound to vary greatly across and within provinces, depending on the combination of a number of factors. Regional emphasis on central policies is inconsistent across China, and appears to depend to a large extent on existing deficiencies in state provision of welfare at the provincial and local level, and the political and social pressure (or lack thereof) experienced by officials in relation to such shortcomings. Some provincial authorities were clearly much more willing than others to engage, in principle, with the private sector in the provision of orphan services. This willingness often relates back, in turn, to the 'flavour of the times' of central policy and aspects of local political culture that may impact on interpretation of these central policy shifts. For example, in the flurry of activity that occurred after the Blue Sky Plan⁸³ was promulgated, central policy was that state-run welfare institutions were to be increased in number, improved, expanded and, importantly, filled,⁸⁴ which in some provinces resulted in large numbers of orphans being removed from privately run institutions. In other provinces, local officials apparently chose to maintain informal cooperation with and tolerance of non-state institutions, contrary to central policy. Most commonly raised by interviewees as relevant to their registration failures were religious freedom (including the history of the local state's dealings with religious groups) and the related issue of the 'social capital' (that is, the value of one's various social relations and networks) of the orphanage's founders, operators, supporters and associates (the director of the Shandong Charity Federation admitted in interview that registration prospects are essentially dependent on having a 'close relationship with government').⁸⁵ These factors are also highly relevant to interactions between local government and the orphanages, and are explored further below.

83 In June 2006, President Hu Jintao, while visiting a state orphanage, called for all children to be able to develop equally under the same blue sky, with orphans benefiting from the same opportunities as other children. In response and as a means of implementing Hu's call, the MCA soon after issued the Blue Sky Implementation Plan. The five-year program, commencing in 2006, aimed to invest central and local government funding in the construction of new state orphanages and the improvement of existing state orphanages across China. *See* Nationwide Plan for Better Care of Orphans, CHINA DAILY, Dec. 29, 2006; *Ertongfulijigoujianshelantianjihuasbishifang'an* [Child Welfare Institute Blue Sky Construction Plan Implementation Program], (Jan. 22, 2007).

84 Interview with Beijing Normal University researcher, in Beijing, (Aug. 5, 2009).

85 Interview with Xi Jieming, Director, Shandong Charity Federation, in Jinan, (Sep. 21, 2009).

In addition to the cost/benefit evaluation of registration, it must also be added that it is possible that the continual refusal experienced by the applicant private orphanages is at least partly a result of the horizontal space within the Chinese government, and the intersection of different portfolio interests in the running of the orphanages. This is particularly the case for orphanages run by local Catholic factions that themselves have a problematic history of government relations. Sister Qin believes, for example, that the MCA is wary of taking on responsibility for Guanghui through registration at least partly because traditionally oversight of the underground Catholic church in their county is within the mandate of the Religious Affairs Bureau; the Religious Affairs Bureau, on the other hand, is reportedly unwilling to oversee child welfare work, which comes under the MCA's ambit.⁸⁶ Whether it is genuinely unclear which department has responsibility to begin overseeing the operations of private orphanages, or whether this intersection of interests is a useful political tool for denying registration, is necessarily a matter of speculation; it seems likely that there could be some degree of truth in both assertions.

3. Local Oversight (Informal)

Just as studies suggest that the majority of NGOs in China are operating outside of the supervisory framework of the MCA and PSU system,⁸⁷ so too examples of formal registration and oversight of private grassroots orphanages are rare. However, turning to the interface of local government and rural society/local operations, it is, of course, difficult to care for more than a handful of children without attracting some government attention. Of the Chinese private orphanages interviewed, while Rainbow House has successfully established a partnership with the MCA, the remainder are operating quasi-legally as either unregistered or, in the case of Star Village, commercially-registered NGOs. While Shang cites central policy as prohibiting private institutional care of orphans, the evidence from the case studies was that all Chinese private orphanages have some dealings with local state officials and authorities. It is difficult to make generalisations about the nature of informal interactions between local authorities and unregistered private

86 Interview with Sister Qin, manager/co-founder of Guanghui, in Hebei, (Jul. 13, 2010).

87 See, e.g., Saich, *supra* note 37; Ashley and He, *supra* note 37.

orphanages; the nature of these interactions varies dramatically from case to case and over time, and it would be unhelpful to attempt to mark definitively the line between formal and informal recognition by local government (a distinction interviewees were generally uninterested in making). Some interactions would seem to indicate approbation, at the local level, of the orphanages' self-directed and self-financed supplementation of state welfare. In other cases, homes are operating for many years in the face of regular threats from local officials to remove the children from their care due to such work being 'not allowed', threats which have been carried through in other cases.⁸⁸

Guanghui, Our Lady's and Good Shepherd all expressly referred to their work as being 'recognised' (*chengren/renke*) in some way by local authorities; the remaining interviewees were generally equivocal, when asked, as to whether the home in question is recognised by local authorities. However, most also related stories during the course of interviews which would seem to indicate that their work is observed, and in some cases tacitly encouraged, by local authorities. Many placed great importance on examples of informal support from local officials, for example the giving of gifts at Chinese festivals, and arranging for school admission or Bureau of Household Registration assistance with *hukous*. Most notable were cases where children were being placed into the private home's care by local police or township officials themselves. For example, Our Lady's was founded in 1993 by Sister Chen. Until three years ago, there was no state welfare institution in the city in which Our Lady's is located, and it was not uncommon for foundlings to be brought to Our Lady's by police and MCA officials alike. However, the home receives no funding from the MCA, and has never been subject to inspections. Sister Chen spoke of their work as being given the 'green light' in 1993, in what appears to have been an informal understanding with the city's leadership that they would not object to the planned use of the church land, provided the orphanage agreed not to approach the officials for funding. However, she also acknowledged that the status of Our Lady's is not clear:

88 Interviews: Project manager, Guanghui, in Hebei, (Jul. 9, 2010); Father Thomas, Wagner Foundation, in Beijing, (Aug. 11, 2010); founder/CEO, China Orphan Relief, in Beijing, (Aug. 25, 2009).

In principle, I think the government recognises us. If they did not, they would have the right to ban our work. Because they've accepted us, it amounts to them agreeing to let us carry on. It's just that right now they haven't given us registration.

The home was visited by government officials once, at the time of its founding, and according to Sister Chen has been able to continue operating with the 'trust of the government and the MCA' since that time – 'We're able to just look after the children'.

I was also made aware of other orphanage operators who are exceptionally good at negotiating local state relations, and have, as a result, been able to enter into (unwritten) arrangements whereby their orphanage is recognized as a town's orphan care provider in the absence of state-run facilities:

That deal was brokered by him agreeing to take on the burden of running and funding the orphanage, in exchange for them [town authorities] making him legal. He got the deal because he knows how to play ball. He became friends with the local officials, and they knew they could work with him – he would go out and drink and smoke with them. They knew he was not a risk to their promotion – if anything, he was a feather in their cap.⁸⁹

Star Village, which is currently registered as a commercial enterprise, is another example of the blurry distinction between recognition and non-recognition. The organization was for some time registered as a not-for-profit 'research institute' under the umbrella of a GONGO, the China Charity Federation (CCF), although not registered with the MCA. A change in CCF leadership led to the Star Village project being cancelled by the CCF, and Star Village's leadership decided to register instead with the SAIC. However, they have maintained an arrangement with the CCF under which they are able to receive domestic donations tax-free. I expressed surprise that Star Village is, in this sense, recognised as not-for-profit by one branch of government but denied charitable status by the MCA. The managing director agreed the situation is 'puzzling and complex ... but it's not surprising – in China there is a long distance between law and reality'.⁹⁰

Interviewees from other orphanages reported little to no interaction with local authorities. For these homes, their relationships with the local state are most

89 Interview with founder/CEO, China Orphan Relief, in Beijing, (Aug. 9, 2010).

90 Interview with manager, Star Village, in Beijing, (Aug. 20, 2009).

notable for being absent, and the most important gift from local officials is 'to be left alone'. This apathetic attitude on the part of local authorities was explained by the volunteer coordinator for Home of Joy:

The local bureau is fully aware of us – but their first priority is always the economic development of [our city]. If anything can benefit that, they will do it. The work of Home of Joy is just not on their priority list, they don't have the mindset or time to care about such a minor problem. They know about Joy's existence, but they don't really exist on paper. So there are no checking or standards imposed.⁹¹

The experience of Good Shepherd and Chen Anhui was similar: 'They didn't give us any trouble, although they also didn't give us any help';⁹² 'We try to get forgiveness rather than permission, to do things slowly and quietly rather than making a noise. Politics is not our concern – just nice and gently, helping the children'.⁹³ Such homes are not beyond the sight of local authorities, and all report having at least one or two unannounced visits by town authorities, usually at the beginning of the home's history, apparently to ensure that the homes are not being used, for example, for child labour or trafficking. For Home of Joy, Good Shepherd and Chen Anhui, such surprise inspections came to an end once a degree of certainty and predictability has been reached after some years of uneventful operations.

In other cases, tacit approval is absent, and the relationship is better described as one of hostility and antagonism. Given that the presence of a foreigner in the rural villages where most orphanages are located would be highly unlikely to go unnoticed, the orphanages which were willing to host me were naturally those with some measure of perceived security in terms of their dealings with local authorities. However, most interviewees were able to speak at length about the hostility experienced by many unregistered orphanages in their dealings with local authorities. Home of Joy experienced a number of police 'raids' when it began operating, which continued for many years. These would consist of unannounced inspections of their grounds, and threats to remove the children from their care;

91 Interview with volunteer coordinator, Home of Joy, in Shanghai, (Oct. 13, 2009).

92 Interview with co-managers, Good Shepherd, in Beijing, (Jul. 25, 2010).

93 Interview with volunteer coordinator, Chen Anhui, in Shanghai, (Oct. 4, 2009).

the orphanage's volunteer coordinator spoke of these raids as ceasing when the police 'realised we're just trying to help the kids'. The relationship has evolved into one of apparent approval, with many of Home of Joy's children being brought to their doors by local police themselves. Charles Kramer, who is familiar with many of China's Catholic orphanages, knows of two at which the threat to shut down operations has in fact been carried out, and believes in both cases this related to 'the religion factor'. In others, local officials simply make life difficult, for example an orphanage in a village not far from Guanghui has reportedly been 'under surveillance' for some months now, with authorities preventing visitors, including medical volunteers, from entering the home, a restriction which heavily impacts on the home's ability to provide quality care to its resident children.⁹⁴

Given the *prima facie* power imbalance in favour of state officials over orphanage operators, it may seem surprising that more orphanages are not being shut down. However, a closer look must be taken at this presumed imbalance, keeping in mind the vertical space in Chinese government. On-the-ground interaction and informal oversight of the private orphanages is occurring at the interface of local government with society, and most often does not accord with central policies: as Sister Qin of Guanghui observes, 'Their law says this – that orphanages are government's responsibility; but implementation is at the grassroots'.⁹⁵ The difficulties of attaining formal provincial or central approval for the private provision of orphan services have been discussed above. However the incentives for allowing unregistered homes to continue, with varying degrees of recognition by and interaction with local officials, would seem to be most keenly felt at the local level. While low-level officials seem reluctant to formalise private operations for reasons congruent with those at higher levels of government (namely ambiguous policies, and the financial/political risks of endorsing non-state homes), Shang makes the point that in most rural areas it would also be "beyond [their] capability...to take over the responsibility of supporting all the children who need protection"⁹⁶ were the children to be removed from private care. This view which was echoed by many interviewees:

94 Interview with visiting physiotherapist, Guanghui, in Hebei, (Jul. 10, 2010).

95 Interview with Sister Qin, manager/co-founder, Guanghui, in Hebei, (Jul. 13, 2010).

96 Shang, Wu and Wu, *supra* note 45, at 132.

Groups like us face hardship in doing this work, but we do it very well, and have persisted for a very long time...Society cannot do without these social service groups, because the government service organisations are unable to undertake the care of all such children as these, they depend on society...Society needs privately-run organisations to stand in for the gaps in government services, to assist the vulnerable groups'.⁹⁷

This lack of local capacity is also, of course, what leads to the emergence of private orphanages, to fill gaps in government welfare provision.

A related factor at play at the local level is the importance of *guanxi* in Chinese culture; many of the homes appear to be very good at building connections with officials which potentially go some way in preventing trouble. Many report a steady improvement in relations with local authorities over years or decades of work, and the emergence of a relationship commonly described as 'one eye open, one eye closed',⁹⁸ for example:

The government in its speech and in its tone does not want to be as provocative as previously – 'Your work is illegal!' – at the very least they recognise that the work we do is charitable work, they are not using the same inhuman words of before. Now they recognise that we are doing charitable work, there is at least some verbal acceptance of it in their language.⁹⁹

The nature of an orphanage's relationship with local authorities is also reflected in the willingness of orphanage operators to approach authorities for assistance, and appears largely dependent on the social capital of its founders (that is, in the case of homes such as Guanghui, Our Lady's and Good Shepherd, the associated church leaders) vis-à-vis the local state, which in turn is affected by a number of factors that vary with time and from place to place. These include, most notably, the political liberalism of the region, attitudes to/tolerance of 'grey market' religious organisations (themselves of questionable legal status), the expression of political views or advocacy activities of the orphanage and its associates, and association with foreigners.

97 Interview with manager, Star Village, in Beijing, (Aug. 20, 2009). See, further, interviews with Father Thomas (Aug. 11, 2010), Guanghui project manager (Jul. 9, 2010), Sister Qin, Guanghui (Jul. 13, 2010).

98 Interviews with project manager, Guanghui; manager/founder, Guanghui, manager, Our Lady's, co-managers, Good Shepherd, and manager, Star Village.

99 Interview with Sister Qin, manager/co-founder, Guanghui, in Hebei, (Jul. 13, 2010).

A number of foreigners with long-standing associations with various Catholic private orphanages across China believe that the ability to ‘play ball’ with local authorities, and garner support and recognition of the orphanage’s work, is out of reach for the majority of grassroots operators, due to a lack of administrative capability, it being self-evidently difficult to convince local officials that a decision to publicly support and endorse one’s work is politically safe when the organisation lacks transparency, internal standards, staff training programs and adequate finances.¹⁰⁰ For homes such as Guanghui, where the associated local church has had a lengthy antagonistic relationship with local authorities, their political clout in terms of fighting for registration is low.

This lack of social capital manifests in a sentiment of disempowerment evident in all interviews with homes that have sought recognition and/or registration:

Every day we’re chasing the government to their gate, and every day looking for their support, and really, we used to go to them all the time. And now we are simply exhausted. We don’t want to go again. We don’t have the energy to waste time on this relationship with government. And so we are just drifting along. If we have food to eat tomorrow, then that’s fine.¹⁰¹

The quote shows the ‘us/them’ binary around which the Catholic nuns I met seem to have organised their lives, a binary which may be reinforced by the male-officials/female-caregivers dichotomy. Astute players are able to contrive ways of enhancing their bargaining power or social capital with authorities – for example, by displaying prominent pictures of officials who have visited or sponsored their children,¹⁰² or by having recourse to media and publicity to garner public support and avoid being shut down.¹⁰³

The Catholic interviewees all noted a correlation between the easing of religious restrictions over the years, and tolerance and informal support of their orphan work. Many stated that they believe religion is the ‘main factor’ in

100 Charles Kramer (project manager, Guanghui, in Hebei, Jul. 9 2010) and Will Peters (founder/CEO of China Orphan Relief, in Beijing, Aug. 9 2010).

101 Interview with Sister Qin, manager/co-founder, Guanghui, in Hebei, (Jul. 13, 2010).

102 E.g. Home of Joy; Star Village.

103 Interview with co-founders, Good Shepherd, in Beijing, (Jul. 25, 2010).

determining the nature of their relationship with government. This does not, as one might expect, mean adopting an irreligious approach to child care – the children at Rainbow House, the registered home, as well as the unregistered Guanghui, Our Lady's, and Good Shepherd, are all brought up in the Catholic faith, attending mass and prayers once or twice daily, and, in the case of older and capable children, Sunday school in their villages. Jiemin, a sister at Guanghui, noted that the tolerance experienced by Guanghui and its diocese in relation to their religious upbringing of the children, and outreach in the village, is not necessarily experienced in other provinces: 'You can't do this in other places – but here, the government has considerable confidence and does not interfere too much. They have one eye open and one closed, knowing we won't cause much trouble. So we don't have many restrictions imposed on us'.¹⁰⁴

Interestingly, almost all Chinese interviewees spoke with a large measure of confidence in their continued ability to care for children outside the formal state welfare system, despite many having experienced threats and scoldings from local officials over the years. However, it would appear that such approbative, informal relationships are not necessarily entirely secure, and that despite the trouble and financial burden which would be incurred were local officials to decide to shut down private homes (some of which, it must be noted, are caring for many hundreds of children), this is a burden which has on occasion (albeit rarely) been willingly incurred – Father Thomas, after relating some examples of this to me, said of the Catholic orphanages generally, 'They get a fairly long leash, but will be reeled in if it comes to their attention as less than helpful'.¹⁰⁵ Certain patterns of behaviour in the sector are perhaps telling of a continued awareness of some degree of vulnerability. For example, most Catholic homes do not welcome foreign visitors, and none of the private orphanages are engaged in advocacy, activities which would presumably be sanctioned for the potential attention drawn to the gap in Chinese social welfare they fill which officially does not exist. Importantly, many Christian interviewees attributed any feelings of tenuousness regarding their home's security to a history of antagonism and, at times, persecution of the associated church by officials.

104 Interview with visiting teacher, Guanghui, in Hebei, (Jul. 13, 2010).

105 Father Thomas, Wagner Foundation, in Beijing, (Aug. 11, 2010).

V. DISCUSSION OF FINDINGS

This study has presented evidence of a spectrum of regulation and oversight, from formal to informal, broadly correlating with central momentum toward acquisition and registration of homes, and local impetus for informal oversight and recognition. Over time, an equilibrium has been reached involving incongruity between central laws and policies, and daily life in the towns and villages in which the orphanages, and the local officials who deal with them, are located. Local officials continue to take a ‘one eye open, one eye closed’ approach to the sector. On the part of the operators of orphanages, there seems generally a lack of concern with legality, law and registration procedures, with some exceptions, and no expectation that interactions with officials will be guided by law or the principle of equality before the law. All in all, the state-orphanage dynamic across the case studies can be characterised as paternalistic and disciplinarian, involving ‘game-playing’ and cautious pushing of boundaries over time. The majority of the case orphanages prefer to seek recognition of the important charitable nature of their work when this is seen as a potential means of garnering legitimacy on which to base arguments for occasional or regular practical support, rather than legality as a means of checking local power or on which to base requests for assistance. There is little momentum for sector-wide advocacy, and no networks of mutual endeavours for standardisation, expansion or political prioritisation of orphan welfare. The homes are generally inward-focused, with an air of ambivalence or resignation vis-à-vis the current state of the sector.

There seemed to be no expectation, on either side of the state-society relationship, that the relationship would be shaped, constrained or governed by formal legal rules or law (except in cases where informal rules were pushed or broken, in which case a show of state power would be anticipated). In fact, looking at the general expectations, understandings and meanings held by actors in the field, the sector appears notably ‘non-legal’ in nature, with informal relationships trumping formal structures. While there was variance among interviewees as to whether law *should* be available as a standard to be invoked in dealings with officials, there was uniformly an expectation that law, rather than constraining and standardising both sides of the state-society equation, would instead only

be used as a tool by local officials if needed to supplement informal processes of negotiation and paternalistic exercise of discretion. This finding challenges law-centric assumptions about the maintenance of state-society relationships, but was not treated as at all unexpected by Chinese interviewees, who commonly evinced a perception of the government as deliberately taking a 'one eye open, one eye closed' approach to many areas of regulation. In the resultant, at-times ambiguous, regulatory landscape, demarcations between lawful and unlawful, tolerance and promotion of social fields beyond the reach of the law, become somewhat unclear. This seems to have resulted in, at times, very effective local government oversight of a supposedly non-legal sector, which is allowed to exist and grow, albeit cautiously and accompanied by a large degree of self-censorship. The extra-legal norms, relationships and processes were generally spoken of as affording players in this field some sense of security, certainty, and an ability to negotiate in a somewhat predictable and ordered manner. On the other hand there was a widespread acceptance that doing charitable work in China on the margins of an ambiguous legal landscape, at least for now, necessarily requires tolerance of an on-going sense of vulnerability to the caprice of both local and central government, and subject to discipline if boundaries are pushed too far. This state of affairs, with aspects of security and insecurity, confidence and vulnerability, was widely accepted by my informants as an inevitable feature of doing such politically contentious work.

1. Legitimacy, Legality and the Role of Law

This is a system in which administrative resources and mechanisms and personal ties play a greater role than laws in shaping the negotiating environment. It is a system that on the one hand allows a great deal of flexibility in terms of how policies and laws are implemented, but on the other hand can be arbitrary and capricious. In other words, behaviour in this system is guided more by administrative rank and control over resources, and the fear of state reprisal, than by [legal] rules.¹⁰⁶

Given the dynamic and unclear state of the legal landscape, it is unsurprising that the touchstone for NGO security and capability in the case sector appears to be legitimacy and not legality. The longevity and success of actors in the field

106 Shawn Shieh, *Beyond Corporatism and Civil Society: Three Modes of State-NGO Interaction in China*, in *STATE AND SOCIETY: RESPONSES TO SOCIAL WELFARE NEEDS IN CHINA* 27 (Jonathan Schwartz and Shawn Shieh, eds., 2009).

was dependent not on compliance with legal rules and duties, but rather on their ability to negotiate the state in a way which enhanced and maximised the political, social and administrative legitimacy¹⁰⁷ of their actions.¹⁰⁸ Legal legitimacy, in the sense of recognition and acceptance by formal law-based institutions (registration) was, when achieved, generally only attainable after years of building up recognition and acceptance in social, bureaucratic and political spheres. For many organisations, legal legitimacy was not considered necessary for operational security and capabilities, it being very often possible to attain acceptance by local officials and society without needing to be first in compliance with formal law. Legality was accordingly often not considered an important goal, and the 'legal' aspect of legitimacy was understood and treated in practice as subordinate in value to its other aspects. Rather than being dependent on compliance with formal law, the state-society relationship at this local level was essentially dependent on different competing considerations relevant to political/social/administrative acceptability, factors which governed the legitimacy and therefore longevity of 'illegal' activity but which also shifted over time and differed from case to case. For example, a general theme in NGO studies, highlighted by the corporatist perspective and echoed at the grassroots level of this study, is that the state-society relationship is such that officially recognised NGOs tend to be far more involved in service provision than advocacy: "We can now hear the voice of civil society... However the voices do not have an institutional position in the process of decision making".¹⁰⁹ Opportunities for such advocacy and participation are very much contingent on the sensitivity of an NGO's chosen field of action, or, we might say, the social and political legitimacy of the organization.¹¹⁰

107 Gao, *supra* note 59.

108 This point relates closely to the many existing studies on the role of *guanxi* in Chinese business, and the use of one's *guanxinwang* (network of social connections) to acquire social capital and acceptance of an organization in its environment: see David Ahlstrom and Gary Bruton, *Learning from Successful Local Private Firms in China: Establishing Legitimacy*, 15(4) THE ACADEMY OF MANAGEMENT EXECUTIVE 72 (2001); Elliot Carlisle and David Flynn, *Small Business Survival in China: Guanxi, Legitimacy, and Social Capital*, 10(1) J. OF DEVELOPMENTAL ENTREPRENEURSHIP 79 (2005).

109 Li, Shang and Cheng, *supra* note 51, at 66.

110 See further, for example, Guoqin Shen, *The Development of Women's NGOs in China*, in *NGOS IN CHINA AND EUROPE* (Yuwen Li ed., 2011), on the relatively warm reception of women's NGOs in modern China, the goal of gender equality pursued by such NGOs coinciding with government policies on women's liberation and social development.

A major theme evident in my findings is that of discipline and paternalism. Most notably at the local state/orphanage interface, and regardless of where a particular home was located on the spectrum of security and apparent permissibility, I repeatedly encountered incidents, discourse and interpretations which echoed Stephens' thesis of disciplinary/parental social control in imperial China. Interviewees spoke of scoldings, threats and berating, and of feeling at the mercy of local officials regardless of what (scant) protection they ought to ostensibly be afforded by law, policy and procedure. These paternalistic state-society relationships, and the centrality of the concept of legitimacy to the state-society interface in China, are relevant to understandings and expectations relating to the concept and role of law in modern Chinese culture. The marked concern with legitimacy over legality on the part of both officials and Chinese interviewees, vis-à-vis the nature of non-state orphan care, demonstrates that the legal/illegal binary presupposed by much socio-legal literature is not apposite in the Chinese context. The aptness of the distinction is further called into question by the degree to which the lawful/unlawful boundary is blurred in this area of regulation. As Gupta argues in a different context, such blurring can be evidence of the "descriptive inadequacy of categories to the lived realities that they purport to represent".¹¹¹ Rather than formal laws and policies determining the limits of NGO activity, this sphere of activity is characterised by informal norms, unspoken but widely understood by those successfully persevering in the face of ambiguity and uncertainty. Compliance with these rules is an important aspect of achieving and maintaining legitimacy in the eyes of officials, and therefore their tolerance or approbation. Moreover, the Chinese homes evinced a preoccupation with (non-legal) legitimacy over legality as both functionally and intrinsically valuable.¹¹² An important conclusion to be drawn, therefore, is that the local 'legal culture' of China is best described as legitimacy-centric rather than law-centric, which manifests as an emphasis on negotiation over regulation – that is, the emergence of normative understandings, in the context of local state-society interaction, is

111 Akhil Gupta, *Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State*, 22(2) *AMERICAN ETHNOLOGIST* 375, 384 (1995).

112 This contrasts with the views of Western informants, presented elsewhere, which generally esteemed legality, in the sense of an attempt to comply with formal rules and policy, as both functionally and intrinsically important.

predominantly taking place beyond formal law-based institutions, roles and rules, being more dependent on aspects of legitimacy than legality.

That is not to argue that the extra-legal nature of this sphere of activity is solely attributable to this type of legal culture. As Shieh points out, one important reason why the legal regulatory mode continues to be usurped by negotiation and other modes of state-society interaction is that “the regulatory mode has been inadequate in keeping pace with changes in the NGO community”.¹¹³ However, it is argued that the peripheral role of law in this area of society (among others) is, at least to some extent, related to a Chinese tradition in which flexibility, *guanxi* (personal networks), *renqing* (human empathy and obligations) and individualised justice are generally esteemed over abstract, general and certain rules, despite central political rhetoric endorsing a move towards the rule of law. In this way, the Chinese legal sensibility just described can be seen as constitutive of Chinese culture, an “extremely characteristic part of the entire social fabric”,¹¹⁴ and itself in part constituted by culture. This analytical perspective is an important corrective to the tendency in commentaries on Chinese law to attribute the notable reliance, in many areas of activity (such as business and NGO work), on *guanxi*, relationships and informal norms *solely* to a lack of adequate legal institutions and structures,¹¹⁵ without also examining underlying culturally-entrenched values and expectations about how society is best ordered. Among my Chinese informants, the dominant expectation regarding law was not that law would be impartially, consistently and unambiguously defined and applied, but rather that flexible norms would govern individualised, paternalistic relations with the state. This accords with Hintzen’s description of China as a culture in which individualised moral decisions are traditionally emphasised above generalised legal rules, and law is viewed as subordinate to the “dictates of morality”, such morality being “rooted

113 Shieh, *supra* note 106, at 37.

114 GEERTZ, *supra* note 19.

115 See, e.g., Katherine Xin and Jone Pearce, *Guanxi: Connections as Substitutes for Formal Institutional Support*, 39(6) THE ACADEMY OF MANAGEMENT JOURNAL 1641 (1996), arguing that in China, ‘managers cultivate personal connections to substitute for reliable government and an established rule of law’ (at 1652); ‘If laws and reliable government cannot provide protection to those wishing to conduct business, businesspeople will seek to create their own protection, drawing on the means available to them’ (at 1655); Ahlstrom and Bruton, *supra* note 59.

in the very essence of reality and therefore constitut[ing] a more general and lasting truth than the more concrete stipulations of the law".¹¹⁶ Moreover, this was not widely regarded as problematic or, in fact, widely regarded at all, due to the emphasis in the field on legitimacy over legality, and discretionary, paternalistic relationships over law-governed, standardised interactions. While it may not be possible to speculate to what extent these features of a 'non-legal' local society are inherent in Chinese culture and a preferred alternative framework for structuring social order, and to what extent they are simply a 'fill-in' necessitated by a lack of adequate, standard and enforced legal institutions and norms, it is important to ensure that inquiries about the maintenance of an ordered and predictable state-society interface in China are approached with a degree of reflection and awareness of one's underlying culturally-shaped assumptions about the normative nexus between law and order. It is apparent from the case of this field of activity that Chinese expectations, meanings and experiences relating to law and order, as evident at the level of the local state-society interface, are vastly different to those evident in Western law-centric societies. This 'micro' picture adds distinction to existing 'macro' narratives of central law-lauding rhetoric and China's on-going transition towards rule by/of law. It demonstrates an on-going embedded cultural preference for non-legal order, for *li* over *fa*, and continued state-paternalism which resonates with Thomas Stephens' construction of China as an arena in which 'small-world' environments can be and often are coordinated and ordered by a disciplinary, as opposed to legal, framework.

2. Legal Fictions and Legal Sensibility

On the other hand, formal laws are not completely irrelevant, with the shadow of the threat of their enforcement being an important element in the power-balance of those relationships and games, by contributing to the perceived disciplinary power of the state. Further, in this (non-)legal culture, formal laws seem to be playing a possible symbolic role, a phenomenon which should be investigated further in future studies on China's law/practice gaps. That is, in the current study, formal laws, which ostensibly regulate orphanages in China, as an

116 Hintzen, *supra* note 9, at 183.

official mode of expression,¹¹⁷ allow the maintenance of a certain ‘presentation of self’ – namely, that ‘only government cares for orphans in China’. This points to a possible function of formal laws as a “repository of aspirations”,¹¹⁸ symbolism, ideology and rhetoric, where such rhetoric is of great social and political importance, however ineffectual and irrelevant such laws might appear in practice. Another way to describe this hypothesis is that formal laws at times constitute a legal fiction with a stabilising function.¹¹⁹ If that be the case in the field of orphan care, it is possible that attempts to legally codify and tighten the permissibility of non-state orphan care would in fact, by drawing attention to the gap between ideology and practice, and due to the importance of this presentation of self, lead to the closure of socially-useful informal practices, a disincentive both on the part of officials and social actors to seeking more formalised structure of the field.¹²⁰ In other words, the gap between law and practice may itself be performing a function – and in this sense be a *productive* contradiction – by allowing controlled, cautious, experimental growth of the sector. Such a conclusion would challenge law-centric assumptions that ambiguous regulatory policies necessarily ‘chill’ the development of the sectors they purport to regulate.¹²¹

117 In his ethnographic study based on formal and informal interviews with Chinese intellectuals, Link notes a common contrast between official and unofficial modes of expression in China (although this is of course not necessarily a uniquely Chinese contrast): PERRY LINK, *EVENING CHATS IN BEIJING; PROBING CHINA'S PREDICAMENT* (W W Norton & Company, 1992).

118 Cotterrell, referring to Durkheim's view of law as ‘an expression of ideals. It has moral meaning. It is a repository of aspirations...’: ROGER COTTERRELL, *EMILE DURKHEIM: LAW IN A MORAL DOMAIN* (Edinburgh University Press, 1999) at 16. For other examples of legal texts, without direct effect but arguably serving symbolic functions, see PATRICK WORMALD, *LEGAL CULTURE IN THE EARLY MEDIEVAL WEST: LAW AS TEXT, IMAGE AND EXPERIENCE* (Hambleton Press, 1999) and PAUL DRESCH, *THE RULES OF BARAT: TRIBAL DOCUMENTS FROM YEMEN* (Centre Francais D'Archaeologie et des Sciences Sociales, 2006).

119 BARBARA YNGVESSON, *BELONGING IN AN ADOPTED WORLD* (U. Chicago Press, 2010), at 80, makes a similar claim in relation to other legal fictions associated with transnational adoption, arguing that “[a] key distinction in keeping adoptions clean is the legal fiction that money is never paid for the child but only for services performed in connection with the adoption...baby-selling...threatens our very understanding of what it means to be (a person) and in this sense destabilizes not only the child who has been sold, but society itself”.

120 JOHNSON, *supra* note 51, at 164, makes the point in relation to informal adoption practices.

121 Ashley and He, *supra* note 37, at 265.

There was little evidence of a perceived nexus, on the part of the Chinese informants, between law-abidance and justice or morality. On the contrary, my Chinese informants on the whole appeared fairly comfortable within a state-society relationship premised on discretion, and in which law, when relevant, could be anticipated to be used as one tool at the state's disposal for regulating social activity (which points to local expectations of 'rule by law' rather than 'rule of law'). Most players in the field demonstrated deftness at functioning in the absence of legally-defined relationships, with recurring reference in interviews and behaviour to game-playing, trust-building, and keeping up appearances. Thus we see that the role of law in the transitioning society of China is subordinate to other structures and processes, with law as a concept not constructed locally in the same way as it is in Western law-centric contexts. This is not to presume that thirty years of law institution building and legal reform has not begun to influence this prevailing 'legal sensibility', but as Peerenboom notes, "the development of the legal system hinges on more than the ideas of the top leadership".¹²² The local state-society interface visible in the current snapshot demonstrates that the central law-lauding rhetoric has only begun to penetrate China locally, with themes of discipline and paternalism continuing to dominate trends of adjudication and equality in practice. If, as Peerenboom claims, rule of law is a function of both institution-building and the creation of a 'culture of legality',¹²³ studies such as the present are important for adding to the picture of to what extent such a culture of legality can really be said to be present locally.

VI. CONCLUDING REMARKS

Apart from its empirical and theoretical contributions to research and literature on the aforementioned themes of modern Chinese socio-legal scholarship, this study has sought to introduce some of the stories of China's private orphanages. These stories contribute to a bigger picture of China's shifting social welfare landscape but are important in and of themselves, providing insight into the challenges and struggles experienced by charity workers as they operate in an uncertain and at times still hostile social sphere. In the same way, networks

¹²² PEERENBOOM, *supra* note 9, at 223.

¹²³ *Id.* at 221.

of informal adoptive parents have emerged across China to take in unknown numbers of unregistered foundlings,¹²⁴ so more and more such children are being cared for collectively by private orphanages. In some, the quality of care is high, but in many cases, economic backwardness is evident, children suffer the effects of a lack of legal personality, and standards of care are set internally, with grave concerns expressed by observers about care practices and the necessities of life. Operators face significant obstacles, such as lack of financial resources, inadequate training, ageing residents, and the dilemma of planning a future for *hukou*-less children with no prospect of adoption or state support. Interviewees varied greatly in their degree of optimism regarding the rate of development of orphan care, and state-society cooperation in this area. The advantage of a system that oversees private orphanages beyond the legal framework is that it allows good work to be done for orphaned children despite the restrictions of formal law. However, if government is at all concerned with allowing more charitable individuals and groups to carry out life-saving work, the strategy or trend is not strong in the long-term. Children continue to languish in substandard state orphanages because it is so hard for organised, visible charities to intervene and assist in provision of care in a meaningful, large-scale way without attracting suspicion or causing the state to lose face. Some interviewees expressed hope that the informal, non-legal operations of private orphanages has contributed to a softening of the government's approach to the sector, and indirectly therefore to better care for orphans more generally. The sector is cautiously evolving, and there is reason to presume it will continue to do so and to be hopeful such growth will lead to better outcomes for China's 'lonely children'.

124 JOHNSON, *supra* note 51, at 161.

APPENDIX A

Table of Interviews

TABLE A1

LIST OF INTERVIEWS WITH CASE STUDY ORPHANAGES

Interviewee	Orphanage	Location*	Date
Project manager (Kramer)	Guanghui	Hebei	7/9/10
Visiting physiotherapist	Guanghui	Hebei	7/10/10
Visiting teacher	Guanghui	Hebei	7/13/10
Manager/co-founder (Qin)	Guanghui	Hebei	7/13/10
Manager	Our Lady's	Hebei	7/20/10
Co-founder (Chen)	Our Lady's	Hebei	21/7/10
Co-managers	Good Shepherd	Beijing	7/25/10
Volunteer coordinator	Home of Joy	Shanghai	10/13/09
Manager/co-founder	Rainbow House	Hebei	7/12/10
Manager	Star Village	Beijing	8/20/09
Founder/director (Leng)	Star Village	Beijing	8/9/10
Volunteer coordinator	Chen Anhui	Shanghai	10/4/2009

APPENDIX B

Profiles of Grassroots Organizations and Informants

Participants from a total of 25 different orphan-related grassroots NGOs were interviewed as part of the broader research project. My analysis is primarily based on interviews undertaken from July to October 2009 and July to September 2010 with representatives of 24 orphan-related, (mostly) grassroots NGOs located in Hebei, Shandong, Henan, Shaanxi, Anhui, Shanxi and Jiangsu provinces and the Beijing and Shanghai municipalities. In total, over 75 people assisted in this research by sharing their thoughts and experiences in interviews, conversations and NGO activities. All interviews were conducted on the condition of anonymity. Where referenced herein, organizations and place names are referred to by pseudonyms. These NGOs' fields of activity are roughly categorized in table C1.

On both research trips, approximately half of my time was spent living at various orphanages and foster homes, helping out with child-care, administrative work and English lessons, in order to more closely observe their operations and daily living. Fieldwork was conducted with approval from the University of Oxford Social Sciences and Humanities Inter-divisional Research Ethics Committee (IDREC).¹²⁵ I translated Chinese interviews to English freely rather than literally, with regard to linguistic nuance and emphasis.

TABLE B1

ORPHAN-RELATED NGOs BY ACTIVITY

Description	No. of NGOs
Chinese-run orphanage	7
Chinese-run orphanage-Support organization	2
Chinese-run foster home	2
Foreign-run foster home	14
Total	25

Interviews were also conducted with a number of child-related NGOs, both foreign and Chinese, with primary content covering NGO laws, policies and practice, registration procedures, and issues relating to Chinese civil society more generally; a retired senior level Ministry of Civil Affairs¹²⁶ official; and the following government and government-owned departments and entities: the Ministry of Civil Affairs China Charity and Donation Information Centre;¹²⁷ the Shandong Charity Federation Office,¹²⁸ and the Ministry of Civil Affairs NGO Service Centre.¹²⁹

125 Reference number: SSD/CUREC21/C1A 10-010.

126 The Ministry of Civil Affairs is the administrative authority responsible, inter alia, for welfare programmes.

127 *Zhonghuarenmingongheguominzhengbu – zhongmincishanjuanzhuxiaoxizhongxin*, in Beijing, (Sep., 2009) [by email].

128 *Shandongshengcishanzhonghui*, in Jinan, (Sep. 21, 2009).

129 *Zhonghuarenmingongheguominzhengbu – minjianzuzhifuwuzhongxin*, in Beijing, (Sep. 18, 2009) [by telephone].