

China's Social Credit System: A Challenge to Human Rights*

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Abstract

[Purpose] To examine the origin and evolution of China's social credit system.

[Methodology/Approach/Design] A doctrinal approach is employed with secondary sources.

[Findings] China's social credit system has some adverse effects on the fundamental principles of international human rights law.

Keywords: Artificial Intelligence. Public Governance. Social Credit System. Human Rights. Limitation of Rights.

INTRODUCTION

The Chinese government introduced the Social Credit System (SCS) to improve the socialist market economy system, to reform social governance, to create a positive living environment, to enhance the nation's competitiveness, to promote social development, and, which is a broad statement to say the least, to

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improve civilization (LIANG e colab., 2018). The SCS is theoretically defined as both an essential part of the socialist market economy system and of social governance (ZHANG, 2020). Two essential elements are included in the foundation of SCS: (i) an infrastructure to score members' credit and (ii) a complete network system containing credit records for all members of the Chinese society. More precisely, the system sets a mechanism of reward and punishment to encourage creditworthiness and to limit non-creditworthiness to improve the degree of compliance with it (KOTSKA, 2019).

According to Beijing, establishing such a system is deemed to be essential in developing a "more civilized" and "more harmonious" society. Because the degree of "trust" among economic entities in the Chinese society is deemed to be too low by the government, the latter wishes to rebuild that trust (SHEN, 2018). It is part of a strategy devised by the General Secretary and President Xi Jinping to bring back stronger Confucian ethical traditions into Chinese society (See LAMS, 2018).

Xi Jinping continued his commitment to promoting China's cultural and philosophical history as a valuable resource for strengthening the Chinese Communist Party (CCP)'s performance since his election as party leader (See NEEDHAM, 1960). Xi has drawn on analogies from the ancient philosophy of Chinese political practice to propose cadre management and anti-corruption measures. Despite the CCP's prior anti-traditionalist policies from early 1950s until Xi Jinping taking paramount power in 2008¹, Xi today portrays the CCP as the natural inheritor and beneficiary of China's cultural heritage (KUBAT, 2018).

"Social Credit System" was officially referred to for the first time as a legal document in the planning outline for constructing a Social Credit System from 2014 to 2020 issued by the State Council of China on June 14th, 2014 (STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA, 2014). However, in 2002, Jiang Zemin, the General Secretary of the CCP, was the first to use the term "social credit system" in his speech at the 16th Congress of the Chinese Communist Party (JIANG, 2002). The Chinese SCS resembles credit systems in liberal democracies in specific ways (GRIFFITHS, 2019; WONG and DOBSON, 2019). This point can be explained by the fact that SCS "derives from its Western counterpart" and that "Chinese law may, in many respects, not be fundamentally different from its Western counterpart" (SÍTHIGH and SIEMS, 2019). However, the Chinese and Western credit systems have some profound differences

¹ The CCP seized power in 1949, absorbing and reproducing long-standing statecraft and power norms in order to project power and increase legitimacy in a modernist fashion (TATLOW, 2018). Deng Xiaoping then implemented the Cultural Revolution from 1966 to 1976, which is heavily criticized by Xi Jinping—"The destruction in the Cultural Revolution was particularly severe. Everything was condemned, the good things from our ancestors were also tossed out." (BUCKLEY, 2014)

(NGUYEN, LAFRANCE, HO, NGUYEN, 2020). The SCS “is apparently not equipped to centralise and share the raw information that each department holds about citizens” (ARSÈNE, 2019). On the other hand, the SCS “is not based on the subjective ratings by other citizens” (SÍTHIGH and SIEMS, 2019). Furthermore, the SCS is operated by the Chinese government, rather than private actors like in the Western world (NGUYEN e colab., 2020).

In China, a planning outline of the CCP can be understood as a normative legal document – it is a unique feature of socialist countries (BUI, 2017). More specifically, it contains legal norms for other institutions in the state apparatus to implement. In the planning outline, the CCP analyzed the development situation of the SCS in “the decisive phase of economic structural transformation and the refining of the socialist-oriented market economy system begun.” The Party also stated that to move the construction of a social credit system forward comprehensively, China must continue to follow Deng Xiaoping’s Theory², the important “Three Represents” thought³, and the scientific development view as guides, acting by the spirit of the 18th Party Congress, the 3rd Plenum of the 18th Party Congress, and the “12th Five-Year Plan.”⁴

In fact, in 2007, the State Council of China released a Notice of Inter-ministerial Conference System to build a social credit system including 15 state offices in commerce, tax, and banking (STATE COUNCIL OF CHINA, 2007). The number of state offices involved in the construction of SCS by 2012 increased to 35, including the financial sector and other areas such as health, education, and agriculture (STATE COUNCIL OF CHINA, 2012). In addition, several studies report that the SCS has been piloted at a local unit in northern Shanghai since 2010 (MURRELL, 2018). However, aside from the general and entirely theoretical content mentioned in the planning outline for constructing a Social Credit System from 2014 to 2020, there has been almost no official statement detailing how to collect information, data sources, or the entire SCS works since then.

According to the annual report of China’s National Public Credit Information Center (NPCIC) (KUO, 2019), would-be travelers are banned from buying airline and train tickets 17.5 million times and 5.5 million times,

² Deng Xiaoping adopted a theory so-called “socialism with Chinese characteristics” merging capitalism into central planning to boost productivity, enhance Chinese culture, and enhance populist interests. Deng distinguishes socialism and capitalism based on the state intervention for economic outcomes (MOAK and LEE, 2015). Socialist countries always attempt to forge their identity through neologism by creating socialist version of Western theories, such as rule of law and market economy (BUI, 2014; GILLESPIE, 2006).

³ The idea of the “Three Represents” holds that the CCP represents the most developed forces of production, the most developed culture, and the most fundamental interests of the vast majority of people (FEWSMITH, 2003).

⁴ See (AHO e DUFFIELD, 2020; CREEMERS, 2018; LEE, Michelle, 2019).

respectively. In order to accomplish this plan, China installed a vast network of 200 million CCTV cameras across the country (CARNEY, 2018). It is meant to monitor each person every single minute, at every step, for every action taken and it also implies that every item purchased can be tracked and evaluated to score an individual's credit in real-time.

Currently, China accomplished the goal of establishing a legal system with fundamental standards and regulations on a social credit system; a system of credit investigation and assessment for the entire community based on information sharing; a credit monitoring and management system; to have created a relatively complete credit service market system, and a fully promoted mechanism of credit score encouragement and sanctions (See CHEN, Yu-Jie e colab., 2018; ROBERTS e colab., 2021).

Western reporting has only covered the 2014–2020 period thus far, and the most of it has taken the form of criticism of the evaluation criteria (e.g., political loyalty, a highly problematic principle in the West) (WOESLER e colab., 2019). It has depicted and condemned a system of almost complete surveillance, a lack of the rule of law, a disdain for data protection and privacy, and has primarily concentrated on dramatic individual outcomes (as in the event of system failures or draconian punishments) (WOESLER e colab., 2019)⁵. It primarily refers to decreasing credit scores and the punishments meted out to those deemed to have low credit scores by the Chinese government.

Specific examples are given as follows. At the end of 2013, the Chinese Supreme Court published the names and information of more than 31,000 people supposed to fail or delay their repayment obligations in civil transactions on its official website. Along with disclosing personal information, defaulters placed on that blacklist were prevented from booking a room at 3-star or more hotels, air tickets, high-speed train tickets, or charged a higher fee for car booking (CHAN, 2017). As of April 21, 2020, anyone who visited the Chinese Supreme Court's website⁶ can access the blacklist of 13 million citizens with their names placed on it.

In 2015, the People's Bank of China granted licenses to eight significant companies to test the construction and operation of the credit system (CENTRAL BANK OF CHINA, 2015). Sesame Credit of Alibaba Group and Tencent with the WeChat application is notable names listed. The credit assessment of the individuals involved is based on data from at least 400 million customers of Alibaba's online shopping and payment platforms and 850 million WeChat users.

⁵ The legal instrumentalism in China has long been criticized by the West, especially concerning human rights (See POTTER, 2011; WANG, Juan e TRUONG, 2021). Since China adopted the SCS, the literature focused on the privacy protection under the mass surveillance (See RAGHUNATH, 2020).

⁶ <http://zxgk.court.gov.cn>

Accordingly, the system collects user purchasing and payment information, then develops a unique credit score system and commercial benefits depending on user credit ratings, such as priority for hotel reservations.

Thus, it can be understood that the SCS planned by the Chinese government encompasses many different interdependent social credit rating systems (LIU, 2019; THE GENERAL OFFICE OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF CHINA, 2016). It is believed that in the future, China will establish a unified social credit rating system under the state management as stated in the planning outline on the SCS from 2014 to 2020. In detail, some credit system scoring citizens are named as follows: Supreme Court Blacklist; Central Bank's credit rating; Alibaba Group's Sesame Credit; Tourism blacklist of the Ministry of Culture and Tourism and the National Development and Reform Commission's Blacklist (LI and ZHAO, 2019).

Algorithmic Ambiguity

In terms of punishment, no one knows how many penalties the Chinese government will apply to citizens with low credit scores in the future (BACH, 2020). While there are some guidelines for blacklists (e.g., evidence of non-compliance), one may readily conceive an extensive range of regional variances. Blacklists have spread to the point where breaches of administrative rules (not only court orders) constitute grounds for placing someone on a blacklist, and any institution can institute blacklists (CREEMERS, 2018).

This does not appear to have impacted the system's apparent high levels of popular support, particularly among those who stand to benefit the most from the rewards (e.g., well-off, educated, urban males), but also more broadly among those who see the system as a reasonable faith effort to improve people's quality of life (KOSTKA, 2019; RUENGRANGSKUL and WENZE, 2019). However, there is no way of knowing how all of one's offenses will sum up. While people should always be told before being placed on a blacklist and given the opportunity to appeal or remove themselves by compliance, this does not always appear to happen. Furthermore, even though public data often has a 5-year sunset clause, there is little control over how third parties may harvest or re-use released data, let alone hostile operators who may break into the system (CHEN, Yongxi e CHEUNG, 2017).

However, in 2016, CCP Central Committee General Office, State Council General Office published the full text of "Opinions concerning Accelerating the Construction of Credit Supervision, Warning and Punishment Mechanisms for Persons Subject to Enforcement for Trust-Breaking" (CREEMERS, 2016). Accordingly, a person can suffer sanctions in the following main groups: (i) restrictions of engaging in particular sectors or affairs; (ii) restrictions on

government support or subsidy; (iii) restrictions on qualifications to hold positions; (iv) restrictions on access qualifications; (v) restrictions in terms of honour and credit awarding; (vi) restrictions on special market transactions; (vii) restrictions on conspicuous consumption and related consumption (CREEMERS, 2016).

The nature of the SCS can be paradoxical. Suppose the social credit system was completely opaque, and no one knew why they were on a black or red list (AHMED, 2019). The system's stated goal of encouraging responsible behavior would be impossible to achieve, as learning from it would be impossible. Meanwhile, the other end of the spectrum is also problematic: if the system is entirely transparent, it will be open to large-scale gaming, and norm compliance will resemble market transactions, contradicting the system's declared goal of reconciling morality and the market. Englemann et al. conclude that keeping the system semi-transparent helps it to guard against the "transformation of moral activity into market transactions," a risk that appears as an unwelcome but seemingly inevitable by-product of a scoring system that adapts market-based governance procedures (ENGLEMANN and colab., 2019, 10).

To sum up, China's Social Credit System (SCS) is, in essence, a system established to gather all information on all aspects, including but not limited to living activities, traveling, shopping, payment, entertainment, making friends, individual's expression on a social network which are all used to evaluate and score every behavior of each individual, and then to encourage behaviors that are considered good, and to punish those who are inadequate according to the standards set by this system. In other words, SCS is an "always-on" system that continuously collects data from a broad and expanding array of behavioral traces and feeds it into algorithmic systems that generate the rewards or punishments intended to change the social environment.

Role of Artificial Intelligence in SCS

On July 8, 2017, China's State Council released the New Generation Artificial Intelligence Development Plan by 2030 (THE STATE COUNCIL OF CHINA, 2017). In particular, artificial intelligence (AI) technology has been identified as a tool to significantly improve the capacity and degree of national and social governance in China⁷. Indeed, with the ambition to build a system capable of information gathering and management and behavior assessment of 1.3 billion people, SCS is undeniably driven to be built upon the achievements of artificial intelligence (AI) technology.

Roles and tasks of AI in SCS include:

⁷ The use of AI probably poses some threats to privacy (See LAFRANCE, 2020).

Face Recognition: the most basic and vital technology in SCS in which, based on images collected from CCTV cameras, AI is tasked to compare with the database of 1.3 billion people and calculate to know who is being followed, distinguish each person in the crowd, and immediately link to the database relating to this person. It is noted as a job that no one or a mechanism based on human capability can do. When blacklisted people, for example, go through certain intersections in Beijing, AI instantly recognizes faces to spot the person in the crowd and immediately releases an alert with their photos and ID numbers on the big screen (CAMPBELL, 2019).

Behavior Tracking and Analysis: identified individuals, cameras, microphones, or any other means are controlled to track and detect behaviors by AI. It could be buying an item from a supermarket in which AI, thanks to the development of technology, can tell what it is from the image. In addition, internet behaviors can be evaluated and collected by AI. For instance, consuming too much alcohol or junk food and playing too many video games are some of the actions the Chinese government considers that they are “bad behaviors”, which warrant punishment (KOTSKA, 2019). However, the government can get a taste of its own medicine because this policy fosters ingrained corruption instead of promoting the expected better citizenry (LILLY, 2018). It is worth mentioning that China's SenseTime, the world's most valuable AI startup, is now providing Chinese governments surveillance solutions in which AI can screen out online videos, read and recognize languages to remove videos that contain pornographic or text containing messages deemed sensitive by the Chinese authorities (JING, 2018).

Citizen Grading: Based on all data collected by the system, compared to all behaviors identified as good or bad, AI, in the context of the Social Credit System, is coded to assess and grade every behavior of every citizen. It seems impossible to know how the Chinese government currently uses algorithms to score citizens. However, with the immense data volume of 1.3 billion citizens attached to a diverse system of human behaviors, it should be noted that the application of artificial intelligence is inevitable due to the size of this data.

Thus, from the practice of SCS implementation in China, it can be said that AI is a vital prerequisite for a system to track and score citizens like the SCS.

SCS' IMPACT ON FUNDAMENTAL HUMAN RIGHTS

The SCS under the State Perspective

Rogier Creemers argues that the introduction of the SCS first derived from the ineffectiveness of the legal system: difficult situations in the enforcement of civil judgments, inadequate protection of intellectual property rights, environmental protection, and food safety remain prominent (CREEMERS,

2018). The Chinese leadership has recognized the situation, identifying the improvement of implementation and compliance mechanisms as a critical component of the legal reform agenda outlined at the 4th Plenum of 2014 (CCP CENTRAL COMMITTEE, 2014).

In addition, many indications show that the rapid development of China's economy is not accompanied by the improvement of people's behavior, self-awareness, and respect for cultural values in the citizen's social life. Behaviors indicating poor awareness of Chinese tourists are recorded worldwide, or socially insensitive behaviors are reported that even the Chinese feel unacceptable (VOLODZKO, 2016; ZUO, 2013).

It is found that, in this context, the vigorous technological development lacking the practical mechanisms of human rights protection has provided Chinese leadership with the idea of a comprehensive citizen tracking and controlling system to improve the legal compliance of China's citizens. In other words, the genesis of the SCS can be seen as the solution to an ineffective legal system and an education system that fails to achieve the goal of nourishing civilized generations in a society where human rights are less respected, and its protection mechanism remains blank. Rogier Creemers states that the SCS is basically framed as a set of mechanisms providing rewards or punishments as feedback to individual actions that are based not just on the lawfulness but also on the morality of their actions, which includes economic, social, and political conduct (CCP CENTRAL COMMITTEE, 2014; CREEMERS, 2018).

Three fundamental issues arise as to how the SCS works:

- (1) Is the government provided with the right to track and record all activities of the people?
- (2) Is the government provided with the right to assess the morality aspect of all people's economic, social, and political actions under its ruling standards?
- (3) Is the government provided with the right to punish people in forms not currently regulated by law? (See AHO e DUFFIELD, 2020; BANNISTER e CONNOLLY, 2011; DAWES, 2010; HOU, 2017; LIANG e colab., 2018; QIANG, 2019)

“No” is the answer that should be given to all these three questions so that a State may still be considered as a genuine democracy. Provided within its Constitution, China upholds “the uniformity and dignity of the socialist legal system” as one of its basic fundamental principles. All acts of State organs must abide by the Constitution, and the law and accountability must be enforced for all acts that violate the Constitution or laws (Constitution of the People's Republic

of China 1982, Article 5). The Chinese socialist legal system has a top-down institutional design and it seems impossible to establish judicial review in such a system without judicial independence (CUI e colab., 2019; HUNG, 2004; ZHANG, Qianfan, 2018)⁸.

To the extent of each individual, the operation of the SCS, especially the imposition of penalties covering, among other things, the right to travel, study, or publish personal information anywhere, is seen to harshly infringe all the fundamental rights of citizens, which constitutionally remains a minority, including freedom of politics (Article 35), personal freedom (Article 37), personal dignity (Article 38), and the inviolable right to the home of citizens (Article 39).

It is found that SCS has switched the position of the people from empowering the state to manage society and protect its citizenship to being tracked, monitored, and controlled in every aspect. A more severe threat is shown since fundamental human rights such as travel, education, and political freedom supposed to be undertaken by the state are planned as rewards for those the state considers with a high credit score or physical deprivation of those the state scores low credit one.

A new social institution would be formed since the SCS operation is no longer a natural state in common sense. It also unavoidably raises questions related to transparency of the State in its dealings with its citizens. While using AI or any other means to score people since accepting such a social institution could exist. Yoshua Bengio, the father of AI, comments on the application of AI in SCS in an interview: “Technology, as it gets more powerful, outside of other influences, just leads to more concentration of power and wealth... That is bad for democracy. That is bad for social justice and the general well-being of most people” (KAHN, 2019).

In brief, the operation of SCS results entirely against the nature, role, and function of the state and thereby seriously violates citizens’ fundamental human rights values. Hence, any excuse or reason given to justify the existence and operation of a system like SCS in human society remains questionable.

SCS under Personal Rights Infringements Perspective

How China applied AI to collect and analyze personal information would have raised concerns about data credibility, data protection and invasion of privacy in China due to weak regulations and law enforcement (LEE, 2020). However, we are witnessing the internationalization of such an infringement of human rights. For example, China has exported AI tracking technology worldwide, including face recognition technology to Bolivia, Ecuador, and Peru (ROLLET, 2018); 110,000 tracking cameras with face recognition were exported

⁸ Vietnam, a socialist neighbor, is in the same boat as China (See BUI, 2018).

to Singapore (JOPLIN, 2018); a total of 54 countries worldwide imported this technology (FELDSTEIN, 2019).

Governments use AI to track their citizens. Nowadays many top-tier technology companies today, namely Google, Facebook, Apple, and Twitter, consider it essential to gather and analyze user information used and exchanged as a profitable commodity. Facebook is even said to collect all information of non-Facebook users (WAGNER, 2018).

The threat imposed on privacy in these countries led to the event that United Nations General Assembly provided Resolution 68/176 in December 2013 on “The right to privacy in the digital age” (UN GENERAL ASSEMBLY, 2014). The resolution states that

“Noting that the rapid pace of technological development enables individuals all over the world to use new information and communication technologies and at the same time enhances the capacity of governments, companies, and individuals to undertake surveillance, interception, and data collection, which may violate or abuse human rights, in particular the right to privacy.”

The right to privacy is to ensure: “no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and the right to the protection of the law against such interference and recognizing that the exercise of the right to privacy is important for the realization of the right to freedom of expression and to hold opinions without interference and is one of the foundations of a democratic society.” Following that, the right to privacy in the technological era has been viewed as a report of the United Nations High Commissioner for Human Rights as well as plenary discussions at the United Nations.

Privacy in the technological age has become an important and demanding content for implementing human rights on a global scale. In its conclusion, however, the annual report of the United Nations High Commissioner for Human Rights No. 27/37, dated 30 June 2014 (UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, 2014) states: “practices in many States have, however, revealed a lack of adequate national legislation and/or enforcement, weak procedural safeguards, and ineffective oversight, all of which have contributed to a lack of accountability for arbitrary or unlawful interference in the right to privacy” (UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, 2014).

Expressly, the right to privacy in the technological age includes the following aspects (CRAIG and LUDLOFF, 2011, p. 14–15):

- (1) The right to privacy in communication activities, including the right to privacy in the way of using email, phone, and social media content.
- (2) The right to privacy in living activities, including all acts of living, trading, traveling, and information seeking.
- (3) Personal privacy, including photos, personal information, and information related to friends and relatives.

Provided with the definition of privacy stipulated by the United Nations and concretizing the aspects mentioned above, it is clear that SCS, as well as the citizen tracking systems around the world, or the user information collection systems of technology companies and social media platforms, for whatever purpose, is a blatant infringement of the privacy of individuals. A living environment where freedom of speech and other grounds of a democratic society is not guaranteed inevitably results from violating the right to privacy.

SCS and the Principles of Rights Limitation

In a democratic society, freedom is based on the idea that no right is considered absolute. The demands from social life and especially the requirements from public order leading to restrictions on the exercise of fundamental rights are believed necessary to protect the public order, which is guaranteed for these rights. Scholar Pierre Bon argues that public order “assumes a specific function of restricting freedoms only when compulsory and limiting the rights in a way commensurate with what the protection of other rights required.” (BON, 1975, p. 226)

Limitations of rights provide the state the power to infringe human rights to further commonly accepted legitimate goals—including domestic legality and compliance with international responsibilities. Article 29.2 of the UDHR states that the limitations of rights have to be determined by law solely to secure due recognition and respect for the rights and freedoms of others and to meet the just requirements of morality, public order, and the general welfare in a democratic society.⁹ As stated in the UDHR, there is a high presumption in favor of human rights, and Article 29.2 places the burden of evidence on those who seek to restrict such rights (BROWN, 2016).

Under international and domestic human rights laws, any limitations or restrictions of human rights must be explained and justified.¹⁰ It is based on

⁹ The notion of “law” in international human rights treaties usually has a broader—encompassing customary law and judge-made law in common law tradition because they are general norms and perceptible for individuals (SCHABAS, 2015, p. 336; TRIANTAFYLLOU, 2002, p. 60).

¹⁰ An international human right does not legally exist outside the limits drawn whether they are expressive or inherent (CHASKALSON, 2002; JOSEPH e CAPSTAN, 2013).

democratic principles, such as the idea that the law represents the will of the people and the rule of law, which provides the ability to know in advance any restrictions that the State may impose on the exercise of rights (TOMUSCHAT, 2013).

Mentioning rights and exceptions is considering the interactions between right holders and duty bearers—citizens and states because “the constitutional right and its limitations are flip sides of the same constitutional concept” (BARAK, 2010, p. 6). There is widespread misuse of state authority as the primary responsibility bearers worldwide, including in China. (GEARTY, 2017; PAUL and colab., 2017). States’ dual roles as primary guarantors of human rights and frequent abusers of those rights create an ongoing conundrum that international monitoring institutions work to resolve or at least lessen.

Specifically, “the notion of arbitrariness is not to be equated with “against the law,” but must be interpreted more broadly to include elements of appropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity, and proportionality” (UN HUMAN RIGHTS COMMITTEE (HRC), 2014 para 12).

CONCLUSIONS

Artificial intelligence is a significant scientific and technological breakthrough (LAFRANCE, 2020). Nonetheless, various governments, technological companies, and social media platforms that use it to acquire personal data may infringe individual’s privacy (WANG, Zhong e YU, 2015). At the same time, the achievements of AI present the risk of a social paradigm where human rights may not be considered as important, and then they may not be respected.

REFERENCES

- Ahmed, S. (2019). The Messy Truth About Social Credit. *Logic*, 7. Available at: <https://logicmag.io/china/the-messy-truth-about-social-credit/>.
- Aho, B. & Duffield, R. (2020). Beyond surveillance capitalism: Privacy, regulation and big data in Europe and China. *Economy and Society*, 49, 2,187–212.
- Arai-Takahashi, Y. (2013). Proportionality. Shelton, D. (Org.). *The Oxford Handbook of International Human Rights Law*. Oxford Handbooks. Oxford: Oxford University Press, 2013, 446–468. Available at: <https://academic.oup.com/edited-volume/42626/chapter/358048027>.
- Arsène, S. (2019). China’s Social Credit System: A Chimera with Real Claws. *Asie. IFRI. Visions*, 110.
- Bach, J. (2020). The red and the black: China’s social credit experiment as a total

- test environment. *The British Journal of Sociology*, 71, 3, 489-502.
- Bannister, F. & Connolly, R. (2011). The trouble with transparency: a critical review of openness in e-government. *Policy & Internet*, 3, 1, 1-30.
- Barak, A. (2010). Proportionality and Principled Balancing. *Law & Ethics of Human Rights*, 4, 1, 1-16.
- Bon, P. (1975). *La police municipale*. Thèse Dactylographiée. Bordeaux: Bordeaux I.
- Brown, G. (Org.). (2016). *Limitations and Derogations*. The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World. Open Book Publishers, 57-62.
- Buckley, C. (2014). Xi Touts Communist Party as Defender of Confucius's Virtue. *New York Times*, 13 Feb 2014. Available at: <https://archive.nytimes.com/sinosphere.blogs.nytimes.com/2014/02/13/xi-touts-communist-party-as-defender-of-confucius-virtues/>.
- Bui, N. S. (2017). The Law of China and Vietnam in Comparative Law. *Fordham International Law Journal*, 41, 1, 135.
- Bui, N. S. (2018). Why Do Countries Decide Not to Adopt Constitutional Review? The Case of Vietnam. Chen, H. & Harding, A. (Org.). *Constitutional courts in Asia: a comparative perspective*. Comparative constitutional law and policy. Cambridge University Press, 335-364.
- Bui, T. H. (2014). Deconstructing the "Socialist" Rule of Law in Vietnam: The Changing Discourse on Human Rights in Vietnam's Constitutional Reform Process. *Contemporary Southeast Asia*, 36, 1, 77.
- Campbell, C. *How China Is Using Big Data to Create a Social Credit Score*. Available at: <https://time.com/collection/davos-2019/5502592/china-social-credit-score/>.
- Carney, M. (2018). *She's a model citizen, but she can't hide in China's "social credit" system*. Available at: <https://www.abc.net.au/news/2018-09-18/china-social-credit-a-model-citizen-in-a-digital-dictatorship/10200278>.
- CCP Central Committee. *Guanyu quanmian tuijin yifa zhiguo ruogan zhongda wenti de jueding* [Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward]. Available at: <https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decisionconcerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/>.
- Central Bank of China. (2015). *Notice on the personal credit information system*. Available at: http://www.gov.cn/xinwen/2015-01/05/content_2800381.htm.
- Chan, T. F. (2017). *Debtors in China are placed on a blacklist that prohibits them from flying, buying train tickets, and staying at luxury hotels*. Available at: <https://www.businessinsider.com/chinas-tax-blacklist-shames->

debtors-2017-12.

- Chaskalson, A. (2002). Human Dignity as a Constitutional Value. KRETZMER, D. & KLEIN, E. (Org.). *The concept of human dignity in human rights discourse*. Kluwer Law International, 133-144.
- Chen, Y. & Cheung, A. S. Y. (2017). The Transparent Self Under Big Data Profiling: Privacy and Chinese Legislation on the Social Credit System. *SSRN Electronic Journal*. Available at: <https://www.ssrn.com/abstract=2992537>.
- Chen, Y.; Lin, C. & Liu, H. (2018). Rule of trust: The power and perils of china's social credit megaproject. *Colum. J. Asian L.*, 32, 1.
- Craig, T. & Ludloff, M. E. (2011). *Privacy and big data*. Sebastopol, CA: O'Reilly.
- Creemers, R. (2018). China's Social Credit System: An Evolving Practice of Control. *SSRN Electronic Journal*. Available at: <https://www.ssrn.com/abstract=3175792>.
- Creemers, R. (Trad.). (2016). *Opinions concerning Accelerating the Construction of Credit Supervision, Warning and Punishment Mechanisms for Persons Subject to Enforcement for Trust-Breaking*. Available at: <https://chinacopyrightandmedia.wordpress.com/2016/09/25/opinions-concerning-accelerating-the-construction-of-credit-supervision-warning-and-punishment-mechanisms-for-persons-subject-to-enforcement-for-trust-breaking/>.
- Cui, W., Cheng, J. & Wiesner, D. (2019). Judicial Review of Government Actions in China. *China Perspectives*, 2019, 1, 35-44.
- Dawes, S. S. (2010). Stewardship and usefulness: Policy principles for information-based transparency. *Government Information Quarterly*, 27, 4, 377-383.
- Englemann, S. (2019). Clear sanctions, vague rewards: How China's social credit system currently defines "good" and "bad" behavior. *Conference on Fairness, Accountability, and Transparency*, 31/1.
- Feldstein, S. (2019). *How artificial intelligence systems could threaten democracy*. Available at: <http://theconversation.com/how-artificial-intelligence-systems-could-threaten-democracy-109698>.
- Fewsmith, J. (2003). Studying the Three Represents. *China Leadership Monitor*, 8. Stanford: Hoover Institution.
- Gearty, C. (2017). Is the human rights era drawing to a close? *European Human Rights Law Review*, 22.
- Gillespie, J. (2006). *Transplanting commercial law reform: developing a "rule of law" in Vietnam*. Aldershot, England: Ashgate Pub. Company.
- Griffiths, J. T. (2019). *The great firewall of China: how to build and control an alternative version of the internet*. London: Zed Books.
- Hou, R. (2017). Neoliberal governance or digitalized autocracy? The rising market for online opinion surveillance in China. *Surveillance & Society*, 15, 3/4, 418-424.

- Hung, V. M. (2004). China's WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform. *The American Journal of Comparative Law*, 52, 1, 77-132.
- Jiang, Z. *Full Text of Jiang Zemin's Report at the 16th Party Congress*. Available at: <http://www.china.org.cn/english/2002/Nov/49107.htm#>.
- Jing, M. *The world's most valuable AI start-up just moved into online censorship*. Available at: <https://www.scmp.com/tech/start-ups/article/2143324/worlds-most-valuable-ai-start-sensetime-eyes-move-online-censorship>.
- Joplin, T. *China's Newest Global Export? Policing Dissidents*. Available at: <https://www.albawaba.com/news/china%E2%80%99s-newest-global-export-policing-dissidents-1139230>.
- Joseph, S. & Capstan, M. (Org.). (2013). *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*. Oxford: Oxford University Press. Available at: <http://opil.ouplaw.com/view/10.1093/law/9780199641949.001.0001/law-9780199641949>.
- Kahn, J. *Deep Learning 'Godfather' Bengio Worries About China's Use of AI*. Available at: <https://www.bloomberg.com/news/articles/2019-02-02/deep-learning-godfather-bengio-worries-about-china-s-use-of-ai>.
- Kostka, G. (2019). China's social credit systems and public opinion: Explaining high levels of approval. *New Media & Society*, 21, 7, 1565-1593.
- Kubat, Aleksandra. (2018). Morality as Legitimacy under Xi Jinping: The Political Functionality of Traditional Culture for the Chinese Communist Party. *Journal of Current Chinese Affairs*, 47, 3, 47-86.
- Kuo, L. *China bans 23m from buying travel tickets as part of "social credit" system*. Available at: <http://www.theguardian.com/world/2019/mar/01/china-bans-23m-discredited-citizens-from-buying-travel-tickets-social-credit-system>.
- Lafrance, S. (2020). The Impact of Artificial Intelligence on the Formation and the Development of the Law. *Vietnamese Journal of Legal Sciences*, 2, 1, 1-15.
- Lams, L. (2018). Examining strategic narratives in Chinese official discourse under Xi Jinping. *Journal of Chinese Political Science*, 23, 3, 387-411.
- Lee, A. *What is China's social credit system and why is it controversial?* Available at: <https://www.scmp.com/economy/china-economy/article/3096090/what-chinas-social-credit-system-and-why-it-controversial>.
- Lee, M. (2019). *Beyond Big Brother: Implications of China's Social Credit System for Global Credit and Governance*. Columbia University.
- Li, D. & Zhao, Y. *This Is How Chinese Citizens Are Watched and Rated*. Available at: <https://www.bloomberg.com/news/articles/2019-04-09/the-list-of-ways-china-keeps-tabs-on-citizens-is-getting-longer>.
- Liang, F. (2018). Constructing a data-driven society: China's social credit system

- as a state surveillance infrastructure. *Policy & Internet*, 10, 4, 415-453.
- Lilly, S. (2018). 15 “Bad Behaviors” China Is Targeting with Its Social Credit System (And Why It Won’t Work). Available at: <https://fee.org/articles/china-s-social-credit-scheme-will-create-more-corruption-not-a-better-citizenry/>.
- Liu, C. (2019). *Multiple Social Credit Systems in China*. (In Press). SocArXiv. Available at: <https://osf.io/v9frs>.
- Moak, K. & Lee, M. W. N. (2015). Deng Xiaoping Theory. Moak, K. & Lee, M. W. N. (Org.) *China’s Economic Rise and Its Global Impact*. New York: Palgrave Macmillan US, 91-115.
- Murrell, A. (2018). *Pushing the Ethical Boundaries of Big Data: A Look At China’s Social Credit Scoring System*. Available at: <https://www.forbes.com/sites/audreymurrell/2018/07/31/pushing-the-ethical-boundaries-of-big-data-a-look-at-chinas-social-credit-scoring-system/>.
- Needham, J. (1960). The past in China’s present: a cultural, social, and philosophical background for contemporary China. *The Centennial Review of Arts & Science*, 4, 2, 145-178.
- Nguyen, V. Q., Lafrance, S., Ho, N. H. & Nguyen, H. A. (2020). Legal and Social Challenges Posed by the Social Credit System in China. *International Journal of Innovation, Creativity and Change*, 14, 5, 413-428.
- Paul, N. W. (2017). Human rights violations in organ procurement practice in China. *BMC Medical Ethics*, 18, 1, 11.
- Potter, P. B. (2011). 4 June and Charter 08: Approaches to remonstrance. *China Information*, 25, 2, 121-138.
- Qiang, X. (2019). The road to digital unfreedom: President Xi’s surveillance state. *Journal of Democracy*, 30, 1, 53-67.
- Raghunath, N. (2020). A Sociological Review of China’s Social Credit Systems and Guanxi Opportunities for Social Mobility. *Sociology Compass*, 14, 5. Available at: <https://onlinelibrary.wiley.com/doi/10.1111/soc4.12783>.
- Roberts, H. (2021). The Chinese approach to artificial intelligence: an analysis of policy, ethics, and regulation. *AI & Society*, 36, 1, 59-77.
- Rollet, C. (2018). *Ecuador’s All-Seeing Eye Is Made in China*. Foreign Policy. Available at: <https://foreignpolicy.com/2018/08/09/ecuadors-all-seeing-eye-is-made-in-china/>.
- Ruengrangsukul, N. & Wenzel, M. F. (2019). China’s social credit system as a stimulant of donation behavior: Assessment of student opinions. *International Journal of Organizational Innovation*, 11, 4, 165-178.
- Schabas, W. (2015). *The European convention on human rights: a commentary*. Oxford, United Kingdom: Oxford University Press. (Oxford Commentaries on International Law).
- Shen, C. F. (2018). *Social credit system in China*. Digital Asia, 21-31.
- Síthigh, D. D. & Siems, M. *The Chinese social credit system: A model for other countries?* Working Paper. European University Institute, 2019.

- State Council of China. (2012). *Agreement to adjust the construction of the social credit system - Responsibilities of inter-ministerial joint meetings and approval of member units*. Available at: http://www.gov.cn/zwggk/2012-07/25/content_2191732.htm.
- State Council of China. (2007) *Notice of Inter-ministerial Conference System for Building a Social Credit System*. Available at: http://www.gov.cn/gongbao/content/2007/content_632090.htm.
- State Council of the People's Republic of China. (2014). *Notice concerning Issuance of the Planning Outline for the Construction of a Social Credit System (2014–2020)*. Available at: http://www.gov.cn/zhengce/content/2014-06/27/content_8913.htm.
- Tatlow, D. K. (2018). *China's Cosmological Communism: A Challenge to Liberal Democracies*. Available at: <https://www.merics.org/en/report/chinas-cosmological-communism-challenge-liberal-democracies>.
- The General Office of the Central Committee of the Communist Party of China. (2017). *Opinions on accelerating the construction of credit supervision, warning and punishment mechanisms for persons with low creditworthiness*. Available at: http://www.xinhuanet.com/politics/2016-09/25/c_1119620719.htm.
- The State Council of China. (2017). *Notice on the New Generation Artificial Intelligence Development Plan by 2030*. Available at: http://www.gov.cn/zhengce/content/2017-07/20/content_5211996.htm.
- Tomuschat, C. (2013). Democracy and the Rule of Law. SHELTON, D. (Org.). *The Oxford Handbook of International Human Rights Law*. Oxford: Oxford University Press, 2013. p. 469–496. Available at: <https://academic.oup.com/edited-volume/42626/chapter/358048032>.
- Triantafyllou, D. (2002). The European Charter of Fundamental Rights and the Rule of Law: Restricting Fundamental Rights by Reference. *Common Market Law Review*, 39, 1, 53–64.
- United Nations General Assembly. (2014). *The right to privacy in the digital age*. Resolution, A/RES/68/167. Available at: <https://digitallibrary.un.org/record/764407/?ln=en>.
- United Nations Human Rights Committee (HRC). (2014). *General Comment No. 35, Article 9 (Liberty and security of person)*. UN Doc, CCPR/C/GC/35.
- United Nations High Commissioner for Human Rights. (2014). *The right to privacy in the digital age*. Annual Report, A/HRC/27/37.
- Volodzko, D. (2016). *Why Are Chinese Tourists So Badly Behaved?* Available at: <https://thediplomat.com/2016/10/why-are-chinese-tourists-so-badly-behaved/>.
- Wagner, K. (2018). *This is how Facebook collects data on you even if you don't have an account*. Available at: <https://www.vox.com/2018/4/20/17254312/facebook-shadow-profiles-data-collection-non-users-mark-zuckerberg>.
- Wang, J. & Truong, N. (2012). Law for What? Ideas and Social Control in China

- and Vietnam. *Problems of Post-Communism*, 68, 3, 202-215.
- Wang, Z & Yu Q. (2015). Privacy trust crisis of personal data in China in the era of Big Data: The survey and countermeasures. *Computer Law & Security Review*, 31, 6, 782-792.
- Woesler, M. (2019). The Chinese Social Credit System. *European Journal Of Chinese Studies*, 2, 7-35.
- Wong, K. L. X. & Dobson, A. S. (2019). We're just data: Exploring China's social credit system in relation to digital platform ratings cultures in Westernised democracies. *Global Media and China*, 4, 2, 220-232.
- Zhang, C. (2020). Governing (through) trustworthiness: technologies of power and subjectification in China's social credit system. *Critical Asian Studies*, 52, 4, 565-588.
- Zhang, Q. (2018). Establishing Judicial Review in China: Impediments and Prospects. Chen, A. H. Y. & Harding, A. (Org.). *Constitutional Courts in Asia*. Cambridge University Press, 311–334.
- Zuo, M. (2013). *Chinese tourists carving out a bad reputation abroad*. Available at: <https://www.scmp.com/news/china/article/1261692/chinese-tourists-carving-out-bad-reputation-abroad>.

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