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Legal Liability and Constraints of U.S. Think Tanks: A Preliminary Study (Post-Print)

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Abstract

[Purpose/Significance] The “Opinions on Strengthening the Construction of New Types of Think Tanks with Chinese Characteristics” points out that new types of think tanks with Chinese characteristics are “entity research institutions that abide by national laws and regulations, are relatively stable, and operate in a standardized manner.” This paper intends to, through researching relevant US laws on think tanks, introduce the operation of US think tanks within the legal framework, provide foreign experience that can be used as reference for the construction of new types of think tanks in China, and improve and strengthen the legal system construction of Chinese think tanks. [Method/Process] Using empirical methods, this paper conducted a comprehensive introduction and preliminary study of the legal environment for the operation of US think tanks. [Results/Conclusions] Although think tanks are already well-known, the concept of US think tanks has not yet been specifically defined in law to date. In fact, a complete legal regulatory system compensates for this deficiency. In the United States, think tanks do not appear in laws under the term “think tank,” but are written into regulations in the form of legal entities, and are subject to legal constraints and legal norms. As long as they apply to become tax-exempt, non-profit, voluntary civil organizations, think tanks as legal entities must, in accordance with relevant laws, fulfill relevant legal responsibilities and undertake relevant legal obligations, be incorporated into the US legal framework, operate in compliance with rules and according to law, and once they violate the law, they will be subject to sanctions under relevant laws.

Full Text

Preliminary Study on the Legal Responsibilities and Legal Constraints of US Think Tanks

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Abstract

[Purpose/significance] The *Opinion on Strengthening the Construction of New Think Tanks with Chinese Characteristics* states that new think tanks with Chinese characteristics are “substantive research institutions that comply with national laws and regulations, are relatively stable, and operate in a standardized manner.” This paper examines relevant US laws concerning think tanks and introduces their operation within a legal framework, aiming to provide foreign experience for the construction of China’s new think tanks and to improve and strengthen the legal system governing Chinese think tanks. [Method/process] This study employs empirical methods to provide a comprehensive introduction and preliminary analysis of the legal environment for US think tank operations. [Result/conclusion] Although think tanks are widely recognized, the concept of “think tank” has not been specifically defined in US law to date. In reality, however, comprehensive legal regulations have compensated for this deficiency. In the United States, think tanks do not appear in laws under the term “think tank” but are instead incorporated into statutes as legal entities subject to legal constraints and norms. Once an organization applies to become a tax-exempt, non-profit, voluntary civil organization, it must fulfill relevant legal responsibilities and obligations as a legal entity think tank, operating within the US legal framework in a rule-abiding manner. Any violation of the law will result in sanctions under relevant statutes.

Keywords: think tank; law; responsibility and obligation; **Classification:** DF13

US think tanks are legally established, law-abiding, non-profit voluntary organizations that serve the public good as non-governmental entities. Within the legal framework, think tanks are not anarchic mass organizations but rather research institutions that specialize in providing public policy consulting services to the government in accordance with the law. Although definitions of think tanks vary, and US law has not provided a specific definition for “think tank,” clear and strict institutional norms can be found in US legislation for think tanks as registered non-profit, non-governmental entities.

1. Legal Definition

It is difficult to find the term “think tank” in US law. Therefore, US law cannot offer any interpretation of the definition of think tanks. However, US law provides strict definitions for think tanks as non-profit organizations engaged in policy consultation as legal entities, with relatively detailed provisions regarding their operations, rights, and functions. Generally, four legal provisions are considered applicable to think tank operations: first, provisions concerning think tanks as government policy advisory bodies, namely the *Federal Advisory*

Committee Act passed in 1972; second, provisions on the conditions for think tanks to apply for tax-exempt status as non-profit organizations; third, Section 501(c)(3) of the *US Federal Income Tax Code*, which provides the legal definition and regulations for think tanks as non-profit legal entities; and fourth, Section 170(b)(1)(A)(vi) of the tax code concerning public welfare organizations, which also applies to think tank organizations.

1.1 The Federal Advisory Committee Act

The 1972 *Federal Advisory Committee Act* defines think tanks as “national advisory institutions that provide policy consultation and recommendations for government policy.” Although the Act does not use the term “think tank,” the term “advisory committee” refers to any committee, council, conference, expert panel, working group, or other similar group, or any subcommittee or other sub-group. Based on the functions and roles of think tanks, the institutions referred to in this law are generally considered to be various types of institutions that currently provide decision-making consultation services to the government and clearly possess think tank functions. US think tanks, whether government-established think tanks or those registered as non-governmental organizations, can all fulfill the function of providing policy consultation to the government as stipulated in the *Federal Advisory Committee Act*.

According to the provisions of the 1972 *Federal Advisory Committee Act* on policy advisory bodies: “An advisory committee is any committee, council, conference, expert panel, task force, or other similar organization, and any subcommittee or other sub-group thereof, that has the following characteristics: (1) an organization established by law or reorganization plan; (2) an organization established or utilized by the President; or (3) an organization established or utilized by one or more agencies to provide advice or recommendations to the President, one or more federal government agencies, or officers thereof.” Under this provision, think tank organizations that provide decision-making consultation to the government should also include committees, investigation groups, and other similar organizations established within various federal executive agencies.

These organizations generally fall into six categories: first, various professional committees established under government agencies; second, various councils; third, various policy consultation seminars convened by the government; fourth, government advisory expert panels; fifth, task forces conducting special research; and sixth, other similar organizations and their subsidiary bodies. These think tanks established within various federal agencies specialize in providing consultation, contingency plans, and policy recommendations to the government and are regarded by the US government as an important means of assisting government decision-making. Because they can serve government decision-making more directly and share the same functions as what people consider think tanks to be, they are classified as government think tanks.

1.2 Provisions of the Federal Income Tax Code

The 1954 *Federal Income Tax Code* made provisions for non-profit organizations, bringing social think tanks under non-profit organization management. In addition to think tanks within the government, according to the *Federal Income Tax Code*, a large number of civil society organizations registered in the United States that are keen on discussing, interpreting, researching, and providing recommendations on public policy also possess think tank functions. The *Federal Income Tax Code* was formulated by the US federal government in 1913 and was revised in 1954 and 1986. During the 1954 tax law revision, Section 501(c)(3) was added, providing the first legal definition of tax-exempt non-profit organizations. The Reagan administration made substantial revisions in 1986, improving the efficiency, fairness, and convenience of the tax code. The domestic version commonly used is translated as the *US Tax Code* and remains in use today.

Section 501(c)(3) is derived from Title 26, *Internal Revenue Code*, of the 1954 *US Tax Code*. Because think tanks are non-profit organizations, Section 501(c)(3) of this law also applies to US think tanks and serves as the first legal basis for think tank operations. Section 501(c)(3) defines non-governmental organizations as: “Corporations, community welfare funds, funds or foundations, and organizations engaged in religious, charitable, scientific, public safety, literary, or educational purposes, or to promote national and international amateur sports competition, or to prevent cruelty to children and animals.” Section 501 includes 25 types of non-profit organizations eligible for tax exemption, such as academic research institutions, education and training institutions (like private schools such as Harvard University and Princeton University), healthcare institutions, associations, churches, chambers of commerce, cultural groups, youth organizations, senior organizations, volunteer organizations, social welfare foundations (such as the Ford Foundation and Rockefeller Foundation), and public welfare and charitable organizations (such as the Red Cross), all of which obtain non-profit status through application. US think tanks, as institutions providing consultation or decision-making services to the government, are naturally listed among non-profit organizations and can legally apply for non-governmental organization status to enjoy tax benefits stipulated by US law.

According to the *Federal Income Tax Code* provisions on non-profit organizations, think tanks as non-profit organizations are exempt from national and local property taxes, business taxes, gift taxes, solicitation taxes, etc. To reduce government functions, expand social self-regulation capabilities, and develop the service market, the US government encourages the development of social non-profit organizations by legally exempting their business from taxation. Because Section 501 provides relatively extensive tax benefits for various non-profit institutions, it has become the central clause of tax law for non-profit organizations. These organizations can be exempt from national or local property and business taxes, as well as donation taxes.

2. Legal Identity and Connotation of US Think Tanks

When a think tank applies to become a social organization, it simultaneously becomes a legal entity. In legal terms, it thus acquires its statutory identity and connotation, and must fulfill legal responsibilities and obligations accordingly.

2.1 Legal Entity

US think tanks are legally established non-profit organizations specializing in providing policy consultation services. Based on the above analysis, US think tanks are legally established non-profit organizations and must therefore fulfill the responsibilities and obligations stipulated by law. After the 1954 legislation, think tanks that applied for registration became legitimate think tanks fulfilling legal responsibilities and obligations, simultaneously registering with the US Internal Revenue Service, declaring assets and solicitations, paying corresponding fees, and conducting relevant activities. This legally established the think tank's status as a corporate entity.

2.2 Mandatory Lawful Operation

Think tanks that legally register as corporate entities must follow corresponding standards and unified procedures in their establishment, operation, management, and continuation, strictly prohibiting think tanks from operating in gray areas outside the law. Therefore, private shareholders or individuals of think tanks cannot obtain net profits. According to legal provisions, think tank operations, including various activities organized by think tanks, should not be profit-oriented, nor should they use any profit-making means or organizational forms to seek benefits for the think tank or its personnel. By law, think tanks must prepare annual financial reports, submit them to the Internal Revenue Service for review and public disclosure, and pay declaration fees according to a certain ratio. The law strictly prohibits think tanks from becoming interest groups that defraud intellectual compensation or obtain black income. These legal provisions further standardize think tank functions and restrict their profit-making activities from an economic perspective.

2.3 Clarifying Think Tank Missions

According to the 1972 *Federal Advisory Committee Act*, think tanks should be organizations that provide decision-making consultation. US think tanks possess the following organizational characteristics: (1) think tank establishment requires thorough review and evaluation; (2) think tanks are policy consultation groups by nature; and (3) they are advisory institutions providing policy recommendations to the President, federal government, agencies, and officials. These three provisions legally define think tank obligations and clarify their specialized mission of providing decision-making consultation services to the government.

2.4 Determining Think Tank Attributes

To ensure the impartiality of think tanks in providing decision-making consultation services, US law stipulates that organizations registered as non-profit must explicitly eliminate their partisan attributes, holding no partisan consciousness or affiliation and serving no partisan interests. Therefore, think tanks must downplay or eliminate their political identity, taking responsibility to identify themselves as non-partisan organizations and declaring themselves as independent organizations that do not support any political party. Consequently, think tanks should legally be defined as non-profit, non-partisan organizations, a point emphasized by many think tanks in their external communications. The law strictly prohibits think tanks from becoming political organizations that form factions for selfish interests, thereby restricting the service objects of think tanks from a political perspective.

2.5 Regulating Political Behavior of Think Tanks

US law makes explicit provisions regarding the political behavior of think tanks: they may not engage in substantial propaganda activities, may not attempt to influence legislation, and may not participate in or interfere with any political campaign on behalf of any candidate for public office, strictly prohibiting think tanks from becoming anti-government organizations that disrupt society. From this perspective, US law provides clear warnings about think tank political behavior.

In summary, as legally established corporate entities, every action of think tanks must comply with regulations. Since the 1954 amendment to the *Federal Income Tax Code*, all US non-governmental organizations, including think tanks, have been incorporated into a legal framework for their operations. Any deviant behavior can be sanctioned according to law. Consequently, all think tank activities have legal basis and precedents. Even in a society with “freedom of speech” like the United States, think tank statements and actions are similarly confined within legal boundaries, and stepping outside these boundaries results in legal sanctions.

3. Rights and Obligations of Think Tanks

According to US law, think tanks registered as non-profit organizations should fulfill the legal obligation to provide counsel for the government. Faced with complex global issues, the US government is overburdened and needs, in all respects, to widely accept sound advice and requires a large group of like-minded elites to help the government address problems and develop good ideas and solutions. To this end, the United States encourages the establishment of non-profit organizations to reduce government authority, allowing social organizations to assist in social management and provide policy consultation and participation in governance, thereby promoting social development. The Reagan administration’s 1986 revision of the tax code included legal norms for social non-profit

organizations, which effectively promoted the development of US think tanks. According to US law, once a think tank applies for non-profit status, it can enjoy tax benefits stipulated by law while simultaneously bearing relevant legal responsibilities and being subject to legal constraints.

3.1.1 Obligation to Provide Decision-making Consultation Services

Think tanks have the obligation to provide policy consultation services to the government and can meet or communicate with legislative personnel. According to the *Federal Advisory Committee Act*, think tanks should provide consultation and recommendations to the President, federal government, one or more agencies, or officials. Under this provision, in actual operations, think tanks have the right to meet with government officials or legislators to reflect and propose problem solutions, thereby participating in governance. Think tanks also have the obligation to provide consultation when invited by the government, engage in small-scale discussions with government officials on policy issues, hold seminars, and provide policy recommendations and decision-making consultation to the government through methods such as writing open letters to the President.

3.1.2 Obligation to Provide Technical Assistance

According to Section 501(c)(3), think tanks can provide their research results and technical assistance to legislative bodies. Scientific research achievements obtained through think tank research can be submitted as evidence to legislative bodies, reflected to Congress through legislators, or presented as legislative evidence to Congress through hearings, thereby achieving the goal of influencing Congressional legislation. Think tanks can also provide technical consultation and assistance upon request from legislative bodies.

3.2.1 Right to Accept Donations and Gifts

Think tanks can organize solicitations and enjoy tax exemption according to their non-profit institutional status. Under Section 501(c)(3) of US law, non-profit organizations established according to legal provisions are permitted to solicit donations, with most organizations applying for 501(c)(3) tax-exempt status by completing IRS Form 1023. Qualified think tanks with non-governmental organization status can enjoy property and solicitation tax exemptions, while donors or corporations can also enjoy tax deductions. Through tax reductions, think tank development is encouraged. Additionally, the US government sometimes awards government policy research projects to think tanks through bidding and contract signing. For example, both the RAND Corporation and the Urban Institute have undertaken projects contracted with the government.

3.2.2 Right to Tax Exemption Benefits

US think tanks are non-profit organizations that can legally enjoy tax exemption benefits but are prohibited from serving any political party. According to

Section 501(c)(3) of the 1986 revised *Federal Income Tax Code* regarding non-governmental organizations: funding obtained by non-profit, non-governmental organizations can be exempt from taxes. Therefore, as civil organizations, the vast majority of US think tanks can apply for registration as non-profit, non-governmental organizations under the *Federal Income Tax Code* and obtain tax-exempt status.

3.2.3 Right to Lobby

Think tanks are permitted to conduct limited lobbying activities to influence legislation. As advisory institutions, think tanks have the right to frequently participate in various hearings held by the Senate and House of Representatives at the invitation of legislators, through which they can lobby members of Congress and indirectly influence legislation and amendment of bills.

4. Legal Liabilities of Think Tanks

The political operations of think tanks should bear corresponding legal responsibilities and must not cross legal bottom lines. In the United States, all think tanks registered with the IRS under Section 501(c)(3) must be subject to the following legal constraints and bear corresponding legal responsibilities:

4.1 Prohibition of Establishing Ownership

Think tanks may not establish ownership interests. Think tanks applying for registration under Section 501(c)(3) should be legally established non-profit organizations. As non-profit entities, although they enjoy tax benefits, they must also comply with relevant laws and regulations and must not seek economic benefits in their operations. Congress and the public should have the right to know the number, purpose, members, activities, and operating costs of advisory committees. To ensure that non-profit entities truly fulfill their legal commitment to non-profit operation, the Financial Accounting Standards Board (FASB) has specifically defined non-profit organizations, explicitly stipulating that non-profit entities may not have “owners.” Under this provision, all think tanks establish boards of directors or trustee committees that do not aim for profit and implement a membership system. They do not call themselves corporations to distinguish themselves from for-profit enterprises or consulting institutions.

4.2 Prohibition of Electioneering

Think tanks are prohibited from participating in elections and influencing legislation or other political activities. All think tanks applying for registration under Section 501(c)(3) may not participate in any illegal political activities. According to US law, think tanks are prohibited from directly or indirectly participating in or intervening in any political campaign that supports or opposes any candidate in a public office election. Under this law, think tanks can provide counsel for political parties, develop campaign plans such as election reports and

policy proposals, but may not organize, incite, support, or oppose other candidates in any form. The introduction of this provision not only limits improper think tank behavior such as political interference and election intervention but also ensures the smooth transition of state power under democratic politics.

4.3 Prohibition of Incitement

Think tanks may not influence public opinion on legislation or affect legislation through communication with employees and officials. An important way for US think tanks to influence public policy, judiciary, and legislation is through media influence on the public, participation in Congressional hearings, and testimony to persuade members of Congress to amend and change original issues, thereby influencing federal government public policy and Congressional legislation and judiciary. This is also the goal that US think tanks advocate and pursue.

To prevent think tanks from becoming too powerful and influencing government decision-making, legislation, and judiciary, Section 501(c)(3) imposes restrictions on think tank influence, prohibiting them from engaging in substantial propaganda activities or other activities influencing legislation, and conducting “legislative lobbying.” Think tanks are not allowed to influence legislation by affecting public opinion on legislation or by communicating with legislative employees or government officials. The introduction of this law confines the negative influence of think tanks within legal boundaries, legally regulating illegal activities such as illegally inciting the public through distributing inflammatory leaflets or organizing illegal gatherings to lobby the government, interfere with governance, and disrupt elections. The *Federal Advisory Committee Act* also limits the functions of advisory institutions, stipulating that think tank functions are limited to consultation in nature, and that all deliberation matters should be decided by relevant officials and agencies according to legal provisions.

From a legal perspective, monitoring the “improper behavior” of US civil think tanks both encourages their standardized operation and ensures the stability of American politics and society.

4.4 Prohibition of Using Connections

Think tank practitioners are prohibited from using former positions and rights to cultivate relationships with former colleagues, interfere with governance, or disrupt government operations. To encourage former or retired government officials to participate in governance and policy discussion, the US government imposes no restrictions on their donations to or establishment of think tanks, nor on their participation in various think tank activities. The 1986 revision of the US Code also contains no provisions on this matter. Consequently, many founders, board members, and senior executives of US think tanks include former presidents, secretaries of state, defense secretaries, treasury secretaries, and other key government officials. Some think tanks take pride in being able to hire high-ranking officials to participate in their activities, using this to enhance

their political and social influence. The participation of former government officials in think tank activities effectively promotes the high-profile presence of civil think tanks and plays a positive role in strengthening the construction of US think tanks. However, from another perspective, because former government officials have countless ties to the government, to prevent them from interfering with US government administration and leaking state secrets, the *Ethics in Government Act* of 1998 was enacted to strictly and clearly warn against the post-retirement political interference of former government officials, strictly prohibiting them from using their former positions to lobby former colleagues on relevant issues and strictly limiting their declassification periods, which range from one to five years or even for life depending on the rank of their former position. The function of advisory committees is limited to consultation in nature, and all deliberation matters should be decided by relevant officials and agencies according to legal provisions.

4.5 Bearing Sanctions for Violations

Think tanks are not extraterritorial entities and will be severely sanctioned by law once they violate it. If a think tank makes false declarations in its registration application, financial reports, or other documents, makes false statements during solicitation, fails to prepare annual financial reports, submits incomplete or inaccurate annual reports, fails to maintain financial records, solicits without registration, engages in coercive solicitation, or fails to disclose financial reports to the public or organization members, it will be penalized. Additionally, once a think tank is found to have violated the law, its management must bear corresponding legal responsibilities. Section 501 also stipulates requirements for think tank management, such as the obligation of management to obey the law, prohibiting unfair profit distribution and backroom operations, and prohibiting embezzlement of charitable funds. Fraudulent solicitation and mismanagement can be investigated and prosecuted, and excessive compensation may not be paid to directors or other insiders, with no-interest loans to directors or employees prohibited. If illegal unjust enrichment is discovered, it can be fully confiscated. If civil or criminal offenses are involved, civil compensation liability cannot be exempted. For general violations, a deadline for correction may be set; for serious violations, board members may be disqualified, required to hand over financial accounts, and pay fines, with the board also required to compensate the think tank for losses; for even more serious cases, the think tank may be ordered to dissolve immediately and transfer its assets.

Within the framework of legal norms, US think tank-like organizations and institutions operate in a standardized manner, assisting and supporting government with positive energy. Of course, although the United States has legal guidance and constraints on think tank operations, whether US think tanks can effectively fulfill relevant legal provisions when pursuing maximum political discourse power and vested interests remains to be further examined in real political life.

5. Implications for China

Although the legal environments for US and Chinese think tanks differ significantly, the legal operation of US think tanks provides the following insights for the law-abiding operation of China' s new think tanks.

5.1 China' s New Think Tank Construction Must Obey Laws and Regulations

New think tanks with Chinese characteristics are important supports for the scientific, democratic, and law-based decision-making of the Party and government. Therefore, the construction of Chinese think tanks must strictly operate in accordance with current national laws and regulations, using legal norms to guarantee the correct political direction of think tanks, uphold Party leadership, maintain political consistency with the Party Central Committee, serve the overall situation, serve decision-making, serve the people, and serve the building of a moderately prosperous society in all respects. The law should protect think tanks in serving the overall situation and providing consultation services for decision-making, safeguard the distinct political nature of think tanks, and protect national interests.

5.2 China' s New Think Tank Construction Is an Important Component of Modernizing the National Governance System and Governance Capability

The construction of China' s new think tanks must operate according to law, comply with national laws and regulations, avoid power-money transactions, and prevent research results from being publicized for profit-oriented purposes. In academic research, we must adhere to seeking truth from facts, use the law to protect academic research results, ensure research findings are timely, accurate, and comprehensive, eliminate academic misconduct, and ensure the authenticity and reliability of think tank output quality.

5.3 China' s New Think Tank Construction Must Strengthen Legal Supervision

The construction of new think tanks cannot be separated from the interference and influence of unhealthy social trends, and the temptations of fame, wealth, and power-money transactions may lead to improper and unethical conduct in academia. Therefore, the construction of China' s new think tanks cannot become an "extraterritorial area" detached from legal supervision. We must enhance the legal system construction and legal awareness of think tanks to ensure the healthy development of China' s new think tank construction, prevent think tanks from becoming service tools utilized by interest groups, and avoid corruption and malpractice. Think tank operations need to accept lawful inspection, supervision, and oversight by third-party institutions.

5.4 New Think Tanks with Chinese Characteristics Are an Important Component of National Soft Power

In today's world, the Internet has become a common home for humanity and a community of shared destiny. China's new think tanks should become the main force in spreading culture, knowledge, morality, and civilization on the Internet and promoting the healthy development of a harmonious society. In interconnectivity, think tanks should operate and access the Internet according to law, strengthen cyber civilization construction, play a guiding role in moral education, and work together to promote a multilateral, democratic, and transparent Internet governance system.

As the saying goes, "To forge iron, one must be strong oneself." The construction of China's high-end new think tanks is an important measure for advancing the modernization of the national governance system and governance capability and enhancing national soft power. It bears the noble historical mission entrusted by the Party and the people. Think tanks must not disappoint the trust of the Party and the people; they must be even more law-abiding and disciplined, have the courage to take responsibility, strengthen their own legal awareness and legal system construction for think tank operations, and provide higher-quality decision-making services for the Party and the state.

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