

Legal and Social Challenges Posed by the Social Credit System in China

Van Quan Nguyen^a, Sébastien Lafrance^b, Hien Ho Ngoc^c, Hoang Anh Nguyen^d, ^{a,d}VNU School of Law, Vietnam National University, Hanoi. E1, 144 Xuan Thuy, Cau Giay, Hanoi, Vietnam, ^bProsecutor (Crown Counsel), Public Prosecution Service of Canada & Professor of Law, Université Libre d'Haïti. 130 King Street West, Suite 2400, Exchange Tower P.O. Box 340, Toronto, Ontario M5X 1E1, ^cGraduate Academy of Social Sciences. 477 Nguyen Trai, Thanh Xuan, Hanoi, Vietnam, Email: ^anguyen.vnu@gmail.com, ^bseblafrance1975@gmail.com, ^chongochien76@gmail.com, ^d97hoanganh@gmail.com

Artificial intelligence is increasingly present in our lives. Some of its tools may be more present than others in citizens' daily life, like the Social Credit System ('SCS') in China. This paper will present the origin and historical background of the SCS, examine how it works, demystify a few preconceived ideas about it and then compare it with the Western world. Some of the impacts of the SCS on fundamental human rights will also be discussed.

Key words: *Artificial Intelligence, Public Governance, Social Credit System, Human Rights.*

Introduction

Technology and its legal implications can no longer be ignored these days, when “[o]nline activities are no longer a separate domain of existence, but the centre of our human interactions” (Weiler, 2014). The future of the Internet is most likely to be written in Asia: China and India, the two most populous countries in the world, are “the two largest markets for the Internet in the world” (Nilekani, 2018). In 2016, China had 731 million Internet users (Chen & Cheung, 2017).

The future of democracy as we know it could then be decided in China since the “[d]igital age is blurring the distinction of power between citizen and state” (Reede, 2017). In China, the Social Credit System (hereinafter ‘SCS’) “blurs the line between state and non-state actors” and “is [also] instituting cybernetic mechanisms of behavioural control” (Creemers,

2018). Yoshua Bengio, the father of artificial intelligence (hereinafter ‘AI’), comments on the application of AI in the context of the SCS: “Technology, as it gets more powerful ... just leads to more concentration of power and wealth... That is bad for democracy [and] that is bad for social justice and the general well-being of most people” (Kahn, 2019). Feldstein (2019) also writes that the impact of AI “is starting to transform basic patterns of governance, not only by providing governments with unprecedented capabilities to monitor their citizens and shape their choices but also by giving them new capacity to disrupt elections, elevate false information, and delegitimise democratic discourse across borders.” One famous example of such phenomenon is the Cambridge Analytica scandal in 2018 when millions of Facebook users’ personal data was harvested without consent to be used for political advertising (Boldyreva, 2018).

The topic of this paper is to examine the SCS, a national reputation system being developed by the Chinese Communist Party that intends “to enforce a new sincerity culture [that] involves defining, measuring and regulating virtue” (Reede, 2017). More specifically, we will first present the origin and historical background of the SCS; second, we will study how the current SCS works; third, we will attempt to demystify a few misconceptions about the SCS in light of a comparison of similar practices in the Western world; and lastly, we will examine some of the impacts of the SCS on fundamental human rights.

At the outset, it is essential to make a few linguistic clarifications, since otherwise it is easy to be lost in translation. Shen (2018) notes that “the credit reference (征信) system and the social credit (社会信用) system are two different but related concepts. Credit reference covers a smaller range of activities that strictly deal with money and is regulated by the People’s Bank of China.” In addition, Von Blomberg (2018) clarifies that “the term 社会信用, which is translated to social credit, carries a different meaning in the Chinese context”. More precisely, “[t]he term 社会, does not necessarily mean ‘social’, in terms of interpersonal connections. It also is used to refer to ‘society’ or ‘public’. Hence a more accurate translation might be ‘the credit of society/the public’” (Von Blomberg, 2018).

China’s Expansive and Tentacular Influence

China is not the only country using AI for surveillance or monitoring purposes. As reported by Feldstein (2019), China is “a major supplier of AI surveillance” all around the planet and has exported its technology abroad in “[a]t least seventy-five out of 176 countries globally” so far. To show China’s expansive and tentacular influence, let us also mention that facial recognition was not only used, for example, in Shenzhen, which “installed facial recognition cameras” (Creemers, 2018) but it was also successfully deployed in Brazil during its famous Carnival in 2019 (Kugler, 2019). It is true as stated by Feldstein (2019) that “[t]his does not inevitably mean that democracies are abusing these systems. The most important factor

determining whether governments will deploy this technology for repressive purposes is the quality of their governance.”

What about China’s quality of governance with respect to the use of facial recognition? The elephant in the room is the use by the Chinese government of facial recognition “to identify and profile members of the ethnic minority, the Uighurs, for the purpose of law enforcement and ideological indoctrination” (Krause Hansen & Weiskopf, 2019; Creemers, 2018). “Ideology is an indispensable aspect in the creation of regime support” in China (Pieke, 2012). If we extend this reality to the use of SCS, it is fair to say that “social scoring systems risk inducing social segregation” (Geslevich Packin & Lev-Aretz, 2016), and it may also be the source of ethnic segregation; the SCS may not be, in that context, multiculturalism-friendly (Lafrance, 2020b). In addition, Chen, Lin and Liu (2018) argue that “the SCS in its current form makes already disadvantaged groups more vulnerable to additional punishments, which is a departure from the principle of equality before the law.” Further, the SCS “creates a separation in society between those with and without access to rights, potentially creating a new form of social and political inequality” (Reede, 2017). On that note, let us keep in mind that Reijers (2019) states that “it seems wrong to assess the [SCS] merely in relation to the potentially nefarious tendencies of Xi Jinping’s administration, exemplified by rampant human right[s] abuses, oppression of minorities, and political persecutions.” The SCS goes beyond that. However, we should not forget that “the SCS is being proposed by the same government that has and is currently detaining hundreds of thousands, perhaps a million, of its ethnic minority citizens in ‘re-education camps’ beyond the reach of its legal system” (Ford, 2019; Fruge 1998).

As Chen (2018) puts it: “China’s goal to become the world’s tech leader must be understood not only in terms of a dominant position in relevant industries and markets, but also in terms of the Communist Party’s ambition to use new governance tools to reinvent social governance and social control.” The exact same statement could also apply *mutatis mutandis* to China’s ‘Belt Road’ initiative.

Origin and Historical Background of the SCS

As Carl Sagan (1980), the American scientific and astronomer, once famously put it, “You have to know the past to understand the present.”

In light of China’s history, there does not seem to be anything new with the SCS, at least regarding basic principles and practice. For thousands of years in China, the authorities have “relied on the regional and local governments to collect and report information for decision-making. Under Mao Zedong, the performance of individual citizens was recorded” (Krause Hansen & Weiskopf, 2019), and “only higher cadres and some farmers were excluded” from

having their information reported (Von Blomberg, 2018). Also, “for centuries, [China] conceived society as an organic whole, where harmony can be achieved if all its members conduct themselves as appropriate to their position in public and civil structures” (Creemers, 2018).

Rogier Creemers (2018) recalls that the term ‘social credit’ “was mentioned first in the [1990s], in the context of the market-economic reforms that had started under the leadership of Deng Xiaoping.” Creemers adds that “[f]rom the very beginning, the compliance problem that the SCS is intended to solve has been framed in moralistic terms [,] sincerity ... was indispensable in developing China’s market economy” (Creemers, 2018; Chen, Lin & Liu, 2018). However, there seems to be a point of disagreement in the literature about when the SCS became moralistic. For instance, Shen (2018) writes that “the primary motivation behind creating a social credit system seems to be more economical and social than political”. That being said, these two views share at least one commonality, which is the acknowledgement that the nature and motivation of the SCS has evolved through time. What also remains true is that “[t]he close linkage between morality and authority lies at the heart of China’s political tradition” (Creemers, 2018).

A few years later, in 2002, the “Chinese Communist Party leader Jiang Zemin underscored the need for the nation to ‘strengthen the social credit system in the modern market economy’” (Chen, Lin & Liu, 2018; Creemers, 2018).

In 2007, there were “two important government regulatory documents that defined the top-level design of the social credit system” (Shen, 2018). One of these documents, entitled ‘Opinions of the General Office of the State Council concerning the Building of a Social Credit System’, emphasised “the urgent need to create a social credit system for maintaining a ‘socialist market economy’ given widespread commercial fraud, tax evasion, product piracy, and evasion or abolition of debts to banks in bad faith” (Shen, 2018).

In 2012, the two related objectives of the SCS were laid at the 18th Congress of the Chinese Communist Party (Backer, 2019; Klooster, 2019), which explicitly included “a non-economic dimension” (Chen, 2019):

The first [goal] was the perceived need to remake China’s culture ... Social credit was to contribute to the advancement of the national values of prosperity, civility, and harmony, along with the social values of justice and rule of law. But at first the primary focus was on individual integrity. The second goal was reforming the socialist market economy system.

Exemplifying this new approach, the Chinese Supreme Court published a year later, in 2013, “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” (Chan, 2017; Creemers, 2018). These blacklists are published in a national database (Arsène, 2019). In the same year, “[a] Supreme People’s Court interpretation [document was issued] criminalising the online spread of rumours [, which] is a vague norm that could result in punishing free speech” (Arsène, 2019).

It is the growing and steady “[p]ublic discontent with corruption, public institutions and fraudulent company practices [that] encouraged the Chinese government to launch a plan in 2014 for a full-blown SCS” (Krause Hansen & Weiskopf, 2019; Síthigh & Siems, 2019b; Von Blomberg, 2018; Hvistendahl, 2018; ASAN Institute for Policy Studies, 2017), which “remains the most authoritative blueprint for subsequent SCS efforts” (Creemers, 2018). It was during that year that the “expansion of social credit was formally endorsed” by the State Council in its *Planning Outline for the Construction of the Social Credit System* (Chen, 2019), which “lays out a more detailed picture about building a unified social credit system” (Shen, 2018). The SCS has three important features: “First, it is not a single system monopolised by the government. ... Second, the document highlights the role information technologies will play in building a social credit system. ... Third, the document points out that rewards and penalties are the keys to making the social credit system work” (Shen, 2018). Develle (2019) states that “[t]he purpose of scoring citizens, companies and public institutions lies in a way to track the extent to which those follow existing laws”. The ASAN Institute for Policy Studies (2017) notes that under the SCS “all Chinese citizens are to be rated in four main areas - administrative affairs, commercial activities, social behaviour, and the law enforcement system. The government plans to establish a mechanism for reward and punishment by 2020”.

How Does the Social Credit System Work?

Shen (2018) points out that the Chinese word 信, which means ‘credit’ or ‘reputation’ or ‘trust’ “is a quintessential concept in Confucian thought. ... The social credit plan could be seen as a tool introduced by the party to cure the social ills of low trust with a good intention but with potentially unpredictable results.” However, Von Blomberg (2018) notes that “all ... key terms in every legislative and policy document, depict[] the overall goal that all SCSs aim to reach are [not] unambiguously defined”, including “the lack of a clear definition of the key concept of the SCS: trust.” This raises the following fundamental question: how could the SCS comply with the rule of law when “officially imposed norms of ‘trust’, which are vague and constantly expanding, weaken the role of clear and predictable legal rules in guiding and regulating social and individual behaviour” (Chen, Lin & Liu, 2018), even though “governing the country in accordance with the law” is enshrined in China’s constitution (China, 1961)?

As previously touched upon, the SCS “uses information technology to transform the manner in which Chinese government authorities manage both state and society” (Creemers, 2018). As Arsène (2019) summarises it, “[t]he Social Credit System is intended to solve a wide range of social issues in four fields: governmental affairs, trade, society and the judicial system” (see also Shen, 2018). Practically, it is “framed as a set of mechanisms providing rewards or punishments as feedback to actors, based not just on the lawfulness, but also the morality of their actions, covering economic, social and political conduct” (Creemers, 2018). The score is “based on data points including online purchases, posted content on social media, and the sort of friends one has” (Creemers, 2018). Muellerleile and Robertson (2018) also indicate that “[t]he plan is for the score to automatically update based on innumerable digitally traceable social interactions from minor traffic violations to using the Internet to falsely accuse others, to whether one has provided suitable care for aging parents” (see also Creemers, 2018; Hvistendahl, 2018). As Creemers (2018) puts it: “While no punishments would result from a poor score”, the consequences of a poor score or of being blacklisted are quite damning. A question that remains unanswered is “how the system will approach rehabilitation of judicial offenders assuming that their low credit scores would make it increasingly difficult to access spaces and opportunities that would help raise their scores” (Reede, 2017). In addition, Creemers (2018) notes that “[t]he blacklist systems have received criticism both inside and outside of China, addressing both the principle of the punishment system and reported instances where the system did not work as prescribed.” What if the SCS were to be hacked as it happened to Equifax, the American credit scoring business, when about a hundred forty-five million files were hacked (Hvistendahl, 2018)?

The SCS may impose a “tyranny of the past”, using here the expression crafted by Dumbrava (2019). An example of such tyranny is the Chinese high school teacher who was put in 2019 “on a ‘social credit blacklist’ ... because he had used corporal punishment on students who had skipped school” (Arsène, 2019), which will make it difficult for him to find a job in the future. While the authors of this paper do not condone corporal punishment on students, another important question that must be raised in that context is, as raised by Arsène (2019), “the proportionality of sanctions relative to offences” under the SCS, because of the potential impacts on someone’s professional and personal life, and also mostly because “the blacklist mechanism already enacts the same group of punishments on everyone on the list regardless of their respective trust-breaking action” (Von Blomberg, 2018). In addition, “the punishment jointly imposed by multiple government agencies under the SCS constitute an additional layer of broad and disproportionate sanctions” (Chen, Lin and Liu, 2018).

The SCS initiatives are concurrently – but not independently – run by State and private initiatives where “the best[-]known example of these [private] systems is Sesame Credit” (Creemers, 2018). The sources of the information collected that populates the database are both public and private (Orgad, 2019). Both government agencies and the private sector are

to share their information with the security authorities (Schwarck, 2018). Sesame Credit, a private entity embedded in Alipay, has about 520 million users and provides a score for individual users: “The score derives from five dimensions: credit history, fulfilment capacity, personal characteristics, behaviour and preferences, and interpersonal relationships” (Shen, 2018). Chen and Cheung (2017) make a distinction between the Sesame scoring system and the SCS State system, which is that the former is voluntary, and the latter is mandatory. But it is worth mentioning that Sesame Credit also has a blacklist of more than six million people who did not pay their legal fines (Hvistendahl, 2018). Many of those people were blocked from buying an airline ticket (Chen & Cheung, 2017).

In short, “three versions of the Chinese Social Credit System can be distinguished: China-wide blacklists, compliance scores by pilot cities, and social credit scores by financial institutions” (Siems and Síthigh, 2019a; Von Blomberg 2018).

Misconceptions about the SCS: Could East (Eventually) Meet West or Vice-Versa?

Because the SCS is “not well understood outside China” (Backer, 2019), let us now turn to the issue of the “similarities and differences between scoring systems in China and in the West” (Lagioia & Sartor, 2019) in the context where “[c]redit scoring has also developed in the [United Kingdom] and across Europe” (Síthigh & Siems, 2019b), and also in North America.

For the Western readership and for the others who may also have access to Netflix, “a common frame of discussing the Chinese Social Credit System is an episode of the science fiction series *Black Mirror*” (Síthigh & Siems, 2019b), more specifically the episode titled *Nosedive*. In that dystopian episode, the protagonist lives in a dystopian world that provides currency and social status to people according to their rate. In this rating system, people can rate each other with stars out of five, via a social media application, which is based on posts, likes and ratings that are mostly used on smartphones. Síthigh and Siems (2019b) state in that regard, “[t]he intuitive parallel to the Chinese system is that, here too, individuals are rated with a single score and that this score can have for a variety of consequences”. This even led a few authors to qualify this science fiction episode either as a “similar real-life version of [the SCS that] is now undergoing implementation in China” (Reede, 2017) or that *Nosedive* “has already become reality” in China (Hvistendahl, 2018).

Conversely, Síthigh and Siems (2019b) insist on the fact that “there are some profound differences. The most obvious one is that the Social Credit System is not based on the subjective ratings by other citizens.” In addition, the SCS “is apparently not equipped to centralise and share the raw information that each department holds about citizens” (Arsène, 2019) In fact, the SCS “has no equivalent elsewhere in the world ... the Chinese social credit

system extends from finance to almost all areas of social life” (Shen, 2018) – but “how unique is China?” (Lagioia & Sartor, 2019). The goal of the Chinese government is to encourage all citizens to change or adopt certain types of behaviour (Hvistendahl, 2018); it “actively engage[s] in changing society” (Liu, 2019). As Upendra Baxi (2020) describes it: “One can safely say that human brains or human species (*homo sapiens*) is fast becoming *machina sapiens*, with all its bright aspects and sinister sides.” While the SCS aims at changing human beings for the best – there remains the question of the scope and definition of what is to be considered ‘best’ – its more sinister sides are hardly deniable. For example, according to Reede (2017), the SCS changes “citizenship from a basic right to a reward that individuals must constantly work to maintain and compete for.” The ultimate objective of the SCS is to have every one of China’s 1.4 billion citizens to fall under its authority (Kim, 2019; Palin, 2018) but it has not “reached the stage where each individual is given a number ‘score’ ... as imagined in the fear-inspiring episode *Nosedive*” (Chen, Lin & Liu, 2018).

Several aspects of the SCS require clarification and need to be demystified.

First, as Creemers (2018) recalls, “it is mistaken to conceive the Social Credit System as a single, integrated entity.” There is not at present, contrary to what some seem to suggest (Ford, 2019), a unified social credit system in China (Backer, 2019; Liu, 2019; Shen, 2018) but “a range of initiatives aimed at documenting the behaviour of citizens to punish breaches of social trust and reward trustworthiness” (Klooster, 2019). Using AI, the SCS rates both businesses and individuals (Chen & Cheung, 2017) with the caveat that “privately owned credit rating systems do not yet play an indispensable role in the SCS, contrary to what has been (mistakenly) reported in major media platforms” (Chen, Lin and Liu, 2018). The SCS “rewards and punishes citizens based on characteristics such as honesty, norm-following, and general courtesy” (Kugler, 2019). It is a “system of systems” (Sel, 2019). For example, “[m]any local [Chinese] governments also construct their own municipal SCSs and reconfigure the meaning of ‘trustworthiness’ and ‘credit’ in their local practice” (Liu, 2019), “each with their own distinctive characteristics” (de Filippi, 2019; ASAN Institute for Policy Studies, 2017). In addition, Síthigh and Siems (2019b) note that “[a]t present, three different models operate: China-wide blacklists, compliance scores by pilot cities, and social credit scores by financial institutions.” Therefore, it is inaccurate, as pointed out by Síthigh and Siems (2019b), to describe the SCS “as a big-data-driven *comprehensive* rating of *all* Chinese citizens”

Second, while the SCS “is part of an openly declared and widely propagated effort to instil civic virtue” (Creemers, 2018), it then becomes “potentially useful ... for social governance” (Liu, 2019). Could it then be true that the SCS is “[s]imilar to credit scoring in the United States, though on a colossal scale”? (Muellerleile and Robertson, 2018). It is true that the “United States has implemented Credit Scores-numerical calculations describing a person’s

ability to secure loans, financial well-being, and much more” (Kim, 2019), but it certainly does not go as far, for example, as public shaming, which “has long been a measure of the Chinese government to exert additional pressure on suspects and, more importantly, to make an example out of a person as to warn the public from violating rules” (Von Blomberg, 2018).

Third, as Síthigh and Siems (2019b) put it, “understanding the Social Credit System as ‘merely’ a tool of state surveillance misunderstands the diversity of the current system” even if “China is widely regarded as a surveillance state” (Daum, 2019). It is not a centralised surveillance tool of governmental control that collects people’s biodata, online speech, and social networking” (Liu, 2019).

Fourth, Síthigh and Siems (2019b) also add that a “frequent reaction is that the Chinese Social Credit System is incompatible with Western political and cultural values. For example, it has been suggested that it may be suitable for an authoritarian political system, but not a liberal democracy”. But it should not be forgotten that the SCS “derives from its Western counterparts” and that “Chinese law may, in many respects, not be fundamentally different from its Western counterpart” (Síthigh and Siems, 2019b). This then “raises the question of whether Western liberal democracies are heading towards the implementation of similar systems” (Reede, 2017). One author even goes as far as to suggest that “a well-designed Social Credit System might make western capitalist societies more just” (Klooster, 2019). Liu (2019) adds that “[w]e need to conceptualise Chinese SCSs not as a dystopian technology that could only exist in authoritarian societies, for its fundamental assumptions, practices, and implications [because they] are not that far away from the Western democratic societies”. Indeed, “[f]or instance, some countries use a point-based immigration system. Another example across many European states is the introduction of ‘penalty points’ as a method of enforcing road traffic law” (Síthigh and Siems, 2019b; Hvistendahl, 2018). Some courts in Western countries also use scoring in the context of predictive system to determine the risk of recidivism (Lagioia & Sartor, 2019; Lafrance, 2020). All these examples remain marginal, and the objective (at least for now) in western countries is not (at least for now) to use scoring in all aspects of life.

Lastly, “[u]nlike most credit score products in Western societies, the credit reference reports do not derive a holistic score for individuals and enterprises” (Shen, 2018) “covering all aspects of personality” (Lagioia & Sartor, 2019), including the punishment of citizens for “purchasing too much junk food or video games, which are not forbidden by law” (de Filippi, 2019; Kim, 2019). This kind of control goes beyond the parameters of what is provided by law, and then it introduces “a new type of normativity” (de Filippi, 2019). The SCS is also *driven* by the Chinese government, rather than by private actors (Lagioia & Sartor, 2019) as in the Western world where, “with some exceptions, western rating systems are voluntary, not

mandatory” (Orgad, 2019; Kim, 2019).

Discussion: Impacts of the SCS on Fundamental Human Rights

To the question de Filippi (2019) asks: “To what extent does the SCS comply with the fundamental principles of democratic legal systems and human rights values?”, Orgad (2019) seems to answer in broad terms, when he writes that in China the human rights affected by the SCS “are fundamental: education, health, housing, as well as freedom of movement, human dignity, and privacy issues.”

Aras and Irawan (2018) define a “dictatorship or authoritarian system” as a government that is “ruled by a few people or a particular group. In this system, the power of the state covers all aspects of the state and society.” As previously stated, not only does the SCS aim at regulating citizens’ behaviour but it also aims at changing it. Lagioia and Sartor (2019) argue that “the Chinese SCS ... has been designed and implemented by an authoritarian government. Though the Chinese SCS has been presented as an implementation of a model of social virtue, inspired by the Chinese Confucian traditions, there is no warranty that it is not driven by goals of political control.” In that respect, de Filippi (2019) states that: “China’s SCS stands in contrast with the democratic concept of the *rule of law* ... and rather implements a *rule by law* – whereby law is used as a tool to command and discipline people, as it is generally done in authoritarian regimes.” Therefore, it is fair to suggest about the SCS, as Reijers (2019) does, that because “the ‘making’ of citizens implied in [the SCS] limits the political freedom of citizens to act virtuously, [it] promotes dictatorial rule”, and then the SCS could be qualified as a ‘dictatorial tool’.

As Chen and Cheung (2017) report: “Whilst the use of big data analytics in the context of credit scoring and the rating of individuals is not unique to China ... What differentiates China [among other things] is the scale of the data collected [and] the scope of its use ... When big data is harvested by governments, the worry is that the totality of individuals’ lives will be captured, that citizens will be monitored and that the Orwellian state will become a reality.” As Ford (2019) puts it:

Respecting human dignity requires at least three things from the state: it requires that the state not offend – at a minimum – basic individual human rights; it requires the rule of law, when questions of individual rights and responsibilities intersect with coercive state power; and it requires that the state not be utterly panoptic, so that individuals have some scope for autonomy and privacy in their lives.

The SCS took that autonomy and privacy away, but how the right to privacy should be understood in the technological age in the context where “[t]he utilisation of social information for financial ranking purposes poses a number of policy challenges [including]

privacy issues” (Geslevich Packin & Lev-Aretz, 2016)?

Shen (2018) recalls that in 2017, “China issued a new regulation on protecting personal information.” According to Liang, Das, Kostyuk and Hussain (2018), China’s “privacy regulation can be flexibly interpreted by political leaders to achieve a goal of implementing SCS-state surveillance and control.” These authors (Liang, Das, Kostyuk and Hussain, 2018) also observe that “Chinese laws regulating the privacy are scattered across sectors and different laws”. More specifically, Chen (2018) notes that “[u]ntil the Cybersecurity Law, which went into effect on June 1, 2017, China lacked a legal framework to govern personal data protection”. In spite of an existing legislative framework protecting privacy in China, some authors even still claim that privacy protections are lacking (Krause Hansen & Weiskopf, 2019). Even though this last statement may be arguable, it remains true that the flexibility given to Chinese leaders to interpret the privacy regulation constitutes both a political and a legal issue. Síthigh and Siems (2019b) state that “[i]t is clear from case law on privacy as a human right that the most extreme forms, such as the compiling and use of a ‘blacklist’ of workers on the grounds of their trade union activity, is suspect” or, as stated by Klooster (2019), “there is a serious concern regarding privacy” in that context.

Conclusion

The question that is on everybody’s lips is: “Will China’s Social Credit System lead the way to a dystopian future?” (Siems and Síthigh, 2019a). Siems and Síthigh (2019a) answer their own question saying, “this very much depends on the way the Chinese models as well its western counterparts evolve.” The authors of this paper could not agree more. In other words, the future will tell us. But safeguards to protect and preserve human rights, such as the right to privacy, should never be traded away in that context from the citizens’ ‘Social Contract’ concluded with the State (Rousseau, 1762).

Acknowledgement

This paper is conducted under the project titled “Improving the laws on state governance in Vietnam in the requirements of the Industrial Revolution 4.0”. Code: QG.20.72.



REFERENCES

- Aras, M. & Irawan, R. E. (2018). Enroute to Good Governance: Society-based Government in Sulawesi. *Pertanika J. Soc. Sci. & Hum.*, 26, 65-75.
- Arsène, S. (2019). China's Social Credit System: A Chimera with Real Claws. *Asie Visions*, 110.
- ASAN Institute for Policy Studies. (2017, February 28). Orwell's Nightmare: China's Social Credit System. Retrieved June 21, 2020, from <http://en.asaninst.org/contents/orwells-nightmare-chinas-social-credit-system/>
- Backer, L. (2019). China's Social Credit System: Data-Driven Governance for a 'New Era'. *Current History*, 209-214.
- Baxi, Upendra. (2020). Towards a New Algorithmic Self? *GNLU Law & Society Review*, vol. II.
- Black Mirror. (2016). Nosedive [Television series episode]. Netflix.
- Boldyreva, E. (2018). Cambridge Analytica: Ethics and Online Manipulation With Decision-Making Process. Conference Paper 18th PCSF 2018. Retrieved July 1, 2020, from https://www.researchgate.net/publication/330032180_Cambridge_Analytica_Ethics_And_Online_Manipulation_With_Decision-Making_Process doi: 10.15405/epsbs.2018.12.12.10
- Chan, T. F. (2017). Debtors in China are placed on blacklist that prohibits them from flying, buying train tickets, and staying at luxury hotels. Retrieved June 21, 2020, from <https://www.businessinsider.com/chinas-tax-blacklist-shames-debtors-2017-12?r=UK>
- Chen, Y. (2019). Evolution of the Social Credit System: Three Functions through the Lens of Public Law. Essay for discussion at the Interdisciplinary Symposium: Super-Scoring? Data-driven Societal Technologies in China and Western-style Democracies as A New Challenge for Education.
- Chen, Y.-J., Lin, C.-F. & Liu, H. (2018). Rule of trust: The power and perils of china's social credit megaproject. *Columbia Journal of Asian Law*, 32(1), 1-36.
- Chen, Y. & Cheung, A. (2017). The transparent Self Under Big Data Profiling: Privacy and Chinese legislation on the Social Credit System. *Journal of Comparative Law*, 12(2), 356-378.



- China. (1961). Constitution of the People's Republic of China, adopted on September 20, 1954 by the First National People's Congress of the People's Republic of China at its first session. Peking: Foreign Languages Press.
- Creemers, R. (2018, May 9). China's Social Credit System: An Evolving Practice of Control. Retrieved June 21, 2020, from <http://dx.doi.org/10.2139/ssrn.3175792>
- Daum, J. (2019) Untrustworthy: Social Credit Isn't What You Think It Is. In Orgad L. and Reijers W., eds, *A Dystopian Future? The Rise of Social Credit Systems*. Robert Schuman Centre for Advanced Studies Global Citizenship Governance, European University Institute Working Papers RSCAS 2019/94, 39-41.
- de Filippi, P. (2019). The Social Credit System as a New Regulatory Approach: From 'Code-Based' to 'Market-Based' Regulation. In Orgad L. and Reijers W., eds, *A Dystopian Future? The Rise of Social Credit Systems*. Robert Schuman Centre for Advanced Studies Global Citizenship Governance, European University Institute Working Papers RSCAS 2019/94, 25-28.
- Develle, Y. (2019). Time to stop comparing China's Social Credit to Black Mirror. Medium.com. Retrieved June 21, 2020, from <https://medium.com/wonk-bridge/time-to-stop-comparing-chinas-social-credit-to-black-mirror-6e54dc98cec8>
- Dumbrava, C. (2019). The Citizen, The Tyrant, and The Tyranny of Patterns. In Orgad L. and Reijers W., eds, *A Dystopian Future? The Rise of Social Credit Systems*. Robert Schuman Centre for Advanced Studies Global Citizenship Governance, European University Institute Working Papers RSCAS 2019/94, 20-21.
- Feldstein, S. (2019). The Global Expansion of AI Surveillance, Carnegie Endowment for International Peace. Retrieved June 21, 2020, from https://carnegieendowment.org/files/WP-Feldstein-AISurveillance_final.pdf
- Ford, C. (2019) Seeing Like an Authoritarian State. In Orgad L. and Reijers W., eds, *A Dystopian Future? The Rise of Social Credit Systems*. Robert Schuman Centre for Advanced Studies Global Citizenship Governance, European University Institute Working Papers RSCAS 2019/94, 15-17.
- Früge, M. P. (1998). The Laogai and Violations of International Human Rights Law: A Mandate for the Laogai Charter, *Santa Clara L. Rev.* 38(2), 123-147.
- Geslevich Packin, N. & Lev-Aretz, Y. (2016). On social credit and the right to be unnetworked. *Columbia Business Law Review*, 2, 339-425.
- Hvistendahl, M. (2018). Bienvenue dans l'enfer du *social ranking*. *La Découverte*, 2(10), 4-425

21.

- Kahn, J. (2019). Deep Learning 'Godfather' Bengio Worries About China's Use of AI. *Bloomberg*. Retrieved June 21, 2020, from <https://www.bloomberg.com/news/articles/2019-02-02/deep-learning-godfather-bengio-worries-about-china-s-use-of-ai>
- Kim, T. (2019). Younger generations are infected by continuous socialisation to accept diminished privacy: global analysis of how the united states' constitutional doctrine is main contributor to eroded privacy. *Indiana Journal of Global Legal Studies*, 26(1), 335-352.
- Klooster, J. v. Rewarding Virtuous Citizens. In Orgad L. and Reijers W., eds, *A Dystopian Future? The Rise of Social Credit Systems*. Robert Schuman Centre for Advanced Studies Global Citizenship Governance, European University Institute Working Papers RSCAS 2019/94, 4-6.
- Krause Hansen, H. & Weiskopf, R. (2019). From Universalising Transparency to the Interplay of Transparency Matrices: Critical insights from the emerging social credit system in China. *Organization Studies*, 0170840619878474. doi: 10.1177/0170840619878474
- Kugler, M. B. (2019). From identification to identity theft: Public perceptions of biometric privacy harms. *UC Irvine Law Review*, 10(1), 107-152.
- Lafrance, S. (2020a). The Impact of Artificial Intelligence on the Formation and the Development of the Law. *Vietnamese Journal of Legal Sciences*.
- Lafrance, S. (2020b). The Beauty of Differences: Multiculturalism Through the Eyes of a Humanist. *Socio Legal Literary*. Retrieved July 7, 2020, from <https://www.sociolegalliterary.in/the-beauty-of-differences-multiculturalism-through-the-eyes-of-a-humanist/>
- Liang, F., Das, V., Kostyuk N. & Hussain, M. M. (2018). Constructing a Data-Driven Society: China's Social Credit System as a State Surveillance Infrastructure. *Policy & Internet* 10, no. 4: 415-453. doi:10.1002/poi3.183.
- Nilekani, N. (2018). Data to the people: India's inclusive internet. *Foreign Affairs*, 97(5), 19-27.
- Liu, C. (2019). Multiple social credit systems in China. *Economic Sociology*, 21(1), 22-32.
- Muellerleile, C. & Robertson, S. L. (2018). Digital weberianism: Bureaucracy, information,



and the techno-rationality of neoliberal capitalism. *Indiana Journal of Global Legal Studies*, 25(1), 187-216.

Murrell, A. (2018). Pushing the Ethical Boundaries of Big Data: A Look at China's Social Credit Scoring System. *Forbes*. Retrieved June 21, 2020, from <https://www.forbes.com/sites/audreymurrell/2018/07/31/pushing-the-ethical-boundaries-of-big-data-a-look-at-chinas-social-credit-scoring-system/#4ac3f4325e56>

Palin, M. (2018). China's 'social credit' system is a real-life 'Black Mirror' nightmare. *New York Post*. Retrieved June 21, 2020, from <https://nypost.com/2018/09/19/chinas-social-credit-system-is-a-real-life-black-mirror-nightmare/>

Pieke, F. N. (2012). The communist party and social management in China. *China Information*, 26(2), 149-165. doi: 10.1177/0920203XI2442864

Reede, M. (2017). China's Social Credit System: The Quantification of Citizenship. Essay: Department of Digital Humanities, King's College, London.

Reijers, W. How to Make 'The Perfect' Citizen? In Orgad L. and Reijers W., eds, A Dystopian Future? The Rise of Social Credit Systems. Robert Schuman Centre for Advanced Studies Global Citizenship Governance, European University Institute Working Papers RSCAS 2019/94, 1-3.

Sagan, C. E. (1980). Episode 2: One Voice in the Cosmic Fugue [Television series episode]. In Adrian Malone (Producer), *Cosmos: A Personal Voyage*. Arlington, VA: Public Broadcasting Service.

Sel, P. (2019). Comprendre le système de crédit social [*Understanding the Social Credit System*]. *Esprit*, 10, 25-28.

Siems, M. & Síthigh, M. (2019a) Treating China as a 'Normal Country'. In Orgad L. and Reijers W., eds, A Dystopian Future? The Rise of Social Credit Systems. Robert Schuman Centre for Advanced Studies Global Citizenship Governance, European University Institute Working Papers RSCAS 2019/94, 7-9.

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).

Retrieved June 21, 2020, from http://www.gov.cn/zhengce/content/2014-06/27/content_8913.htm

State Council of the People's Republic of China. (2017). Notice on the new generation artificial intelligence development plan by 2030. Retrieved June 21, 2020, from



http://www.gov.cn/zhengce/content/2017-07/20/content_5211996.htm

- Schwarck, E. (2018). Intelligence and Informatization: The Rise of the Ministry of Public Security in Intelligence Work in China. *The China Journal*, 80(1), 1-23.
- Shen, C. F. (2018) Social credit system in China. *Digital Asia*, 2, 21-31.
- Síthigh, D. M. & Siems M. (2019b). The Chinese social credit system: A model for other countries? European University Institute, Working Papers, Department of Law.
- United Nations General Assembly. (2014). The right to privacy in the digital age. A/RES/68/167, 68th session.
- Von Blomberg, M. (2018). The social credit system and China's rule of law. *Mapping China Journal*, 2, 77-162.
- Weiler, M. (2014) The right to privacy in the digital age: The commitment to human rights online, *German Yearbook of International Law*, 57, 651-665.