Assessment-driven regulation and the law:

The case of China's Social Credit System

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Abstract

Trustworthiness assessments are a ubiquitous guide to decision-making in the digital age. Devised by governments, companies, or social organisations, trustworthiness assessments of different types simplify the choices that consumers, public officials, or human resource departments, among others, make daily. With its plans for a Social Credit System, the government of the People's Republic of China is the first to assert political authority over the rise of trustworthiness assessment regimes. The Social Credit System project draws in all parts of society. It addresses behaviour in all fields, establishing trustworthiness assessment-centred statecraft. The SCSP has a fundamental impact on the relations between the people and the state, as reflected in administrative law. This investigation asks how the Social Credit System project strengthens, weakens and transforms the law in China.

Trustworthiness assessment-driven regulation influences traditional administrative law structures for rule-making, law enforcement, legal principles, and channels for the protection of rights, and these structures transform as a result. This study is grounded in analyses of legal and policy documents, court decisions, technical standards, and interviews with officials responsible for social credit implementation, citizens, judges, social credit theorists, corporate representatives, and lawyers conducted over three years of fieldwork across China. I demonstrate how the technique of trustworthiness assessments lies at the centre of all SCSP practices and further reveal discrepancies between this technique and the prevailing categories and logic of administrative law. On the one hand, trustworthiness assessment-driven regulation is an innovative and promising tool for law enforcement. Its rise spurred significant legal developments in China, such as the emergence of the prohibition of improper connection principle. At the same time, it undermines rights protections for citizens by hollowing out existing legal principles, such as proportionality, and by posing conceptual novelties that courts and other remedial institutions cannot address. Embedded in the socialist state structure and inspired by instances of assessment-driven regulation abroad, a form of trustworthiness assessment-centred administrative law emerges. The findings contribute to our understanding of both the nature of Chinese law and regulatory evolution in the data era.

Contents

Acknowledgment i
Abstract iii
Glossary and Abbreviations vi
Introduction: Where law meets social credit 8
1.1. A global trustworthiness assessment revolution and the Social Credit System project in China 8
1.2. Approaching the Social Credit System 社会信用体系: Terms and translations 17
1.3. The state of the art: Research on the relationship between the law and the SCSP 21
1.3.1. The *strengthening* paradigm 21
1.3.2. The *weakening* paradigm 24
1.3.3. The *transforming* paradigm 28
1.4. Shortcomings in current literature 32
1.4.1. Fragmented SCSP initiatives, fragmented research 32
1.4.2. 'Law is law': Doctrinal analyses 35
1.4.3. 'Law in China is irrelevant or non-existent' 37
1.5. Sources and limitations 39
1.5.1. Written sources 40
1.5.2. Oral sources 41
1.5.3. Notes on fieldwork and positionality 43
Chapter 2: Conceptualising the SCSP and administrative law in China 46
2.1. The social credit mode of governance: To counter the 'trust crisis' 46
2.1.1. Root one: Credit reporting for the socialist market economy 49
2.1.2. Root two: A credit system for law enforcement 59
2.1.3. Root three: Engineering trustworthy citizens 63
2.1.4. The central plan 68
2.1.5. Social credit as a new mode of governance 72
2.2. Two functions of administrative law in China 78
2.2.1. Reflections on the functional perspective on law 79
2.2.2. PRC administrative law in functions 82
2.2.3. Function one: Enabling the public administration 85
2.2.4. Function two: Protecting legal rights and interests 90
Chapter 3: The SCSP and *enabling the public administration* 97
3.1. Making "law for people to follow" or blurring law? 97
3.1.1. Social credit norms: Clear and transparent rules? 97
3.1.2. SCSP development: Driving legal development? 108
3.1.3. The SCSP legal framework: Bringing law to grey areas? 118
3.1.4. Conclusion of section 3.1 127
3.2. Empowering or undermining law enforcement? 129
3.2.1. Publicity-centred law enforcement with social credit information 130
3.2.2. Publicity with a twist: Reputational disciplining 144
3.2.3. Joint agency disciplining of trust-breaking 155
3.2.4. Credibility-based regulation: Making administrative discretion risk-based, predictive, algorithmic 170
3.2.5. Joint rewarding of trust-keeping 192
3.2.6. Conclusion of section 3.2 206
Chapter 4: The SCSP and *protecting legal rights and interests* 212
4.1. SCSP practices and principles of administrative law 212
4.1.1. Legal basis 213
4.1.2. The proportionality principle 227
4.1.3. The prohibition of improper connection 240
4.1.4. The prohibition of double sanctioning 251
4.1.5. Due process 257
4.1.6. Conclusion of section 4.1 265
4.2. Remedial channels for SCSP subjects 270
4.2.1. Administrative litigation, administrative reconsideration 270
4.2.2. Legality review of SCSP legislation and norms 293
4.2.3. Non-adversarial justice? Credit repair 302
4.2.4. Interim findings: The limitations of ex-post remedial channels 312
4.2.5. Objection procedures 313

4.2.6. Conclusion of section 4.2 ... 321
Chapter 5: Conclusion ... 334
5.1. The SCSP strengthens the law ... 337
5.1.1. *Enabling the public administration* ... 338
5.1.2. *Protecting legal rights and interests* ... 341
5.2. The SCSP weakens the law ... 342
5.2.1. *Enabling the public administration* ... 342
5.2.2. *Protecting legal rights and interests* ... 344
5.3. The SCSP transforms the law ... 347
5.3.1. *Enabling the public administration*, the technique of 'assessments' and the 'trustworthiness' normativity 348
5.3.2. *Protecting legal rights and interests* and the emergence of 'trustworthiness assessments' ... 352
5.4. Beyond China ... 355
Bibliography ... 358

Glossary and Abbreviations

SCSP	Social Credit System project, refers to the ensemble of projects, initiatives and mechanisms that are by the state designated or have themselves declared a part of the SCS
SCS	Social Credit System, refers to the official name of the government initiative 社会信用体系
Trust assessment	Value statements about a legal or natural person made on the basis of records of its behaviour, to the end of predicting the probability with which the person concerned is going to uphold a promise, including implicit promises as in what can be reasonably expected of them, especially abidance by legal rules, contracts and social norms
SCSP subject	Refers to all addressees of SCSP initiatives and is roughly equivalent to what SCSP rhetoric refers to as 'credit subject 信用主体', that is, entities with a social credit identification number. SCSP subjects encompass nearly all citizens and registered organizations in the People's Republic of China, as well as in some schemes, state actors
Comprehensive credibility assessment	Credibility assessments produced by the NDRC and its subsidiary agencies from social credit information that is retrieved through departmental regulators, industry associations, market entities and other sources, reflecting an SCSP subject's overall social credit status
Sectoral credibility assessment	Credibility assessments produced within one regulator realm, often by one regulatory agency, reflecting an SCSP subject's social credit status in that realm
CBR	Credibility-based regulation, see section 3.2.4.
JAD	Joint administrative disciplining, see section 3.2.3.
Social credit information	PCI and MCI
PCI	Public credit information, 公共信用信息 Behavioural records of social credit subjects sourced by administrative agencies throughout their regular regulatory work
MCI	Market credit information, 市场信用信息 Behavioural records of social credit subjects sourced from private actors
Social credit agency	The local administrative agencies, commissions or groups tasked specifically with SCS building in a locality. In practice, they have different titles and are therefore here summarized under 'social credit agencies'
Credibility assessment	A grade, rating, score or other indicator of an SCSP subject's social credit status based on PCI and MCI

Introduction: Where law meets social credit

1.1. A global trustworthiness assessment revolution and the Social Credit System project in China

"The [social credit system project], however, is not about the market nor politics alone; its policy approaches involve more than 'big data,' and its implications for law and governance also go beyond the common concerns of data privacy."

- Xin Dai[1]

In 2014, the State Council of the People's Republic of China (PRC) issued a blueprint for building a Social Credit System (SCS),[2] the lead theme being, then as now, "green lights all the way for the trustworthy, and restrictions at every turn for the untrustworthy 让守信着一路绿灯，失信着处处受限".[3] In Western media, the plan has given rise to speculations about an Orwellian social credit score, purportedly calculated by the PRC government based on a person's social behaviour and dictating the lives of all citizens.[4] The reality of the SCS project (SCSP) unfolding on the ground in China, however, is much more pluralistic: Local governments, ministries, regulatory agencies, as well as technology companies, industry associations, and several other actors create renditions of SCSs that fit the policy's aim of 'building trust' but also serve their respective institutional interests. The government of Xiamen city designed the Egret Points scoring scheme that offers free parking downtown for residents who achieved high scores for instance through volunteering or donating blood,[5] the central bank (People's Bank of China, PBoC) designated Alibaba and other companies to experiment with personal credit scoring,[6] and the Ministry of Ecology and Environment partnered with 31 other

[1] Peking University Law Professor Xin Dai (2018) Toward a reputation state: The social credit system project of China, SSRN, 24 June 2018, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3193577, p. 4, hereafter: *Xin Dai: Reputation state*.
[2] 国务院关于印发社会信用体系建设规划纲要（2014-2020） (State Council on Issuing the Planning Outline for Building a Social Credit System (2014-2020)), issued 14 June 2014, hereafter: *SCS Planning Outline*.
[3] 国家发展改革委办公厅 人民银行办公厅关于对失信主体加强信用监管的通知 (Notice Of The National Development And Reform Commission (NDRC) And People's Bank Of China (PBoC) On Strengthening Oversight And Management Of Trust-Breaking Entities), issued 24 July 2018.
[4] E.g., Frank H. Buckley (2019) "'Social credit' may come to America", Wall Street Journal, 28 August 2019, https://www.wsj.com/articles/social-credit-may-come-to-america-11567033176; Bastian Benrath und Bernhardt Bartsch (2018) "Punktabzug für zu seltene Besuche bei den Eltern (Score deduction for too infrequent visits to parents)", Frankfurter Allgemeine Zeitung, 30 November 2018, https://www.faz.net/aktuell/wirtschaft/chinas-sozialkredit-system-punktabzug-fuer-seltenen-elternbesuch-15913709.html.
[5] credit.xm.gov.cn (geo-blocked), see Xiamen Information Group 厦门信息集团 (2022) "《信用讲堂》"白鹭分"能带给厦门人哪些便利？最全的说法都在这了" ([Credit Lecture] What conveniences can "Egret Points" bring to Xiamen residents? The most comprehensive explanation is here), 15 September 2022, https://mp.weixin.qq.com/s?__biz=MzI4NzMxNzk1MQ==andmid=2247644937andidx=2andsn=564d7ac9933e3b20ee62ce25a3a2fc25andchksm=ea57a11dc94087f018acb92ed8145ccf4559f06286be46ee5e9eec93e13573796b4d9cc8f31aandscene=27, archived at https://web.archive.org/web/20250314143431/https://mp.weixin.qq.com/s?__biz=MzIxNzA1NzczOQ==andmid=2649788590andidx=1andsn=cd20948e186a04336b1dd59815bac31dandchksm=8ffba00ab88c291c8284a5dcd94182c480ef984c65e1a03b7e9aa0c40cb28be5dd366a8de6e4andscene=27.
[6] Yuzhe Zhang, Qinqin Peng and Tongjian Dong (2017) "China gives little credit to companies handpicked to develop credit-reporting sector", Caixin Global, 15 May 2017, https://www.caixinglobal.com/2017-05-15/china-gives-little-credit-to-companies-handpicked-to-develop-credit-reporting-sector-

government departments to jointly enforce disciplinary measures on repetitive polluting companies it designated 'trust-breakers'[7], to just name some examples from the vast social credit landscape. Further, ongoing projects, such as the corporate credit reporting industry and village-level lending arrangements for virtuous residents, were by state departments and local governments rhetorically drawn into the SCSP policy framework.[8]

Media reporting often portrays the SCSP as a uniquely Chinese invention[9] and, in terms of the broad plan, it certainly is original. However, many of its initiatives have readily identifiable equivalents outside China. Personal credit scoring schemes that evolve under the SCSP are comparable to the FICO score in the USA, the risk assessment tools developed in the public regulatory arm of the SCSP are akin to the ALMA tool used by the German financial markets regulator, and the Aadhaar programme of India's government.

Contrary to the simplistic imaginary of a single score, the SCSP is a highly fragmented, state-coordinated, private sector-powered strategy of top political priority centred on the normative core of 'trustworthiness'. The SCSP does not consist of a single closed system but rather serves as a discursive roof for a plethora of projects. As a political strategy from the highest level of government, and, as I will argue, a mode of governance, it denotes an effort by China's political leadership to make sense of and shape a development that is underway globally, namely, the rise of trustworthiness assessments.

At the intersection of global capitalism's rise and leaps in technological development, trustworthiness assessments have come to the fore and facilitate transactions in societies of strangers. With automated analysis of behavioural data from compliance records to consumer preferences, individuals, companies, and other organisations are classified according to their trustworthiness on a massive scale. Trustworthiness assessment applications permeate the private and public sectors, infusing the operational repertoire of regulatory agencies, commercial platforms, societal organisations, and industry associations. Financial credit scores, Airbnb ratings, environmental impact assessments and ESG regimes all represent attempts to evaluate a (legal) person's trustworthiness in a way that it serves as a basis for decision-making.[10]

Trustworthiness assessments prosper in the information society because they ease decision-making.[11] As transactions of all kinds move online, decision-makers, from

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101089851.html, archived at https://web.archive.org/web/20250521094721/https://www.caixinglobal.com/2017-05-15/china-gives-little-credit-to-companies-handpicked-to-develop-credit-reporting-sector-101089851.html.

[7] 31部门联合启动环保严重失信企业惩戒机制 (31 Ministries Jointly Launch The Disciplining Mechanisms For Serious Environmental Trust-breakers), issued by the Ministry of Ecology and Environment on 27 July 2016, https://www.mee.gov.cn/gkml/sthjbgw/qt/201607/t20160727_361345_wh.htm.

[8] Many projects described in the name of the SCSP are older than the SCSP, e.g. the "banks of virtue 道德银行" described in 浙江省社会信用体系建设"十三五"规划 (Zhejiang Province 13th Five Year Plan for SCS Building), issued by the General Office of the Zhejiang People's Government on 28 June 2016.

[9] E.g., Josh Chin and Gillian Wong (2016) "China's new tool for social control: a credit rating for everything", The Wall Street Journal, 28 November 2016, https://www.wsj.com/articles/chinas-new-tool-for-social-control-a-credit-rating-for-everything-1480351590.

[10] The public acceptance of forms of trustworthiness assessment regimes or trust registers has been proven widely, and is correlated to their perceived general usefulness, see: Katja Turha, Simon Vrhovec, Igor Bernik (2024) State surveillance in the digital age: Factors associated with citizens' attitudes towards trust registers, *Arxiv* (Cornell University), 19 August 2024, https://doi.org/10.48550/arXiv.2408.09725.

[11] Steffen Mau (2019) *The Metric Society: On the Quantification of the Social,* Polity.

consumers to public officials, interact with strangers daily and need indications about whom to trust. Information to guide decision-making is either scarce or so broad that it is hardly digestible. Meanwhile, transactions in delocalized societies of strangers are increasingly detached from geographic and cultural contexts. Local knowledge loses value, and formerly useful symbolic reference frames disperse. Against this background, assessments of trustworthiness, often but not necessarily numeric, are a key guardrail. Fuelled by the air of technical neutrality and objectivity, a restaurant rating, an automated fine recommendation, or a credit score are the reference points of choice for the consumer, for the grassroots level official, or the landlady, respectively.

Trustworthiness assessments appear in different forms. They can be maintained by public actors or private actors. They may be public-facing, seeking to impact the decisions of market actors, such as university rankings. They may be inward-facing, as a reference for decision-making within an organisation, such as a work safety regulator's risk profiles of industrial factories.[12] Some trustworthiness assessments are quantified, such as credit scores, some use non-quantified categories such as 'trust-breaker'. Conceptual clarity in the broader field of trustworthiness assessment regimes, especially their use in public regulation[13] is yet to be achieved. For this investigation, trustworthiness assessments are defined as value statements about a legal or natural person made on the basis of records of its behaviour, to the end of predicting the probability with which the person concerned is going to uphold a promise, including implicit promises as in what can be reasonably expected of them, especially abidance by legal rules, contracts and social norms.

Note that this definition neither implies that trustworthiness assessments are created using big data analytics or complex algorithmic systems, nor does it restrict trustworthiness assessments to the public or private realm. It covers Airbnb ratings just as trust-breaker blacklists of judgment defaulters. It excludes, however, value statements made solely on the basis of non-behavioural data such as age, sex, and place of origin (e.g., racial profiling).[14] It further excludes assessments of the trustworthiness of things, such as AI applications.[15]

Trustworthiness assessment regimes challenge existing normative orders. For instance, they redefine class and social stratification. In their study of credit ratings in the U.S.,

[12] An example of an inward-facing use of trustworthiness assessments in a private company is also Facebook's rating of users, see Elizabeth Dwoskin (2018) "Facebook is rating the trustworthiness of its users on a scale from zero to 1", Washington Post, 21 August 2018, available at https://www.washingtonpost.com/technology/2018/08/21/facebook-is-rating-trustworthiness-its-users-scale-zero-one/#:~:text=The%20Switch-,Facebook%20is%20rating%20the%20trustworthiness%20of%20its%20users,scale%20from%20zero%20to%201andtext=SAN%20FRANCISCO%20%E2%80%94%20Facebook%20has%20begun,scale%20from%20zero%20to%201.

[13] For one notable effort, see Karen Yeung (2018) Algorithmic regulation: A critical interrogation, *Regulation and Governance* 12, pp. 505-523.

[14] As much applied in criminal justice, see for instance Han-Wei Liu, Ching-Fu Lin and Yu-Jie Chen (2019) Beyond State v Loomis: Artificial intelligence, government algorithmization and accountability, *International Journal of Law and Information Technology* 27(2), pp. 122-141, p. 125.

[15] They constitute a separate emerging realm in public regulation: For instance, the EU Artificial Intelligence Act is structured around the risk classification of AI systems, similarly: Shenzhen, Art. 66, 深圳经济特区人工智能产业促进条例 (Shenzhen Special Economic Zone Regulation on the Promotion of AI Industries), passed by the Standing Committee of the Shenzhen City People's Congress on 5 September 2022.

Marion Fourcade and Kieran Healy argue that what they term "classification situations" are an entirely new force shaping class and, consequently, life chances. Credit ratings not just reinforce previous class structures, for instance, the discrimination of minorities, but as per the social-technical mechanism of classification itself, essentially add a new logic so fundamental that they call to "rethink class analysis through the prism of credit scores and similar devices"[16]. Because classification situations are a phenomenon not particular to any market but rather spanning a wide range of realms, they shape class structures globally in similar ways.[17]

This study scrutinises how trustworthiness assessment regimes challenge another normative order, namely, the law. The transformative impact of trustworthiness assessment regimes on behavioural regulation reaches into structures of public regulation and has begun to fundamentally transform the law, and administrative law in particular. For instance, trustworthiness assessment regimes by platform companies, enabling merchants, consumers, and service providers to get in touch and conduct transactions, take over tasks originally in the hands of state regulators. The taxi industry used to rely on administrative licenses handed out by regulatory agencies. These licenses and the symbols they allow a driver to use, such as the 'taxi' roof signs, facilitate the trust on the part of a rider to get into a stranger's car. Ride-hailing platform companies such as Didi and Uber do not rely on taxi licenses. The trust necessary to attract customers in the online ride-hailing business is instead facilitated through trustworthiness assessment mechanisms administered by the platforms. Ride-hailing platforms challenge the public administration's monopoly on facilitating trust, offering an alternative fuelled not by virtue of state authority but by more or less processed user reviews - scaled interpersonal trust. In Todd Henderson and Salen Churi's view, this scaled interpersonal trust is more meaningful than government-provided institutional trust in most decision-making situations and is therefore likely to eventually take on more regulatory tasks. Providers of trustworthiness assessment technologies that enable scaled interpersonal trust, such as platform companies, they maintain, therefore already operate as micro-regulators.[18]

Not only do trustworthiness assessment regimes by market actors have an impact on the law. State agencies worldwide also apply various kinds of trustworthiness assessment regimes, which transform traditional regulatory structures. Trustworthiness assessments have come to play an important role in an emerging mode of data-centred statecraft, which Marion Fourcade and Jeffrey Gordon call the "dataist state".[19] The dataist state collects and processes data to model and predict risks, which it then can base its decision on. Examples abound: Across Europe, regulators use different types of trustworthiness assessment systems linked to automated decision-making to profile the

[16] Marion Fourcade and Kieran Healy (2013) Classification situations: Life-chances in the neoliberal era, *Accounting, Organizations and Society* 38, pp. 559-572, p. 570.
[17] See also, Marion Fourcade and Kieran Healy (2013) Classification situations: Life-chances in the neoliberal era, *Accounting, Organizations and Society* 38, pp. 559-572, p. 561.
[18] M. Todd Henderson and Salen Churi (2019) *The trust revolution. How the digitization of trust will revolutionize business and government*, Cambridge University Press. Note that their statements on the SCSP in China are inaccurate (p. 154).
[19] Marion Fourcade and Jeffrey Gordon (2020) Learning like a state: Statecraft in the Digital Age, *Journal of Law and Political Economy* 78, pp. 78-108, hereafter: *Fourcade and Gordon: Learning like state*.

unemployed, detect potential value-added tax fraud, and identify families potentially neglecting their children.[20]

Whether operational in the public or the private sector, trustworthiness assessments pose risks to the protection of rights and the law at large to varying degrees of seriousness. For one, they are increasingly (but not always) facilitated by information technologies such as big data analysis, carrying the semblance of objectivity and neutrality[21] on which decision-makers readily rely. However, the veil of neutrality of technology-assisted assessments is not warranted. Research illuminated that trustworthiness assessment technologies are plagued by biases,[22] are prone to technical error, and are, whether intentionally or not, infiltrated by the values of their operators or designers.[23] The outcomes produced by complex trustworthiness assessment applications can often not be retraced, complicating judicial or administrative review of potential legal violations in the system. They regularly present black boxes, often not comprehensible even to their own creators.[24] The risks of non-transparent trustworthiness assessments in public regulation surfaced, for instance, in 2021: Dutch Prime Minister Mark Rutte resigned after it was revealed that the Dutch tax administration, relying on a self-learning algorithm that created risk profiles of individuals, had wrongfully penalised more than ten thousand families for fraud.[25]

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[20] Algorithm Watch and Bertelsmann Stiftung (2020) Automating Society Report 2020, October 2020, available at https://automatingsociety.algorithmwatch.org/wp-content/uploads/2020/12/Automating-Society-Report-2020.pdf; see also other compendia of governance tools including trustworthiness assessments: Ombudsman New South Wales (2024) A map of automated decision-making in the NSW Public Sector: A special report to Parliament, March 2024, https://cmsassets.ombo.nsw.gov.au/assets/Reports/Executive-Report-ADMS.pdf; Charlotte van Ooijen, Barbara Ubaldi and Benjamin Welby (2019) A data-driven public sector. Enabling the strategic use of data for productive, inclusive and trustworthy governance, OECD Working Papers on Public Governance, 3/2019, https://dx.doi.org/10.1787/09ab162c-en; Lina Dencik, Arne Hintz, Joanna Redden and Harry Warne (2018) Data Scores as Governance: Investigating uses of citizen scoring in public services, Project Report, Data Justice Lab of Cardiff University, December 2018, https://orca.cardiff.ac.uk/id/eprint/117517/1/data-scores-as-governance-project-report2.pdf; for examples of failures of "government 2.0" in the U.S.A., see Danielle Keats Citron (2008) Technological due process, *Washington University Law Review*, 85(6), pp. 1249-1314, p. 1267.

[21] Theodore Porter (1996) *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life,* Princeton University Press.

[22] Oscar Gandy (2000) Exploring identity and identification in cyberspace, *Notre Dame Journal of Ethics and Public Policy* 14, pp. 1085-1111, p. 1101.

[23] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 72 and p. 59; Danielle K. Citron and Frank Pasquale (2014) The scored society: Due process for automated predictions, *Washington Law Review* 89 (1), pp. 1-27; Lina Dencik, Arne Hintz, Joanna Redden and Harry Warne (2018) Data scores as governance: Investigating uses of citizen scoring in public services, Project Report, Data Justice Lab of Cardiff University, December 2018, https://orca.cardiff.ac.uk/id/eprint/117517/1/data-scores-as-governance-project-report2.pdf, p. 9, among others.

[24] Frank Pasquale (2015) *The black box society: The secret algorithms that control money and information*, Harvard University Press; Han-Wei Liu, Ching-Fu Lin and Yu-Jie Chen (2019) Beyond State v Loomis: Artificial intelligence, government algorithmization and accountability, *International Journal of Law and Information Technology* 27(2), pp. 122-141, p. 135.

[25] David Hadwick and Shimeng Lan (2021) Lessons to be learned from the Dutch childcare allowance scandal: A comparative review of algorithmic governance by tax administrations in the Netherlands, France and Germany, *World Tax Journal* 13 (4), pp. 609-645; See also the case of data protection issues with India's biometric identity programme Aadhaar and the respective Supreme Court ruling: Pawan Singh (2019) Aadhaar and data privacy: Biometric identification and anxieties of recognition in India, *Information, Communication and Society* 24(7), pp. 978-993.

As trustworthiness assessment regimes expand, strengthening, challenging, and transforming the law, governments have reacted in different ways. In Europe, no state has so far directly engaged with this development. Reports scrutinising the trustworthiness assessment applications of single government agencies appear.[26] But a political strategy for engaging with such practices, as well as those blossoming in the market, is not in sight. That said, policies addressing other issues include important provisions that concern trustworthiness assessment regimes, too. For instance, the European Union's General Data Protection Regulation (GDPR) and related national-level personal information protection legal frameworks shape those trustworthiness assessment applications that involve personal information. Similarly, several of the Artificial Intelligence Act's provisions ruling out certain types of systems address assessment technologies, too.[27] However, in Europe, policies that directly address trustworthiness assessments as such do not (yet) exist. If any strategy is discernible from the scattered extant provisions, it may be described as one of regulating risks arising from trustworthiness assessment regimes, a containment strategy. Trustworthiness assessments themselves are not the explicit target of policymaking, but one of many information systems that fall under regulatory frameworks, which themselves have personal data protection or AI risk control as explicit targets.

The PRC government, on the other hand, has early on elevated 'trustworthiness' to a central paradigm of governance as it began to engineer the SCSP strategy, paving the way to placing trustworthiness assessments at the locus of policymaking. In the late 1990s, long before machine-generated trustworthiness assessments were permeating corporate, consumer and regulatory decision-making, the PRC's political leadership identified 'trustworthiness' as a theme at the root of three pressing problems the young market economy faced: widespread fraud and noncompliance with laws, regulations and judicial decisions; the lack of financial credit reporting infrastructure leading to bad debts and financial instability; and what has been termed a 'moral vacuum' arising from the breaking away of social structures as millions moved to urban areas in the largest domestic migration movement ever recorded.[28] These three problems henceforth

[26] E.g., Algorithm Watch and Bertelsmann Stiftung (2020) Automating Society Report 2020, October 2020, available at https://automatingsociety.algorithmwatch.org/wp-content/uploads/2020/12/Automating-Society-Report-2020.pdf.

[27] For instance, Art. 5(1) c prohibits the "placing on the market, the putting into service or the use of AI systems for the evaluation or classification of natural persons or groups of persons over a certain period of time based on their social behaviour or known, inferred or predicted personal or personality characteristics, with the social score leading to either or both of the following:

(i) detrimental or unfavourable treatment of certain natural persons or groups of persons in social contexts that are unrelated to the contexts in which the data was originally generated or collected;

(ii) detrimental or unfavourable treatment of certain natural persons or groups of persons that is unjustified or disproportionate to their social behaviour or its gravity"

Artificial Intelligence Act (Regulation (EU) 2024/1689), adopted by the European Parliament and the Council of 13 June 2024, OJ L 1689.

[28] See chapter 2.1.; Kam Wing Chan (1994) Urbanization and rural- urban migration in China since 1982: A new baseline, *Modern China* 20(3), pp. 243-281.

shaped the design of the SCSP and are a useful way to structure existing SCSP initiatives (see figure below).[29]

Figure 1: Three pillars of the SCSP and respective initiatives

Financial credit	**Law enforcement**	**Moral education**
The PBoC's public credit information registry (*Credit Reference Centre*)	Joint agency disciplining of trust-breaking violators of law	Municipal reward programs (e.g., *Osmanthus Score* in Suzhou, *Qiantang River Score* in Hangzhou, *Jasmin Score* in Xiamen)
Corporate credit ratings (e.g., *Tianyancha*, *Qichacha)*	Joint agency disciplining of trust-breaking judgment defaulters	Village's lending arrangements with local banks (e.g., Yangqiao's *Bank of Virtue*)
Personal credit ratings (*Baihang Zhengxin, Pudao Credit, Qiantang Zhengxin*)	Credibility-based regulation (以信用为基础的新型监管机制)	Technology companies' loyalty scores (e.g., *Sesame Credit, WeChat Points*)
…	…	…

The global rise of trustworthiness assessment regimes thus falls on different grounds in China. The SCSP and its rhetoric, even though originally concerned mainly with building the financial credit system, proved to be a useful catalyst and basis for addressing trustworthiness assessment applications directly. As Xin Dai writes: "By assertively placing government actors in the driver's seat of the country's reputation revolution, the SCSP offers us a unique opportunity to observe promises and challenges of the rising reputation state."[30]

I argue in this study that the SCSP builds, coordinates, and shapes trustworthiness assessment regimes in China, constituting a pioneering case of a government's engagement with the trustworthiness assessment revolution and a mode of behavioural governance centred around the notion of trustworthiness.[31] Further, this social credit mode of governance both strengthens and weakens the law. I zoom in on administrative law, the norms and procedures that both enable the efficient functioning of the public administration and protect the legal rights and interests of subjects in the face of administrative power.[32] It is arguably the field of law most affected by the SCSP.

On the face of it, the SCSP appears to present a mode of behavioural regulation that operates in parallel to administrative law: The SCSP, like the legal system, lays down a set of norms (revolving around the notion of 'trustworthiness'); it enforces them (using

[29] This classification is not official but inspired by Jeremy Daum's work at the China Law Translate blog. See Jeremy Daum (2019) "Untrustworthy: Social credit isn't what you think it is", Verfassungsblog, 27 June 2019, https://verfassungsblog.de/untrustworthy-social-credit-isnt-what-you-think-it-is/.
[30] *Xin Dai: Reputation state*, p. 60.
[31] See section 2.1.
[32] See section 2.2.

assessment-driven mechanisms);[33] and it provides remedial channels (centred around the notion of 'repair').[34] However, upon closer scrutiny, neither the SCSP's norms, nor its enforcement mechanisms, nor its remedial channels exist in a vacuum. They are deeply entangled with administrative law. A large part of the SCSP's 'trustworthiness' (or: social credit) norms consists of pre-existing legal norms that have been re-labelled. The SCSP's enforcement mechanisms are borrowed from the existing repertoire of law-enforcing administrative agencies and rearranged, as well as from the credit service industry and grassroots governance institutions. The SCSP remedial channels, too, build on existing infrastructure in the administration and judiciary.

Moreover, as a comprehensive political effort, the SCSP is tightly interwoven with the government's aim to build the socialist rule of law in China: For one, one of the SCSP's four key missions is to "raise the credibility of the judiciary."[35] Further, the Central Committee of the CPC (CPCCC) in its Implementation Outline for the Establishment of a Society Based on the Rule by Law (2020-2025) calls to "[a]ccelerate the advancement of the establishment of the social credit system"[36] casting the SCS as a key facilitator for furthering a law-based order.

In consequence, the SCSP is inseparable from administrative law. To the extent that administrative law facilitates governance and affords legal protection, the case of the SCSP thus sheds crucial light on the relationship between trustworthiness assessment regimes and administrative law and what their entanglement means for citizens. This investigation, therefore, poses an explorative research question: How does the SCSP strengthen, weaken, and transform administrative law in China?

In a number of ways, the SCSP holds potential to strengthen aspects of administrative law. For instance, SCSP practices may have inspired significant legal developments in the area of personal data protection law and the maturing of the prohibition of improper connection principle of administrative law, which protects citizens from collective law enforcement practices of regulators (section 3.1.2). The SCSP regulatory framework, with its rules on transparency and rights to objection, further may reform the Dang'an, the old personal dossier system from the Mao Zedong Era, as well as administrative blacklists for "abnormal petitioning", both of which have long existed in a legal grey area (section 3.1.3). SCSP mechanisms such as the disclosure of social credit information records,

[33] Not necessarily = numerical scores. Social credit assessments include rankings (from A-D for instance), designations of "trustworthy, untrustworthy, seriously untrustworthy) and other categories. Therefore I refrain from using the "social scoring" terminology that has taken hold widely in SCS-related literature (see, for instance, the helpful account of Anja Geller (2023) Social Scoring durch Staaten: Legitimität nach europäischem Recht - mit Verweisen auf China, Dissertation submitted to the Ludwig-Maximilians-University Munich, published on 17 January 2023, https://edoc.ub.uni-muenchen.de/31151/, hereafter: *Anja Geller: Social Scoring*.

[34] For a comparison of "law" with SCSs, see Chuncheng Liu and Akos Rona-Tas (2024) Trusting by numbers: An analysis of a Chinese social credit system goight to objectiovernance infrastructure, *Critical Sociology* 51(6), pp. 1247-1265, p. 1250.

[35] *SCS Planning Outline*.

[36] 中共中央印发《法治社会建设实施纲要（2020－2025年）》(The CPCC Issues the 'Outline for the Establishment of a Society Based on the Rule by Law (2020-2025)'), issued 7 December 2020, Xinhua, available at https://www.gov.cn/zhengce/2020-12/07/content_5567791.htm, archived at https://web.archive.org/web/20240315161908/https://www.gov.cn/zhengce/2020-12/07/content_5567791.htm.

social credit blacklists, and disciplinary measures for trust-breaking (失信惩戒措施',惩戒措施) may help alleviate China's longstanding difficulties in enforcing laws, regulations, and judicial decisions, ultimately empowering the courts and elevating the law's authority (section 3.2). A promising SCSP invention for law enforcement work is credibility-based regulation 信用监管 (CBR), a form of assessment-based public regulation in the course of which regulatory agencies in China compile themselves or delegate third-party companies to compile credibility assessments 信用评价 of regulatory subjects based on behavioural records in various fields, which then inform regulatory decision-making (section 3.2.4).

SCSP practices, however, also conflict with laws and legal principles in China, posing significant risks to the protection of the rights of SCSP subjects.[37] Social credit measures often lack sufficient legal basis, impose double punishment, are not proportionate, and affect other persons in the vicinity of the actual target subject as well (section 4.1.). Paths to legal remedy are regularly impeded: One SCSP practice's decision is regularly composed of multiple administrative actions by a range of state and non-state institutions, which makes it nearly impossible to pinpoint the correct administrative act and the defendant to address. Courts and administrative review institutions regularly deny the actionability of SCSP measures because their novel concepts, such as 'disciplinary measures for trust-breaking' do not clearly fall into the categories of actionable items laid out in procedural laws. Where accepted, dispute resolution related to SCSP practices has reached different results, because decision-makers do not interpret social credit vocabulary uniformly. Most existing remedial channels allow only for ex-post relief, which, in the light of the SCSP's irreversible measures, such as shaming and elements of automated decision-making, are rather helpless (section 4.2 4.2.).

In sum, the SCSP both strengthens *and* weakens the functions of administrative law. How can we understand the character of administrative law that emerges from the entanglement with the SCSP?

A pattern emerges from the analysis of how the SCSP strengthens and weakens administrative law, which indicates that the influence of the SCSP supports a transformation of administrative law itself. Specifically, the observation of the SCSP illustrates how the law in China transforms from a traditional legality, shaped by influences from Western and Soviet legal systems rooted in an analogue world, to one that better matches both the Communist Party of China's (CPC) ideal of socialist law with Chinese characteristics, as well as the data era which is defined by the rise of trustworthiness assessments.

By addressing the intersections of the law and the SCSP, this thesis seeks to further our understanding of what happens when a traditional legality (with Chinese characteristics) becomes entangled with an emerging, assessment-based mode of behavioural governance such as the SCSP. It speaks to at least three debates: To the multi-disciplinary discourse that assesses potentials and risks of China's SCSP specifically,

[37] SCSP subjects hereafter refers to all addressees of SCSP initiatives and is roughly equivalent to what SCSP rhetoric refers to as 'credit subject 信用主体'. SCSP subjects encompass nearly all citizens and registered organizations in the PRC, as well as in some schemes, state actors.

this study contributes an empirically grounded account from a socio-legal perspective. Second, the case of the SCSP as a paradigmatic case of a government's active engagement with trustworthiness assessment techniques also provides the basis for an exploration of changes that traditional legalities may incur from the rise of trustworthiness assessments, in China and beyond.[38] Thereby, this dissertation informs the broader discussion unfolding in the legal and China studies fields about the role of law in China's one-party system. Thirdly, this research contributes to the debate in the field of law and society studies about the impact of private and public trustworthiness assessment regimes on traditional legal systems beyond China by providing a case study of the first national-level strategy that centres on the "social technology of trust"[39].

1.2. Approaching the Social Credit System 社会信用体系: Terms and translations

"It isn't particularly 'social', nor really about 'credit', and it certainly is not a 'system'."

- Vincent Brussee[40]

The English translation of *shehuixinyongtixi* 社会信用体系 into 'social credit system' has given rise to numerous misunderstandings. Since in 2014 the SCS Planning Outline was first issued, newspapers worldwide feature factually flawed stories about the CPC's latest move to create the tech-enabled Orwellian dystopia and describe the SCS as a comprehensive control system, complete with scores and surveillance cameras everywhere[41] – while some point out that the social credit system is not as much a uniform system under the control of the central government as it is a "chimera"[42] with

[38] See, e.g.: "We argue, therefore, that what is happening in China can be seen as a specific instance of a wider phenomenon. Even more so, as reputation-based quantitative tools have become established in the West, the Social Credit System may tell us something about their evolution in Western countries (oreven the future of global normative orders", Daithí Mac Síthigh and Mathias Siems (2019) The Chinese social credit system: A model for other countries? *Modern Law Review* 82(6), pp. 1034-1071, p. 1036.
[39] M. Todd Henderson and Salen Churi (2019) *The trust revolution. How the digitization of trust will revolutionize business and government*, Cambridge University Press, p. 50.
[40] Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 4.
[41] Al Jazeera (2018) "China's spying eyes", 15 November 2018, https://www.aljazeera.com/program/101-east/2018/11/15/chinas-spying-eyes; Asan Institute for Policy Studies (2016) "Orwell's nightmare: China's social credit system", 28 February 2016, https://en.asaninst.org/contents/orwells-nightmare-chinas-social-credit-system/; The Wall Street Journal (2016) "In China, using big data as big brother?", 28 November 2016, https://www.wsj.com/video/in-china-using-big-data-as-big-brother/EFE6FB1C-FDC5-4EA5-B7D8-164FD41F7DD2; Bastian Benrath und Bernhardt Bartsch (2018) "Punktabzug für zu seltene Besuche bei den Eltern (Score deduction for not visiting parents often enough)", Frankfurter Allgemeine Zeitung, 30 November 2018, https://www.faz.net/aktuell/wirtschaft/chinas-sozialkredit-system-punktabzug-fuer-seltenen-elternbesuch-15913709.html. Such stories have impacted real politics – for instance, former Vice President of the USA said: "And by 2020, China's rulers aim to implement an Orwellian system premised on controlling virtually every facet of human life – the so-called 'social credit score'." Hudson Institute (2018) Vice President Mike Pence's Remarks on the Administration's Policy Towards China, 4 October 2018, available at https://www.hudson.org/events/1610-vice-president-mike-pence-s-remarks-on-the-administration-s-policy-towards-china102018, archived at https://web.archive.org/web/20240309104615/https://www.hudson.org/events/1610-vice-president-mike-pence-s-remarks-on-the-administration-s-policy-towards-china102018.
[42] Séverine Arsène (2019) China's Social Credit System: A Chimera with Real Claws, *Asie.Visions*, No. 110, November 2019, https://www.ifri.org/en/publications/notes-de-lifri/asie-visions/chinas-social-credit-system-chimera-real-claws.

multiple subsystems which are not or barely interlinked.[43] The variety of imaginaries about the SCSP widespread in academia as well as political discourses warrants an investigation of the concept's roots. The following paragraphs shed light on the term's genealogy, dissecting its three constituents: 'social', 'credit', and 'system'.

"How did the German social credit system develop so well?"[44] "China has only started developing its social credit system rather late, in comparison with Western countries."[45] These comments of SCSP implementors and system designers in China appear startling to observers of the English debate around China's SCSP. They underline how the term *social credit system* is within China often understood not as an external engineering project imposed onto society, but a pre-existing element in a society: a marker of a state of trust in society, rather than an institution that is established and administered.[46] "Building[47] a social credit system", refers not necessarily to the establishment of a new apparatus but rather describes in the abstract the striving towards an economically developed state in which institutions are strong. The SCS Building Law draft defines the SCS as

> "the state mobilizing and leading government, market, and all social forces to promote the building of trustworthiness in government affairs, trustworthiness of the market, trustworthiness of society, and judiciary credibility; improving credit reporting systems, regulating the handling of credit information, strengthening credibility-based regulation, completing institutional mechanisms to praise trust-keeping and discipline trust-breaking, and advancing the building of a culture of trustworthiness."[48]

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[43] A large part of the literature has come to speak of social credit systems in plural, see Chuncheng Liu (2019) Multiple social credit systems in China, *Economic Sociology: The European Electronic Newsletter* 21(1), pp. 22–32; Tong Lam (2021) The people's algorithms: Social credits and the rise of China's big (br)other, in Andrea Mennicken and Robert Salais (eds.) *The new politics of numbers*, Palgrave Macmillan, pp. 71-95; Frederico Caprotti, Ying Xu and Shiuh-Shen Chien (2024) Variegated platform urbanism: Social credit and the city, *Annals of the American Assoication of Geographers* 114(10), pp. 2222-2239.

[44] City-level SCS implementor, SZ05.

[45] City-level Party secretary QZ04. See also: Zhidong Xiong 熊治东 (2020) 改革开放以来中国社会信用体系建设：成就、经验、问题与展望 (On the achievements, experience, problems and prospect of China's SCS construction since reform and opening-up), 征信 (Credit Reference) 261(10), pp. 12–20; Hongwen Jia 贾洪文 and Hua Ao 敖华 (2020) 社会信用管理体系建设研究———基于市场机制的视角 (Research on social credit management system building – a perspective based on the market mechanism), 浙江工商大学 (Journal of Zhejiang Gongshang University), 1/2020, pp. 119-128, p. 119.

[46] See, for instance, the usage of the term in the title of a sociological study by Xiaoye Huang and Xuewei Zhai (2023) *China's social credit,* Routledge. The study investigates the state of trust in society and does not directly engage with the policy of the SCSP as laid down in the *SCS Planning Outline*.

[47] Note that most influential observers translate 建设 to 'establishing', e.g. China Law Translate: https://www.chinalawtranslate.com/en/socialcreditsystem/. Conversations with co-designers and implementors of SCSP policy in the course of this research revealed that rather than an establishment in the sense of a "process of starting or creating something" as defined in Cambridge Online Dictionary, https://dictionary.cambridge.org/dictionary/english/establishment, SCSP building is a continuous effort. This dissertation thus departs from the authoritative translation and uses 'building' or 'constructing/construction' in the place of 'establishing/establishment' to stress the processual nature of SCSP making.

[48] Art. 2, 关于《中华人民共和国社会信用体系建设法（向社会公开征求意见稿）》公开征求意见情况的通告 (Report On The Status Of Openly Soliciting Opinions On The 'PRC SCS Building Law (Draft Version For The Public Solicitation Of Comments)"), issued by the NDRC on 28 December 2022, available at https://www.ndrc.gov.cn/hdjl/yjzq/yjfk/xytxjsf/202212/t20221230_1344924.html, archived at: https://web.archive.org/web/20241210120833/https://www.ndrc.gov.cn/hdjl/yjzq/yjfk/xytxjsf/202212/t20221230_1344924.html, hereafter: *SCS Building Law draft*. For recent progress in legislation, see NPC Observer, "Social Credit System Development Law", https://npcobserver.com/legislation/social-credit-

In this light, the title of the blueprint document 'for building *an* SCS' might have been more suitably translated as 'for building *the* SCS'.

Dissecting the term 'social credit system' first reveals that what is in the common English version translated as 'social', *shehui* 社会, was not to mean that social behaviour is rewarded or punished, as often explained in media reports which contrast it with a 'financial credit system'. Instead, *shehui* was to indicate that the operators of the SCSP are societal actors rather than the state itself.[49] Before the first document mentioning social credit was issued, the research group in charge of the preceding investigations and planning work, the National Leading Group for Rectification and Standardization of the Market Economy at the CASC,[50] had not yet used the term social credit system but instead spoke of establishing a 'national credit management system'[51]. The change of title to SCS for what was to become one of the most ambitious of China's governance projects "was just a name change", observers noted, that did not indicate shifts in the original plan by the research group. It was reportedly inspired by the senior State Council researcher and economist Jinglian Wu 吴敬琏, who suggested that the new name would "better clarify that this system is neither controlled nor engineered/undertaken by the government" but societal forces.[52] Further, it was to stress the fact that the SCSP's corresponding counterpart is the social security system, as for the market, both systems are of equal importance.[53] Consequently, when the term social credit first appeared in an official document, manifested in calls for establishing both a corporate economic filing system and a personal credit information system, nothing indicated that these mechanisms were to be created by the state.[54] This illustrates that at its outset, government officials did not mean the *shehui* in Social Credit System to describe that the system evaluates social behaviour that both the intended targets and the operators of the system were to be societal actors as opposed to government actors. In this light, a more accurate English translation is 'societal credit system.' This also comes closer to an early German translation as 'gesellschaftliches Bonitätssystem',[55] which now has largely been sidelined in the mainstream German discourse by a Germanization of the English term, 'Sozialkreditsystem.'

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system-development-law/. 守信 is here for a lack of a better word translated to trust-keeping. Other translations for 'trust-breaking 失信' include 'dishonest' and 'untrustworthy'.

[49] E.g., Jing Wang, Hongmei Li, Weiai Wayne Xu and Wei Xu (2022) Envisioning a credit society: Social credit systems and the institutionalization of moral standards in China, *Media, Culture and Society* 45(3), pp. 451-470.

[50] 全国整顿和规范市场经济秩序领导小组办公室, Junyue Lin 林钧跃 (2019) "为什么说社会信用体系建设起始于1999年? (Why did the construction of the Social Credit System start in 1999?)", 信用体育 (Credit Sports), 22 October 2019, http://www.sport.gov.cn/n4/n15094/n15097/c930697/content.html, archived at web.archive.org/web/20250316202013/https://www.sport.gov.cn/n4/n15094/n15097/c930697/content.html.

[51] Published in 2000: Jingming Yu 喻敬明, Junyue Lin林钧跃 and Jie Sun 孙杰 (2000) 国家信用管理体系 (National credit management system), 社会科学文献出版社 (Social Science Academic Press).

[52] Junyue Lin 林钧跃 (2011) 社会信用体系：中国高效建立征信系统的模式 (The Social Credit System: China's model for efficiently establishing a credit reporting system), 征信 (Credit Reference) 2/2011, pp. 1-7, p. 5, hereafter: *Junyue Lin: The Social Credit System*.

[53] *Junyue Lin: The Social Credit System*, p. 5.

[54] See, e.g., 国务院关于整顿和规范市场经济秩序的决定 (State Council Decision on the Rectification and Standardization of the Market Order), issued 28 April 2001.

[55] Sebastian Heilmann (2015) "Gesellschaftliches Bonitätssystem", MERICS, on file with the author.

The second element in the term SCS, *xinyong* 信用, in contemporary use refers to creditworthiness, trustworthiness, or honesty, and only became common at the beginning of the 20th century.[56] The translation of *xinyong* 信用 into 'credit' in 'SCS' has been widely criticized. The Chinese term *xinyong* is broader and covers trust in general rather than just credit, which is associated with finance.[57] *Xinyong* can refer to financial credit only, but another term that specifically describes credit reporting exists (*zhengxin* 征信) and is increasingly used. *Xinyong* can encompass other forms of trustworthy behaviour, such as compliance with the law, observance of contractual obligations, and abiding by social norms, which are in fact explicitly included under the SCS project.[58] Consequently, scholars suggest replacing the term 'credit' with 'trust' in the English translation, calling the SCS a 'social trust system' instead.[59] Others suggested using *xinyong* to refer to the SCSP's pillar of enhancing compliance with laws and regulations, *zhengxin* for its pillar of building financial credit, and *chengxin* 诚信 for its moral education pillar.[60] This classification is useful to differentiate the target areas of the SCSP; however, in practice, many official documents use the terms interchangeably.

Finally, the third element of the term Social Credit System, *tixi* 体系, has led to the impression that the SCSP is a 'system', suggesting comprehensiveness, internal coherence and a clear border to an outside. As laid out above, the SCSP is better described as an overarching strategy revolving around the core theme of trust than a system. Its core mission may be described as seeking to activate state and non-state actors to make decisions on credit subjects based on their trustworthiness. Under this roof, as mentioned above, different projects are initiated, such as building infrastructure for collecting information on trustworthiness, evaluating and disclosing such information, educational campaigns for honest behaviour, corporate compliance assessment mechanisms, as well as punishment and reward schemes, and personal sincerity ratings. Projects in the name of social credit are undertaken in many areas, including, i.e., commercial and public experiments with financial credit ratings, mechanisms of administrative regulation, education campaigns against plagiarism and other so-called trust-breaking behaviour, and reward programs in municipalities, leading researchers to speak of "multiple social credit systems in China"[61] and the SCSP as a "system of systems."[62] Hence, following the example of Xin Dai,[63] this dissertation refers to the SCSP

[56] Yaguang Zhang 张亚光 (2017) 近代信用监管体系的思想制度与经验启示 (The ideological system of the modern credibility-based regulation system and inspirations from experiences), 中国市场监管研究 (Research on China Market Supervision) 5/2017, pp. 30-33.
[57] Pointing out that there is no translation in English that comes even close, Xiaoye Huang and Xuewei Zhai (2023) *China's social credit,* Routledge, p. 18.
[58] Elaborated in Jingmei Wu 吴晶妹 (2016) 三维信用论 (Three dimensions of credit), 当代中国出版社 (Contemporary China Publishing House).
[59] Chun Peng (2024) Building a high-trust society: Lineage, logic, and limitations of China's Social Credit System, *The China Review* 24(3), pp. 107-137, p. 115, hereafter: *Chun Peng: Building a high-trust society*.
[60] Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan.
[61] Chuncheng Liu (2019) Multiple social credit systems in China, *Economic Sociology: The European Electronic Newsletter* 21(1), pp. 22–32.
[62] Katja Drinhausen and Vincent Brussee (2021) "China's Social Credit System in 2021: From fragmentation towards integration", 3 March 2021, updated 2022, MERICS, https://merics.org/en/report/chinas-social-credit-system-2021-fragmentation-towards-integration.
[63] *Xin Dai: Reputation state*.

when discussing the project at large, and to the SCS only when reiterating words of others who so refer to it.

1.3. The state of the art: Research on the relationship between the law and the SCSP

"I investigate whether the punishment measures for 'trust-breakers' are in line with the law." "In line with the law? China has no law."

– Conversation with a street food vendor in Hangzhou

Scholars from various academic disciplines have investigated the relationship of the law with the SCSP. Relevant literature stems from the fields of economics, area studies, law, anthropology, philosophy, political sciences, geography, sociology, and computer sciences. Contributions conceptualize the SCSP very differently and even display significant discrepancies about basic facts. Complicating the matter further, scholarship in the Chinese and Western languages on social credit and its many aspects barely informs each other, referencing only literature that derives from their own respective language environment. Within China's academic debate, the SCSP is first and foremost discussed in legal scholarship, specifically, administrative law scholarship.[64] To bridge these gaps, the following sections synthesize the fragmented debates. I first summarize the state of the art, highlighting literature that offers helpful points of departure for the current investigation. Secondly, in section 1.4. I point out the shortcomings in the existing literature to lay the groundwork for Chapter two, where I introduce the "mode of governance" concept and functional analysis as frameworks for this investigation.

1.3.1. The *strengthening* paradigm

Scholarly work in the early years of SCSP design highlights its role in solving the problem of widespread infringements of laws and contracts in China.[65] In one of the most influential scholarly writings on the SCSP, Rogier Creemers casts it as a law enforcement amplification device, devised by the government to resolve the long-standing law enforcement problem in China.[66] In the same vein, observers, particularly from economics, point out that the SCSP is primarily concerned with corporate compliance.[67] and has the potential to become a "fine-tuned model for IT-backed and big data-enabled

[64] Notably, the Law division of Xiangtan University, Hunan Province, has established a School for Credit Risk Management dedicated to the study of the SCSP and offering both BA and MA programs.

[65] See, e.g., Junyue Lin 林钧跃 (2001) 信用经济: 加入WTO第一门坎—访著名信用管理专家林钧跃 (The credit economy: The first threshold for joining WTO – Interview with Lin Junyue, a famous credit management expert), interview by Zhi Yu 雨芝, in 中国质量万里行 (China Quality Miles) 11/2001, pp. 24-27. On the problem of weak law enforcement in China, see section 2.1.

[66] Rogier Creemers (2017) China's Social Credit System: An evolving practice of control, SSRN, 22 May 2018, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3175792.

[67] Theresa Krause and Doris Fischer (2020) An economic approach to China's Social Credit System, in: Oliver Everling (ed.) *Social credit rating*, Springer, pp. 437-453; Kendra Schaefer (2020) China's Social Credit System: Context, competition, technology and geopolitics, Trivium China, 4 December 2020, available at https://www.uscc.gov/sites/default/files/2020-12/Chinas_Corporate_Social_Credit_System.pdf; European Chamber of Commerce (2019) The digital hand, Report from 28 August 2019, available at https://www.europeanchamber.com.cn/en/publications-archive/709/The_Digital_Hand_How_China_s_Corporate_Social_Credit_System_Conditions_Market_Actors; William Zhengdong Hu (2022) No way out? The fate of 'dishonest judgment debtors' in China's Social Credit System, PhD Thesis submitted to the University of Warwick, Department of Sociology in December 2022, https://wrap.warwick.ac.uk/id/eprint/179311/1/WRAP_Theses_Hu_2022.pdf. p. 7.

market regulation."[68]. Consequently, during the pandemic, the SCSP was not as much employed to enforce pandemic control measures as its mechanisms were put on hold, so firms had more leeway in navigating the consequences of lockdowns, without being punished for violating laws in that process.[69]

While the focus of the SCSP lies on corporate compliance, it also spurs individuals to act in compliance with laws and regulations, fulfil contractual duties, follow court orders, and, to some extent, adhere to moral rules.[70] Responding to criticism concerning the arbitrariness of moral rules, authors close to the national-level SCSP planning process point out that, as per central design, only laws and regulations are to be enforced through the SCSP.[71] Overall, the literature agrees that the SCSP strengthens the law through endowing enforcement work with new instruments revolving around the paradigm of trustworthiness (addressed in section 3.2.).

Taking the discussion around the SCSP's capacities to enforce law a step further, Haemin Jee argues that the SCSP's particular way of enhancing enforcement is one that simultaneously keeps in check the independence of courts. Through consolidating information and engaging in "institutional layering", she argues, the SCSP solves the autocratic state's concurrent needs for an independent judicial system on the one hand, but keeps courts in check on the other ("autocrat's dilemma").[72]

Another strand of arguments upholding that the SCSP strengthens legal enforcement in China is coined by Jamie Horsley and others who point out that through spurring transparency of both government information and corporate information, the SCSP empowers subjects to object to abuses of public power and sue breaches of contract, respectively.[73] Observing how the corporate SCSP and its information disclosure platforms reach corporate groups, Virginia Harper-Ho contextualizes the SCSP as a mechanism designated to improve corporate liability. Her study zooms in on social credit information platforms that disclose corporate information previously unavailable to the general public, aiding market participants to make better-informed decisions on whom

[68] Mirjam Meissner (2017) China's Social Credit System. A big-data enabled approach to market regulation with broad implications for doing business in China, MERICS, 24 May 2017, available at https://merics.org/sites/default/files/2020-05/Chinas%20gesellschaftliches%20Bonit%C3%A4tssystem.pdf, p. 11.

[69] Adam Knight and Rogier Creemers (2021) Going viral: The Social Credit System and COVID-19, 21 January 2021, SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3770208, p. 188.

[70] Yongxi Chen (2021) Die Entwicklung des Social Credit Systems: zu drei seiner Funktionen aus Sicht des Öffentlichen Rechts, in: Harald Gapski; Stephan Packard (eds.) *Super-Scoring? Datengetriebene Sozialtechnologien als neue Bildungsherausforderungen*, Kopaed, pp. 35-51.

[71] Peixin Luo 罗培新 (2016) 善治须用良法：社会信用立法论略 (Good governance requires good law: A general view on social credit legislation), 信用中国 (Credit China) 12/2016, pp. 104–112, p. 110.

[72] Haemin Jee (2022) Credit for compliance: How institutional layering ensures compliance in China, Dissertation, Stanford University Department of Political Science, available at https://purl.stanford.edu/tg087jk8675. Jee's investigation does not differentiate between power of courts in terms of judicial independence and power of courts in terms of power to enforce their decisions.

[73] Jamie P. Horsley (2020) China's corporate Social Credit 'System', Briefing, U.S.-China Business Council, Washington DC, 31 January 2020, available at https://law.yale.edu/sites/default/files/area/center/china/document/horsley_china_corporate_social_credit_1-31-20.pdf; see also Hans Krause Hansen and Richard Weiskopf (2021) From universalizing transparency to the interplay of transparency matrices: Critical insights from the emerging Social Credit System in China, *Organization Studies* 42(1), pp. 109-128.

to enter relations with, thereby enabling market self-regulation.[74] These accounts, pointing out how the SCSP enables transparency, align with arguments by early SCSP theorists who envisioned the SCSP as a vehicle to improve information symmetry in the market, hoping to resolve many pressing enforcement problems, such as IP infringement, through better informing market participants about their environment[75] (addressed in section 3.2.1. and 3.2.2.).

Beyond just law enforcement, the SCSP may also strengthen the law (unintentionally) by effectively pushing local and central-level legislators to take on the challenge of regulating the handling of personal data. Xin Dai suggests that the SCSP is a driver of data protection legislation, strengthening the rights and interests of individuals in the face of data collection and use by corporations and the state.[76] In the absence of detailed local laws on personal data protection, provincial and municipal regulations on social credit are host to some of the most detailed and prudent provisions on the handling of personal information through market actors, and, to a lesser extent, state actors. Similarly, the SCSP may spur the reform of the still secretive personnel dossier system of the state, the Dang'an 档案, towards more transparency.[77] The SCSP, with its self-declared ambition to base all punishments on the law, might further pull previously unregulated governance practices, such as the blacklists for repetitive petitioners, out of the legal grey area (addressed in section 3.1)

A final strand of literature argues that the SCSP is one means to guarantee justice in the data era, where traditional legal institutions often fail to provide adequate protection of justice. Respective takes begin with the observation that increasingly, everyday life is shaped by systems of assessment designed largely by private corporations that profit from unilateral monitoring and modifying of human behaviour.[78] Marcelo Thompson and Xin Zhang argue that in order to effectively control such practices, the state must counter the private sector with a data-driven regulatory system that itself builds profiles and conducts assessments.[79] The SCSP is a technically (and technologically) equivalent counterforce on the part of the state that may reign in the inequalities created by the platform corporations, especially.[80]

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[74] Virginia Harper-Ho (2024) China's corporate credit system and the boundaries of corporate liability, in Paul S. Davies and Hans Tjio (eds) *Fraud and risk in commercial law*, Bloomsbury Publishing, pp. 323-346.
[75] Junyue Lin 林钧跃 (2002) 社会信用体系原理 (Principles of the Social Credit System), 中国方正出版社 (China Fangzheng Press).
[76] *Xin Dai: Reputation state*.
[77] Le Wang 王乐 and Hao Zhang 张浩 (2010) 略论人事档案管理信用化改革 (A brief discussion on the credit reform of personnel file management), in 档案学研究 (Archives Research) 3/2010, pp. 91-93, hereafter: Le *Wang and Zhang: Personnel file management*.
[78] Shoshana Zuboff (2019) *The age of surveillance capitalism: The fight for a human future at the new frontier of power*, Profile Books.
[79] Marcelo Thompson and Xin Zhang (forthcoming): Justice and social credit, 2019 draft on file with the author, abstract available at https://researchblog.law.hku.hk/2019/09/marcelo-thompson-zhang-xin-on-justice.html.
[80] Qingsong Yu 虞青松 (2020) 算法行政: 社会信用体系治理范式及其法治化 (Algorithmic governmentality: The governance paradigm of the Social Credit System and its legalization), 法学论坛 (Legal Forum) 35(188), pp. 36-49.

1.3.2. The *weakening* paradigm

It is highlighted that many SCSP practices violate the rights of legal and natural persons, giving rise to an overall picture of the SCSP weakening the law. A general consensus has formed that punitive measures imposed on those who 'break trust' (joint disciplinary measures for trust-breaking 失信惩戒措施) violate several procedural and substantive norms of administrative law.[81] Legal scholars, especially in the Chinese debate, conduct legal doctrinal analysis to explore the legality of the measures. Most influentially, Kui Shen 沈岿 identifies a series of potential problems with joint disciplining, which henceforth have been studied in more detail by others. He argues that joint disciplining arrangements by multiple agencies lack a legal basis as they are stipulated only in memoranda of understanding signed among participating state agencies rather than in the law. They therefore violate the principle of administration in accordance with the law 依法行政.[82] Likewise, Yin Jia 贾茵 found that memoranda of understanding that are being signed between Party and state agencies to realise the penalties are merely normative documents and do not suffice as a legal basis as required by the Legislation Law.[83] Joint disciplinary measures for trust-breaking further typically fail the proportionality test,[84] risks blurring the line between private and public law,[85] and adds an additional layer of punishment on top of the administrative punishment already imposed.[86] As Chunyan Ding elaborates, "the social credit system runs in parallel to the legal system, as a result of which private entities who breach a contract or violate a law are subject to "double judgment" (i.e., legal judgment and moral judgment) and "double punishment/liabilities"

[81] For an overview of the Chinese legal debate on the legality of social credit disciplinary measures, see Marianne von Blomberg and Björn Ahl (2024) Debating the legality of social credit measures in China: A review of Chinese legal scholarship, *China Review* 24(3), pp. 17-46.

[82] Kui Shen 沈岿 (2019) 社会信用体系建设的法治之道 (The rule of law approach to the construction of the Social Credit System), 中国法学 (China Legal Science) 5/2019, pp. 25-46, hereafter: *Kui Shen: The rule of law approach*.

[83] Yin Jia 贾茵 (2020) 失信联合惩戒制度的法理分析与合宪性建议 (Legal analysis of and suggestions for constitutionalizing the system of joint disciplining of trust-breaking), 行政法学研究 (Administrative Law Review) 3, pp. 95-108, hereafter: *Yin Jia: Constitutionalizing*, for a dissenting opinion arguing that the MoU merely link to the formal legal basis, see e.g., Honghai Bi (2021) Old regulatory wine in a new bottle of technology—— A critical analysis of China's Social Credit System, *University of Pennsylvania Asian Law Review* 16(2), pp. 282-327, p. 321, hereafter: *Honghai Bi: Old regulatory wine*. Addressed in section 4.1.1.

[84] Yajuan He 和亚娟 (2019) "黑名单"制度的属性、功能及其边界控制 (Attributes, functions and controlling the limits of the 'blacklist' system), 贵州警官职业学院 (Journal of Guizhou Police Officer Vocational College) 4/2019, pp. 27-35. Addressed in section 4.1.2.

[85] Chun Peng 彭錞 (2021) 失信联合惩戒制度的法治困境及出路—基于对 41 份中央级失信惩戒备忘录的分析 (Legal dilemmas and solutions of joint disciplining of trust-breaking – Based on the analysis of 41 central-level MoU on joint disciplining of trust-breaking), 法商研究 (Studies in Law and Business) 38(5), pp. 47-60, hereafter: *Chun Peng: Legal dilemmas*.

[86] Xin Dai 戴昕 (2019) 理解社会信用体系建设的整体视角—法治分散、德治集中与规制强化 (Understanding the overall perspective of the construction of the Social Credit System——Decentralized rule of law, centralized rule of virtue, and strengthened regulation), 中外法学 (Peking University Law Journal) 6/2019, pp. 1469-1491, hereafter: *Xin Dai: Understanding the overall perspective*; Xixin Wang 王锡锌 and Zhijie Huang 黄智杰 (2021) 论失信约束制度的法治约束 (On the legal constraints of the trust-breaker restraining system), 中国法律评论 (China Law Review) 1/2021, pp. 96-112, p. 108, hereafter: *Wang and Huang: On the legal constraints*; Yu-Jie Chen, Ching-Fu Lin and Han-Wei Liu (2018) 'Rule of trust': The power and perils of China's social credit megaproject, *Columbia Journal of Asian Law* 32(1), pp. 1-36, p. 29; Sheng Zou (2021) Disenchanting trust: instrumental reason, algorithmic governance, and China's emerging Social Credit System, *Media and Communication* 9(2), pp. 140-149, p. 146. Addressed in section 4.1.4.

(i.e., the liability for breach of contract or violation of law under the civil, administrative, or criminal law, and the joint liabilities under the social credit system)."[87] Among the types of joint disciplinary measures for trust-breaking, shaming measures are particularly questionable because they are irreversible,[88] violate the target subject's right to reputation,[89] and furthermore are barely litigable as they are neither formally acknowledged administrative punishment nor administrative acts with external impact.[90] It is criticised that blacklist publication is not halted upon a subject's filing of a lawsuit or an administrative reconsideration against it, because it thereby continues to unfold negative effects even while under investigation.[91] In order to resolve the dilemmas arising from the new type of punishments the SCSP brings about, scholars either argue that the measures are to be subsumed under the catalogue of existing punishments in the Administrative Punishment Law,[92] should be added to it,[93] or should be restrained to such practices that do not amount to punishment at all and treated separately as a "collection of 'unfavourable treatments'".[94]

Joint disciplinary measures for trust-breaking are not only applied to persons who have, by regulatory agencies, been marked as trust-breaking as a result of violating laws and regulations. They are further used by the law enforcement division of courts, which in China are the main conduit to ensure that civil judgments are enforced. In that capacity, the measures are the means to an end, upon the achievement of which – the fulfilment of the court order – they are discontinued. Even as measures of compulsory enforcement, however, Chunyan Ding argues, they violate a number of fundamental legal principles and have "disturbing implications for the Chinese legal system"[95]. One of the more

[87] Chunyan Ding (2019) 'Moral conviction' plus 'joint sanctions': The judgment-defaulter blacklist system in China, *Brooklyn Journal of International Law* 48 (2), pp. 389-444, p. 425, hereafter: *Chunyan Ding: Judgment-defaulter blacklist system*.

[88] Wei Fan 范伟 (2018) 行政黑名单制度的法律属性及其控制—基于行政过程论视角的分析 (The legal character and control of the administrative blacklist system – an analysis based on administrative process theory), 政治与法律 (Political Science and Law) 9/2018, pp. 93-104, p. 103, hereafter: *Wei Fan: The legal character*; Zhen Shi 石珍 and Qin Zhang 张琴 (2020) 全面依法治国背景下行政"黑名单"制度及其法律规制 (The administrative blacklist system and its legal regulation against the background of comprehensively governing the country by law), 市场监管现代化 (Market Supervision Modernization) 4/2020, pp. 63-66, p. 65.

[89] Ruixue Wang 王瑞雪 (2021) 声誉制裁的当代图景与法治建构 (The contemporary picture of reputational sanctions and the construction of the rule of law), 中外法学 (Peking University Law Journal) 33(2), pp. 446-464, hereafter: *Ruixue Wang: The contemporary picture*; Jianmiao Hu 胡建淼 (2017) "黑名单"管理制度——行政机关实施"黑名单"是一种行政处罚 (The blacklist management system – 'Blacklists' implemented by administrative organs are a type of administrative punishment), 人民法治 (People's Rule by Law) 5/2017, p. 83; Zhongjing Men 门中敬 (2019) 失信联合惩戒之污名及其法律控制 (Stigmatization in joint disciplining for trust-breaking and its legal control), 法学论坛 (Legal Forum) 24(6), pp. 18-26, p. 25, hereafter: *Zhongjing Men: Stigmatization*.

[90] Marianne von Blomberg and Haixu Yu (2023) Shaming the untrustworthy and paths to relief in China's Social Credit System, *Modern China* 49(6), pp. 744-781. Addressed in section 4.2.

[91] *Honghai Bi: Old regulatory wine*, p. 325.

[92] For instance, *Kui Shen: The rule of law approach*, p. 42; *Wei Fan: The legal character*, p. 100.

[93] On blacklisting in particular: Xiaoying Zhang 张晓莹 (2019) 行政处罚视域下的失信惩戒规制 (The regulation of disciplining of 'trust-breaking' from the perspective of administrative punishment), 行政法学研究 (Administrative Law Review) 5/2019, pp. 130-144, p. 138.

[94] Peixin Luo 罗培新 (2023) 论社会信用立法基本范畴 (On the basic categories of social credit legislation), 中国应用法学 (China Journal of Applied Jurisprudence) 2/2023, pp. 27-35, p. 34, hereafter: *Peixin Luo: On the basic categories*.

[95] *Chunyan Ding: Judgment-defaulter blacklist system*, p. 394.

frequently mentioned legality issues with the court blacklists is the effect they have on family members, as one of the measures consists of restricting the children of those blacklisted from attending private schools.[96] Beyond law literature, economic empirical analyses of social credit blacklists for judgment defaulters have demonstrated that target subjects are regularly forced into financial ruin with barely a way out.[97] Guodong Chen 陈国栋, acknowledging the consensus that joint disciplinary measures for trust-breaking are unlawful in different ways, suggests a functionalist perspective to solve related issues: Instead of analysing the joint disciplinary measures for trust-breaking as laid down in policy documents and law, he argues to take the logic behind the measures and their goal – not to punish, but to prevent trust-breaking – into account.[98]

The most recent debate concerns the novel SCSP practice of credibility-based regulation (CBR), a risk-based regulatory approach through which regulatory agencies create 'credibility assessments' of regulatory subjects, share them among each other, and base administrative discretionary decisions upon them. Scholarship widely points out the lack of any legal framework for CBR (in Muyao Zhang 张牧遥's words, CBR's "legality crisis") and proposes conceptualisations based on current applications of CBR to further the legislative work.[99]

Apart from problematizing the punitive measures, scholars find that SCSP plans infringe on privacy rights by implementing systemised collection and sharing of corporate and personal information through state agencies.[100] Yongxi Chen and Anne S. Y. Cheung probe social credit-related laws for their privacy protection clauses, finding that there exist significant gaps in the legal protections of personal data.[101] Similarly, the author and

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[96] Yu-Jie Chen, Ching-Fu Lin and Han-Wei Liu (2018) 'Rule of trust': The power and perils of China's social credit megaproject, *Columbia Journal of Asian Law* 32(1), pp. 1-36, p. 30.

[97] William Zhengdong Hu (2022) No way out? The fate of 'dishonest judgment debtors' in China's Social Credit System, PhD Thesis submitted to the University of Warwick, Department of Sociology in December 2022, https://wrap.warwick.ac.uk/id/eprint/179311/1/WRAP_Theses_Hu_2022.pdf.

[98] Guodong Chen 陈国栋 (2023) 功能主义视角下的信用惩戒 (Credit disciplining from the perspective of functionalism), 经贸法律评论 (Business And Economic Law Review) 6/2023 pp. 18-39, hereafter: *Guodong Chen: Credit disciplining*.

[99] Muyao Zhang 张牧遥 (2022) 市场信用监管权设定问题探究 (Explorative research on regulatory power setting issues in market credibility-based regulation), 征信 (Credit Reference) 7/2022, pp. 21-31, p. 22; see also: Li Wang 王莉 and Jianhao Lu 吕健豪 (2025) 环保信用监管机制法理逻辑的四维表征 (A four-dimensional representation of the legal logic of credibility-based regulation in environmental protection), 中南林业科技大学学报（社会科学版）(Journal Of Central South University Of Forestry & Technology (Social Sciences)) 19(2), pp. 81-92.

[100] Given that the SCSP relies heavily on the collection and transmission of personal information, scholarly criticism evaluating the SCSP from the angle of data protection law is relatively scarce: Chuangyu Fu 伏创宇 (2025) 公共信用信息数字化的运行逻辑与法律限度 (The operation logic of public credit information digitization and its legal limits), 浙江工商大学学报 (Journal of Zhejiang Gongshang University), online first, pp. 1-12, https://www.cnki.net/KCMS/detail/detail.aspx?dbcode=CAPJ&dbname=CAPJLAST&filename=ZJZF20250427002&uniplatform=OVERSEA&v=NNkfRHV40moT0cAgBchBBJUpqvjLQLHYWi1KivxncjR-ZkzbRLfgXw0w8IsT8TSh. Notable exceptions include: Xin Zhang 张欣 (2021) 算法行政的架构原理、本质特征与法治化路径：兼论《个人信息保护法（草案）》 (The framework, features and legalizing path of algorithmic regulation: A discussion of the 'Personal Information Protection Law (Draft)'), 经贸法律评论 (Business And Economic Law Review) 1/2021, pp. 21-35; *Wang and Huang: On the legal constraints*.

[101] Yongxi Chen and Anne S. Y. Cheung Cheung (2017) The transparent self under big data profiling: Privacy and Chinese legislation on the Social Credit System, University of Hong Kong Faculty of Law Research Paper, 2017/011, SSRN, available at: https://ssrn.com/abstract=2992537.

Hannah Klöber identify inconsistencies between the SCSP's official commitment to transparency and the lack of the necessary procedures for individuals to access or correct their social credit files.[102] Other commentators highlight that the PRC's data protection regime does not effectively control state agencies' handling of personal information,[103] and thus is ineffective in curbing respective risks that emerge from the massive collection, sharing, and processing of personal data in the course of SCSP building.[104] Even with regard to private actors, it is elsewhere argued, citizens in China lack appropriate channels to hold data processors accountable, a circumstance further exacerbated by the lack of a strong civil society.[105]

Most legality problems stem from the very broad central-level guidelines that lack precise definitions, e.g., of what falls into the scope of social credit information and how joint disciplinary measures for trust-breaking are delimited. A first draft for a Social Credit System Building Law[106] offers little clarification.[107] Legal scholarship either suggests adjusting existing legislation or passing new legislation to accommodate the SCSP, for instance, by adding joint disciplinary measures for trust-breaking, such as blacklisting, to the catalogue of permissible administrative punishments in the Administrative Punishment Law.[108] Others point out that ex-post legitimising the problems of the SCSP might deprive the law of its authoritative role – turning it into a "law that authorises power" instead of a "law that limits power".[109] A growing number of voices, including the theoretical founding father of the SCSP, Junyue Lin 林钧跃, suggest turning the focus in SCS building from the punishments back to a market-based regulatory model that is based on information disclosure and reputational effects.[110] Overall, legal analyses of the SCSP reveal that several of its core ideas are barely reconcilable with the very pillars of administrative law. If not fundamentally reformed, the SCSP, as far as it concerns punitive measures and personal data handling, weakens the law.

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[102] Marianne von Blomberg and Hannah Klöber (2022) Sozialkreditdossiers in der Tradition staatlicher Personenakten in China: zunehmende Transparenz durch rechtliche Einbettung? *Tagungsband der Jahreskonferenz des Forum Privatheit*, 18-19 November 2022, Wiesbaden, pp. 177-208.

[103] Chuangyu Fu 伏创宇 (2025) 公共信用信息数字化的运行逻辑与法律限度 (The operation logic of public credit information digitization and its legal limits), 浙江工商大学学报 (Journal of Zhejiang Gongshang University), online first, pp. 1-12, https://www.cnki.net/KCMS/detail/detail.aspx?dbcode=CAPJ&dbname=CAPJLAST&filename=ZJZF20250427002&uniplatform=OVERSEA&v=NNkfRHV40moT0cAgBchBBJUpqvjLQLHYWi1KivxncjR-ZkzbRLfgXw0w8IsT8TSh.

[104] Qiang Xiao (2019) The road to digital unfreedom: President Xi's surveillance state, *Journal of Democracy* 30(1), pp. 53–67.

[105] Fan Liang, Vishnupriya Das, Nadiya Kostyuk, and Muzammil M. Hussain (2018) Constructing a data-driven society: China's Social Credit System as a state surveillance infrastructure, *Policy and Internet* 10(4), pp. 415–453, p. 434.

[106] *SCS Building Law draft*.

[107] Guodong Chen 陈国栋 (2023) 功能主义视角下的信用惩戒 (Credit disciplining from the perspective of functionalism), 经贸法律评论 (Business And Economic Law Review) 6/2023 pp. 18-39, p. 18-19, hereafter: *Guodong Chen: Credit disciplining*; *Peixin Luo: On the basic categories*, p. 27.

[108] Xiaoying Zhang 张晓莹 (2019) 行政处罚视域下的失信惩戒规制 (The regulation of disciplining of 'trust-breaking' from the perspective of administrative punishment), 行政法学研究 (Administrative Law Review) 5/2019, pp. 130-144.

[109] *Chun Peng: Legal dilemmas*, p. 60.

[110] Junyue Lin 林钧跃 (2022) 论公共和市场两种不同类型的失信惩戒机制及其互补关系 (On the two different types of trust-breaker disciplining mechanisms, by the state and the market, and their complementary relationship), 征信 (Credit Reference) 1/2022, pp. 11-25.

1.3.3. The *transforming* paradigm

Studies investigating how the SCSP either strengthens or weakens existing orders and institutions in the law often indicate that the SCSP has or might have a transformative impact on the legal order and legal institutions in China. Peking University Law Professor Xin Dai attributes to the SCSP potential to "change law and government as we know them in China and beyond."[111] The normative aspiration of scholarly contributions to offer a judgment on the (part of the) SCSP under scrutiny often leaves only hints as to how exactly the SCSP unfolds influence on the law and what fundamental changes that may bring to the law. Nevertheless, at least three threads describing (potential) transformations emerge from the literature.

Early studies attest that the SCSP *aligns morality with the law*[112], with some warning of the consequences thereof for the legitimacy of law[113]. In a Caixin op-ed series on the generalization 泛化 of credit, Lu Wang 汪路 asks, "Why kidnap 'credit'?"[114] One strand of literature points to how non-legal norms are enforced through SCSP disciplinary measures. The SCSP in China, it is held, may "function even when the law ends [...] It is not merely a law enforcement system but a system to enforce conformity with social norms."[115] Yu-Jie Chen et al. argue that the SCSP facilitates a "rule of trust", holding that what constitutes trust-breaking "may further involve 'norms' that are artificially imposed by the government at will"[116]. The empirical evidence on which many such arguments are built, however, is anecdotal, often pointing to particular local pilot projects. Some respective perspectives overlook that social credit-relevant norms that are not codified in law in other places do have a legal basis in China, such as the duty of children to support their elderly parents (The Law on the Protection of the Rights and Interests of the Elderly, Art. 18).[117] Commonly, the role of law is overlooked: "The SCS seeks to bring

[111] *Xin Dai: Reputation state*.

[112] Jingmei Wu 吴晶妹 (2004) 产权, 道德, 法律: 社会信用制度的三大支柱 (Property rights, morals, law: The Social Credit System's three pillars) , 重大理论问题探讨 (Theory Problems Inquiry) 4/2004, pp. 15-17; *Xin Dai: Understanding the overall perspective*.

[113] Haiyuan Zhou 周海源 (2020) 失信联合惩戒的泛道德化倾向及其矫正———以法教义学为视角的分析 (Correcting the trend of overly moralizing joint disciplines for trust-breaking – analysis from a legal doctrinal perspective), 行政法学研究 (Administrative Law Review) 3/2020, pp. 69-81, hereafter: *Haiyuan Zhou: Correcting the trend*. See also: Huanlong Cai 蔡焕隆 (2022) 信用监管泛化问题的反思——以交通失信为切入点 (Reflections on the issue of the generalization of credibility-based regulation – Taking the case of traffic trust-breaking as starting point), 贵阳市委党校学报 (Journal of the Party School of Guiyang CPC Committee) 2/2022, pp. 43-50.

[114] Lu Wang 汪路 (2020) "泛化信用十日谈（2）：为什么要绑架信用？(Ten-day-debate on the generalization of credit (2): Why hijack credit)", Caixin, 11 June 2020, https://opinion.caixin.com/m/2020-06-11/101566101.html, archived at https://web.archive.org/web/20251125151148/https://opinion.caixin.com/m/2020-06-11/101566101.html.

[115] Liav Orgad and Wessel Reijers (2021) How to make the perfect citizen? Lessons from China's Social Credit System, *Vanderbilt Journal of Transnational Law* 54(5), pp. 1087-1121, p. 1104, hereafter: *Orgad and Reijers: How to make the perfect citizen*.

[116] Yu-Jie Chen, Ching-Fu Lin and Han-Wei Liu (2018) 'Rule of trust': The power and perils of China's social credit megaproject, *Columbia Journal of Asian Law* 32(1), pp. 1-36, p. 29.

[117] Thomas Jessup (2021) 'I think therefore I AM'? – Artificial intelligence and the Chinese Social Credit System: A human rights critical analysis, SSRN, 17 May 2021, available at https://ssrn.com/abstract=3847481; Sheng Zou (2021) Disenchanting trust: instrumental reason, algorithmic governance, and China's emerging Social Credit System, *Media and Communication* 9(2), pp. 140-149, p. 157.

individuals into compliance with the hegemonic values defined and promoted by the Party-state" argues Sheng Zou, omitting to differentiate between values that are law and other values.[118]

In Chinese legal literature, a consensus is forming (and is reflected in recent SCSP policy) that non-legal norms must not be a basis for social credit disciplinary measures, and that respective SCSP mechanisms should be revoked.[119] This reform notwithstanding, where not enforced with the help of disciplinary measures, non-legal moral norms and legal norms continue to be part of the SCSP. Emphasising that non-legal moral norms are not enforced through punishments, Jeremy Daum points out that in its educational pillar, the SCSP does involve efforts to enforce moral norms, even if not by means of coercion.[120] A series of studies shows that mechanisms of the SCS produce non-legal norms and sanction them through reputational means and nudging. This happens with regard to individuals, for instance, through city-level social credit scoring programs that offer rewards for exemplary behaviour such as volunteering work and blood donations. I previously argued that, with regard to corporate organisations, in the name of social credit, standards are created that help regulators assess the trustworthiness of companies using legal thresholds, but also non-legal norms such as an entity's reputation in local media reporting.[121] Studying the top-level design of the SCSP, Larry Catá Backer holds that the SCSP, by merit of the data-drivenness of its mechanisms, inevitably produces norms.[122] Several scholars attribute the SCSP to the 'rule by virtue 德治', a concept that enjoys increasing mentions in documents and speeches by central political authorities about the legal system[123] and that Xi Jinping has made a pillar of his ruling ideology.[124]

Based on the fact that the CPC itself heavily uses the language of morality to disseminate and enforce norms summarised in twelve 'socialist core values', literature has largely conceptualised the SCSP's ambitions in enforcing moral norms as political.[125] In this vein, Lauren Yu-Hsin Lin and Curtis Milhaupt assess the ambitions of Zhejiang Province's SCSP to nudge corporate philanthropic behaviour as part of a political agenda.[126] Julian Gruin maintains that the SCSP is designed to steer market behaviour according to the relevant needs of the CPC: "the costs and benefits of compliance with the CCP's politics

[118] Sheng Zou (2021) Disenchanting trust: instrumental reason, algorithmic governance, and China's emerging Social Credit System, *Media and Communication* 9(2), pp. 140-149, p. 147.
[119] Section 4.1.1.
[120] Jeremy Daum (2017) "China through a glass, darkly", China Law Translate, 24 December 2017, http://www.chinalawtranslate.com/seeing-chinese-social-credit-through-a-glassdarkly/?lang=en.
[121] Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243, p. 233.
[122] Larry Catá Backer (2018) Next generation law: Data-driven governance and accountability-based regulatory systems in the west, and social credit regimes in China, *Southern California Interdisciplinary Law Journal* 28(21), pp. 123-173, p. 144.
[123] Xiaodong Ding and Dale Yuhao Zhong (2021) Rethinking China's Social Credit System: A long road to establishing trust in Chinese society, *Journal of Contemporary China* 30(130), pp. 630-644, p. 642.
[124] Delia Lin and Susan Trevaskes (2021) Law–morality ideology in the Xi Jinping era, in: Rogier Creemers and Susan Trevaskes (eds.): *Law and the party in China,* Cambridge University Press, pp. 121-148, p. 136.
[125] Yongxi Chen (2019) A déjà vu? The Social Credit System and fajia (legalism), Verfassungsblog, 28 June 2019, https://verfassungsblog.de/a-deja-vu-the-social-credit-system-and-fajia-legalism/.
[126] Lauren Yu-Hsin Lin and Curtis Milhaupt (2021) China's corporate Social Credit System and the dawn of surveillance state capitalism, *The China Quarterly* 256, pp. 835–853.

are ‘baked into’ the market”[127]. Finally, in building their sectoral or local SCSPs, state agencies select rules that they deem relevant to trustworthiness to be enforced with social credit practices. The selection process itself can be deemed a political and moral decision that hinges on the particular local environment and the respective tasks it poses to regulators.[128]

The second emerging thread in the literature describes how the SCSP transforms the law by leveraging the power of corporations for legal regulation. The use of private companies to enforce the law, under terms such as ‘co-regulation’, has long been observed and recently become a popular topic in literature on regulatory duties of online platforms to control the lawfulness of the transactions conducted through them.[129] Core questions around how law undergoes transformative changes, for instance, to accommodate the new regulatory role of technical standards, have been debated globally[130] and are raised anew in discussions around the SCSP. For instance, Chun Peng 彭錞 highlights that the China Railway Corporation helps enforce blacklists of trust-breaking judgment defaulters. This leads to problems regarding rights to legal remedies stipulated in administrative law, and enables litigation against state enforcement, provided the enforcer is a state agency. A continuation of the merging of market and state under the SCSP requires a fundamental restructuring of the legal remedial system at least.[131]

Finally, the use of data-driven infrastructure in some state-driven parts under the SCSP, for instance, ‘credibility-based regulation 信用监管’ (CBR), has in the literature been assessed as leading to an *automation of law*.[132] The transformative impact of automation on the law is discussed globally, for instance, when used by online platforms for legally mandated content moderation.[133] The equivalent debate revolving around the SCSP focuses on the use of information technologies directly by regulators rather than commercial platforms that are legally mandated to regulate (the latter debate, to date,

[127] Julian Gruin (2020) The epistemic evolution of market authority: Big data, blockchain and China’s neostatist challenge to neoliberalism, *Competition and Change* 25(5), pp. 580-604, p. 598.
[128] Severin Engelmann, Mo Chen, Lorenz Dang and Jens Grossklags (2021) Blacklists and redlists in the Chinese Social Credit System: Diversity, flexibility, and comprehensiveness, in: Proceedings of the 2021 AAAI/ACM Conference on AI, Ethics, and Society (AIES ’21), May 19–21 2021, USA. ACM, New York, USA, https://doi.org/10.1145/3461702.3462535; *Chunyan Ding: Judgment-defaulter blacklist system*, p. 425.
[129] E.g., Shaoyu Liu 刘绍宇 (2025) 公法如何介入平台治理?———以私行政法学之建构为切入点 (How does public law enter platform governance? The building of private administrative law studies as entry point), 交大法学 (SJTU Law Review) 2/2025, pp. 64-77.
[130] Jean-Christoph Graz (2019) *The power of standards. Hybrid authority and the globalisation of services*, Cambridge University Press, p. 86; Alicia Solow-Niederman (2023) Can AI standards have politics, *U.C.L.A. Law Review* 71(2), pp. 4-17; Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243.
[131] Chun Peng 彭錞 (2021) 失信联合惩戒行政诉讼救济困境及出路 (The dilemma of administrative litigation relief in joint disciplining for trust-breaking and solutions), 东方法学 (Oriental Law) 3/2021, pp. 171-186, hereafter: *Chun Peng: The dilemma*.
[132] Literature that conceptualizes the SCSP as a unified advanced digital technological application that assigns scores to citizens without providing evidence for their claims is here left aside.
[133] Robert Gorwa, Reuben Binns and Christian Katzenbach (2020) Algorithmic content moderation: Technical and political challenges in the automation of platform governance, *Big Data and Society* 7(1), https://doi.org/10.1177/2053951719897945.

unfolds not with regard to the SCSP[134]). According to SCSP plans, Cheung and Chen find, administrative agencies may use data from other agencies as well in calculating comprehensive assessments of a (legal) person's trustworthiness and link them with rewards and punishments.[135] The related concept of CBR, which envisions a profiled approach to dynamically adjust regulatory measures according to the targeted subject's credibility as assessed based on various factors such as compliance and social responsibility, is described as the centrepiece of the SCS's regulatory ambitions.[136] The transformative impact of such assessments is described as an emerging "rule by numbers 数治"[137]. Qingsong Yu 虞青松 argues the regulatory approach envisaged in the SCSP brings about a fundamental paradigm shift in law and regulation, and that an entirely new "digital administrative law" would be necessary to accommodate this shift.[138] One account argues that the SCSP regulatory approach is a first step towards "cybernetic citizenship", significantly widening the concept of governance by combining all four types of regulation identified by Lawrence Lessig: Laws that are enforced by sanctions, norms that are enforced by social pressure, markets that are enforced by price mechanisms, and architecture that is enforced by technical codes.[139] Larry Catá Backer argues that such technology can help realise the vision of a socialist legality, creating an alternative to traditional legal systems that accommodates the leadership of the vanguard – the CPC – and its Marxist-Leninist ideology.[140] In an attempt to make sense of the SCSP as a whole, Xin Dai suggests that it is constituted by three systemic logics – dispersing rule by law 法治分散, concentration of the rule of morality 德治集中, and strengthening regulation 规制强化 and contends that legislative efforts shall draw together all three so that the SCSP can be grasped from the high ground of the "data constitution".[141] Overall, however, arguments that the SCSP transforms law are yet rare and less strong than those regarding the two other paradigms.

[134] E.g., Xin Zhang 张欣 (2019) 从算法危机到算法信任 算法治理的多元方案和本土化路径 (From the algorithm crisis to algorithm trust – The multidimensional plan of algorithmic governance and paths towards its regionalization), 华东政法大学学报 (ECUPL Journal) 6/2019, pp. 17-30.

[135] Anne S. Y. Cheung, Clement Chen (2021) From datafication to data state: Making sense of China's Social Credit System and its implications, *Law and Social Inquiry* 47(4), pp. 1137-1171, hereafter: *Cheung and Chen: From datafication to data state*.

[136] Lauren Yu-Hsin Lin and Curtis Milhaupt (2021) China's corporate Social Credit System and the dawn of surveillance state capitalism, *The China Quarterly* 256, pp. 835–853; Jing Hao 郝静 (2020) 论行政法视域下正当程序对信用监管机制的规制 (On the regulation of credibility-based regulation by due process through the lens of administrative law), 河北青年管理干部学院学报 (Journal Of Hebei Youth Administrative Cadres College) 32(5), pp. 82-87, p. 83.

[137] So translated by the authors themselves: *Wang and Huang: On the legal constraints*, p. 97.

[138] Qingsong Yu 虞青松 (2020) 算法行政: 社会信用体系治理范式及其法治化 (Algorithmic governmentality: The governance paradigm of the Social Credit System and its legalization), 法学论坛 (Legal Forum) 35(188), pp. 36-49.

[139] *Orgad and Reijers: How to make the perfect citizen*, p. 1120.

[140] Larry Catá Backer (2018) Next generation law: Data-driven governance and accountability-based regulatory systems in the west, and social credit regimes in China, *Southern California Interdisciplinary Law Journal* 28(21), pp. 123-173.

[141] *Xin Dai: Understanding the overall perspective*, p. 1472.

1.4. Shortcomings in current literature

"It seems that the various disciplines are all discussing 'credit'; however, each researcher has his or her own understanding and use of the concept. Due to the vagueness of the concepts and the arbitrariness of their use, in tandem with the very limited interaction between the different academic disciplines, the result is a deepening chaos and fragmentation of the relevant research."

- Xuewei Zhai & Xiaoye Huang[142]

With regard to capturing the complex relationship between law and the SCSP, existing literature has the following limitations.

1.4.1. Fragmented SCSP initiatives, fragmented research

As a result of the highly fragmented nature of the SCSP and the broad wording in central plans, most previous investigations have concerned themselves with certain parts or subsystems of the SCSP.[143] Given the plurality of the initiatives that are summoned under the SCSP roof, that is a plausible approach to understand the concrete operations that take place in the SCSP's name. It follows a logic made explicit by Chunyan Ding: "Given the different nature of and concerns arising from different parts of China's social credit system, it is better to examine the details of each part to have an accurate understanding and fair evaluation of the social credit system operating in China"[144]. Nuclear approaches are in a better position to assess the SCS's viability, the details of its operation, and the manifold deals that are struck between different actors of the state and the private sector to make "raising levels of trust"[145] possible.

About the ways the SCSP strengthens, weakens, and transforms law, current contributions provide pieces of the puzzle. Studies highlight how localities gather PCI[146], how social credit platforms disclose information[147] and assess corporate compliance in particular provinces,[148] inquire how blacklisting impacts foreign companies,[149] or zoom

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[142] Xuewei Zhai and Xiaoye Huang (2023) *China's social credit,* Routledge, p. 10.

[143] With some notable exceptions, see e.g. *Xin Dai: Reputation state*; Rogier Creemers (2017) China's Social Credit System: An evolving practice of control, SSRN, 22 May 2018, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3175792; Chenchen Zhang (2020) Governing (through) trustworthiness: technologies of power and subjectification in China's social credit system, *Critical Asian Studies*, 52(4), pp. 565-588, p. 573; Calling for more research on the broader concept of the SCSP, see *Chun Peng: Building a high-trust society*.

[144] *Chunyan Ding: Judgment-defaulter blacklist system*, footnote 5.

[145] *SCS Planning Outline*.

[146] Xiangrong Ye 叶湘榕 (2014) 公共信用信息归集和使用的地方规则比较研究 (Comparative research on local principles of public credit information collection and use), 征信 (Credit Reference) 32(11), pp. 28-33.

[147] Jamie P. Horsley (2020) China's corporate Social Credit 'System', Briefing, U.S.-China Business Council, Washington DC, 31 January 2020, available at https://law.yale.edu/sites/default/files/area/center/china/document/horsley_china_corporate_social_credit_1-31-20.pdf; Marcelo Thompson and Xin Zhang (forthcoming) Justice and social credit, 2019 draft on file with the author, abstract available at https://researchblog.law.hku.hk/2019/09/marcelo-thompson-zhang-xin-on-justice.html; Hans Krause Hansen and Richard Weiskopf (2021) From universalizing transparency to the interplay of transparency matrices: Critical insights from the emerging Social Credit System in China, *Organization Studies* 42(1), pp. 109-128.

[148] Lauren Yu-Hsin Lin and Curtis Milhaupt (2021) China's corporate Social Credit System and the dawn of surveillance state capitalism, *The China Quarterly*, 256, pp. 835–853.

[149] Omar Ramon Serrano Oswald, Sandra Selmanovic, Benjamin Lee, Laua Arndt (2022) "Techno-regulation in China: How are Bavarian Firms Faring Under the Social Credit System?" Report by the Bavarian Research Institute for Digital Transformation (bidt), July 2022, DOI: 10.35067/xypq-kn21, https://www.bidt.digital/wp-

in on local pilot projects,[150] some of which are only broadly related to the SCSP.[151] A small number of studies compare particular SCSP mechanisms to equivalents in other countries,[152] a functional approach that backgrounds the particular political context that is the greater SCSP. A range of studies address specific legality issues of SCSP practices,[153] other contributions scrutinize single SCSP initiatives with regard to how and whether they digitalize and enhance public regulation.[154]

While highly informative on parts of the questions under scrutiny here, accounts zooming in on particular bits and pieces of the SCSP cannot explain why the SCSP as a larger political strategy itself is necessary in the first place. Many of the observed projects simply do not rely on the greater strategy; some predate the SCSP and were ex-post drawn under its umbrella. Some might as well have been implemented independently or as part of already existing programs, in the case of CBR, for instance, as part of the "streamlining public administration" [155] program. Hence, while informing the overall SCSP picture by illuminating how certain parts of the SCSP operate, current studies barely shed light on the purpose of the SCSP as a concept itself. As Chun Peng 彭錞 has put it,

> "[...] the existing explanations [of the SCSP] fail to explain: Why does the Chinese Party-state, with all the material and symbolic resources at its disposal, facing little constraints, choose to utilize the particular narrative of *xinyong* (conventionally translated as credit) to grab power, to foster morality or to enforce norms? Is *shehui xinyong* (conventionally translated as social credit) just a rhetorical façade to mask the underlying agenda, be it insidious or innocent? Or is such a choice of policy framework neither an accident, nor an

content/uploads/sites/2/2022/08/08_bidt-Reihe-Analysen-Studien-Technoregulierung-in-China-Web_EN.pdf.

[150] E.g., Frederico Caprotti, Ying Xu and Shiuh-Shen Chien (2024) Variegated platform urbanism: Social credit and the city, *Annals of the American Association of Geographers* 114(10), pp. 2222-2239; Panbo Qin 秦攀博 (2018) 全面建设信用广州的实践逻辑与路径选择 (The practical logic and path choice in comprehensively building credit Guangzhou), 探求 (Academic Search for Truth and Reality), 5/2018, pp. 114-120; Shouxiao Gong 巩守效, Yun He 何云, Jiao Wang 王蛟 (2018) 社会信用体系建设的实践与思考——以甘肃省天水市为例 (Practice and reflection on the construction of the Social Credit System—A case study of Tianshui City, Gansu Province), 征信 (Credit Reference) 36(8), pp. 31-34.

[151] Marianne von Blomberg and Wessel Reijers (2024) Who deserves credit? Banks for the virtuous in rural China, *Journal of Contemporary China* 33(150), pp. 955-970.

[152] Theresa Krause, Mo Chen, Lena Wassermann, Doris Fischer and Jens Grossklags (2023) China's corporate credit reporting system: A comparison with the United States and Germany, *Regulation and Governance* 17(3), pp. 755-771; Saif Shahin and Pei Zheng (2018) Big Data and the illusion of choice: Comparing the evolution of India's Aadhaar and China's Social Credit System as technosocial discourses, *Social Science Computer Review* 38(1), pp. 25-41.

[153] For instance, Kui Shen 沈岿 (2021) 社会信用惩戒的禁止不当联结 (The prohibition of improper connection in social credit disciplining) 暨南学报(哲学社会科学版) (Jinan Journal (Philosophy and Social Sciences)) 11/2021, pp. 1-21, hereafter: *Kui Shen: The prohibition of improper connection*; Hongfei Xing 邢鸿飞 and Yaling Yu 余亚玲 (2022) 论比例原则在信用惩戒中的适用 (On the application of the proportionality principle in credit disciplines), 江苏警官学院学报 (Journal of Jiangsu Police Institute) 37(6), pp. 103-109, hereafter: *Xing and Yu: On the application*.

[154] *Cheung and Chen: From datafication to data state*; Tao Zhang 张涛 (2020) 个人信用评分的地方实践与法律控制——以福州等 7 个城市为分析样本 (Local practices and legal control of personal credit scoring: A case study of seven cities including Fuzhou), 行政法学研究 (Administrative Law Review) 01/2020, pp. 116-129; Haimei Qian 钱海梅 (2014) 治理工具创新：激活内生型社会信用秩序 (Governance tool innovation: Activating the endogenous social credit order),理论与改革 (Theory and Reform), 6/2014, pp. 104-107.

[155] E.g., 国务院办公厅关于加快推进社会信用体系建设构建以信用为基础的新型监管机制的指导意见 (State Council General Office Guiding Opinion On Accelerating And Promoting SCS Building And Building The Credibility-based Regulation Mechanism), issued 9 July 2019, hereafter: *State Council Opinion on CBR*.

> excuse, but a carefully planned (though by no means perfectly designed and executed) response to perceived socioeconomic challenges?"[156]

Apart from the gap they leave in addressing the logic behind the SCSP, at least two other issues arise:

First, the existing fragmented landscape of studies tackling bits and pieces of the SCSP gives rise to a confusing picture that has often resulted in assumptions that there is, in fact, no clear political logic behind the SCSP. Studies of SCSP subsystems reach contradictory results and, as authors on that basis inductively make claims about the SCSP as a whole, inevitably produce conflicting pictures. For instance, some argue that the SCSP is China's latest upgrade of state surveillance infrastructure,[157] while others cast it as a force for government transparency,[158] arguably the contrary of secretive surveillance. Some describe it as, at its core, a moral engineering project,[159] whereas others hold that it is concerned first and foremost with legal compliance.[160]

Second, studies regularly overlook that SCSP subsystems often have nearly direct equivalents in other countries. Researchers who come from a curiosity for the novel conceptual notion of 'social credit' tend to take the fact that the SCSP is a PRC-specific one of a kind as a departure point and jump to the assumption that the subsystem they observe is just as unique an outgrowth of it. However, social credit score-based lending arrangements with local banks are readily comparable to the Bangladeshi Grameen bank project; social credit blacklists of judgment defaulters to the German "Schuldnerverzeichnis" administered by local courts, and personal credit scoring giants Baihang and Pudao to personal credit scoring firms such as Schufa and FICO. As a consequence, ironically, the focus of many studies on explaining the workings of China's unique SCSP by means of looking more closely at subsystems gets in the way of understanding the overarching and certainly unique political logic behind it.

With regard to my research question, the observations of SCSP subsystems imply several weakening and transformative moments for the two functions of administrative law in China under scrutiny here. In addition to assessing primary sources on the SCSP, this dissertation draws on these pioneering yet scattered studies described above to create a comprehensive account of the SCSP-law relationship.

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[156] *Chun Peng: Building a high-trust society*, p. 108.

[157] Fan Liang, Vishnupriya Das, Nadiya Kostyuk and Muzammil M. Hussain (2018) Constructing a Data-Driven Society: China's Social Credit System as a state surveillance infrastructure, *Policy and Internet* 10(4), pp. 415-453.

[158] E.g., Jamie P. Horsley (2020) China's corporate Social Credit 'System', Briefing, U.S.-China Business Council, Washington DC, 31 January 2020, available at https://law.yale.edu/sites/default/files/area/center/china/document/horsley_china_corporate_social_credit_1-31-20.pdf.

[159] E.g., Sheng Zou (2021) Disenchanting trust: instrumental reason, algorithmic governance, and China's emerging Social Credit System, *Media and Communication* 9(2), pp. 140-149, p. 142.

[160] Haixu Yu (2024) The evolving complex of the Chinese corporate tax credit system and tax law, *The China Review* 24(3), pp. 47-70; Haemin Jee (2025) The Social Credit System as a law-enforcing tool: Pillars of local implementation, in: Haiqing Yu and Rogier Creemers (eds.) *Automating governance in China?* Leiden University Press, pp. 121-142.

1.4.2. 'Law is law': Doctrinal analyses

Especially, Chinese legal literature on the SCSP conducts classical legal doctrinal analysis, in other words: "It is a habit and duty of the legal community to examine emerging systems with legal principles."[161] Doctrinal analysis is rooted in legal positivism and treats law as a delimited system of rules that underwent legislation processes and explicitly excluded other rules, such as political, ethical, moral, or religious norms.[162] The purpose is a normative one, namely to evaluate the lawfulness of the practice under scrutiny. As per the definition, legal doctrinal investigations stand firmly on the law alone and do not take into account at least two extra-legal forces that shape the PRC legal system.

First, law, as per the political system of the PRC, is accountable not only to the legislature in the government but also to the CPC. Since 2018, the CPC's leadership is cemented in Article 1 of the Constitution.[163] Even though throughout the years of reform in the 1980s and 1990s, the PRC adopted many features of liberal-democratic countries' legal systems, law has never been structurally detached from the Party's oversight[164] and in recent years is arguably on a path back to more ideological control.[165] CPC influence in China's legal system is present throughout the processes of legislation, execution, and adjudication, not by deviation but qua the constitutional setup of the PRC.[166]

Even though the SCSP is primarily concerned with law enforcement work and thereby not pertaining to the core tasks of the CPC, the Party has firmly installed itself as a part of the strategy's structural design. For instance, SCSP guiding documents are issued jointly by the State Council and the Central Committee of the CPC. Further, the annually published lists of permissible joint disciplinary measures for trust-breaking first issued in 2020 continuously stipulate that not only legal documents, but also documents issued jointly by the State Council and the CPC's Central Committee may serve as a legitimate basis for the penalties and assessment of 'trust-breaking'.[167]

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[161] Chun Peng 彭錞(2024) 再论行政处罚决定公开: 性质、逻辑与方式 (Further discussion of the disclosure of administrative punishment decisions: Substance, logic and mode), 现代法学 (Modern Law Science) 46(1), pp. 48-63, p. 50.

[162] Generally, see Mark Van Hoecke (2011) Legal doctrine: Which method(s) for what kind of discipline? In Mark Van Hoecke (ed.) *Methodologies of legal research*, Hart Publishing, pp. 1–18.

[163] 中华人民共和国宪法 (Constitution of the People's Republic of China), adopted by the NPC on 4 December 1982, last amended on 11 March 2018, hereafter: PRC Constitution.

[164] Cf. Kwai Hang Ng and Xin He (2017) *Embedded courts: Judicial decision-making in China*, Cambridge University Press.

[165] Carl Minzner (2018) *End of an era. How China's authoritarian revival is undermining its rise*, Oxford University Press.

[166] Captured by leading constitutional law scholar Shigong Jiang 强世功 as "unwritten Constitution", Shigong Jiang (2009) Written and unwritten constitutions: A new approach to the study of constitutional government in China, *Modern China* 36(1), pp. 12-46.

[167] "党中央、国务院政策文件" (CPCC-State Council policy documents), see 国家发展改革委 中国人民银行关于印发《全国公共信用信息基础目录（2025年版）》和《全国失信惩戒措施基础清单（2025年版）》的通知 (Notice Of The NDRC And The PBoC On Issuing The 'National Basic Catalogue Of PCI' And The 'National Basic List Of Disciplinary Measures For Trust-Breaking'), issued 14 March 2025, https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm, archived at web.archive.org/web/20250331232307/https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm.

It is questionable whether doctrinal analysis for administrative law, as shaped by liberal-democratic multi-party states, can account for this Party-state intertwinement of SCSP law. Generally speaking, doctrinal analysis as practised in liberal-democratic states is notoriously unfit to consider the Party's constitutional role as revolutionary vanguard in the law. CPC ideology and goals that are structural parts of PRC law can hardly be decoded through the lens of classical legal doctrinal analysis because the latter evolved in non-socialist systems defined by the structural separation of judicial, legislative, and executive powers. Doctrinal analysis as a method is not per se unsuitable for application in non-liberal democratic systems, as its very origins in Imperial Rome illustrate. It can be adjusted to the PRC's particular structure; however, such an adjustment is a theoretical mammoth project that has yet to be undertaken. Current doctrinal methods applied by most Chinese scholars are arguably strongly drawing on patterns developed in the liberal-democratic countries that the legal reforms looked to as models. As of now, studies adopting the legal doctrinal approach to analyse the SCSP frequently find themselves in the tradition of the pursuit of furthering judicial reforms, neglecting the political predominance in the law.[168] Lacking the language or sensors for the aspects of the complex and dynamic CPC influence in the law, current ways of legal doctrinal analysis of SCSP elements cannot sufficiently factor it in (or, perhaps, purposefully leave it aside in a tacit activist attempt by scholars to stress the authority of the law over that of the Party).

Second, PRC law is structurally married not just to the CPC's vanguard role, but also to the moral system of values that Party leaders have made the underpinning order of their rule. Law in China has a long history of entanglement with changing centrally stipulated moral normativities.[169] Recently, the doctrine of "rule by morality/virtue 德治" and related central-level decisions to better intertwine the rule by law and the rule by morality have become increasingly pronounced.[170] Just like legal doctrinal analysis is generally rather oblivious of law's political context, as mentioned above, it can also not fully account for PRC law's intricate intertwinement with state-sanctioned morality. In the legal literature on the SCSP, this becomes clear in that its doctrinal studies often venture from a point that assumes the clear differentiation of law and morality: Specifically, many voices criticise that SCSP elements lead to a "pan-moralization" of law in China or more broadly posit that the SCSP problematically merges morality and law.[171] To understand the relationship of the SCSP to the function of law as manifesting the ultimate moral authority of the state, the departure point must factor in the status quo of how Chinese law is infused with morality, an aspect that remains systematically (and necessarily) unexplored in legal doctrinal analysis.

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[168] A strategy in Chinese legal scholarship captured by Samuli Seppänen (2016) *Ideological conflict and the rule of law in contemporary China - Useful paradoxes*, Cambridge University Press, pp. 106 and 109.
[169] See for instance Philip C. C. Huang (2015) Morality and law in China, past and present, *Modern China* 41(1), pp. 3-39.
[170] After it was mentioned in multiple speeches by top-level politicians, the rule of/by virtue was highlighted in the 中共中央、国务院印发《法治政府建设实施纲要(2021 – 2025年)》(Plan On Implementing Building A Law-based Government), issued by the CPCCC and the State Council on 11 August 2021: See also Delia Lin and Susan Trevaskes (2021) Law–morality ideology in the Xi Jinping era, in: Rogier Creemers and Susan Trevaskes (eds.): *Law and the party in China,* Cambridge University Press, pp. 121-148.
[171] For instance, *Haiyuan Zhou: Correcting the trend*.

To summarise, with regard to administrative law's function as an instrument for effective public administration and its function to provide legal protections, legal doctrinal studies of SCSP elements provide important substance. However, political and moral normativities crucially shape law in China and are generally not captured through classical legal doctrinal analysis.

1.4.3. 'Law in China is irrelevant or non-existent'

A third strand of (mostly English language) literature on the SCSP's relation to the law ignores the existence and authority of law in China in general. In contrast to the above-described legal doctrinal approaches, which have a tendency to overstate the authority of law in China, this strand of literature understates it.

A wide range of contributions stresses the authoritarian and illiberal nature of the SCSP and implies that it violates legal rights. However, most stop short of laying out which rights exactly are potentially violated, let alone citing the respective legal bases. For instance, literature on social credit initiatives that concern individuals argues that the SCSP creates a form of cybernetic governance.[172] Here, it finds itself in the tradition of other socialist countries' experiments with data-driven governance to implement Marxist-Leninist ideology, such as the CyberSyn project in Chile. In such accounts where strong concerns about fundamental values such as individual freedom are expressed, considerations of relevant legal safeguards in Chinese law and legal procedure that may mitigate such risks are notoriously absent. Some go as far as stating that "there is no system in place for preventing abuse by officials, ensuring data quality and score accuracy, allowing citizens to dispute scores, or protecting citizen privacy."[173]

Accounts that do refer to law often misinterpret it. The most common case in point is the widespread argument that social credit disciplinary measures imposed on those not regularly visiting their elderly parents prove that the SCSP sanctions moral misbehaviour rather than law.[174] This overlooks that PRC law does stipulate a civil duty to care for one's parents. [175] Studies implying that the SCSP violates rights often rely on political documents to cast the PRC as an authoritarian monolith, conveniently neglecting the institutions and procedures for the protection of individual rights that it hosts. Some contributions invoke cultural essentialist arguments denying that the law can constrain state action in China. William Zhengdong Hu for instance surmises that if a person was to be subjected to public shaming as a result of being entered into a social credit blacklist, in a Western country, she would view this as an infringement on her civil rights, whereas

[172] *Orgad and Reijers: How to make the perfect citizen*; Samantha R Hoffman (2017) Programming China: the Communist Party's autonomic approach to managing state security, PhD thesis, University of Nottingham, School of Politics and International Relations, https://eprints.nottingham.ac.uk/48547/1/Hoffman%2C%20Samantha%20Student%20ID%204208393%20PHD%20THESIS%20Post%20Viva%20copy.pdf.

[173] Abigail Devereaux and Linan Peng (2020) Give us a little social credit: To design or to discover personal ratings in the era of Big Data, *Journal of Institutional Economics* 16, pp. 369-387, p. 372.

[174] Sheng Zou (2021) Disenchanting trust: instrumental reason, algorithmic governance, and China's emerging Social Credit System, *Media and Communication* 9(2), pp. 140-149, p. 147.

[175] Art. 18, 老年人权益保障法 (Law on the Protection of the Rights and Interests of the Elderly), issued 29 August 1996, last amended 29 December 2018.

in China, "many might align with Confucian ethics, internally chastising themselves" and refrain from protesting out of fear of repercussions.[176]

Admittedly, it is difficult to establish that contributions on the SCSP that do not explicitly discuss law still make a statement about the law-SCSP relationship. However, ignoring law in China, as displayed in scholarship on the SCSP described above, might well be an expression of a phenomenon Teemu Ruskola has described as "legal orientalism" – the widespread assumption in Western discourse that China has no modernity and, relatedly, no law.[177] Regarding China as lawless altogether ignores at least two realities of the SCSP: that SCSP subjects use records disclosed through social credit information platforms to sue government agencies and companies for infringing on their rights as evidenced by court decisions; and the efforts by local legislators to create procedures through which credit subjects can correct their social credit files and seek remedy for wrongful disciplinary measures for 'trust-breaking', among others.[178]

This study addresses the weaknesses of existing scholarship in mainly two ways: It consolidates and contextualises fragmented research on the SCSP-law relationship, resolving contradictory findings, by conceptualising the SCSP as a mode of governance that impacts and is impacted by two functions of PRC administrative law. It will contribute insights for actors beyond China to learn from the SCSP experiments. A careful observation of the law-SCSP relationship can offer hints on the legal challenges that arise from trustworthiness assessment regimes, or, de facto social credit systems, globally. For instance, lessons can be learned from SCSP initiatives that combine moral norms and legal rules to regulate ESG regimes. These initiatives occupy a position between binding state regulation and 'soft' moral sanction systems. Further, regulation based on trustworthiness assessments is being practised by regulatory agencies across Europe, and legal issues that arise from those practices have been discussed within Chinese legal circles for some time.[179] Naturally, law as well as SCSs that emerge in China are different from initiatives elsewhere. However, practical legal challenges beneath the broader political-legal state structure are similar. For instance, the question of how to ensure that data drawn on is accurate is one faced by all regimes that seek to leverage trustworthiness assessments for decision-making, regardless of whether employed by PRC state agencies or ESG consortia.

[176] William Zhengdong Hu (2024) Understanding the power of China's Social Credit System: A structural/mechanism explanation, *Philosophy of the Social Sciences,* online first, https://doi.org/10.1177/00483931241229445, p. 8.

[177] Teemu Ruskola (2013) *Legal orientalism. China, the United States and modern law*, Harvard University Press. With Jürgen Habermas, who declares 'subjective freedom' as contingent on the provision of both property rights and rights to political participation, as constituents of "the projekt of modernity", one could associate the commonly assumed absence of law in China directly with the absence, or not having, of modernity. See Jürgen Habermas (1990) *The Philosophical Discourse of Modernity*, Polity Press.

[178] See section 4.2.

[179] See for instance, Min Zhang 张敏 (2024) 数字政府建设政企合作法律风险的规制模式 (Regulating legal risks in private-public-partnerships for digital government building), 现代法学 (*Modern Law Science*) 46(3), pp. 173-190.

1.5. Sources and limitations

“Village leader Tong, your 'Bank of Virtues' project is described as a model for SCS building in documents of the provincial-level Development and Reform Commission. Have you been officially honoured for it?”

“The what system? … Social credit system. Maybe that is a central-level policy. We don’t know about it.”

- Conversation with a village leader in 2019[180]

Narrowing down the sources used in this research required defining which initiatives fall under the SCSP and which do not. The SCSP’s borders, however, are far from clear-cut. In several cases, I observed blacklist schemes or local village instantiations of social credit that were in higher-level policy documents indicated as part of the SCSP, even model projects, whose creators and administrators, however, had never heard of the SCSP (see the above-cited conversation). Further complicating the matter, the Chinese government in the SCSP building simultaneously acts as policy designer, investor, supplier of infrastructure and information, client, and regulatory authority. As laid out above, this study focuses on the role of the government as a curator, that is, the designer of the overall picture of the SCSP as well as its core mechanisms,[181] rather than the operations of specific subsystems. In order to develop the most complete account possible, this study includes projects by virtue of their officially declared connection to elements of the central-level SCSP plan.

To that end, based on two years of exploratory investigation, I drafted a catalogue of keywords that central planning documents refer to and gathered relevant projects and sources under each of them. The catalogue was refined based on regular deliberations with colleagues from academia and professionals researching different pieces of the social credit puzzle, as well as a near-comprehensive literature review of Chinese, English, German, and French scholarship. Thereby, every source that I used is unanimously linked to an element of the central plan. This approach avoids mistaking nominally similar projects for SCSP-related initiatives, for instance, the understanding of bank customer blacklists as social credit blacklists,[182] or facial recognition gates at stations as social credit projects.[183] As per the research question’s focus on SCSP-administrative law entanglements, this investigation places more emphasis on the SCSP initiatives that are explicitly state-driven and carried out directly by state agencies.

Generally, official sources on the SCSP were readily accessible as the SCSP was at the time of data collection not (yet) considered a sensitive topic whatsoever. In 2014, the government designated the SCSP a prestige project. To promote it widely, it disseminates and orders local state agencies to disseminate relevant information, including policy and

[180] ZJ01.

[181] See section 3.2.

[182] Research design for a part of the data collected of this study may have resulted in this issue here: Alexander Trauth-Goik and Chuncheng Liu (2022) Black or Fifty Shades of Grey? The Power and Limits of the Social Credit Blacklist System in China, *Journal of Contemporary China* 32(144), pp. 1017-1033.

[183] Zhenbin Zuo (2024) Automated law enforcement: An assessment of China’s Social Credit System (SCS) using interview evidence from Shanghai, *Journal of Cross-disciplinary Research in Computational Law* 2(1), https://journalcrcl.org/crcl/article/view/38.

legal documents, statistics, and practice cases. The government funded research projects on SCSP legality: State-led think tanks explicitly called for critical analysis of the SCSP setup in order to make improvements in this planning stage.[184] One critical legal scholar has described his research on the SCSP as "fulfilling his dues to the government."[185]

A shortcoming of the chosen approach lies in its commitment to plans and ideals. The SCSP is an ongoing endeavour, the final outcomes of which are hardly predictable. During the past six years, multiple SCSP initiatives and concepts emerged, and many of them have already rolled back. The choice of aspects this investigation focuses on is made based on informed guesses about the future political, regulatory, and technological developments.

1.5.1. Written sources

The mainstay of this investigation rests on the textual analysis of a wide range of written sources collected between early 2018 and December 2024 that date back to 1999. They include, firstly, 134 policy and legal documents issued at the central level by both Party and state organs (especially, the CPCCC, the State Council, NDRC, PBoC, Supreme People's Court, among others), such as state ministries' directions on the implementation of social credit mechanisms in their respective realms and Memoranda of Understanding signed between multiple central level CPC and government organs.

Secondly, 476 documents implementing social credit policies issued by local governments and regulatory agencies at all levels, such as Measures (办法) to implement blacklists, and legislation passed by local People's Congresses (条例), were drawn on. Official and expert interpretations of such documents (解读 and 解释) form an additional source, as well as draft documents, amendment suggestions, and other preparatory documents in policymaking and legislation retrieved through public channels and persons involved in drafting processes.

Thirdly, the study draws on court decisions, including judgments from civil and administrative litigation retrieved through the official court decision database Caipan Wenshu, throughout the years 2020-2023. During this time, several administrative litigation decisions were taken offline.[186] The gradual deletion of court decisions from public view has progressed according to particular causes of dispute.[187] A specific focus of the deletions on social credit-related cases, including blacklisting and social credit information requests, is not discernible, as in line with the official view on the SCSP as a prestige project rather than a sensitive topic. In addition to court decisions and

[184] E.g., 厦门国信信用大数据创新研究院 (2021): 2021年社会信用体系建设十大重点研究方向 (The 10 Big Focus Research Directions of SCS Building 2021), 30 April, https://www.gx-credit.com/p/20210430127.html, on file with the author.
[185] BJ02.
[186] David Cowhig (2023) "2023: PRC administrative law decisions taken offline", 高大伟 David Cowhig's Translation Blog, 4 January 2023, https://gaodawei.wordpress.com/2023/04/01/2023-prc-administrative-law-decisions-taken-offline/.
[187] Jiajun Luo and Thomas Kellogg (2022) "Verdicts from China's courts used to be accessible online. now they're disappearing", China File, 1 February 2022, https://www.chinafile.com/reporting-opinion/viewpoint/verdicts-chinas-courts-used-be-accessible-online-now-theyre-disappearing.

judgments, administrative reconsideration decisions were retrieved through local government websites. After anonymising those that were not yet anonymised, a total of 477 decisions were included in the analysis.

Fourthly, selected procurement documents from local governments for the acquisition of software solutions for building social credit databases and other related infrastructure form a part of the written sources.

Fifthly, I drew on a series of technical standards issued by the Technical Committee for the Standardisation of the SCS, under the Standardisation Administration of China (国家标准, GB and GB/T). In addition, I used standards published by local branches of the Standardization Administration of China (地方标准, DB) and group standards from other semi-state industry associations (团体标准, TB).

Finally, a wide range of various online sources is drawn on: News outlets and blogs (e.g., Yuandian Credit), public WeChat accounts of local governments, regulatory agencies, courts, dedicated SCSP WeChat accounts (often connected to Credit China, see e.g. 信用舟山), state outlets such as Legal Daily 法治日报, Xinhua, and the NDRC's Credit China magazine, social credit information platforms run by the NDRC, SAMR and their local branches (such as the National Enterprise Credit Information Publication Platform,[188] government and department websites, among others. Since around 2022, local governments have begun to build a "reverse firewall", geo-blocking their websites to make them inaccessible from places beyond China or beyond their own jurisdiction.[189]

1.5.2. Oral sources

The document analysis is supplemented by formal semi-structured interviews and informal conversations with, first, SCSP subjects. These include individuals and corporate representatives who actively make use of the voluntary schemes under the SCSP, including municipal points systems and rural counterparts, use social credit information infrastructure in their daily life or business operations, or have become targets of social credit disciplinary measures, for instance, blacklisting, shaming measures, and bans on high-speed rail travel. I recruited interlocutors through various channels, including local business networks and associations, inquiries through my professional networks, and through directly approaching people in (semi-) public spaces, including train stations, restaurants, gyms, parks, university grounds, buses, and foot massage shops.

Another group of interlocutors consists of judges and other court personnel who are involved in judicial enforcement and social credit-related civil or administrative litigation. A significant proportion of the oral sources consists of interviews with public officials holding different capacities at local Development and Reform Commissions and local Administrations for Market Regulation (the NDRC and SAMR are two leading implementors of the SCSP). To better understand the implementation of social credit law enforcement measures, I further conversed with officials in regulatory agencies and their

[188] https://www.gsxt.gov.cn/.
[189] Vincent Brussee (2024) Mitigating missingness in analysing Chinese policy and implications for the fragility of our knowledge base, *China Quarterly* 261, pp. 234-248.

subdivisions that conduct social credit assessments, administer social credit blacklists, or are involved in designing the local SCSP, including for environmental protection, urban and rural development, HR and social security, and finances. These conversations were to some extent self-initiated through introductions with the help of my network, and to some extent part of formal fieldwork (调研) visits headed by colleagues at Zhejiang University. Finally, a series of formal academic and semi-political conferences allowed for conversations with participants from several government agencies. At the lower levels of governance, I spoke to members of Residential Committees in urban communities (居民委员会) and village chiefs (both, chairs of village committees 村民委员会主任 and local Party Secretaries).

Thirdly, I interviewed scholars working on SCSP-related questions at both universities and think tanks, many of whom serve as legal advisors to central and local social credit legislation and policymaking. Discussions with scholars are, insofar as they can publish, insofar crucial as what they can publish in writing underlies censorship rules and allows substantial criticism of central governance projects only to a limited extent. By 2023, I had built expertise on the SCSP and its European counterparts, documented in several publications, one of which was translated into Chinese.[190] This came to pave the way for me to speak to persons involved in the top-level design of the SCSP, including senior social credit theorists.

Finally, I interviewed representatives of technology firms building service solutions for the SCSP in Zhejiang Province, as well as lawyers and consultants across China who advise clients on adjusting their operations to SCSP policies. These interlocutors were identified through conferences, workshops, and recommendations of other contact persons.

Apart from conversations offline and online, I gathered responses to my questions in written form. Officials often accepted a WeChat introduction through a supporter in my network, but then proceeded to not respond or respond in very vague terms. Given the difficulty of meeting with interlocutors and their often being unsure about what information they could lawfully share with me, I developed personalised questionnaires to send to them. Responses were naturally less spontaneous than in interviews but contained a much wider range of details than oral conversation would have yielded. The questionnaires allowed me to gather insights from a large number of officials in a short time and allowed them to reply on their own terms – when it best suited them and to, if they saw necessary, check the responses with their colleagues or superiors. Often, interlocutors opted for the questionnaires at first and were open to meeting or a video call afterwards. The downside of this approach is that it leaves clear traces, and in an environment of ubiquitous surveillance, officials write down only what they deem not to harm their careers or their departments. The lack of outright criticism in the responses was, insofar as unproblematic, as I was more interested in what actually was being done and where priorities lay than in what officials thought about it.

[190] Credit 世界 (2023) "国际观察 -《社会信用》最新书评（节选） (International outlook – latest book review on 'social credit')", 25 December 2023, https://mp.weixin.qq.com/s/1Pte9sgsNx5SLCcOiyX8iw, archived at https://web.archive.org/web/20250314132332/https://mp.weixin.qq.com/s/1Pte9sgsNx5SLCcOiyX8iw.

I anonymised all sources as well as the names of the places. I retrieved oral informed consent from all interlocutors, with exceptions in situations where the framing of the conversation made it clear that I was a researcher working on the SCSP (conversations during breaks of conferences, research visits to state agencies as part of a research group at Zhejiang University, etc.).

Finally, countless informal conversations with persons either affected by or themselves playing a role in implementing the SCSP that occurred throughout my overall four years of living and working in China before and after the pandemic inform this research. These exchanges are not formally part of my research data, but they nevertheless provide a significant backdrop to this study as they shape the way I structured and contextualised findings from formal interviews and document analysis.

1.5.3. Notes on fieldwork and positionality

Fieldwork for this dissertation was conducted across rural Zhejiang and Liaoning and the cities of Hangzhou, Wenzhou, Quzhou, Chongqing, Shenzhen, Guangzhou, Beijing, Shanghai, Suzhou and Xiamen.[191] The choice of locations followed indications of particularly far-advanced SCSP initiatives in central-level documents, resulting in most work being conducted in the economically stronger Eastern parts of China. A correlation exists between economic development and local activity in SCSP building. To capture the experience of a less wealthy locality, I added Chongqing as a fieldwork site. Zhejiang Province was selected as the primary case because, first, it is heralded as a pioneer in SCS building at the central level and is host to the first initiatives under the thread of the SCS.[192] Second, it hosts companies that were from the start deeply involved in building relevant technologies, as well as the early credit rating industry. Third, having lived in Hangzhou since 2016 (interrupted by the pandemic 2020-2023) and being affiliated with the School of Law at Zhejiang University throughout, both background knowledge of local institutions and access to resources were significantly easier than in other places. I was able to participate in official field trips organised by faculty of Zhejiang University and conducted some research as part of classes at the school.

Being a white German woman in her early 30s limited my access to the field in several ways. Non-PRC citizens are restricted formally, in terms of archival access and access to courts, as well as online government databases and archives.[193] Less easy to pinpoint

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[191] This section is put together based on Siddarth Peter de Souza and Lisa Hahn (2022) *The socio-legal lab: An experiential approach to research on law in action*, Open Press Tilburg University, p. 82.

[192] Literature surveying the SCSP nationwide agrees on this point, see e.g. Kendra Schaefer (2020) China's Social Credit System: Context, competition, technology and geopolitics, Trivium China, 4 December 2020, available at https://www.uscc.gov/sites/default/files/2020-12/Chinas_Corporate_Social_Credit_System.pdf, p. 39.
The arguably first local document on SCS building was published in Hangzhou while Xi Jinping held the position as General Secretary of Hangzhou: 杭州市人民政府办公厅关于印发杭州市社会信用体系建设"十一五"专项规划的通知 (Notice Of The Hangzhou People's Government General Office On Issuing The Hangzhou City SCS Building '11-5' Special Plan), issued on 9 May 2006, geo-blocked, on file with the author. As Xi advanced to lead the central government in 2013, SCSP plans were elevated to top priority, with the State Council issuing the key document, the *SCS Planning* Outline, just after Xi took power.

[193] Apart from the common access problems, as laid out in Ariane Ollier-Malaterre, Emilie Szwajnoch, Alexander Trauth-Goik, Ausma Bernot, Fan Liang and Ashley Poon (2025) Navigating through the fog: Reflexive accounts on researching China's digital surveillance, censorship, and other sensitive topics, *Journal of Contemporary China*, online first, https://doi.org/10.1080/10670564.2025.2477200.

are the internal rules and guidelines that instruct officials about (not) engaging with foreigners. On the rise for about a decade, such instructions vary locally and by sector. The overall strengthening of nationalism, to a great extent realised by antagonising the West, and the PRC-U.S. trade war further raised general levels of caution among PRC officials when engaging with foreigners during the time of research.[194] It appeared that the lower an official stood in the administrative hierarchy, the more curiosity and the aim to learn outweighed reservations to talk to a foreigner. However, it remains difficult for me to assess precisely the risks that engaging with me would bring to my interlocutors, as this was not a topic that could be sensibly discussed, warranting extra caution on my part.

Xiang Gao 高翔, political science professor at Zhejiang University, stated: The most important factor in fieldwork on governance was and is trust.[195] According to my observations, interlocutors hesitated to talk to me less because they worried that a foreign researcher could uncover secret information. Instead, they feared that she would be unable to correctly understand work that many officials regarded as contributing to a fair policy and misconstrue it. A significant aid in talking to government officials in that regard was not only my affiliation with Zhejiang University but that I hold a law degree from a Chinese law school and thus appeared as a researcher who somewhat trusts the PRC educational institutions, further bolstered by the fact that I returned to China after the pandemic, unlike most foreign students and researchers. Being based in Hangzhou, I could adapt my fieldwork travel schedule flexibly. I was able to follow up on interlocutors who cancelled initial meetings without exerting pressure, but take the time to understand their life and work situations and reach out with conversation formats that were feasible for them. Finally, my social and institutional embeddedness in the field helped circumvent the common negative image of a Western visitor who drops in, takes out information, and leaves. On the downside, I was not entirely independent: My visa was linked to my affiliation with Zhejiang University, and while I consciously separated my fieldwork contacts from my personal social circles, some interlocutors were recruited through persons I consider old friends.

Over time, my growing expertise on the SCSP and its European counterparts became a door-opener in gathering new information. At first unintentionally, I found myself in PhD colloquia or business meetings alongside my interlocutor's students or trainees, raising my questions as well as responding to theirs. Because these settings proved fruitful, I eventually intentionally sought out discussion formats where my interlocutor brought along trainees, colleagues, or students. Previous empirical research, especially by Chinese colleagues, sought out one-on-one settings in order to discuss sensitive issues more openly.[196] Throughout my explorative field work, however, I found that officials were reluctant to meet me alone but, clearly willing to converse, actively thought of potential

[194] If the 2010s were called a "Decade of Challenges" in social science fieldwork in China (Scott Kennedy and Iliara Mazzocco (2022) "Doing Fieldwork in China: Evolution and Prospects", Big Data China, 29 August 2022, https://bigdatachina.csis.org/doing-fieldwork-in-china/), then the 2020s may tentatively be calles the "Decade of Suspicion".

[195] Oral statement at the workshop The Digital Reach of the Chinese State, Volkswagen Scoping Workshop, 5-6 July 2023, Schloss Herrenhausen, Hannover.

[196] Yueduan Wang (2024) Embedded supervision: China's prosecutorial public interest litigation against government, *Regulation and Governance*, online first, https://doi.org/10.1111/rego.12602, p. 4, hereafter: *Yueduan Wang: Embedded supervision*.

discussion formats that would provide a formal cover for the meeting. In some instances, one-on-one meetings were interrupted or ended by phone calls from superiors. The group settings I eventually embraced afforded my interlocutor an adequate alibi for meeting: It was an opportunity to reap my insights for their students or trainees. Interlocutors would feel safe to share their thoughts, talk more naturally (one-on-one situations were sometimes hijacked by interlocutors wanting to practice English), and, in addition to the interlocutor's thoughts, gain insights from their students/trainees' work as well.

Chapter 2: Conceptualising the SCSP and administrative law in China

As demonstrated above, current literature exploring the intersections of law and social credit yields contradictory findings. To observe the relationship between the law and social credit while taking the characteristics of PRC law and the full picture of the SCSP into account, I propose to conceptualise the SCSP as a mode of governance that interacts with two functions of administrative law in China.

First, a conceptualisation of the SCSP is, insofar as necessary, as current accounts have not yet provided a coherent picture of the underlying logic of the project. The SCSP cannot be fully understood as *only* concerned with surveillance, [197] credit reporting, [198] or governance digitalisation.[199] My conceptualisation of the SCSP as a mode of governance builds on existing explorations of the SCSP's internal logic, which have described it as aiming to establish a "reputation state"[200] or a "high trust society"[201].

The functional approach to the law is chosen because it may overcome both shortcomings in current literature highlighted above, the treatment of law as a rigid normative frame independent of politics and morality and, on the other extreme, the relative ignorance of law's relevance. Finally, a functional approach to law yields an account of the law-SCSP relationship as complex and entangled. It allows me to analyse whether the SCSP is in line with the law but also how it impacts administrative law, paving the way for a complex picture of the SCSP as simultaneously weakening, strengthening and transforming administrative law.

2.1. The social credit mode of governance: To counter the 'trust crisis'

A mode of governance is here defined as "every mode of political steering involving public and private actors, including traditional modes of government and different types of steering from hierarchical imposition to sheer information measures" [202]. Other than

[197] In the focus of, e.g.: Fan Liang, Vishnupriya Das, Nadiya Kostyuk, and Muzammil M. Hussain (2018) Constructing a data-driven society: China's Social Credit System as a state surveillance infrastructure, *Policy and Internet* 10(4), pp. 415–453.

[198] In the focus of, e.g.: Theresa Krause, Mo Chen, Lena Wassermann, Doris Fischer, Jens Grossklags (2022) China's corporate credit reporting system: A comparison with the United States and Germany, *Regulation and Governance* 17, pp. 755-771.

[199] In the focus of, e.g.: *Orgad and Reijers: How to make the perfect citizen*; Karen Li Xan Wong and Amy Shields Dobson (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), pp. 220-232.

[200] *Xin Dai: Reputation state*. See also, See, e.g., Xin Dai 戴昕 (2019) 理解社会信用体系建设的整体视角法治分散、德治集中与规制强化 (A comprehensive understanding of the social credit system's decentralized law, centralized morality, and empowered regulation), 中外法学 (Peking University Law Journal) 31(6), pp. 1469-1491.

[201] *Chun Peng: Building a high-trust society*. Reaching a similar conclusion by way of analyzing Chinese state media reporting on the SCS, see also Jing Wang, Hongmei Li, Weiai Wayne Xu and Wei Xu (2022) Envisioning a credit society: Social credit systems and the institutionalization of moral standards in China. *Media, Culture and Society* 45(3), pp. 451-470.

[202] Adrienne Héritier (2002) New modes of governance in Europe: Policy-making without legislating? In Héritier (ed.), *Common goods: Reinventing European and international governance*, Rowman and Littlefield, pp. 185–206, p. 185.

"regulation", which is most commonly understood as the power of public authority through law to steer behaviour, *governance* covers non-state actors' activities as well.[203] Oliver Treib et al. expound that a mode of governance can be institutionalised or not institutionalised, involve public actors and/or private actors, rules may be legally binding or soft law, fixed or malleable, implemented with or without sanctions, rigidly (uniform) or flexibly (e.g., with local adaptations).[204]

It is here argued that the SCSP presents us with a new, dynamic and rather messy mode of governance, hereafter termed the *social credit mode of governance*.[205] New modes of governance, with Sebastian Botzem et al., are distinguishable by (1) the introduction of new actors or actor constellations, (2) new institutional arrangements or modes of regulation, and (3) the blurring of traditional borderlines (e.g., between public and private, national and international, formal and informal).[206] The following sections conceptualise the SCSP as a new mode of governance that revolves around the core paradigm of 'trust'. I introduce the setup of the SCSP along the three characteristics above.

The SCSP is hardly a system in the sense of a "a regularly interacting or interdependent group of items forming a unified whole".[207] It covers a variety of local and nationwide projects, run by either private companies, government entities or in a joint effort of both. Some projects were initiated through top-down SCSP plans, such as the administration of social credit files by various local state departments and these state departments' imposition of disciplinary measures on those whose violations of the law amount to "untrustworthiness". The SCSP also draws into its scope other influential mechanisms related to trust that predate the larger SCSP. Their connection to the SCSP is not always obvious. Many initiatives are only loosely associated with the SCSP or are not clearly discernible as parts of it. For instance, commercial personal credit ratings and corporate credit ratings, municipal reward programs for residents who firmly abide by the law, platform companies' collection of information relating to trustworthiness of platform users, campaigns for honest behaviour, as well as measures against plagiarism in the field of academic research all are initiatives that fall within the scope of the SCSP and are guided by its policies. As diverse as the initiatives under the SCSP are, so are the organisations and persons they address (in SCSP rhetoric referred to as 'credit subjects' 信用主体 and here called SCSP subjects). SCSP subjects can be corporations of any size

[203] Note that some broader definitions of 'regulation' also embrace non-state actors' actions, see for instance Lawrence Lessig's four different modalities of regulation of which law – traditionally seen as the regulatory modality – is only one, the others being social norms, the market and the architecture or design of technological applications. Lawrence Lessig (1999) The law of the horse: What cyberlaw might teach, *Harvard Law Review* 113, pp. 501-549.

[204] Oliver Treib, Holger Bähr and Gerda Falkner (2007) Modes of governance: towards a conceptual clarification, *Journal of European Public Policy* 14(1), pp. 1-20, p. 5 ff.

[205] Several other accounts have used the term 'mode of governance' to describe the SCSP, but none yet has elaborated on this conceptualization or defined their notion of 'mode of governance'. For instance, calling the SCSP mode of governance the 'rule of trust': Yu-Jie Chen, Ching-Fu Lin and Han-Wei Liu (2018) 'Rule of trust': The power and perils of China's social credit megaproject, *Columbia Journal of Asian Law* 32(1), pp. 1-36; speaking of 'trust governance 信用治理' and its logic: *Guodong Chen: Credit disciplining*.

[206] Sebastian Botzem, Jeanette Hofmann, Sigrid Quack, Gunnar Folke Schuppert and Holger Straßheim (2009) Die Dynamik des Governance-Ansatzes. Vier Dimensionen im Wandel, in Sebastian Botzem, Jeanette Hofmann, Sigrid Quack, Gunnar Folke Schuppert and Holger Straßheim (eds) *Governance als Prozess. Koordinationsformen im Wandel*, Nomos, pp. 11-16.

[207] Merriam Webster Dictionary: 'system', https://www.merriam-webster.com/dictionary/system.

and industry, as well as civil society organisations, and individuals, in the latter case, especially designated key groups including lawyers, researchers, company managers, and civil servants.

Given this fragmented landscape that is the SCSP on the ground, and the fact that even actors implementing it do not always clearly understand its logic and basic definitions, my claim that the SCSP constitutes even just a messy mode of governance requires substantiation.

Is there a common denominator of all initiatives associated with the SCSP? All aim to increase the trustworthy behaviour of SCSP subjects, but every initiative has its own definition of what that is. In China, given this variety of initiatives, the central-level rhetoric on the "Social Credit System" has, by implementing officials and in scholarship, especially by legal scholars, been deemed too broad to be useful.[208] Despite increased functional fragmentation of SCSP, the central government continues to address the SCSP as one at the central level[209] and further brought a Social Credit Law on the way.[210] Why does China's political leadership still, after decades of functional differentiation and fragmentation of social credit initiatives, handle and advocate the SCSP as one united undertaking? How did "trustworthiness" become a central paradigm of a top-priority governance strategy?

The following sections investigate trajectories of social and economic development in modern Chinese history that gave rise to the SCSP, illuminating how the government came to treat the diverse and remotely trust-related initiatives as one, establishing the social credit mode of governance. All SCSP initiatives can historically be traced back to efforts to combat what the central government, in the wake of Reform and Opening, has diagnosed as a 'trust crisis' in China.[211] When the central government relaxed economic planning and permitted private economic activity, the free market began to restructure economic relations. This eroded traditional structures of trust in the People's Republic, which rested upon the societal structure around the planned economy.

Multiple problems coincided, which in essence relate to trust: New private businesses needed information to assess the financial soundness of transaction partners, and on

[208] One official in a sub-agency of SAMR explained that much of the friction between central ministries in SCSP implementation derives from the overly broad rhetoric: SAMR02; Pierre Sel (2024) From financial supervision to morality construction: Political narratives of the social credit system policy process, *China Review* 24(3), pp. 275-304, p. 276.

[209] E.g., 中共中央办公厅国务院 办公厅印发《关于推进社会信用体系建设高质量发展促进形成新发展格局的意见》 (The CPCCC General Office And The State Council General Office Issue The 'Opinions On Advancing High-Quality Development In The Building The Social Credit System For Promoting The Formation Of A New Development Structure'), issued 29 March 2022.

[210] *SCS Building Law draft*.

[211] See for example literature of Communist Party Schools pointing out the risks of trust problems contaminating political and economic structures: Xiya Lin 林希娅 (2000) 建立社会信用体系迫在眉睫 (It is imminent to establish a Social Credit System), 福州党校学报 (Fuzhou Party School Journal) 3/2000, pp. 29–31; Jinzhu Wang 王金柱 (2001) 转轨时期中国社会信用面临的危机透视 (A perspective on the crisis facing China's Social Credit System during the transition period), 求实 (Seeker) 17/2001, pp. 17-19; Tianhong Lin 林天宏 (2011) "公信力下降致信任危机 以政府专家媒体最严重 (Declining public trust has led to a crisis of confidence, with government officials, experts, and the media being the most severely affected)", 中国周刊 (China Weekly), 17 November 2011, https://news.sina.com.cn/c/sd/2011-11-17/120023481451.shtml; making a similar argument: *Chun Peng: Building a high-trust society*.

the part of banks, the credibility of lenders (SCSP root one, 2.1.1.). Underfunded state regulators tasked with enforcing a range of newly passed laws and regulations on a booming market economy required effective means to swiftly identify and deter notoriously law-violating firms (SCSP root two, 2.1.2.). Reform policies also rendered largely meaningless the CPC's major channel of social supervision over citizens through state-owned labour units, and foreign influence in the information sphere increased. The party-state had to find new ways to uphold its moral authority and funnel re-defined socialist political values into corporate and individual behaviour, as well as that of public officials (SCSP root three, 2.1.3.).

Assessing in how far the "trust crisis" diagnosis is reflective of the true overall situation and in how far it was merely ex-post constructed to justify politics[212] is beyond the scope of this work. For our purposes, the elements that, through the eyes of the government, contribute to the trust crisis are observed because they form the factual support for the SCSP plans, regardless of whether they reflect social reality.

2.1.1. Root one: Credit reporting for the socialist market economy

"The banks of capitalist nations establish information institutions [credit bureaus] mainly to extract more profits and serve the exploiting classes. But this effective information system, like other scientific and technological and economic management methods, is also worthy of our reference."

- Yujun Wei and Xuehui Hu (1981) [213]

"Lending money in rural areas is a mysterious art"

- Mingkang Liu, former chairman of the China Banking Regulatory Commission (2007)[214]

A market economy requires a credit reporting system for lenders and other businesses to make sound economic decisions. Efforts towards building a credit reporting system are rooted in Reform and Opening Up policies in the late 1970s. Market reform policies granted local branches of the PBoC some independence from the central bank, which had been the sole bank throughout the years of the planned economy. The funding needs of especially SMEs began to transform China's banking system to focus more on lending than saving.[215] However, the largely 'unbanked' population lacked credit histories.[216] Paired with the lack of resources to monitor financial risk, this led to a general instability

[212] See for instance, John Clarke (2022) Crisis and change – the contested politics of constructing crisis, in Richard Ballard and Clive Barnett (eds.) *Routledge Handbook of Social Change*, Routledge, pp. 117-129; H. Christoph Steinhardt, Xue Gong and Jan Delhey (2025) Chasing a phantom: a re-evaluation of China's 'trust crisis', *Chinese Sociological Review* 57(3), pp. 297-327.

[213] Yujun Wei 卫毓俊 and Xuehui Hu 胡学慧 (1981) 银行建立信息系统是当务之急 (That banks establish an information system is a top priority), 金融研究 (Finance Research) 2/1981, pp. 65-67, p. 66.

[214] Describing how the government navigates an unbanked yet socially interwoven rural lending environment. Wall Street Journal Asia "Chinese regulator lays out rural-bank overhaul --- Enhancing liquidity, branch networks are key to achieving goal", 17 May 2007, https://www.wsj.com/articles/SB117934026643805191, original article in Chinese By Ling Huawei Caijing Magazine.

[215] Alicia Garca-Herrero, Sergio Gavil and Daniel Santabarbara (2006) China's banking reform: An assessment of its evolution and possible impact, *CESifo Economic Studies* 52, 2/2006, pp. 304-363, p. 318, doi:10.1093/cesifo/ifl006.

[216] Due to a lack of resources, "one universal credit rating is typically given to all borrowers in a village": Lynette H. Ong (2012) *Prosper or perish. Credit and fiscal systems in rural China*, Cornell University Press, p. 43.

of the national economy. Credit reporting was the very first field of action under the early SCSP plans.[217]

Since then, it has come a long way: At the time of writing, China has 151 officially registered corporate credit reporting companies[218] and three personal credit reporting companies, as well as a public credit information registry with the central bank covering 1.1 billion natural persons and 3.6 million companies as of 2024.[219] The backdrop of the 'trust crisis' environment, however led emergence of a uniquely *broad notion of credit* on the sidelines. Evolving in parallel to the narrow, financial notion of credit, the broad notion of credit envisages credit files as encompassing behavioural records beyond just financial information and as useful for public governance more than just for lenders in the market.

2.1.1.1. The financial notion of credit to improve creditworthiness

Since the end of the planned economy era in the 1970s, the PRC government balances its way forward, introducing market reforms while retaining features of Socialism. One fundamental question, as one banker put it, was: "Do banks in a socialist system need to establish credit information services?"[220] Many observers replied with suggestions to create conditions for a market-driven credit reporting industry to develop, referring to Western countries and the USA in particular. Some pointed to the credit reporting pioneer from the Republican Era, the China Credit Bureau in Shanghai, as a Chinese prototype.[221] Interest arose in understanding the operation of credit reporting institutions in economically developed countries and respective information technologies.[222] Allowing

[217] How to build a credit reporting system was the subject of the first policies and research endeavours on social credit in China, it was then regarded as first step to solving the larger trust crisis. Interview with Zhejiang University Economics Professor Rongzhu Ke 柯荣住 who under a project of the State Council and the PBoC went to Yale University to work on building "social trust" rather than credit reporting in the narrow sense.
Pierre Sel (2024) From financial supervision to morality construction: Political narratives of the social credit system policy process, *China Review* 24(3), pp. 275-304.

[218] Shanghai Municipal Credit Service Industry Association (2024) "行业动态｜备案+4！ 详解全国154家企业征信备案机构 (Industry News｜Record +4! Detailed explanation of 154 corporate credit registration agencies across the country)", WeChat Account, 6 August, https://mp.weixin.qq.com/s?__biz=MzIxNTYxNzA1Mw==&mid=2247516907&idx=1&sn=b177befb1d9ad6be31ab50cff14f2780&chksm=9656bc54ae6e763a1db094d60e1608c47a4d8d1b3f8cbbafa94c9805baae8efdb3d3302db370&scene=27, archived at https://web.archive.org/web/20250608071439/https://mp.weixin.qq.com/s?__biz=MzIxNTYxNzA1Mw==&mid=2247516907&idx=1&sn=b177befb1d9ad6be31ab50cff14f2780&chksm=9656bc54ae6e763a1db094d60e1608c47a4d8d1b3f8cbbafa94c9805baae8efdb3d3302db370&scene=27.

[219] 推动征信业高质量发展 助力金融服务实体经济 [Promote the high-quality development of the credit reporting industry, help financial services serve the real economy], General Office of the People's Bank of China, 10 March 2024, http://www.pbc.gov.cn/redianzhuanti/118742/5256143/5256153/5267725/index.html, archived at https://web.archive.org/web/20250223183939/http://www.pbc.gov.cn/redianzhuanti/118742/5256143/5256153/5267725/index.html.

[220] Chuwen Mao 茅初文 (1983) 一项银行新业务—信用咨询 (A new business for banks: Credit consulting), 上海金融研究 (Shanghai Finance Research) 3/1983, p. 21.

[221] Yujun Wei 卫毓俊 and Xuehui Hu 胡学慧 (1981) 银行建立信息系统是当务之急 (That banks establish an information system is a top priority), 金融研究 (Finance Research) 2/1981, pp. 65-67.

[222] Xuehui Hu 胡学惠 and Junxia Yang 杨俊霞(1980) 解放前的中国征信所 (The China Credit Bureau' before liberation), Journal of Financial Research (金融研究动态) 2/1980, p. 17; opining to introduce a loan quality management mechanism to check a given loan in every phase of the process as "the emergence of quality management gave capitalists a big advantage": Qizhang Gui 归淇章 (1981) 浅论信贷的质量管理 (On the

further privatization of financial institutions was the only way to reverse the "anti-credit" mindset of China's enterprises, a former official and financial advisor to the government wrote.[223]

A market-driven credit industry began to grow under state guidance. In February 1988, the PRC's first professional credit rating company was established.[224] At the same time, branches of the central bank across the country had started to conduct credit risk assessments through subsidiary companies.[225] In 1992, Moody's entered the Chinese market through a joint venture with the Chinese firm China Chengxin International and began to train local personnel in credit investigation work. In 1994, Dagong Global Credit was established, the first Asian credit rating agency to receive a license to operate in Europe.[226]

The market-driven credit industry's large strides forward occurred in a largely unbanked environment, especially in rural areas.[227] With the credit industry barely subject to regulation and lacking reliable credit information, the credibility of the credit ratings was low. Individuals and enterprises opened multiple bank accounts, hiding their existing debts to obtain more loans. This way, taxes were evaded, a widespread trend that found a particularly serious manifestation in the city of Shantou 汕头, where in the first half of the year 2000 taxes worth 4.2 billion RMB were defrauded, an amount by far exceeding the local fiscal revenue.[228] State-owned enterprises, often still relying on the information credit system they used internally during the planned economy, produced "triangular debt": They forestalled debt payments, claiming that other state-owned enterprises

quality management of credit), 金融研究 (Finance Research) 6/1981, pp. 32-35; Chuwen Mao 茅初文 (1983) 一项银行新业务—信用咨询 (A new business for banks: Credit consulting), 上海金融研究 (Shanghai Finance Research) 3/1983, p. 21.

[223] Zhenhua Mao 毛振华 (1998) 完善信用评级制度有效防范金融风险 (Improve the credit rating system and effectively prevent financial risks), 金融研究 (Financial Studies) 7/1998, pp. 68-70, p. 69. As Pierre Sel (2024) points out, it was in Zhenhua Mao's work that the catchphrase which until today guides SCSP building first appeared, albeit, in a slightly different wording: "If you have credit, you can walk everywhere, but if you don't have credit, you cannot walk anywhere": Pierre Sel (2024) From financial supervision to morality construction: Political narratives of the social credit system policy process, *China Review* 24(3), pp. 275-304.

[224] Shanghai Far East Credit Rating Company 上海远东资信评估有限公司.

[225] Yingjie Zhang 张英杰, Yabin He 何亚斌, Qian Liu 刘茜, Liang Chen 陈亮 and Bing Liu 刘兵 (2019) "中国社会信用体系建设与改革40年 (40 years of China's Social Credit System building and reform)", report by 中诚信 (CCX), 8 March 2019, http://www.ccx.com.cn/uploadfile/2019/0311/20190311054615955.pdf, archived at https://web.archive.org/web/20250607203237/https://www.ccx.cn/uploadfile/2019/0311/20190311054615955.pdf, p. 4.

[226] Initially heralded as a national champion in China, in 2018, Chinese regulators found Dagong breached domestic laws and regulations for the rating industry and revoked its license for a year. The crackdown further led the formerly privately held company to be rescued by the state-owned China Reform Holdings Corporation which acquired a 58% stake: Chunping Bush (2021) The rise and fall of Dagong Global Credit Rating Agency: A geopolitical challenge for the rating industry, *Journal of Financial Regulation* 7/2021, pp. 319–324, p. 319.

[227] Lynette H. Ong (2012) *Prosper or perish. Credit and fiscal systems in rural China*, Cornell University Press, p. 43.

[228] Sina Finance 新浪财经 (2021) "中国征信往事：一个时代的困局、抉择与底色 (The past of China's credit reporting: One era's dilemmas, choices and backgrounds)", 23 January 2021, https://finance.sina.com.cn/china/gncj/2021-01-23/doc-ikftpnny0867768.shtml, archived at https://web.archive.org/web/20251006131259/https://finance.sina.com.cn/china/gncj/2021-01-23/doc-ikftpnny0867768.shtml.

owed them.[229] Campaigns to counter the chaos did not fully come to fruition.[230] A period of local debt chaos from the 1980s to the early 2000s spurred plans to build a public credit registry to stabilise the yet immature private credit reporting industry.

China's central bank initiated several attempts to establish a public credit registry, which eventually resulted in today's China People's Bank Credit Reference Centre (中国人民银行征信中心, the most authoritative source for financial credit reports in the PRC.[231] The public credit registry was a larger engineering project to establish a credit network covering all companies that apply for a loan, led by the PBoC and operated by all financial institutions jointly.[232] Various forms of credit investigation operations were stopped,[233] uniform credit rating committees 信誉评级委员会 across local branches of the PBoC were formed,[234] and the information they gathered was entered into a first national database, the Bank Credit Registration Consultation System 银行信贷登记咨询系统,[235] which eventually migrated to today's Credit Reference Centre. In 2004, the IFC launched a collaboration that would bring in Western expertise in financial credit investigation work through workshops with PRC officials in charge.[236] While still far from covering all of China's population, the personal credit registry was by 2007 described as the largest in the world.[237]

Notably, although the central bank is one of the three top organs in charge of SCSP building and qua this role an advocate for the broad notion of credit, it has emphasized that in its own operations, it sticks to a "clean" notion of credit – resisting calls by other

[229] Mo Zhang 张莫 and Shaohua Sun 孙韶华 (2012) "多部委密集调研"三角债"风险 涉及各类企业 (Multiple ministries and commissions conduct intensive research on the risks of 'triangular debt' involving various types of enterprises)", 环球网 (Global Times), 24 August 2012, https://china.huanqiu.com/article/9CaKrnJwRdK, archived at https://web.archive.org/web/20251006132710/https://china.huanqiu.com/article/9CaKrnJwRdK.

[230] Xuewei Zhai and Xiaoye Huang (2023) *China's social credit,* Routledge, p. 183.

[231] The PBoC with its public credit registry is consistently the SCSP stakeholder most often mentioned in SCSP-related central and local state media reports from 2003 to 2019, underlining its central function to the initiative. At the same time, this central role is often overlooked in English reporting and research which stresses the role of CPC organs, the State Council and other ministries: Jing Wang, Hongmei Li, Weiai Wayne Xu and Wei Xu (2022) Envisioning a credit society: Social credit systems and the institutionalization of moral standards in China, *Media, Culture and Society* 45(3), pp. 451-470.

[232] A project first proposed by an employee at a branch of the Industrial and Commercial Bank of China in Hunan: Lanjun Wu 吴兰君 (1987) 如何组建我国的征信网络 (How to put together our country's credit reporting network), 金融研究动态 (Journal of Financial Research) 2/1987, pp. 58-59.

[233] 中国人民银行关于撤销人民银行设立的证券公司、信誉评级公司的通知 (Notice by the PBoC on the Revocation of Securities Companies and Credit Rating Companies Set up by the People's Bank of China, issued on 19 September 1989.

[234] 中国人民银行关于设立信誉评级委员会有关问题的通知 (Notice of the PBoC on Relevant Issues Concerning the Establishment of Credit Rating Committee), issued 11 August 1990.

[235] Ning Su 苏宁 (2020) 我国征信体系建设的基本经验 (The basic experience of China's credit information system construction), 中国金融 (China Finance) Z1/2020, p. 46.

[236] Lin Huang and Prashan Paramanathan (2009) "Creating financial infrastructure in a large transition economy – lessons from China's new credit bureau", IFC Smart Lessons series no. 48789, April 2009, available at https://openknowledge.worldbank.org/bitstream/handle/10986/10567/486780BRIEF0IF10credit0bureau1FINAL.pdf?sequence=1andisAllowed=y.

[237] Website of the PBoC: http://www.pbc.gov.cn/bangongting/135485/135491/135603/2827502/index.html archived at https://web.archive.org/web/20240209141324/http://www.pbc.gov.cn/bangongting/135485/135491/135603/2827502/index.html.

top actors to include compliance records and other non-financial information in their credit registry. As a top central bank official stated, "credit reporting is not a super police officer"[238]. Arguing his point, the official invokes the International Finance Corporation (IFC)'s definition of credit reporting as a tool to create sound financial infrastructures that facilitate lending and help expand access to credit to a significant share of individuals, microfinance, and SMEs, while reducing the risk for lenders. As shown above, in setting up the credit registry, the PBoC cooperated closely with global experts who operate with the purely financial notion of credit. Most of the technical efforts and groundwork in building the credit registry likewise showed little traces of a broad notion of credit. For instance, credit reporting-related standardisation efforts were initially led by the National Technical Working Small Group for Credit Standardisation 全国信用标准化技术工作组 (only in 2008 renamed to the SCSTC and from then on addressing larger SCSP themes relating to the broad notion of credit) and focused on classic themes of finance-focused credit systems such as credit data collection procedures, credit report formats and credit information security. At that time, scholars involved in the SCSP design also emphasised looking at other countries' respective rules and standards.[239] The Credit Reference Centre also indirectly rejects the broad notion of credit by associating itself with international credit reporting associations such as the European Association of Consumer Credit Information Suppliers, which maintains that "credit reference agencies do not hold information on what you earn, your nationality, your employment, or other sensitive personal data (e.g., religion, political preferences, gender)."[240]

2.1.1.2. The broad notion of credit in the central bank's public credit registry

It appears somewhat contradictory, then, that while establishing a strictly finance-related credit registry, the PBoC has, since the 2000s, also been keen to expand the financial concept of credit. The Credit Reference Centre's credit reports for individual consumers as well as corporations today, under a section titled "public records", also include administrative punishments imposed, tax arrears, telecommunication arrears, and civil judgments of any kind. Reports for natural persons further include detailed educational and professional histories, such as positions held and professional qualifications gained.[241] In 2005, the PBoC issued internal rules that contained definitions of credit information which encompass non-financial information: "The personal credit information referred to in these Measures includes basic personal

[238] Caixin 财信 (2020) "穆长春：征信不是超级警察" (Changchun Mu: Credit reporting is not a super police officer", Caixin, 8 January 2020, https://opinion.caixin.com/2020-01-08/101502177.html, archived at https://web.archive.org/web/20240208104249/https:/opinion.caixin.com/2020-01-08/101502177.html.
[239] Junyue Lin (2006) 谈我国信用标准的方案设计 (On the design of the plan of China's credit standards), 世界标准化与质量管理 (World Standardization and Quality Management), 6/2006, pp. 26-28, p. 28.
[240] Homepage of the ACCIS, https://accis.eu/.
[241] Sample consumer credit report of the Credit Reference Centre: http://www.pbccrc.org.cn/ewebeditor/uploadfile/20230426112754595001.pdf, archived at: https://web.archive.org/web/20240209132454/http://www.pbccrc.org.cn/ewebeditor/uploadfile/20230426112754595001.pdf; Sample of a self-inquiry corporate credit report: http://www.pbccrc.org.cn/crc/qyzx/201411/cb5442762d934fd891e2490ecef3943d/files/43d05e2088bb47ff887c7fc0c30a2e82.pdf, archived at: https://web.archive.org/web/20240209132153/http://www.pbccrc.org.cn/crc/qyzx/201411/cb5442762d934fd891e2490ecef3943d/files/43d05e2088bb47ff887c7fc0c30a2e82.pdf.

information, personal credit transaction information, and other information that reflects personal credit [*xinyong*] status."[242]

The PBoC's decision to include compliance records in its public credit registry is not entirely new. In fact, in its guidelines for building credit reporting systems in economically developing countries, the World Bank suggests that compliance records are a good place to start where credit information is scarce.[243] From the perspective of creditors seeking to extend loans that will be paid back in an environment where credit records are rare, broad non-financial information is still better than nothing.[244]

In 2006, in one of the first moves that were explicitly made in the name of the SCSP, the PBoC actively embraced the inclusion of non-financial information in corporate credit files. In a joint declaration with the (then) State Environmental Protection Administration, the PBoC announced that starting April 2007, it would include a company's environmental non-compliance records in its credit registry database and the credit reports it issues.[245] Loans were to be withheld from violators of environmental protection laws. The goals to "prevent financial risk" and to "raise the cost for corporate law violations, strengthen societal supervision and restrict corporate environmental violations" were listed side by side and linked to SCSP language on raising moral quality. At a respective press conference, Ning Su 苏宁, deputy head of the PBoC, declared that the credit registry is the most important part of the SCS. He presented the cooperation as a perfect way to enhance credit reporting and better enforce laws and regulations.[246] Respective cooperations with other regulators, such as the General Administration for

[242] 个人信用信息基础数据库管理暂行办法 (The Interim Measures for the Management of Basic Personal Credit Information Databases), issued by the PBoC on 16 June 2005.

[243] World Bank Group (2019) "Credit Reporting Knowledge Guide 2019", 6 April 2019, https://documents.worldbank.org/en/publication/documents-reports/documentdetail/262691559115855583/credit-reporting-knowledge-guide-2019, p. 63.

[244] See for example the debate about rural Banks of Virtue 道德银行 which extend loans to virtuous villagers: Shuguang Wang 王曙光 and Bin Wang 王彬 (2020) "道德银行"与中国新型乡村治理 (The 'Banks of Virtue' and China's new rural governance), 农村经济 (Rural Economy) 2/2020, pp. 1-6.

[245] At a respective press conference, the deputy head of the PBoC Ning Su 苏宁 contextualized the move within the spirit of the 6th Plenary Session of the 16th CPCCC and its decision to build an SCS. He cites then-Premier Wen Jiabao saying that SCS building starts from credit reporting: PBoC website (2007) "中国人民银行与国家环境保护总局联合举办《加快信用体系建设 共建和谐环保社会》新闻发布会图文实录 (The PBoC and the State Environmental Protection Administration jointly held a press conference titled 'Accelerating the Construction of a Credit System and Building a Harmonious and Environmentally Friendly Society)", 10 January 2007, http://www.pbc.gov.cn/bangongting/135485/135491/135603/2827502/index.html, archived at: https://web.archive.org/web/20240209141324/http://www.pbc.gov.cn/bangongting/135485/135491/135603/2827502/index.html.

[246] PBoC website (2007) "中国人民银行与国家环境保护总局联合举办《加快信用体系建设 共建和谐环保社会》新闻发布会图文实录 (The PBoC and the State Environmental Protection Administration jointly held a press conference titled 'Accelerating the Construction of a Credit System and Building a Harmonious and Environmentally Friendly Society)", 10 January 2007, http://www.pbc.gov.cn/bangongting/135485/135491/135603/2827502/index.html, archived at: https://web.archive.org/web/20240209141324/http://www.pbc.gov.cn/bangongting/135485/135491/135603/2827502/index.html. See also, Bank for International Settlements (2007) "Su Ning: The evolution of a credit information system for China", Speech by Su Ning at the International Seminar on the Application of Credit Information Products in Managing Credit Risk of Commercial Banks, Tianjin, 29 June 2007, https://www.bis.org/review/r071026g.pdf, archived at https://web.archive.org/web/20250607195945/https://www.bis.org/review/r071026g.pdf.

Quality Inspection and Quarantine and the State Administration for Taxation, were to come.[247]

These developments demonstrate an official understanding of financial credit records and law compliance records as two sides of the same coin (currency: trust, if you will). The idea of putting credit files to governance use, however, is even older: Early communist credit reporting ideas that were soon halted likewise envisioned credit files largely as market planning tools: The newly founded PBoC proposed to build a credit information database in 1951 to cover all enterprises and to constitute a cornerstone of the new planned economy system.[248] The main intention was "to better understand companies' capital activities and production and selling circumstances", so relevant state departments could adjust their economic policies accordingly. Files were to cover not just financial history but compliance records and overall reputation in society, the facilities owned, monthly usage of resources and where they came from, soundness of their bookkeeping system, and relation to the state-owned economy. It was further to list unincorporated businesses, from street peddlers to handicrafts. The plans were not pursued; however, they bear striking similarities to current initiatives under the SCSP. Both seek to set up a central credit information-based system and call for establishing information exchanges between the tax authority, banks and other realms. In this respect, the "credit reporting pockets 征信袋" or "credit reporting cards 征信卡片" that the 1951 plan calls for, files for collecting information on market actors, may be regarded as pre-digital versions of the social credit files established under the SCSP for every natural and legal person under a social credit identifier.

Upon Reform and Opening, thinking on building a credit reporting system for what eventually was called "socialist market economy" flourished and produced ideas to reimagine credit files as tools for economic policymaking.[249] Yujun Wei and Xuehui Hu for instance analyze how credit reporting institutions in the U.S. and Japan have become de facto controlling powers in financial markets, and suggest that in China's socialist economy, credit bureaus could be repurposed: instead of letting them "squeeze out even more profit", they could function as "mirrors of the national economy", for macro-

[247] Genyou Dai 戴根有, head of the PBoC Credit Reporting Bureau at a press conference on 10 January 2007: PBoC website (2007) "中国人民银行与国家环境保护总局联合举办《加快信用体系建设 共建和谐环保社会》新闻发布会图文实录 (The PBoC and the State Environmental Protection Administration jointly held a press conference titled 'Accelerating the Construction of a Credit System and Building a Harmonious and Environmentally Friendly Society)", 10 January 2007, http://www.pbc.gov.cn/bangongting/135485/135491/135603/2827502/index.html, archived at: https://web.archive.org/web/20240209141324/http://www.pbc.gov.cn/bangongting/135485/135491/135603/2827502/index.html.

[248] "Large Production Investigation Network 生产调查大网". See "征信调查工作 (Credit investigation work)", 中国金融 (China Finance) 1/1951, no. 9, pp. 20-21.

[249] Commentators for instance suggested that financial credit files created by private actors may be used by regulators to "formulate robust regulatory measures" and that "rating results can be used as basis for regulation": Zhenhua Mao 毛振华 (1998) 完善信用评级制度有效防范金融风险 (Improve the credit rating system and effectively prevent financial risks), 金融研究 (Financial Studies) 7/1998, pp. 68-70, p. 69; see also Siding Jin 金思鼎 (1984) 货币杠杆·信息网络·预测工程——关于加强银行经济信息工作的几点设想 (Monetary leverage, information network, engineering forecasting – Some ideas to strengthen the banks' economic information work), 中国金融 (China Finance) 2/1984, pp. 33-35.

economic intelligence.[250] Hence, the usefulness of credit files for not just market actors, but state regulators – a crucial feature of the SCSP – had early on been identified by officials and scholars alike.

Meanwhile, financial departments in rural areas found credit files to help both of their tasks, to limit the risks of bad debt, and to help enforce laws and policies: Linfeng Wan 万林风 calls to establish credit files for Township and Village Enterprises (TVE, 乡镇企业), which he argues are not just for controlling financial risk but form the basis for making policies that suit the local business environment.[251] Wan's plan to help the management of TVE operations "gradually change from extensive to scientific" through using credit files features strong parallels with the contemporary official rhetoric on the SCSP. Wan's idea for TVE credit files also already contained the plan to combine information from multiple state departments in the files.

Alongside banks and government departments, China's first self-grown credit rating agencies, too, embraced a broad notion of credit. Above-introduced Dagong Global Credit Ltd. went global with a clear political mission, which the founder describes as rectifying the biased and unscientific credit rating practices of the three major global credit ratings, Moody's, Fitch and S&P.[252] When downgrading the USA's rating, it explained that the decision was grounded in the USA's deficient political ecology.[253] Dagong's approach was criticised as "revisionist"; however, it also posed the first challenge to the global credit rating oligopoly consisting of three companies from the USA. As first-movers, they set rating criteria beneficial to them, such as a country's system proximity to a 'western' ideal of democracy and the independence of the central bank from the government. In an interview, Dagong founder Jianzhong Guan criticises these criteria as overly ideological and weak indicators for whether a country can pay back its debt.[254]

2.1.1.3. A finance-only notion of credit was never fully developed

The broad notion of credit also caught on easily because a narrow notion of credit encompassing only financial information had not fully developed in China. The very first

[250] Yujun Wei 卫毓俊 and Xuehui Hu 胡学慧 (1981) 银行建立信息系统是当务之急 (That banks establish an information system is a top priority), 金融研究 (Finance Research) 2/1981, pp. 65-67.

[251] Linfeng Wan 万林风 (1988) 建立乡镇企业信用档案初探 (A preliminary study on establishing credit files for township and village enterprises), 企业经济 (Enterprise Economy) 4/1988, pp. 37-39, p. 37. In rural areas, the intertwinement of local state regulators and entrepreneurs in the 1980s produced TVE. Business was guided as well as facilitated by local state regulators, an environment in which credit files came to be regarded as a useful tool for local officials who were trying to keep a tap on business development within their jurisdictions.

[252] Jutta Lietsch (2011) "Ideologie ist kein Maßstab", Interview with Jianzhong Guan, Tageszeitung (taz.net), 25 July 2011, https://taz.de/Guan-Jianzhong-von-Ratingagentur-Dagong/!5115647/.

[253] Dagong invoked socialist rhetoric: "The perennial negative impact of the superstructure on the economic base has continued to deteriorate the debt repayment sources of the federal government" Katie Martin (2018) "Chinese ratings agency Dagong downgrades US on political 'deficiencies'", Financial Times, 16 January 2018, https://www.ft.com/content/ea932697-ad9f-39fc-844b-a744ed0cc52c. Dagong Global Credit Ltd. was frequently accused of strategically leveraging its ratings for the PRC's political agenda: "The problem associated with Dagong's assessment, which reverses about 50% of the commonly known global ratings, is that it has a profound geopolitical orientation." Birau Cristian Radu and Stoia Alexandru Cosmin (2011) A new paradigm for the rating market - A Geopolitical perspective on rating, *Annals of the University of Oradea: Economic Science* 1/2011, pp. 162–166, p. 163.

[254] Jutta Lietsch (2011) "Ideologie ist kein Maßstab", Interview with Jianzhong Guan, Tageszeitung (taz.net), 25 July 2011, https://taz.de/Guan-Jianzhong-von-Ratingagentur-Dagong/!5115647/.

credit reporting schemes, globally, were highly subjective. To better assess the creditworthiness of lenders, the first credit assessments in the USA relied on unpaid local correspondents who "turned to their friends and associates for information. Opinion, hearsay, and anecdotes culled from local newspapers and conversation formed the basis of their reports."[255] As market economies grew more mature, credit reporting became functionally differentiated, to speak with Niklas Luhmann, developing into a metrics-based system that operates only with formal financial records and cuts out subjective reputational information. In other words, over time, credit reporting could afford to develop from quantity first to quality first.

In China, likewise, credit reporting long revolved around acquiring all information available, including and often fully relying on subjective statements of persons familiar with the creditor. The earliest forms of institutional credit reporting in modern China date back to the 1930s, when Zhejiang businessman and war hero-to-be Naiqi Zhang 章乃器 led 63 commercial banks in Shanghai to jointly set up the *China Credit Bureau* 中国征信所. Its 20 employees, including accomplished economists,[256] created credit reports on commission for member banks. These included information about immovable assets, debts, bankruptcy records, effective contracts, and special rights granted, but also opinions from various persons on their management style, overall reputation and general social standing.[257] Content may well have been informed by informal conversations over lunch, as the Bureau's canteen reportedly turned into an important get-together venue of Shanghai's banking elite.[258] Other than in Western markets, however, the first credit reporting institutions were short-lived as the Japanese invasion, the Civil War and eventually two decades of planned economy effectively halted their development. Thus, the functional differentiation of a highly specialised notion of credit that is based on financial information only really began in the 1980s, in the face of an almost entirely unbanked population. Developments of credit reporting into a highly finance-focused, embedded in a closely-knit banking network that can afford to cancel out other information as "noise" not processable for its complexity, started much later in China.

Especially in rural areas, a purely financial notion of creditworthiness was, until the late 2000s, simply not feasible; credit files required subjective reputation as backup. Before the CPC restructured the economy into a planned economy in the 1950s, loans were largely extended through informal lending networks and pawnshops, as modern banking had only begun to sideline these traditional institutions in urban areas.[259] The practice of

[255] Josh Lauer (2017) *Creditworthy: A history of consumer surveillance and financial identity in America*, Columbia University Press, p. 35.
[256] 中国征信所会员名单 (Members' list of the China Credit Bureau), February 1933, Shanghai City Archive doc 档号 Q281-1-120-93, retrieved on 13 May 2024.
[257] All larger banks and as well as US and Japanese credit investigation institutes in Shanghai became members of the Bureau, paying a quarterly fee for access to its services. The Bureau conducted credit investigations on commission about loan-seeking entities and double-checked securities that loan-seeking parties offered. For instance: 中国植物油料厂商业信用调查资料（外文）(Commercial Credit Survey Data of Chinese Vegetable Oil Mills (Foreign Language)), 1948, Shanghai City Archive, doc 档号 Q398-29-10, retrieved on 13 May 2024.
[258] Jialun Yang 杨家仑 (1985) 关于中过征信所的一些回忆 (Some memories about the China Credit Bureau), 上海金融 (Shanghai Finance) 5/1985, p. 41.
[259] Lien-sheng Yang (1971) *Money and credit in China. A short history*, Harvard University Press, p. 74.

creating and administering files on the creditworthiness of persons and businesses was neither existed in rural areas in the mid-1970s, nor were they necessary. Only in the 1990s, capital amassed in urban areas where reform policies were first implemented, and found its way to rural areas through centrally initiated poverty alleviation programs.[260] To allocate the funds, local cooperatives-turned-banks first needed to assess the creditworthiness of lenders on a large scale. In the absence of formal credit records, officers in charge of assessing the creditworthiness of citizens frequently relied on township and village leaders or Party cadres to gather data on borrowers' repayment capabilities. 40% of the villagers Lynette Ong surveyed believe that access to loans depends on one's social connections.[261] Private lenders, too, resorted to non-credit record information about lenders: The Grameen Bank, a microcredit institution from Bangladesh that specialised in lending to impoverished individuals using social collateral, set foot in Yunnan Province in the early 2000s.[262]

2.1.1.4. Summary

In sum, credit reporting based on financial information and in the service of financial transactions in the market is but one side of the "credit reporting" coin in China. In parallel, *broad notions of credit* developed that encompassed compliance information and mere opinions of others, too, depending on the context and needs of its developers. When lenders had no means to assess repayment ability, and strong courts that would enforce the payment of outstanding debt were lacking, broad credit files at least helped indicate the *willingness* of someone to pay back a loan. Simultaneously, for state regulators, the broad notion of credit helps to fructify credit reporting for public governance.

The financial notion of credit files and respective ratings, typically relying nearly exclusively on information sourced from banks and other financial institutions, took a century to develop in Western capitalist systems. During this time, credit rating technology and information sources became both highly specialised and closely regulated. The resulting narrow notion of credit, alongside the rest of the capitalist economic structures, bypassed Mao Zedong's China and only began to permeate the country in the 1980s. It also met with administrative agencies at the central and local levels, who faced a myriad of challenges resulting from weak regulatory oversight and rampant fraud. As a result, across many credit systems, state and non-state, a broad notion of credit surfaced. The broad notion of credit combines financial credit with societal credibility in a larger sense, casting one as the means to sustain the other.

[260] Li Zhou, Hui Feng and Xuan Dong (2016) From state predation to market extraction: The political economy of China's rural finance, 1979–2012, *Modern China* 42(6), pp. 607-637. For instance, the central bank introduced a microloan 小额贷款 program in 1999 to bring small loans to rural households and small businesses.

[261] Lynette H. Ong (2012) *Prosper or perish. Credit and fiscal systems in rural China*, Cornell University Press, p. 43

[262] Jianchao Luo and M. Wakilur Rahman (2010) The development perspective of finance and microfinance sector in China: How far is microfinance regulations? SSRN, 15 April 2010, https://ssrn.com/abstract=1587950, p. 4.

The emergence of the broad notion of credit also coincides with the rise of big data-driven "alternative credit information",[263] a global trend to infuse financial credit information with behavioural data from other fields, such as consumer preferences or social media activity, embracing a broader notion of credit as the 'better' indicator for future repayment. The head of the National PCI Centre's Comprehensive Planning Bureau, Liu Yang 杨柳 and the director of China's leading think tank on social credit matters, Guanghui Zeng 曾光辉, write: "Against the background of Big Data, any information of a credit subject is credit information."[264]

2.1.2. Root two: A credit system for law enforcement

"In the 1990s, we found that China is facing problems very similar to those England faced in the late 18th and early 19th century due to industrialisation. A moral turpitude. We designed the social credit system as a social governance tool to help China overcome these problems more quickly than England, where it took 100 years."

- Lin Junyue, interview 2024

The perceived trust crisis underpinning the SCSP is further rooted in difficulties in enforcing law and court decisions that unfolded since Reform and Opening. [265] Especially, widespread contract breaches and violations of state regulations that do not reach the threshold of a criminal offence are issues that constitute the trust crisis narrative. The 1980s and 1990s produced a wide range of new civil and regulatory laws, the enforcement of which overwhelmed courts and administrative agencies. Large-scale contract fraud, IP infringements, and an overall flouting of market rules were rampant, harming businesses. At the same time, workers, and especially migrant workers with rural *hukou* (household registration), were regularly not paid their wages, with little means to seek a remedy. Different types of scams blossomed, reportedly, in 1998, nearly 70% of the consumers in China had fallen for a scam at least once.[266] In 1986, Deng Xiaoping said that a tradition of enforcing and abiding by law simply did not yet exist in China.[267]

This resulted in extremely low levels of public trust in China's industries and, relatedly, its state regulators. The early years of the nascent market economy were described as "a period of ignorance and chaos", marked by "the entire market's indifference to the word

[263] Since the emergence of big data analysis, the credit rating industry increasingly turns back to non-financial information for determining creditworthiness, especially in personal credit ratings, under the heading of 'alternative credit information'. See, e.g.: Wensheng Peng and Feng Zhu (2021) Trust building and credit reporting with big data in the digital age, in: Raghavendra Rau, Robert Wardrop and Luigi Zingales (eds.) *The palgrave handbook of technological finance,* Palgrave Macmillan, pp. 809-836.

[264] Liu Yang 杨柳 and Guanghui Zeng 曾光辉 (2023) 基于大数据的企业信用评价 – 理论与实务 (*Corporate credit assessment based on big data – theory and practice*), 中国金融出版社 (China Finance Press), p. 44.

[265] See for instance the first State Council document addressing the SCSP: 国务院办公厅关于社会信用体系建设的若干意见 (Several Opinions of The General Office of The State Council on The Construction of The SCS), 23 March 2007, http://www.gov.cn/zwgk/2007-04/02/content_569314.htm, archived at https://perma.cc/3H98-NWHZ, hereafter: *State Council 2007 SCS Opinions*.

[266] Qiangzhong Bai 柏强忠 (2000) 信用危机纵横谈 (Discussion of the credit crisis), 决策与信息 (Decisions and Information) 8/2000, pp.16-18.

[267] "执法和守法的传统": Deng Xiaoping: "在全体人民中树立法制观念 (Establishing the concept of legality among the people)", speech to the Political-Legal Committee on 28 June 1986, in 邓小平文选 – 第三卷 (Selected Works of Deng Xiaoping, volume 3), 人民出版社 (People's Press), 1994, p. 163.

'credit/trust".[268] Low-quality and scam products, in many instances, led to public scandals, which were deeply imprinted on the public consciousness. It gave rise to a form of activism that came to be known as "fighting fakes 打假", the intentional buying of counterfeit or substandard products to claim compensation and push producers to comply with legal standards. The situation was regularly blamed on incompetent or powerless regulators. As a survey from 2005 and 2006 shows, the product safety-related scandals rendered trust in government officials to drop. Among professional groups, government officials ranked lowest in terms of public trust.[269] Local regulators frequently stepped down law enforcement measures as the very same enterprises' tax payments made up for much of the local government's income.[270]

In this context, the official founding story of the SCS begins with a businesswoman from Shenzhen. Wenyun Huang 黄闻云's microchip factory was one of many plagued by counterfeits. According to the official story, which cannot be verified, she wrote a letter to Premier Rongji Zhu 朱镕基 in which she explained the value of credit not only for lenders but also for solving the law enforcement problem.[271] Subsequently, Zhu, in August 1999, set up a State Council-led research team with the PBoC in charge and the Ministry of Industry and Information Technology, the Ministry for Public Security and the National Intellectual Property Administration on board. Funded by the Chinese Academy of Social Sciences and further supported with 3 million RMB by Huang herself, the objective of the research was nothing short of curing the root cause of counterfeiting and related problems in the market order.[272]

Continuing the trend of learning from developed countries' systems, research group members ventured to North America and Europe to study the respective local credit systems. They followed the trace of 'credit', which led them to focus on financial credit systems, like public credit registries and the credit rating industry. The group's first publication, "National Credit Management System", proposes pathways and standards

[268] Sina Finance 新浪财经 (2021) "中国征信往事：一个时代的困局、抉择与底色 (The past of China's credit reporting: One era's dilemmas, choices and backgrounds)", 23 January 2021, https://finance.sina.com.cn/china/gncj/2021-01-23/doc-ikftpnny0867768.shtml, archived at https://web.archive.org/web/20251006131259/https://finance.sina.com.cn/china/gncj/2021-01-23/doc-ikftpnny0867768.shtml.

[269] Xiaojun Kang 康小君 (2006) "2005 ~ 2006 中国信用小康指数：60.1" (2005 ~ 2006 China Credit Moderate Wealth Index: 60.1), 小康杂志 (Moderate Wealth Magazine) 10/2006, pp. 18-19.

[270] Junyue Lin 林钧跃 (2002) 信用体系建设地方先行 (Credit system building – Localities lead the way), 商业时代 (Commercial Times) 7/2002, pp. 40-41, p. 41. Problematizing the arbitrariness of regulatory inspections from an administrative law perspective: Xuexian Huang 黄学贤 (2015) 行政调查及其程序原则 (Administrative inspection and its procedural principles), 政治与法律 (Political Science and Law) 6/2015, pp. 15-28.

[271] Qiang Li 李强 and Hongjun Zhu 朱宏钧 (2012) "黄闻云：中国信用建设第一人 兼济天下为诚信上 (Huang Wenyun: The first person in China's credit construction)", 中国广播网 (China Broadcasting Network), 31 August 2012, http://finance.cnr.cn/txcj/201208/t20120831_510800670.shtml, archived at https://web.archive.org/web/20220909120838/http://finance.cnr.cn/txcj/201208/t20120831_510800670.shtml.

[272] Junyue Lin 林钧跃 (2019) "为什么说社会信用体系建设起始于1999年? (Why did the construction of the Social Credit System start in 1999?)", 信用体育 (Credit Sports), 22 October 2019, http://www.sport.gov.cn/n4/n15094/n15097/c930697/content.html, archived at web.archive.org/web/20250316202013/https://www.sport.gov.cn/n4/n15094/n15097/c930697/content.html.

for building a market-based credit system in China.[273] The conviction then was that much of the law enforcement, as well as broader morality problems, could be solved through a sound financial credit industry in support of the market. The SCS was envisaged as a social mechanism through which trust breakers would simply be exposed and thereby pushed off the market, consequently stabilising the market environment. A sound financial credit system, planners maintained, naturally reduces fraudulent behaviour and noncompliance by merely reducing financial information asymmetry in the market.[274]

One stream of Chinese scholarship and SCSP planners-to-be early on proposed that China's credit system should be tasked with functions beyond assessing financial credit risk, asking: "Is China's credit information system only used to solve the problem of information asymmetry between the parties to credit transactions?"[275] Official-to-be and legal scholar Peixin Luo 罗培新 argued that other than in developed countries, in China, the lack of credit reporting and the lack of reliable law enforcement coincide, and the SCS must not thus tend to both.[276] Supplementing financial credit records with non-financial information creates a more representative credit record, Jingmei Wu 吴晶妹 argues, and inhibits drunk drivers, judgment defaulters, and tax evaders from obtaining loans.[277] With the aim of curing China's overall trust problem in mind, researchers advocated the concept of credit reporting in a broad sense, 广义征信.[278]

> "Some people have a good credit history with financial institutions. They can continue to get a better service experience in financial institutions, but it does not mean that they will also exhibit good credit/trust in the societal environment. Therefore, credit characterisation based on only loan records is not comprehensive enough; other data and behaviours must be used to comprehensively characterise an individual's credit."[279]

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[273] Junyue Lin (2006) 谈我国信用标准的方案设计 (On the design of the plan of China's credit standards), 世界标准化与质量管理 (World Standardization and Quality Management), 6/2006, pp. 26-28, p. 27. The group regarded its mission in helping China enter the stage of the credit economy, the third of three economic stages according to historical economist Hildebrandt's idea of three development stages of the market economy: *Junyue Lin: The Social Credit System*, p. 5

[274] BJ05.

[275] *Junyue Lin: The Social Credit System*, p. 3.

[276] Peixin Luo 罗培新 (2018) 遏制公权与保护私益：社会信用立法论略 (On social credit legislation: From the perspective of controlling powers and protecting rights), 政法论坛 (Tribune of Political Science and Law) 36(6), pp. 170-180, p. 173, hereafter: *Peixin Luo: Social credit legislation*.

[277] Jingmei Wu 吴晶妹 and Yinxu Wang 王银旭 (2017) 以诚信度为基础的个人信用全面刻画初探——基于WU's三维信用论视角 (A preliminary study on the comprehensive characterization of personal credit based on honesty – based on the perspective of WU's three-dimensional credit theory), 现代管理科学 (Modern Management Science) 12/2017, pp. 3-5, p. 3.

[278] Jingming Yu 喻敬明, Junyue Lin 林钧跃 and Jie Sun 孙杰 (2000) 国家信用管理体系 (National credit management system), 社会科学文献出版社 (Social Science Academic Press). On broadening the notion of credit, see also: Weibin Gong 龚维斌 (2018) 改革开放40年中国社区治理的回顾与反思 (Review and reflection on 40 years of China's Social Credit System building), 社会治理 (Social Governance Review) 8/2018, pp. 50-59; Zheng Zhang 章政 and Lili Zhang 张丽丽 (2019) 论从侠义信用向广义信用的制度变迁—信用、信用经济和信用制度的内涵问题辨析 (On the institutional evolution from narrow credit to broad credit: An analysis on the connotations of credit, the credit economy and the credit system), 征信 (Credit Reference) 37/2019, pp. 1–8.

[279] Jingmei Wu 吴晶妹 and Yinxu Wang 王银旭 (2017) 以诚信度为基础的个人信用全面刻画初探——基于WU's三维信用论视角 (A preliminary study on the comprehensive characterization of personal credit based on honesty – based on the perspective of WU's three-dimensional credit theory), 现代管理科学 (Modern Management Science) 12/2017, pp. 3-5, p. 3.

Some observers quote the USA and German systems as frontrunners for combining financial and law compliance records. The false claim that in Germany taking the train without a ticket leads to an entry in one's credit file was widely cited.[280] Weiying Chen likewise refers to the U.S. personal credit reporting model as an example for connecting financial credit with legal compliance.[281] While law scholars highlighted the use of "combining credit reporting services with functions of state law and government supervision where fit" [282] economists expressed concerns over involving regulatory authorities due to the potential for bribery. If pulled into the realm of administrative regulation, the credit system might fail: "a reputation mechanism relies on market competition to form, but the regulatory system [管制] frequently hinders the formation of this mechanism, even destroys it."[283]

However, the first steps towards building the SCSP centred around 'trust' in the broad sense were taken. Because the compliance and fraud chaos in the market hit small and medium-sized enterprises the strongest, it comes as no surprise that the first political move towards SCS building came in the shape of a document issued by the leading work group on small and medium-sized enterprises (of the State Economic and Trade Commission, now merged under the NDRC and multiple other departments). It highlighted that small and medium-sized enterprises are most affected by the chaotic market environment, arguing that

> "some fraudulent behaviours of individual SMEs and the resulting trust problems, such as illegal capital withdrawals, defaulting on debts, bank debt evasion, malicious tax evasion, and poor product quality, have affected the overall trust image of SMEs to some extent and become a prominent problem restricting the development of SMEs."

And demands better supervision of SME trustworthiness/credit by improving the PBoC's public credit registry on the one hand, but also by creating a policy environment for intermediaries to conduct credit information management.[284] Notably, the document stressed the role of third-party institutions rather than that of the regulators. The state's

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[280] *Peixin Luo: Social credit legislation*, p. 172. 'Fraudulently acquiring services' is in fact a crime under German law, however, a respective violation is not therefore entered into an individuals' personal credit file with the Schufa, Germany's de facto monopoly personal credit rating agency.

[281] Chen Weiying 陈蔚瑛 (2005) Examining the establishing of China's personal credit information database (建立我国个人信用征信数据库探论), Forward Position in Economics (经济前沿) 4/2005, pp. 33-35, p. 33.

[282] Zhongxiao Cong 丛中笑 (2002) 论政府在健全社会信用机制中的作用 (On the role of the government in building the Social Credit System), 中国商法期刊 (China Business Law Journal) 2/2002, pp. 250-259, p. 259.

[283] Weiying Zhang 张维迎 and Junyue Lin 林钧跃 (2001) 社会信用体系_进入现代化的基石 (The Social Credit System: The cornerstone for entering modernization), China Reform (中国改革) 9/2001, pp. 16-20; see also, arguing that when the government is granted power to fill financial credit registry with compliance information, this contravenes the core concept of credit reporting and the market economy as a whole, and may "like turn the credit registry into a collection place for administrative penalties": Weigang Fu 傅蔚冈 (2016) "征信"扩大化，或变身"道德档案"" (Expanding 'credit reporting' may turn it into 'moral archives'), 华夏时报 (China Times), 21 April 2016, https://www.chinatimes.net.cn/article/55512.html, archived at https://web.archive.org/web/20250506143201/https://www.chinatimes.net.cn/article/55512.html.

[284] 关于加强中小企业信用管理工作的若干意见 (Several Opinions on Strengthening the Credit Management of Small and Medium-Sized Enterprises), issued by the State Economic and Trade Commission and others on 20 April 2001 http://www.gov.cn/gongbao/content/2002/content_61964.htm, archived at https://web.archive.org/web/20250901172003/https://www.gov.cn/gongbao/content/2002/content_61964.htm.

role is largely described as building the policy and legal environment for such intermediaries to grow.

A week later, the State Council entered a short passage on "establishing a social credit system[285]" in its Decisions on the Rectification and Standardisation of the Market Order[286] and the ideas eventually resulted in the promulgation of the first SCSP blueprint document, the 2003 Social Credit System Outline.[287]

2.1.3. Root three: Engineering trustworthy citizens

"Thus, any adequate understanding of China today, whatever one's perspective or interest, requires an effort to make sense of its moral crisis."

- Jiwei Ci (2014)[288]

Even though, in effect, the SCSP barely impacts individual citizens, to the extent that most have not heard about it, it is also rooted in a clear mission to resolve what has been diagnosed as a "moral crisis". As Honghai Bi summarised,

> "In the process of transforming from an agricultural society to an industrial and post-industrial society—and also from a society of acquaintances to a society of strangers—the creation of a social credit system is seen not only as a form of insurance for economic transactions, but also as an integral element to restore integrity into China's cultural fabric."[289]

Prominent incidents fostering the narrative of the moral crisis include passers-by ignoring rather than helping victims of traffic accidents[290] and dating scams luring people into fake relationships to extract money.[291] Scholarly and political discourse regularly trace the "moral crisis" back to economic reforms, specifically, the mass migration and the rise of individualism they brought about.[292]

Note that I here describe the narratives of the trust crisis that gave rise to the SCSP plans. That is, the PRC government's reading of societal developments of the time. There exist scholarly accounts countering many of the narratives.[293] The very notion of moral norms

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[285] 制度, not yet: 体系.

[286] 国务院关于整顿和规范市场经济秩序的决定 (State Council Decision on Rectifying and Standardizing the Market Economy Order), 27 April 2001, https://www.gov.cn/gongbao/content/2001/content_60825.htm, archived at https://web.archive.org/web/20250901172516/https://www.gov.cn/gongbao/content/2001/content_60825.htm.

[287] 社会信用体系纲要 (Social Credit System Outline), National Leading Group for Rectification and Standardization of Market Economic Order 全国整顿和规范市场经济秩序工作领导小组办公室, drafted at the Social Credit Construction Symposium organised by NDRC and China Information Association, 13 May 2003.

[288] Jiwei Ci (2014) *Moral China in the Age of Reform*, Cambridge University Press, p. 14.

[289] *Honghai Bi: Old regulatory wine*, p. 286

[290] Discussed in Yunxiang Yan (2009) The good samaritan's new trouble: A study of the changing moral landscape in contemporary China, *Social Anthropology* 17/2009, pp. 19–24.

[291] For regular updates on relevant news reporting, see the "Morality Observer 道德观察" program of CCTV, https://tv.cctv.com/lm/ddgc/index.shtml, one archived version: https://web.archive.org/web/20250613132359/https://tv.cctv.com/lm/ddgc/index.shtml).

[292] See, for instance, Jiwei Ci (2014) *Moral China in the Age of Reform*, Cambridge University Press; Zhifeng Liu 刘智峰 (ed., 1999) 道德中国 (Moral China), 中国社会科学出版社 (China Social Sciences Press).

[293] E.g. John Clarke (2022) Crisis and change – the contested politics of constructing crisis, in Richard Ballard and Clive Barnett (eds.) *Routledge Handbook of Social Change*, Routledge, pp. 117-129; H.

somehow disappearing is highly questionable, as moral norms are not things that are there or not, rather, they may be understood as a subtle set of values that guide individuals' behaviour. Rather than simply disappear, as the official narrative and multiple supporting studies suggest, moral norms change. The 'moral vacuum' attested in policies and research may much rather be described as a moral transition. This section undertakes a deep dive into the ways the CPC constructs and reads the moral developments in the nation it governs in order to illuminate the social credit mode of governance.

Designated cities spearheaded market reforms, while the agricultural production surplus led to a drop in income from farming.[294] As a consequence, large parts of China's rural population flocked to rapidly growing urban areas for work and business opportunities.[295] In rural areas, this brought about yet another rupture in the social fabric within a few decades. Traditional rural governance was organised around family clans until the Mao Zedong administration in the late 1940s established rural farming collectives, which henceforth came to control not just the allocation of goods but also social life. After several intense political campaigns throughout which leading figures were taken down, the first post-reform Constitution of 1982 eventually granted relative autonomy to villages. Quasi-democratic procedures were later detailed in the Villagers' Committees Organic Law of 1998; however, with rampant corruption and most young people capable and willing to engage in local politics having left, the system was often undermined. With the absence of both the traditional clan system and the communist structure of farming collectives, and the departure of many young people from the villages, scholars diagnosed a "decline of value-orientation"[296] and a "moral vacuum"[297] in Chinese villages. In urban areas, meanwhile, whether in work site dormitories or residential compounds, societies of strangers formed.[298] The old lineage connections were ineffective in these environments of high resident mobility, people with diverse backgrounds, languages spoken and customs, resulting in the adherence to moral rules was barely socially sanctioned. To many who have lived in cities for decades, the place of origin is still what they regard as home, and where they carefully craft their reputation by investing in new houses or shrines for their ancestors.[299]

Christoph Steinhardt, Xue Gong and Jan Delhey (2025) Chasing a phantom: a re-evaluation of China's 'trust crisis', *Chinese Sociological Review* 57(3), pp. 297-327.

[294] Jacob Eyferth, Peter Ho and Eduard B. Vermeer (2003) Introduction: the opening-up of China's countryside, *Journal of Peasant Studies* 30(3), pp. 1-17.

[295] Kam Wing Chan (1994) Urbanization and rural- urban migration in China since 1982: A new baseline, *Modern China* 20(3), pp. 243-281.

[296] Tiejun Wen 温铁军 (2009) "三农"问题与制度变迁 (Three rural problems and institutional changes), 中国经济出版社 (China Economic Press).

[297] Yunxiang Yan (2011) The changing moral landscape, in: Arthur Kleinman, Yunxiang Yan, Jing Jun, Sing Lee, Everett Zhang, Pan Tianshu, Wu Fei and Guo Jinhua (eds.) *Deep China: The moral life of the person*, University of California Press, p. 36-77, p. 51; Shuguang Wang 王曙光 and Bin Wang 王彬 (2020) "道德银行"与中国新型乡村治理 (The 'Banks of Virtue' and China's new rural governance), 农村经济 (Rural Economy) 2/2020, pp. 1-6.

[298] Shitong Qiao (2025) *The authoritarian commons – neighborhood democratization in urban China*, Cambridge University Press, p. 78.

[299] Chen Chen (2019) Why migrant workers in China continue to build large houses in home villages: A case study of a migrant-sending village in Anhui, *Modern China* 46(5), pp. 521-554.

This reform-related domestic mass migration[300] gave rise to problems that, until today, challenge China's politics. For instance, parents often had to leave their children behind as they relied on jobs in faraway cities where they lived as de facto second-class citizens. The household registration system does not allow them access to regular urban schools, hospitals and other public infrastructure. Children then grew up with their grandparents or other caretakers, with limited contact with their parents (留守儿童), often developing psychological problems. [301] Another migration-based problem contributing to the perceived moral crisis is that more than half of China's elderly population consists of 'empty nesters 空巢老年人'[302]. China's traditional structures of elderly care relied heavily on children, not only financially supporting their parents but also taking on the care work. With their children residing elsewhere, and the state institutional elderly care yet far from sufficient, parts of the ageing population are left to themselves. The problem is exacerbated by the demographic effects of decades of one-child policy.

Apart from mass migration, the 'moral crisis' is in political narratives directly linked to a decline of socialist mentality and the strengthening of individual rights awareness. The New Rural Reconstruction movement 新乡村建设运动, for instance, blamed marketisation for the moral crisis. Its activists pointed to market fundamentalism, arguing that "this crisis could not be understood simply as a problem of economics and agricultural production, but as a social crisis that called for the reconstruction of rural social life" [303]. Decades of anti-liberal rhetoric had spread the idea that Western, individualist morality endorsing self-interest is equivalent to egotism, a conviction that was "a pivotal force in the politics of moral crisis."[304]

Key reform figure Deng Xiaoping had predicted that structures of morality would change as the economy completely transformed. Aware that the reforms he initiated would lead to the breaking away of existing societal structures and spur social change, he emphasised early on:

> "The socialist country we want to build must have not only a high level of material civilisation, but also a high level of spiritual civilisation. Spiritual civilisation refers not only to education, science and culture (which are absolutely necessary), but also to communist ideas, ideals, beliefs, morality, revolutionary positions and principles,

[300] Kam Wing Chan (2013) China: Internal migration, *The Encyclopedia of Global Human Migration,* Wiley Online Library, https://doi.org/10.1002/9781444351071.wbeghm124.

[301] The issue is at the central level addressed for the first time in the Action Plan for Strengthening Care and Protection of Migrant Children: 关于印发《加强流动儿童关爱保护行动方案》的通知 (Notice on Issuing the Action Plan for Strengthening Care and Protection of Migrant Children), issued by the Ministry for Civil Affairs and 20 other departments on 16 August 2024, https://www.gov.cn/zhengce/zhengceku/202409/content_6972120.htm, archived at https://web.archive.org/web/20250421195637/https://www.gov.cn/zhengce/zhengceku/202409/content_6972120.htm.

[302] Banghua Li 李邦华, deputy director-general of the ministry's Bureau for Elderly Care Services, at the Ministry of Civil Affairs' 4th Press Conference in 2022, 民政部举行2022年第四季度例行新闻发布会, 26 October 2022, available at http://www.scio.gov.cn/xwfb/bwxwfb/gbwfbh/mzb/202211/t20221111_619625.html, archived at https://web.archive.org/web/20250122140110/http://www.scio.gov.cn/xwfb/bwxwfb/gbwfbh/mzb/202211/t20221111_619625.html.

[303] Alexander F. Day (2013) *The peasant in postsocialist China*, Cambridge University Press, p. 154.

[304] Yunxiang Yan (2021) The politics of moral crisis in contemporary China, *The China Journal* 85/2021, pp. 96-120, p. 119; see also: Xiaoying Wang (2002) The post-communist personality: The spectre of China's capitalist market reforms, *The China Journal* 47/2002, pp. 1–17.

> comradeship between people, among others. Without this spiritual civilisation, without communist ideas and communist morality, how can we build socialism?"[305]

He continued to stress the need to "educate the people from the whole country to have ideals, morals, culture and discipline."[306] An entire political field of action developed surrounding the notion of "socialist spiritual civilisation", the idea that citizens and Party members in particular must spiritually be kept on the socialist track and ills stemming from the embrace of quasi-capitalist mechanisms be cured.[307] Stepping up to the challenge, a range of policies, research and reporting to repair Chinese citizens' morality emerged, often deeply nested in socialist ideology on shaping the "good citizen". I summarise this broad, ongoing endeavour as moral engineering.[308]

One key vehicle of moral engineering, for instance, is the increased political use of the terminology around *suzhi* 素质 in the early 2000s,[309] a term describing an ideal moral state, or overall moral quality, of a person. Its widespread use indicates an understanding of citizenship as transformational, Delia Lin argues, as something yet to be achieved through eradicating uncivilised qualities by educating citizens.[310] The concepts and initiatives forwarded in the name of *suzhi* speak to the CPC's mission as laid down in the Party Constitution 党章: "The highest ideal of communism pursued by Chinese Communists can be realised only when socialist society is fully developed and highly advanced"[311] and expounds on improving the moral qualities of workers, Party members and citizens of all ethnic groups. Moral engineering became a crucial element of nearly all political efforts, as Larry Catá Backer writes:

> "Virtually every aspect of Chinese policy for the last several decades has sought to merge not merely politics and economics, but also legal, moral, and social relations, within the larger project of developing the socialist path toward the establishment of a communist society in China."[312]

The very first top-level document by the State Council that calls for building an SCS[313] includes one section titled "Strengthen education on ideology and morals, establish a social credit system", and in the same breath emphasises better linking up ruling by

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[305] Deng Xiaoping, "贯彻调整方针，保证安定团结 (Implementing readjustment and ensuring stability and solidarity)", 25 December 1980, in 邓小平文选 – 第二卷 (Selected works of Deng Xiaoping, volume 2), 人民出版社 (People's Press), 1994, pp. 354-374, p. 367.

[306] Deng Xiaoping, "一靠理想二靠纪律 才能团结起来 (Unity depends on ideals and discipline)", 7 March 1985, in 邓小平文选 – 第三卷 (Selected works of Deng Xiaoping, volume 3), 人民出版社 (People's Press), 1994, pp. 110-114, p. 110.

[307] First mentioned in at the wake of the reforms by Jianying Ye 叶剑英, Fourth Plenary Session of the 11th CPCCC held from September 25 to 28 1979.

[308] My conceptualization of the SCSP casts it as one driver of a larger movement of moral engineering, not the project of moral engineering itself, in contrast to: Sheng Zou (2021) Disenchanting trust: instrumental reason, algorithmic governance, and China's emerging Social Credit System, *Media and Communication* 9(2), pp. 140-149.

[309] Delia Lin (2017) *Civilising citizens in post-Mao China: Understanding the rhetoric of suzhi*, Routledge, p. 51.

[310] Delia Lin (2017) *Civilising citizens in post-Mao China: Understanding the rhetoric of suzhi*, Routledge, pp. 60-61.

[311] 中国共产党章程 (Constitution of the CPC), last amended at the 20th National CPC Congress on 22 October 2022, at General Program, 3.

[312] Larry Catá Backer (2024) Social credit "in" or "as" the cage of regulation of socialist legality, *The China Review* 24(3), pp. 71-106, p. 90.

[313] then: '制度' not yet '体系'

virtue and ruling by law.[314] Thus, from the very beginning, the SCSP's scope of action was not limited to the rather narrow aims of constructing a functional financial credit reporting system and a tool to better enforce laws, regulations and court judgments. From the start, it was involved in the much larger and top-priority project of building a socialist civilisation by educating citizens to behave more ethically. The SCSP, then, is one more powerful driver of the ongoing ideological project of moral engineering, making citizens qualified parts of the socialist society. Similar to the language around *suzhi*, the SCSP offers moral engineers a new, powerful set of terminology, namely, that on "credit/trust". Conversely, with the SCSP, the government could retain the authority to define what constitutes "trustworthy", "creditworthy", "sincere" or "honest" behaviour, in addition to the longer-standing terms "morality" and "civilised" over which it had previously asserted the power of definition.[315]

The moral crisis is neither clearly delimited nor did early SCSP documents clarify what its education pillar was to address in detail. Hence, implementors of all levels and fields designed widely varying curricula and education schemes that suited their respective purposes best. The first local pilot projects that leveraged credit education programs of different types blossomed in the 2000s.[316] However, the political drive that the other two pillars enjoyed was only leveraged for the moral education pillar starting in 2011. Amid growing criticism from lawyers as well as economists, the SCSP's 'Small Credit Period' came to an end, with leaders increasingly emphasising the need for China's credit system to promote societal sincerity (诚信) rather than merely market trust.[317] Yongxi Chen and Anne Cheung cast the 2011 CPC Plenum decision to better link credit reporting to the moral dimension of credit as the moment when "use of the SCS for the ideological control of society emerged"[318]. The term 'sincerity 诚信' henceforth played a key role in the moral education pillar of the SCSP. At the 18th CPC Congress, it was designated as one of the twelve 'socialist core values', which continue to be incorporated into the agendas of various bodies, including those responsible for developing the socialist rule of law.[319]

[314] State Council, 国务院关于整顿和规范市场经济秩序的决定 (Decision Of The State Council On Rectifying And Regulating The Market Economic Order), 27 April 2001.
[315] See, e.g., Nicholas Dynon (2014) Civilisation-state: modernising the past to civilise the future in Jiang Zemin's China, *China: An International Journal* 12(1), pp. 22–42.
[316] Pierre Sel (2024) From financial supervision to morality construction: Political narratives of the social credit system policy process, *China Review* 24(3), pp. 275-304, p. 290.
[317] Ping Sun 孙平: Social Credit System Practice, unpublished chapter draft, February 2023, on file with the author.
[318] *Cheung and Chen: From datafication to data state*, p. 1144.
[319] 法治中国建设规划（2020—2025年）(Plan on Building the Rule of Law in China (2020–2025), issued by the CPCCC on 10 January 2021, available at https://www.gov.cn/zhengce/2021-01/10/content_5578659.htm.
I translate 法治 to socialist rule of law as to distinguish it from Anglo-American definitions of the rule of law that are intertwined with the liberal-democratic political systems they are rooted in.

2.1.4. The central plan

"The SCS is an effective societal mechanism, based on law and morality, with the credit system as its core. Through the functions of recording, exposing, disseminating and warning of trust-breaking behaviours, it solves the contradiction of credit information asymmetry in economic and social life, increases the cost of trust-breaking, disciplines trust-breaking behaviours, commends honesty and trustworthiness, expands the scale of credit transactions in the market, maintains the normal order of economic activities and social life, and promotes the healthy development of the economy and society."

- The first top-level definition of the SCS (2003)[320]

The above demonstrates that China's SCSP is much older than the global debate surrounding it, with its roots emerging in tandem with the market reforms. The first central planning around the SCSP is deeply embedded within efforts to transform the old planned economy into a new socialist market economy.[321] Until the first State Council plan dedicated to SCSP building was issued in 2007, the policy documents mentioning social credit did so under the heading of modernising the market economy.[322] It was the National Leading Small Group for Rectification and Standardisation of Market Economic Order that first drafted a plan for SCSP building, [323] and it was the CPC Central Committee's (CPCCC) plan for improving the socialist market economy, which forwarded the concept.[324] Modernising the market order was then the key concern, as expressed in the CPC's latest redefinition of the principal contradiction in 1981 from 'proletariat versus bourgeoisie' to 'the ever-growing material and cultural needs of the people versus backward social production'[325] and evident from the politically powerful participants in relevant conferences. The SCSP found itself in the key repertoire to resolve the contradiction. Former PRC Premier Jiabao Wen 温家宝 was frequently recited saying: "The socialist market economy is also a credit economy, and credit is the cornerstone of the modern market economy. Without credit, there is no order, and the market economy cannot develop healthily."[326] Social credit is thus part of the larger, ongoing and open-

[320] 社会信用体系纲要 (Social Credit System Outline), National Leading Group for Rectification and Standardization of Market Economic Order 全国整顿和规范市场经济秩序工作领导小组办公室, drafted at the Social Credit Construction Symposium organised by NDRC and China Information Association, 13 May 2003, definition cited in *Junyue Lin: The Social Credit System*, p. 5.

[321] Notably, the term 'socialist market economy' only became the formal denominator of China's economic setup years after the reforms began.

[322] E.g., under 'economic development and restructuring', in the report of Jiang Zemin 江泽民 at the 16th CPC National Congress in 2002: 在中国共产党第十六次全国代表大会上的报告 (Work Report to the 16th National Congress of the Communist Party of China), 8 November 2002, https://www.gqt.org.cn/search/zuzhi/theory/leadertalk/2002/zttb20021118.htm, archived at https://web.archive.org/web/20251202144210/https://www.gqt.org.cn/search/zuzhi/theory/leadertalk/2002/zttb20021118.htm. The first SCS blueprint document begins with the sentence: "The market economy is a credit economy. The social credit system is an important institutional arrangement in the market economic system." *State Council 2007 SCS Opinions*.

[323] *Junyue Lin: The Social Credit System*, p. 5.

[324] 中共中央关于完善社会主义市场经济体制若干问题的决定 (Decision Of The CPCCC On Some Issues Concerning The Improvement Of The Socialist Market Economy), issued on 14 October 2003.

[325] 人民日益增长的物质文化需要同落后的社会生产之间的矛盾. In Marxist tradition of dialectical materialism, the CPC leadership views societies through the major opposing forces, called the principal contradiction. In order to peacefully advance society and avoid upheaval, they must identify and resolve the principal contradiction contradiction.

[326] Here reiterated by Zhigang Zhang 张志刚: Website of the MOFCOM (2003) "全国整顿和规范市场经济秩序领导小组办公室主任、商务部副部长长张志刚在"中国跨国经营与信用管理高层研讨会"上的讲话 (Speech by Zhang Zhigang, Director of the Office of the National Leading Group for Rectifying and

ended endeavour of harmonising Socialism with liberal markets, elsewhere described as "markets Marxism"[327].

In Spring 2003, Vice Premier Yi Wu 吴仪 announced that the State Council officially started building the SCSP[328] and the first SCS Outline was published.[329] Soon after, local governments issued respective local work plans,[330] with Hangzhou being one of the first movers and at the same time the capital of the province of Zhejiang, which was then led by Xi Jinping.[331] Social credit-related reporting in state media sharply increased.[332] In 2007, the State Council founded and took the lead of the SCSP task force, the Inter-Ministerial Joint Conference on the Construction of Social Credit System (hereafter: Joint SCS Conference).[333] It promulgated the first top-level state guidance dedicated to the SCSP only, the Several Opinions of the General Office of the State Council on Social Credit System Building. The brief document opens by explaining in the first sentence that the "market economy is a credit economy"[334].

Regulating Market Economic Order and Vice Minister of Commerce, at the 'High-Level Seminar on China's Transnational Operations and Credit Management')", 19 September 2003, https://m.mofcom.gov.cn/article/xwfb/xwrcxw/200309/20030900128132.shtml, archived at https://web.archive.org/web/20250608095447/https://m.mofcom.gov.cn/article/xwfb/xwrcxw/200309/20030900128132.shtml.

[327] Larry Catá Backer (2016) Central planning versus markets Marxism: their differences and consequences for the international ordering of state, law, politics, and economy, *Connecticut Journal of International Law* 32(1), pp. 1-47.

[328] Website of the MOFCOM (2004) "吴仪在全国整顿和规范市场经济秩序领导小组全会上强调强化责任突出重点扎实推进整顿和规范市场经济秩序工作 (Wu Yi stressed at the plenary session of the National Leading Group for Rectifying and Regulating the Market Economic Order that we should strengthen responsibility, highlight key points, and solidly promote the work of rectifying and regulating the market economic order), 30 April 2004, https://m.mofcom.gov.cn/article/ae/ai/200404/20040400215644.shtml, archived at https://web.archive.org/web/20250608134112/https://m.mofcom.gov.cn/article/ae/ai/200404/20040400215644.shtml.

[329] *Junyue Lin: The Social Credit System*, p. 5.

[330] see e.g. 重庆市人民政府关于印发重庆市社会信用体系建设方案的通知 (Chongqing People's Government Notice On Issuing The Chongqing Municipal SCS Building Plan), issued on 28 March 2003, https://www.tax.org.cn/displaw-law-10999274.html, archived at https://web.archive.org/web/20250608123324/https://www.tax.org.cn/displaw-law-10999274.html; 杭州市人民政府办公厅关于印发杭州市社会信用体系建设"十一五"专项规划的通知 (Notice Of The Hangzhou People's Government General Office On Issuing The Hangzhou City SCS Building '11-5' Special Plan), issued on 9 May 2006, geo-blocked, on file with the author.

[331] This may hint that Xi Jinping early on supported and co-designed SCSP building plans. About one year after Xi Jinping became General Secretary of the CPC and President or the PRC, the SCSP was elevated to top priority at the central-level. In any case, it is unlikely that Xi Jinping only 'took an interest in the system' after 2014, as surmised elsewhere: Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 79.

[332] Jing Wang, Hongmei Li, Weiai Wayne Xu and Wei Xu (2022) Envisioning a credit society: Social credit systems and the institutionalization of moral standards in China, *Media, Culture and Society* 45(3), pp. 451-470.

[333] 国务院办公厅关于建立国务院社会信用体系建设部际联席会议制度的通知 (The General Office Of The State Council On Establishing The State Council Inter-Ministerial Joint Conference For SCS Building), issued on 18 April 2007, https://www.gov.cn/gongbao/content/2007/content_632090.htm, archived at https://web.archive.org/web/20241204112634/https://www.gov.cn/gongbao/content/2007/content_632090.htm.

[334] *State Council 2007 SCS Opinions*.

Most crucially, the document calls to perfect[335] a massive infrastructure of records for every market participant to be filled with information on their market behaviour, from tax payment history to contract breaches and product quality. These records, called '行业信用记录 industry credit records', are mentioned separately from the financial credit reporting system in the document. 'Industry credit records' repurposed the technology of credit files, until then mainly known from financial credit reporting and the Dang'an system (see section 3.1.3.), to supervise industries and the entire economy. They harbour most potential of and pose most challenges to the SCSP. Fittingly, the implementation of industry credit records was eventually handed to the NDRC, the 'industry coordinator' among China's ministries, established with the mission of furthering the socialist market economy and the licensor of all major investment projects. Industry credit records were predecessors of the comprehensive public credit assessments, or credibility assessments (see section 3.2.4.).[336] Only a year and a half later, the PBoC took the lead over the Joint SCS Conference and in 2012, the NDRC was elevated to co-lead SCS building alongside the PBoC.[337] From then onwards, the SCSP was reportedly regarded as a social governance innovation in policy circles.[338]

Central planning efforts cumulated in the SCS Planning Outline issued on 14 June 2014. This yet most comprehensive top-level document on the SCSP stipulates four target areas: trustworthiness of government affairs, trustworthiness of the market, trustworthiness of society, and credibility of the judiciary. The mechanisms laid out in the SCS Planning Outline will be addressed in chapters three and four. Significantly, the SCS Planning Outline kicked off more direct regulatory action on the part of state agencies. These now had official backup and incentive for drawing up blacklists for trust-breaking, publicizing them and sharing them with other regulators to impose joint disciplinary measures (section 3.2.). This shift towards a more state-driven approach departed from the original plan of SCSP theorists, who intended it to be merely a societal mechanism, regulated by public administration but not itself becoming a regulatory instrument. The market credit system was sidelined.[339]

[335] The records until then been experimented with by some departments and in some localities. With the first steps of the credit system+, localities began to implement respective pilot projects: In 2001, 'Credit Gansu', 'Credit Zhejiang' and 'Credit Jiangsu' were launched by the local PBoC branches, Economic and Trade Commissions, and Bureaus for Industry and Commerce: Junyue Lin 林钧跃 (2002) 信用体系建设地方先行 (Credit system building – Localities lead the way), 商业时代 (Commercial Times) 7/2002, pp. 40-41, p. 41.

[336] Shen Yan 闫申and Boyang Wang 王博阳 (2023) 论公共信用综合评价及其法律完善路径 (On public credit comprehensive assessment and the path to its legal improvement), 征信 (Credit Reference) 10/2023, pp. 41-50, p. 42, hereafter: *Shen Yan and Boyang Wang: Credit assessment*.

[337] 国务院关于同意调整社会信用体系建设部际联席会议职责和成员单位的批复 (State Council Reply On The Adjustment Of The Responsibility And Member Units Of The Inter-Ministerial Joint Conference On The Construction Of The Social Credit System), issued on 17 July, 2012.

[338] Bixin Jiang 江必新 (2018) 以党的十九大精神为指导，加强和创新社会治理 (Strengthen and innovate social governance guided by the 19th CPC National Congress), 国家行政学院学报 (Journal of Chinese Academy of Governance) 1/2018, pp. 23–29, p. 26.

[339] BJ05 and HK02.

Since then, SCSP building has been addressed in several top-level documents related to the economy over the years[340] and local experimentation was encouraged.[341] The official leading organs, the PBoC and the NDRC, devised a promotional campaign in the form of a national competition for the title of a "SCS Building Model City".[342] Locally, offices under the NDRC or the People's Governments are in charge of coordinating implementation (names of these offices vary locally, they are hereafter referred to as social credit agencies).[343] A wave of local legislation and policy-making reached its peak in the early 2020s. On 9 July 2019, the General Office of the State Council promulgated Guiding Opinions on one particularly innovative and comparably sustainable initiative under the SCSP, namely, credibility-based regulation (信用监管, addressed in section 3.2.4.).[344] A joint document by the CPCCC and the State Council issued on 29 March 2022 applied the economic governance hot concept of "high-quality development" to the social credit debate, calling to advance SCS building to shape a new development pattern.[345]

In 2022, a first draft of the long-anticipated *Social Credit Law* was published by the NDRC and the PBoC in conjunction with the Joint SCS Conference, for the solicitation of comments from the public.[346] It adds little clarity and is rather fragmented, earning the

[340] SCS building appears in the Five-Year-Plans of 2016 and 2021: 中华人民共和国国民经济和社会发展第十三个五年规划纲要 (Outline of the 13th Five-Year-Plan for the National Economic and Social Development of the PRC), issued 16 March 2016; 中华人民共和国国民经济和社会发展第十四个五年规划和2035年远景目标纲要 (Outline of the 14th Five-Year Plan (2021-2025) for National Economic and Social Development and Vision 2035 of the PRC), issued 11 March 2021.

[341] E.g., 中共中央办公厅国务院 办公厅印发《关于推进社会信用体系建设高质量发展促进形成新发展格局的意见》 (The CPCCC General Office and the State Council General Office Issue the 'Opinions on Advancing High-Quality Development in the Building the Social Credit System for Promoting the Formation of a New Development Structure'), issued 29 March 2022.

[342] For instance, they set up SCS demonstration city indicators and selected two batches of cities that did particularly well in terms of SCS building targets in 2015, 2016 and 2021, respectively. Marianne von Blomberg (2020) "How to build your municipal social credit system", 26 October, European Chinese Law Research Hub, available at https://blog.uni-koeln.de/eclrhub/2020/10/26/how-to-build-your-municipal-social-credit-system/. Three batches of SCS Building Model Cities have so far been announced. See: Jeremy Daum (2019) "What is a social credit demonstration city?" China Law Translate, 16 August 2019, https://www.chinalawtranslate.com/en/what-is-a-social-credit-demonstration-city/.

[343] E.g., the 兰州市社会信用体系建设领导小组办公室 (Office of the Lanzhou Municipal SCS Building Leading Small Group).

[344] *State Council Opinion on CBR*.

[345] 中共中央办公厅国务院 办公厅印发《关于推进社会信用体系建设高质量发展促进形成新发展格局的意见》 (The CPCCC General Office and the State Council General Office Issue the 'Opinions on Advancing High-Quality Development in the Building the Social Credit System for Promoting the Formation of a New Development Structure'), issued 29 March 2022. Most recently reinforced at the 2024 China Credit 4.16 Summit Discussion 2024中国信用4.16高峰论坛 the theme of which was "SCS Building and China's High-Quality Development 社会信用体系建设与中国高质量发展". China Youth Network 中国青年网 (2024) "2024中国信用4.16高峰论坛成功举办 (The 2024 China Credit 4.16 Summit was successfully held)", 16 December 2024, https://baijiahao.baidu.com/s?id=1818587095793245003andwfr=spiderandfor=pc, archived at https://web.archive.org/web/20250224141511/https://baijiahao.baidu.com/s?id=1818587095793245003andwfr=spiderandfor=pc.

[346] *SCS Building Law draft*.

nickname “Franken-law”[347]. The wide range of different departments involved indicates that the final version is not expected soon.[348]

The latest document dedicated to the SCSP was issued by the NDRC in the form of an action plan for 2024-2025. It highlights the legalisation of current initiatives, the enhancement of SCS information infrastructure with a special focus on improving information sharing among state departments, and some of the more promising pilot projects that have sprung from the past years of experimenting, such as ‘Credit +’ (addressed in section 3.2.5.).

Recently, top-level planning policy documents on the SCS appeared less frequently. This, combined with the fact that the imagined high-tech SCS conjured up in the media did not materialise[349] has led to speculations that the SCSP has failed or ended.[350] This view overlooks that SCSP elements and mechanisms increasingly appear in regulatory documents by central and local departments across all fields, which primarily address other things. For instance, Guiding Opinions of the NDRC, the National Data Bureau, the Ministry of Finance and the Ministry of Natural Resources on smart city building lay down how social credit files are involved in smart city building plans.[351] In light of the thriving local and departmental action in SCS building, the decline in central planning documents may rather be interpreted as an end of the architectural phase that set the design of the SCSP, and the beginning of the implementation phase.

2.1.5. Social credit as a new mode of governance

“The seemingly diverse strands of technocratic intervention under the SCS are not just to enforce various norms but are actually unified in the pursuit of a high trust society.”

- Chun Peng, Professor of Law, Peking University[352]

Recalling the above-stated definition of new modes of governance,[353] we can now ascertain the social credit mode of governance by delineating (1) the introduction of new

[347] Jeremy Daum (2022) “’Franken-Law’: Initial thoughts on the Draft Social Credit Law”, China Law Translate, 15 November 2022, https://www.chinalawtranslate.com/en/franken-law-initial-thoughts-on-the-draft-social-credit-law/.

[348] Finding that bills that involve a higher degree of bureaucratic fragmentation are more likely to be delayed in the legislative process: Xiaohong Yu, Zhaoyang Sun, Hui Yang and Donald Lien (2024) 重新评估威权僵局：中国的立法绩效 (Reevaluating authoritarian gridlock: Legislative performance in China), draft presented at the Conference *Law, Courts and Judges in Comparative Perspective,* Hong Kong University, 3 July 2024.

[349] Marianne von Blomberg and Chuncheng Liu (2025) Techno-orientalism in the US media: The case of ‘China’s social credit system’, *Information, Communication & Society*, online first, https://doi.org/10.1080/1369118X.2025.2565335.

[350] E.g., Vincent Brussee (2024) “Is the Social Credit System as we know it dead?”, The China Story, Australian Centre on China in the World, 16 October 2024, https://www.thechinastory.org/is-chinas-social-credit-system-as-we-know-it-dead/.

[351] 国家发展改革委、国家数据局、财政部、自然资源部联合印发《关于深化智慧城市发展 推进城市全局数字化转型的指导意见》 (The NDRC, the National Data Bureau, the Ministry of Finance and the Ministry of Natural Resources Jointly Issue the ‘Guiding Opinions On Deepening Smart City Development And Promoting The Digital Transformation Of Smart Cities’), issued 14 May 2024.

[352] *Chun Peng: Building a high-trust society*, p. 121.

[353] Sebastian Botzem, Jeanette Hofmann, Sigrid Quack, Gunnar Folke Schuppert and Holger Straßheim (2009) Die Dynamik des Governance-Ansatzes. Vier Dimensionen im Wandel, in Sebastian Botzem,

actors or actor constellations, (2) new institutional arrangements or modes of regulation, and (3) the blurring of traditional borderlines (e.g., between public and private, national and international, formal and informal).[354]

2.1.5.1. New actors

With the creation of the Joint SCS Conference in 2007,[355] the State Council designated leading officials of 16 central-level executive organs, including the State Tax Administration, the Commerce Administration (now SAMR) and the central bank, to lead the top-level design. Today, nearly every ministry has integrated social credit mechanisms throughout the entire vertical structure down to local bureaus. Firmly in line with the PRC tradition of experimental policy making, core planning documents call for pilot projects.[356]

This approach resulted in a diverse landscape of social credit initiatives. State-administered initiatives (particularly relevant for observing the SCSP-law relationship) draw in a multitude of private actors: Core documents allocate crucial roles to companies, industry associations, social organisations, and other actors. An entire industry has developed in support of social credit file management, information processing and the creation of assessments.[357] Industry associations likewise build their own versions of SCSs. For instance, the Shanghai Bar Association set up an online platform for inquiries about local lawyers' social credit information, including records of administrative penalties and crimes, education, and awards received, among others.[358]

2.1.5.2. New institutional arrangements or modes of regulation

From the perspective of highly functionally differentiated societies, it appears somewhat odd that the SCSP links fields as diverse as financial credit reporting, discretionary decision-making by state agencies, and morality reward scores for residents under one

Jeanette Hofmann, Sigrid Quack, Gunnar Folke Schuppert and Holger Straßheim (eds) *Governance als Prozess. Koordinationsformen im Wandel*, Nomos, pp. 11-16.

[354] Sebastian Botzem, Jeanette Hofmann, Sigrid Quack, Gunnar Folke Schuppert and Holger Straßheim (2009) Die Dynamik des Governance-Ansatzes. Vier Dimensionen im Wandel, in Sebastian Botzem, Jeanette Hofmann, Sigrid Quack, Gunnar Folke Schuppert and Holger Straßheim (eds) *Governance als Prozess. Koordinationsformen im Wandel*, Nomos, pp. 11-16.

[355] 国务院办公庭关于建立国务院社会信用体系建设部门际联席会议制度的通知 (Notice Of The General Office Of The State Council On The Establishment Of The Joint Inter-ministerial Joint Conference For The Construction Of The Social Credit System), issued 18 April 2007.

[356] Sebastian Heilmann and Elizabeth Perry (2011) *Mao's invisible hand: The political foundations of adaptive governance in China,* Harvard University Asia Center. See also, Adam Knight (2020) Technologies of risk and discipline in China's Social Credit System, in: Rogier Creemers and Susan Trevaskes (eds.) *Law and the Party in China,* Cambridge University Press, pp. 237-262, p. 249; Adam Knight (2023) Basket case: Reform and China's Social Credit Law, *China Law and Society Review* 6/2023, pp. 181-210, p. 189.

[357] See Mengyu Liu 刘梦雨 and Liyao Wang 王砾尧 (2017) 第三方力量 (The third force), 中国信用 (Credit China) 12/2017, available at https://www.creditchina.gov.cn/xinyongkanwu/zazhi/201712/P020171228631675806748.pdf, archived at https://web.archive.org/web/20241219161751/https://www.creditchina.gov.cn/xinyongkanwu/zazhi/201712/P020171228631675806748.pdf. See also: 国家发展改革委办公厅关于充分发挥信用服务机构作用加快推进社会信用体系建设的通知 (Notice of the NDRC General Office on Giving Full Play to the Function of Credit Service Institutions in Accelerating the Advancement of SCS Building), issued 2 February 2018.

[358] https://credit.lawyers.org.cn/index.jsp, archived at https://web.archive.org/web/20241219153724/https://credit.lawyers.org.cn/index.jsp.

policy strategy. It is often argued that the SCSP is a "basket"[359] or a "hodgepodge"[360], combining seemingly arbitrary elements. The historical perspective, however, shows that, even though the three trust-related problems described above emerged in different domains and concern different actors and behaviours, they coincided as sources of political risk. The common denominator of the coinciding problems during the first decades of Reform and Opening, the CPC decided, is low levels of trust. Hence, it posited 'trust' as a key target of reform policies and devised the SCSP to tackle related challenges in a systematic manner. Consequently, 'trust' became a political paradigm of governance.

The SCSP's constituting roots, such as the need to build a financial credit system and the need to enhance moral engineering, were separately addressed before the advent of the SCSP. The 'trust crisis' narrative links the multiple issues elaborated on above to the effect that theoretical and political discourse in the late 1990s and early 2000s sought a one-for-all answer,[361] eventually drawing up the SCSP. In comparison to the developed economies, China's trust-related problems were not isolated issues to be solved by small fixes but interrelated and thus in need of top-down central addressing.[362] This "trust crisis exceptionalism" claiming that building social trust in China needs a uniform approach is grounded in the argument that, unlike China, developed economies feature mature social, political, economic and cultural structures, where trust problems are "local and detailed"[363]. Leading SCSP designers also compared China's trust crisis to the situation in industrialisation-era England, which then likewise adopted "all kinds of methods" to reinstall trust.[364] Central Party School Professor Wei Wang 王伟 emphasised that "[u]nlike the West, which mainly focuses on economic and financial credit, China promotes the sustainable development of the economy and society through a broad social credit system."[365]

[359] Jueyin Wang 王珏玢 and Ye Pan 潘晔 (2020) "没常回家看看，也算失信？警惕信用管理沦为低成本的社会治理"工具箱" (Does not going back home often to check count as trust breaking, too? Beware of credit management becoming a low-cost "toolbox" for social governance)", Xinhua, 13 July 2020, https://k.sina.cn/article_5887928088_15ef2a71801900rmr0.html, archived with the author, hereafter: *Wang and Pan: Not going back home often*; see also Adam Knight (2023) Basket case: Reform and China's Social Credit Law, *China Law and Society Review* 6/2023, pp. 181-210; Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 44.

[360] *Xin Dai: Reputation state*, p. 114.

[361] See, e.g.: Rongzhu Ke and Weiying Zhang (2003) Trust in China: A cross-regional analysis, William Davidson Institute Working Papers Series 2003-586, William Davidson Institute at the University of Michigan, on file with the author.

[362] Xuewei Zhai and Xiaoye Huang (2023) *China's social credit,* Routledge, p. 189-190; SCS theorists BJ05 and BJ10.

[363] Xuewei Zhai 翟学伟 (2014) 信用危机的社会性根源 (The social root of the credit crisis), 江苏社会科学 (Jiangsu Social Science) 1/2014, pp. 85-96, p. 86.

[364] SCS theorist BJ05.

[365] Wei Wang 王伟 from the Central Party School, speaking at the 2024 China Credit 4.16 Summit at Peking University's China Credit Research Centre: China Youth Network 中国青年网 (2024) "2024中国信用4.16高峰论坛成功举办 (The 2024 China Credit 4.16 Summit was successfully held)", 16 December 2024, https://baijiahao.baidu.com/s?id=1818587095793245003andwfr=spiderandfor=pc, archived at https://web.archive.org/web/20250224141511/https://baijiahao.baidu.com/s?id=1818587095793245003andwfr=spiderandfor=pc.

The elevation of trust to a central governance paradigm facilitated new institutional arrangements. On a micro-level, SCSP signature mechanisms pick up existing instruments of governance and curate them to form new ones. For instance, social credit information platforms do not compile entirely new information on SCSP subjects but draw together and consolidate information that state agencies already hold (section 3.1.1.). These include records of administrative licenses granted, violations of laws and tax payments: "Rather than uncovering hidden knowledge about citizens, the value added of the social credit system is to more effectively consolidate and share information already collected by individual government bureaus."[366] The joint disciplining for trust-breaking mechanism, likewise, does not invent new punishments but largely restructures measures that have long been part of the regulatory repertoire of state agencies so that they reach persons outside of their original jurisdiction: A local bureau for market regulation can deny licenses to a company that has violated environmental laws (section 3.2.3.).

On a macro-level, the SCSP curates the socialist market economy by drawing together, rhetorically framing and categorising different schemes for trust-building that already existed. In this way, a range of initiatives vaguely related to trust, whether emerging in the market (e.g., credit ratings), in local government departments, village committees, industry associations or in courts, are politically treated as parts of the governance paradigm of trust (building) and by virtue of that included in the SCSP. The SCSP has developed around, as support of, and as a force shaping single initiatives that were previously not interconnected.

2.1.5.3. Blurring of traditional borderlines

That the SCSP redefines, blurs and over-generalises (泛化) legal and moral notions is a common critique in the SCSP debate in China.[367] For instance, state-imposed joint disciplinary measures for trust-breaking often do not just penalise violations of administrative law, but also some violations of contracts, specifically, evading payment of public utility bills. Thereby, private law norms are enforced with instruments of the public administration, thus blurring the traditional boundary between public and private law.[368] Before the advent of the SCSP, credit referred to the ability to pay debts, which is

[366] Haemin Jee (2022) Credit for compliance: How institutional layering ensures compliance in China, Dissertation, Stanford University Department of Political Science, available at https://purl.stanford.edu/tg087jk8675, p. 49; Likewise describing the SCS as a project revolving around re-labelling and moving behavioural records, see Ping Sun 孙平: Social Credit System Practice, unpublished chapter draft, February 2023, on file with the author.

[367] Out of many, e.g., Binglin Tan 谭冰霖 (2022) 处罚法定视野下失信惩戒的规范进路 (A normative approach to disciplining trust-breaking from the perspective of punishment law), 法学 (Law Science) 482(1), pp. 35-49, p. 41, hereafter: *Binglin Tan: Disciplining trust-breaking*; Lu Wang 汪路 (2020) "泛化信用十日谈：这颗子弹还要飞多久？(Ten-day-debate on the generalization of credit: How far will this bullet fly?)" Caixin, 10 June 2020, https://opinion.caixin.com/2020-06-10/101565405.html, archived at https://web.archive.org/web/20250609192314/https://opinion.caixin.com/2020-06-10/101565405.html.

[368] *Chun Peng: Legal dilemmas*, p. 54; see also Ruixue Wang 王瑞雪 (2022) 论横跨公私法域的个人信用评价制度 (Discussing the personal credit assessment system's extension across the realms of public and private law), 暨南学报 (哲学社会科学版) (Jinan Journal (Philosophy and Social Sciences)) 44(1), pp. 66-78; *Haiyuan Zhou: Correcting the trend*. This configuration may in future reforms disappear, and the social credit mode of governance does not hinge on it.

"different from the political attitude and the general moral character of a subject [...]".[369] By introducing the "broad notion of trust" as elaborated above, the SCSP blurs the line between financial credit reporting, law enforcement, and state-sanctioned moral engineering.

The broad notion of credit was swiftly supported through "theoretical innovations".[370] For instance, Jingmei Wu 吴晶妹 developed an influential concept of "three-dimensional-trust", casting moral behaviour, contract adherence and legal compliance as trust's three defining parts.[371]

In sum, the social credit mode of governance places trust as a governance paradigm under which existing tools of governance are rearranged to form SCSP signature mechanisms. Additionally, existing mechanisms that further trustworthiness in any way are identified, categorised, and labelled in an act of curation. The whole of curated SCSP signature mechanisms then provides an institutional infrastructure consisting of both state and private actors to resolve challenges on China's path towards building a market economy under the socialist party-state.[372]

As a mode of governance, it differs fundamentally from the older modes of Maoist mass campaigns and post-Maoist managed campaigns. These tackled the arising issues through instructing local officials top-down to conduct temporary enforcement actions.[373] The SCSP provides a more systematic and sustainable alternative that centres on institutionalisation to address problems that were previously dealt with through campaigns. Arguably, the advent of the SCSP marks the beginning of a new form of campaign governance in China. The Mao Zedong administration from the late 1940s until the late 1970s leveraged mass campaigns to enforce political agendas, which were hardly ever laid down in law at all. Upon Reform and Opening, mass campaigns retreated and "managed campaigns"[374] emerged. These placed emphasis on pragmatic, workable mechanisms, engineering approaches, the creation of models and test projects, and they

[369] Handong Wu 吴汉东 (2001) 论信用权 (On the right to credit), 法学 (Legal Science Monthly) 1/ 2001, pp. 41-48, p. 42. Similarly, Ping Sun 孙平: Social Credit System Practice, unpublished chapter draft, February 2023, on file with the author.

[370] So-described by *Cheung and Chen: From datafication to data state*, p. 1145.

[371] Jingmei Wu 吴晶妹 and Yinxu Wang 王银旭 (2017) 以诚信度为基础的个人信用全面刻画初探——基于WU's三维信用论视角 (A preliminary study on the comprehensive characterization of personal credit based on honesty – based on the perspective of WU's three-dimensional credit theory), 现代管理科学 (Modern Management Science) 12/2017, pp. 3-5. Cited for instance by Peixin Luo 罗培新 (2017) 社会信用法 (Social Credit Law), 北京大学出版社 (Peking University Press), p. 56; Junyue Lin 林俊跃 (2020) 辨识社会信用体系的性质及其实施意义 (On the identification of the nature of the Social Credit System and its practical significance), 征信 (Credit Reference), 9/2020, pp. 1-7, p. 3.

[372] State media coverage on the SCS largely hinged on the theme of institutionalization 制度化: Jing Wang, Hongmei Li, Weiai Wayne Xu and Wei Xu (2022) Envisioning a credit society: Social credit systems and the institutionalization of moral standards in China, *Media, Culture and Society* 45(3), pp. 451-470.

[373] Xuewei Zhai and Xiaoye Huang (2023) *China's social credit,* Routledge, p. 184. See also, Elizabeth J. Perry (2011) From mass campaigns to managed campaigns: 'Constructing a new socialist countryside', in Sebastian Heilmann and Elizabeth Perry (eds) *Mao's invisible hand: The political foundations of adaptive governance in China*, Harvard University Press, pp. 30-61.

[374] Elizabeth J. Perry (2011) From mass campaigns to managed campaigns: "Constructing a new socialist countryside", in Sebastian Heilmann and Elizabeth Perry (eds): *Mao's invisible hand: The political foundations of adaptive governance in China*, Harvard University Press, pp. 30-61.

feature more local variation than was permitted in Maoist mass campaigns.[375] That campaign governance continued alongside the consolidation of law-based governance[376] poses one of the main puzzles in the paradox of concurrent strengthening of authoritarianism and strengthening of law. The SCSP, arguably, resolves this paradox by institutionalising campaigns. It demonstrates that the deeply socialist key practice of campaign governance can be made workable in a state increasingly structured and governed through laws.

The need to regularise enforcement was most prominently and influentially raised by Alibaba founder Jack Ma in his powerful remarks in Shanghai in October 2020, which led to a major regulatory crackdown on Alibaba and other firms.[377] In 2023, however, the government turned to embrace the very arguments Ma had made, especially to "drop campaign-style rectification"[378]. In fact, the SCSP presents itself as somewhat of an opposite of campaign governance. SCSP plans highlight the streamlining and regularising of regulation.[379] The official framing of the SCSP as an 'anti-campaign' mode of governance however, cannot cover up that it creates infrastructure for temporary enforcement action that relies on the 'masses'.

SCSP-fostered, institutionalised campaign governance shares several features with mass and managed campaigns: The SCSP lends itself flexibly to enforce dynamic political agendas, as became evident in its application for enforcing garbage separation, private tutoring bans, and pandemic prevention policies.[380] The social credit normativity can relatively quickly designate an undesired behaviour 'trust-breaking' and address it with the SCSP's mechanisms.[381] Most importantly, SCSP mechanisms, and publicity-centred regulation and reputational disciplining in particular, leverage the power of the 'masses'.[382]

The shift of campaign governance towards 'institutionalised campaigns' is best illustrated by observing practices of shaming, which have a long history in China. Only in 2010 was the common practice of parading sex workers and their clients through public

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[375] Elizabeth J. Perry (2011) From Mass Campaigns to Managed Campaigns: "Constructing a New Socialist Countryside", in Sebastian Heilmann and Elizabeth Perry (eds): *Mao's Invisible Hand: The Political Foundations of Adaptive Governance in China*, Harvard University Press, pp. 30-61, p. 43

[376] Sarah Biddulph, Sean Cooney and Ying Zhu (2012) Rule of Law with Chinese characteristics: The role of campaigns in lawmaking, *Law & Policy* 34(4), pp. 373-401.

[377] Kevin Xu (2020) "Jack Ma's Bund Finance Summit Speech", Interconnected, 9 November 2020, https://interconnected.blog/jack-ma-bund-finance-summit-speech/, archived at https://web.archive.org/web/20210108205858/https://interconnected.blog/jack-ma-bund-finance-summit-speech/.

[378] Huang made his point when he was invited to speak to NPC lawmakers, a rare opportunity, and his remarks were approved beforehand, indicating that his thoughts already enjoy powerful political backing. https://mp.weixin.qq.com/s/SOXuYFSnUdXwDG8cSwzmmw?mc_cid=55303b3b5e&mc_eid=902fe70bde, archived at web.archive.org/web/20230116040926/https://mp.weixin.qq.com/s/SOXuYFSnUdXwDG8cSwzmmw?mc_cid=55303b3b5e&mc_eid=902fe70bde.
See twitter thread by Tom Nunlist https://twitter.com/freefader/status/1614112356354912256

[379] Sections 3.2.3.3.; 3.2.4.3.; 国务院关于加强和规范事中事后监管的指导意见 (Guiding Opinions Of The State Council On Strengthening And Standardizing Regulation Before And After The Event), issued 12 September 2019.

[380] Section 3.1.1.2.

[381] Section 3.1.1.2. and others in Chapter 3

[382] Sections 3.2.1. and 3.2.2.

streets banned.[383] In 2018, police practices of spraying 'drug-related families' on houses of persons involved in drug crimes were dismissed as unlawful.[384] While fading from the prosecution of individual criminals from weak economic backgrounds, sporadic regulatory shaming targets white-collar crimes, it is used regularly in antitrust investigations,[385] and in combating pollution.[386] Since the advent of the SCSP, the sporadic application of shaming is equipped with a versatile rhetoric – any act can be 'trust-breaking' if so defined by regulators, a network of information platforms and a range of dissemination channels. These instruments can be leveraged for all issues that the government may perceive as in need of tackling. That said, it remains to be seen whether 'institutionalised campaigns' are effective in the long run. Institutionalisation somewhat contradicts the ad-hoc and spontaneous character that arguably rendered campaigns so powerful. Institutionalising campaigns, re-applying similar rhetoric repetitively, may rid them of their mobilising force and their persuasiveness.[387]

2.2. Two functions of administrative law in China

Current literature on the relationship between the SCSP and the law reveals that the greatest impact occurs in the field of administrative law.[388] Civil procedure law is relevant, insofar as SCSP mechanisms assist in enforcing court decisions, too. However, in the interest of maintaining a concise framework of analysis, this study touches on the SCSP's impact on civil procedure law only on the margins and leaves its in-depth examination to future research.

The PRC has, within a few decades since Reform and Opening, built administrative legal structures nearly from scratch. Respective efforts, most recently, are referred to as building administrative rule of law 行政法治[389]. For analysing the relationship between the SCSP and PRC administrative law, this investigation adopts a functional view of PRC administrative law. This section first reflects on the functional approach to law. The following section 2.2.2. sketches the historical development of functions of PRC

[383] Reuters (2010) "China bans "shame parades" of criminal suspects", 27 July 2010, https://www.reuters.com/article/world/china-bans-shame-parades-of-criminal-suspects-idUSTRE66Q0OE/.

[384] Related news have gradually disappeared from the web as the practice was deemed unlawful: Yulong Yang 杨玉龙 (2018) "喷漆"涉毒家庭", 于法于情均不妥 (Spraying 'drug-related family' is inappropriate both legally and morally)", 新京报 (Beijing News), 11 May, https://baijiahao.baidu.com/s?id=1600103096075540937andwfr=spiderandfor=pc, archived at https://web.archive.org/web/20250523135932/https://baijiahao.baidu.com/s?id=1600103096075540937andwfr=spiderandfor=pc.

[385] Angela Huyue Zhang (2019) Strategic public shaming: Evidence from Chinese antitrust investigations, *The China Quarterly* 237, pp. 174-195.

[386] Reuters (2016) "China in public shaming campaign against polluters", Reuters, 23 December, www.dw.com/en/china-in-public-shaming-campaign-against-polluters/a-36895569, archived at https://web.archive.org/web/20250519140646/https://www.dw.com/en/china-in-public-shaming-campaign-against-polluters/a-36895569.

[387] Section 3.2.2.3.

[388] The overwhelming majority of contributions by legal scholars on the SCSP are from the field of administrative law; see also: Marianne von Blomberg and Björn Ahl (2024) Debating the legality of social credit measures in China: A review of Chinese legal scholarship, *China Review* 24(3), pp. 17-46.

[389] E.g., Baoying Guan 关保英 (2026) 论行政六法对行政法学自主知识体系构建的影响 (The impact of the six administrative laws on the autonomous administrative legal studies knowledge system), 上海政法学院学报 (Journal of Shanghai University of Political Science and Law) 41(1), pp. 35-54.

administrative law, drawing on the rich debate that unfolded in the late 1980s. The second and third sections tap the rich literature on the functions of law in the PRC party-state, delineating two functions with two sub-elements each: The *enabling the public administration* function and the *protecting legal rights and interests* function. These two functions structure the remainder of this thesis, with chapters three and four analysing the SCSP's impact on one of them, each.

2.2.1. Reflections on the functional perspective on law

"Of all the disciplines that can be used in the West to study China, law seems the most difficult to use meaningfully because it is so rooted in Western values. Plainly, we have to learn to adapt our perspectives to the object of our study in order to transcend, without abandoning, our Western context. If we succeed even partially, we will have shaped our views of China so that they will gain both in neutrality and principle."

- Stanley Lubman (1970)[390]

Several features of law[391] in the PRC complicate its study from a perspective grounded in civil and common law systems. This is especially the case for administrative law, the realm that defines relations between state and non-state actors. Law in the PRC performs functions different from law in Europe and North America. However, it is civil and common law systems that have shaped the dominant research methods and categories in legal studies. To bridge this divide, for my analysis of intersections of law and the SCSP, this investigation conceptualises administrative law as consisting of two principal functions and four sub-functions.

In 1970, at the height of Mao Zedong's power, Stanley Lubman, one of the first foreign scholars of modern Chinese law, wrote an essay calling Western observers of Chinese law to carefully revisit their own assumptions and definitions, e.g., on what a contract is, to make sense of the PRC legal system:[392]

> "It seems preferable to analyse legal and administrative practices and arrangements in terms of the functions they perform, recognising that several functions may coexist, that apparently similar institutions may have different functions, and that apparently dissimilar institutions may perform similar functions."[393]

A few years later, Reform and Opening set in and fostered confidence among foreign observers that the PRC and its legal system were eventually going to turn liberal-democratic, similar to economically developed liberal-democratic countries. Lubman's insights were backgrounded. Then, China's development over the past decades proved wrong mainstream assumptions that political liberalisation and economic growth go hand in hand. The PRC's economy boomed while the Party-state structures grew stronger.

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[390] Stanley Lubman (1970) Methodological problems in studying Chinese communist 'civil law', in: Jerome A. Cohen (ed.) *Contemporary Chinese law - Research problems and perspectives*, Harvard University Press, pp. 230-260, p. 260.

[391] Law in this thesis is defined narrowly as a system of rules backed by the state with sanctions, in contrast to conceptions of law often used in legal anthropology, e.g. law as a system of meanings embedded in social practices, see: Fernanda Pirie (2013) *The anthropology of law*, Oxford University Press.

[392] Stanley Lubman (1983) Emerging functions of formal legal institutions in China's modernization, *China Law Reporter* 2/1983, pp. 195-266.

[393] Stanley Lubman (1970) Methodological problems in studying Chinese communist 'civil law' , in: Jerome A. Cohen (ed.) *Contemporary Chinese law - Research problems and perspectives*, Harvard University Press, pp. 230-260, p. 258.

Against this background, Lubman's remarks appear highly relevant to contemporary studies of law in China from an outside perspective.

Describing and analysing law as functions is an approach rooted in comparative law, which developed the method of functional analysis to compare nominally dissimilar, but functionally equivalent institutions of law from different jurisdictions.[394] It helps to look "not only at legal rules ('law in books'), nor only at the results of their application ('law in action'), but even beyond at non-legal answers to societal needs."[395] This investigation is not comparative legal research, however, the approach of conceptualising law in functions is useful for the purposes of this study and thus borrowed.

First, the study of any country's law in which the observer herself is not politically or culturally socialised inevitably comes with a comparative element.[396] As a German observing domestic Chinese society and law, my positionality is one of "out-of-place-ness"[397], even though I have a formal education in PRC law from a law school in China. Approaching law as functions is suitable to overcome the considerable methodological and epistemological gap between the 'home jurisdiction' and that under scrutiny, to some extent. It backgrounds legal definitions and categories from a given jurisdiction, casting not laws or legal institutions, but legal problems as the objects of research.[398] Research inquiries must be framed with regard to a concrete societal problem to which the observed legal object is (supposed to be) the solution.[399] This broadens the view, for instance, when searching for what may be consulted as 'source of law', to include different types of customary law and ethics apart from just formal sources of law.[400]

The second reason for approaching law through the functional lens is its capacity to overcome dichotomies. Different functions of law can co-exist and even contradict one

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[394] Konrad Zweigert and Hein Kötz (1996) *Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts*, 3rd Edition, Mohr, p. 33. See also: "Rather than comparing fixed data and isolated paragraphs, we compare the solutions produced by one state for a specific factual situation with those produced by another state for the same factual situation, and then we ask why they were produced and what success they had." Ernst Rabel (1937) Die Fachgebiete des Kaiser Wilhelm-Instituts fur ausländisches und internationales Privatrecht 1909-1935, in: Max Planck (ed.) 25 Jahre Kaiser Wilhelm-Gesellschaft zur Förderung der Wissenschaften, dritter Band: Die Geisteswissenschaften, Verlag von Julius Springer, pp. 77-190, p. 82.

[395] Ralf Michaels (2019) The functional method of comparative law, chapter in Mathias Reiman and Reinhardt Zimmermann (eds.) *The Oxford handbook of comparative law*, Oxford University Press, pp. 345–389, p. 369.

[396] Teemu Ruskola (2013) *Legal orientalism. China, the United States and modern law*, Harvard University Press, pp. 34-35.

[397] For several perspectives on positionality in law and society studies, see Lynette J. Chua and Mark Fathi Massoud (2024) *Out of place – Fieldwork and positionality in law and society*, Cambridge University Press.

[398] Rodolfo Sacco formulated: "The comparative method is thus the opposite of the dogmatic.
The comparative method is founded upon the actual observation of the elements at work in a given legal system. The dogmatic method is founded upon analytical reasoning. The comparative method examines the way in which, in various legal systems, jurists work with specific rules and general categories. The dogmatic method offers abstract definitions." Rodolfo Sacco (1991) Legal formants: A dynamic approach to comparative law, *American Journal of Comparative* Law 39(1), pp. 1-34.

[399] Konrad Zweigert und Hein Kötz (1996) Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts, 3. Auflage, Mohr, p. 32. Philosophers of law previously maintained that the universals of legal science are legal problems, see for instance Max Salomon (1925) *Grundlegung zur Rechtsphilosophie*, 2nd edition, Rothschild. However, this thinking has barely found entry into mainstream legal science.

[400] Konrad Zweigert und Hein Kötz (1996) Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts, 3. Auflage, Mohr, p. 34.

another, and legal institutions can perform multiple functions simultaneously.[401] This approach resonates with findings on authoritarian legal systems that highlight the inherent contradictions in legal systems that combine features of the rule of law with authoritarian rule, by some described as "dual legal systems".[402] Legal literature from liberal-democratic countries, when referring to authoritarian or illiberal legal systems, casts them as the opposite or antagonist of what is the aspired ideal in their own jurisdictions. However, research on authoritarian legality has demonstrated that this binary is rather fabricated.[403] As will be shown in the following sections of this Chapter, the functional lens reveals that administrative law in the PRC serves to make state bureaucracies capable and to protect subjects from harm through administrative power, just as in liberal-democratic countries. The state's official ideology and its particular type of regime legitimisation is different in liberal-democratic systems than in socialist systems. They significantly shape the functions of administrative law. However, the official state ideology does not deterministically define the existence or absence of the functions. I do not mean to dismiss authoritarianism as a concept. Instead, I advocate speaking of authoritarian elements, rather than entire political systems, in order to facilitate fine-grained observation in authoritarian legalities.

To illustrate this, consider algorithmic public regulation practices. The risks of algorithmic regulation that an analysis based on European rule of law principles yields (e.g., "primacy of techno-rationality", "supremacy of coders", "automation of legalism", "deficit of accountability", "systemic vulnerability"[404]) have likewise been observed by Chinese legal scholars. Chinese scholarship applied domestic legal principles and reached similar conclusions. Under a functional perspective of administrative law, findings produced by normative legal literature about the detrimental impact of algorithmic governance practices in Europe largely correspond to respective findings from China, even though the legal frameworks and principles used to deduce and describe them differ.

[401] Ralf Michaels (2019) The functional method of comparative law, chapter in Mathias Reiman and Reinhardt Zimmermann (eds.) *The Oxford handbook of comparative law*, Oxford University Press, pp. 345–389, p. 387. Arguing that Chinese legal institutions serve several mutually inconsistent functions: Stanley Lubman (1983) Emerging functions of formal legal institutions in China's modernization, *China Law Reporter* 2/1983, pp. 195-266, p. 197.

[402] Hualing Fu (2019) Duality and China's struggle for legal autonomy, *China Perspectives* 1/2019, pp. 3-10. A similar argument is made using the phrase 'thin rule of law' as coined by Lon Fuller (1969) *The Morality of Law*, Harvard University Press, by Randall Peerenboom (2002) *China's long march toward the rule of law*, Cambridge University Press.

[403] See, for instance, Teemu Ruskola (2024) The limits of liberal justice: On authoritarianism and instrumental theories of law, *Asia Pacific Law Review* 32(2), pp. 322-331.

[404] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 221.

2.2.2. PRC administrative law in functions

"Administrative law itself is a cultural phenomenon"

– Baoying Guan 关保英[405]

The advent of Reform and Opening in China has spurred an unprecedentedly broad and long-lasting debate about the purpose and functions of administrative law in China. Notably, all discussants

> "adopt the functionalist approach to administrative law research, rather than strictly adhering to a certain established belief, principle, or principle, and using this belief, principle, or principle to force a fit into the ever-changing reality."[406]

The emerging debate provides a rich foundation from which I delineate functions of PRC administrative law, that is, the dependent variables for this study.

The first, most widespread view on the function of administrative law in China held that it serves the state to manage the public administration (Management Theory 管理论). Its advocates refer to relevant accounts from the Soviet Union, holding that administrative law served state organs to efficiently implement the tasks related to realising the construction of communism. The Management Theory is widely associated with the planned economy.[407] The early years of administrative law building in the early 1980s had focused on laying down rules and operational principles for the public administration. Management Theory proponents de-emphasised the role of litigation and other remedial channels in administrative law, arguing that these could fatally undermine the performance of the public administration and weaken its enforcement power.[408]

Another stream of literature held against this, proposing that it requires administrative litigation to ensure that administrative organs operate orderly and do not abuse their powers (Power Control Theory 控权论).[409] Respective thought was inspired by Anglo-American administrative law scholarship, which cast administrative law mainly as the law that controls government power. Administrative power, the power of maintaining social order yielded by the state, qua its existence, may harm the interests of state

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[405] Baoying Guan 关保英 (2018) 新时代背景下行政法功能重构 (Reconstruction of the functions of administrative law in the new era), 社会科学研究 (Social Science Research) 5/2018, pp. 9-18, p. 15, hereafter: *Baoying Guan: Reconstruction of the functions*.

[406] "Fourthly, whether it is the balance theory, the new control theory, or the government rule of law theory, they all basically adopt the functionalist approach to administrative law research, rather than strictly adhering to a certain established belief, principle, or principle, and using this belief, principle, or principle to force a fit into the ever-changing reality." Kui Shen 沈岿 (2022) 行政法理论基础：传统与革新 (The theoretical foundations of administrative law: Tradition and innovation, 北京大学出版社 (Peking University Press), p. 54, hereafter: *Kui Shen: The theoretical foundations*.

[407] Youyong Zhou 周佑勇 (2024) 行政法院论 (The fundamental theory of administrative law), 北京大学出版社 (Peking University Press), p. 101.

[408] Jiawei Gao 高家伟 (2000) 为管理论正名 – 兼论现代行政法学的理论基础 (Justifying management theory – On the theoretical basis of modern administrative law), 法学文稿 (Law Drafts, student journal of Zhejiang University Law Department), described in Haikun Yang 杨海坤 and Zhiyuan Zhang 章志远 (2004) 中国行政法基本理论研究 (Basic theoretical research on Chinese administrative law), 北京大学出版社 (Peking University Press), p. 70.

[409] E.g., Chunxie Pi 皮纯协 and Jun Feng 冯军 (1997) 关于"平衡论"疏漏问题的几点思考——兼议"平衡论"的完善方向 (Some considerations on the loopholes in the 'balance theory' – Pathways for improvement), 中国法学 Chinese Legal Science 2/1997, pp. 40-50, at 48.

subjects and requires laws and procedures to prevent potential abuse. Administrative law's purpose, thus, is to protect those whose rights and interests are impacted by state action, rather than protect or enable administrative power.[410]

The Power Control Theory was criticised for ostensibly advocating to weaken government power and limit the functioning of the public administration. In response, scholars formed the New Power Control Theory (新控权论):[411] The concept of control of administrative power, it is therein specified, does not deny the management function of administrative law. "Control" of power refers not only to restricting but also to guaranteeing and maintaining power in various ways.[412] Control of power "is a unity of opposites between restriction and constraint and guarantee and maintenance."[413]

Proposing a middle way through this controversy, Haocai Luo 罗豪才 coined the Balance Theory (平衡论). It maintains that administrative law serves to provide the necessary rules and procedures to the public administration to realise its tasks, speaking to the Management Theory, and that it simultaneously must protect the legal rights and interests of subjects, speaking to the Theory of Power Control. In other words:

> "Administrative power must be both controlled and protected; citizens' rights must be both protected and constrained; and administrative power and citizens' rights should both check and balance each other."[414]

Pursuant to the Balance Theory, administrative law's purpose is to achieve a power balance between the administrative body and its counterpart, the subject.[415] This seemingly tautological take has been criticised, but it has also opened the door to constructive paths forward in a highly constrained environment that explicitly rejects the separation of powers.[416] Among all current theories, the Balance Theory has received the

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[410] Shanglu Zhang 张尚鷟 and Huaide Ma 马怀德 (1991) 走出低谷的中国行政法学一—中国行政法学综述与评价 (The rise of chinese administrative law: An overview and evaluation), 中国政法大学出版社 (CUPL Press), p. 46 and p. 695.
See also: Liancheng Wang 王连昌 and Huaide Ma 马怀德 (1999) 行政法学 (Administrative Law), 中国政法大学出版社 (CUPL Press), p. 13.

[411] *Kui Shen: The theoretical foundations*, p. 33.

[412] Xiaoxia Sun 孙笑侠 (1999) 论法律对行政的综合化控制—从传统法治理论到当代行政法的理论基础 (On comprehensive legal control of the administration – From traditional rule of law theory to theoretical foundations of contemporary administrative law), 比较法研究 (Journal of Comparative Law) 3 and 4/1999, pp. 378-391, p. 383. See also: Xiaoxia Sun 孙笑侠 (1999) 法律对行政的控制——现代行政法的法理解释 (Legal control of the administration – A jurisprudential explanation of modern administrative law), 山东人民出版社 (Shandong People's Press); Xueyao Li 李学尧 (1999) 综合控权理念和当代行政法的理论基础 (The comprehensive power control concept and theoretical foundations of contemporary administrative law), 浙江省政法管理干部学院学报 (today: Journal of Zhejiang Gongshang University) 3/1999, pp. 22-29.

[413] Ruimin Yao 姚锐敏 (2000) 现代行政法控权理论的新思考 (New thoughts on the Power Control Theory of modern administrative law), 宁夏社会科学 (Ningxia Social Science) 1/2000, pp. 65-68, p. 67.

[414] Haocai Luo 罗豪才, Shuhong Yuan 袁曙宏, and Wendong Li 李文栋 (1993) 现代行政法的理论基础——论行政机关与相对一方的权利义务平衡 (The theoretical foundation of contemporary administrative law –On the balance of rights and obligations between administrative organs and the opposing party), 中国法学 (Chinese Legal Science) 1/1993, pp. 52-59, p. 54.

[415] Youyong Zhou 周佑勇 (2024) 行政法院论 (The fundamental theory of administrative law), 北京大学出版社 (Peking University Press), p. 101.

[416] Jianfu Chen (2016) *Chinese law: Context and transformation*, Brill Niejhoff, p. 295. For the development of the Balance Theory, see Haikun Yang 杨海坤 and Zhiyuan Zhang 章志远 (2004) 中国行政法基本理论研究 (Basic theoretical research on Chinese administrative law), 北京大学出版社 (Peking University Press), p. 65.

most support, amongst others, because it achieved a breakthrough in the controversy that had ushered in a more fundamental dispute over whether administrative law was to be more traditionally socialist (typically Management Theorists) or capitalist (typically Power Control Theorists).[417] Tellingly, Haocai Luo, formerly a professor at Peking University, was appointed vice-president of the Supreme People's Court (SPC) in 1995. Since the theory was first posited, further studies began to develop an empirical foundation for its claims,[418] and other theories, as well as knowledge from other disciplines, were integrated into its framework.[419]

From the standpoint of the Balance Theory, PRC administrative law has two major functions: To e*nable the public administration* ("function of guaranteeing the effective carrying out of administrative management 保障行政管理的有效实施的作用") and to *protect legal rights and interests* ("function of protecting the legal rights and interests of individual citizens and organisations 保护公民个人、组织的合法权益的作用").[420]

The character of administrative law transformed in the 21st century. Specifically, the turn towards 'active' administrative law with the advent of the welfare state and a service-oriented public administration further shaped the functions of administrative law.[421] The two overarching functions, however, represented in the continuing prevalence of the Balance Theory, remain applicable. Novel theories that integrate the outgrowths of the welfare state place themselves within or as a continuation of, rather than as a counter to, the Balance Theory.[422]

Building on this two-pronged conceptualisation, I observe the impact of the SCSP on each of the functions in Chapters three and four, respectively. The following sections of this Chapter elaborate on the functions and their constituting elements.

Notably, the two functions of administrative law in the PRC correspond somewhat to functions of administrative law captured in accounts describing liberal-democratic systems. Pursuantly, administrative law, both enables and limits state bureaucracy.[423] Unsurprisingly, then, a large part of the Chinese literature likens the change in functions of administrative law to respective changes in U.S. administrative law. Such accounts define the transition towards more active administrative law that not only polices the red lines of the law but also shapes society and provides services as part of a global shift. Due to this parallel, the analysis below holds significant insights for the broader debate about how trust assessment regimes affect law in countries other than China.

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[417] *Kui Shen: The theoretical foundations*, p. 23.
[418] For instance: Gongde Zhu 宋功德 and Haocai Luo 罗豪才 (2001) 行政法的失衡与平衡 (On the balance and imbalance of administrational law), 中国法学 (Chinese Legal Science) 2/2001, pp. 72-89.
[419] *Kui Shen: The theoretical foundations*, p. 26.
[420] Haocai Luo 罗豪才 and Zhongle Zhan 湛中乐 (2016) 行政法学 (Administrative Law), 北大出版社 (Peking University Press), p. 37.
[421] See section 2.2.3.; *Baoying Guan: Reconstruction of the functions*, p. 13.
[422] Re-iterated e.g., in: Haocai Luo 罗豪才 and Zhongle Zhan 湛中乐 (2016) 行政法学 (Administrative Law), 北大出版社 (Peking University Press), p. 37; *Kui Shen: The theoretical foundations*, p. 21 and 28.
[423] See, among others, Francesca Bignami (2012) Comparative administrative law, in: Mauro Bussani and Ugo Mattei (eds.) *The Cambridge companion to comparative law*, Cambridge University Press, pp. 145-170, p. 145; Zaim M. Nedjati, J. E. Trice (1978) *English and Continental Systems of Administrative Law*, North-Holland Publishing.

2.2.3. Function one: Enabling the public administration

“There must be laws for people to follow”

- Deng Xiaoping[424]

The *enabling the public administration* function of administrative law refers to administrative law’s role in making the state administration capable. Administrative law, among other things, “has the function of standardising administrative power, promoting administrative management and implementing effective services”[425]. The *enabling the public administration* function encompasses at least two elements, namely, that the state organises executive action as well as its own structure by (1) issuing regulatory laws and sub-statutory rules and (2) enforcing them. It describes administrative law’s instrumental aspect as a tool of governance for regulators. As discussed above, this function is most early on delineated in scholarship upholding the Management Theory, was henceforth integrated and further developed in the Balance Theory and is at the heart of more recent theories on functions of administrative law, such as the Government Rule of Law Theory.[426]

PRC administrative law’s *enabling the public administration* function is best understood against its historical development. Contemporary administrative law in China was profoundly influenced by the historical legacy and experiences of Mao Zedong’s rule. Classical Marxism dismisses law as an instrument of the bourgeoisie to oppress the proletariat. [427] Nevertheless, as socialism spread across the world, different legitimizations for socialist types of legal systems have sprung from Marxist theory. By the time the CPC controlled territories in China, it, too, began modelling a legal system on practices of other socialist states, in particular the Soviet Union. China’s first socialist Constitution of 1954 laid the foundation for a formal legal system.[428]

However, with the beginning of the anti-Rightist campaign in summer 1957, judicial institutions came to be regarded as channels for counterrevolutionaries to oppose the cause of the CPC (以法抗党) and by 1960, structural changes left the SPC with only around 30 employees.[429] After a brief revival of the judicial system in the aftermath of the

[424] Contextualized in Carlos W. H. Lo (1992) Deng Xiaoping's ideas on law: China on the threshold of a legal order, *Asian Survey* 32(7), pp. 649-665, p. 654.
[425] Haocai Luo 罗豪才 and Zhongle Zhan 湛中乐 (2016) 行政法学 (Administrative Law), 北大出版社 (Peking University Press), p. 37.
[426] Haikun Yang 杨海坤 (2007) 行政法哲学的核心问题：政府存在和运行的正当性——兼论“政府法治论”的精髓和优势 (The core issue of administrative law philosophy: the legitimacy of the existence and operation of government – A discussion of the essence and advantages of the Government Rule of Law Theory), 上海师范大学学报（哲学社会科学版）(Journal of Shanghai Normal University (Social Science and Philosophy Edition) 36(6), pp. 55-62.
[427] Maureen E Cain and Alan Hunt (1979) *Marx and Engels on law*, Academic Press.
[428] In its support, the 人民法院组织法 (People’s Courts Organic Law) was passed subsequently on 1 July 1979.
[429] 中共中央关于中央政法机关精简机构和改变管理体制批复 (CPCCC Reply On Streamlining The Organization And Changing The Management System Of The Central Political-Legal Organs), 11 November 1960; Dong Cao 曹东 (2016) “共和国的检察足迹” (The footprint of republican China’s procuratorate), SPP Website, 21 October 2016, available at https://www.spp.gov.cn/zdgz/201610/t20161021_170219.shtml, archived at https://web.archive.org/web/20250311072851/https://www.spp.gov.cn/zdgz/201610/t20161021_170219.shtml.

Great Leap Forward, the eve of the Cultural Revolution in 1966 eventually led to the end of all formal judicial decision-making of courts and instead subjected the adjudication teams 审判组 that emerged in the place of courts to the Public Security organs (公安机关军管会). Police-administered fines, warnings and confinement for disturbing the public order expanded, a development which became an important antagonist in developing the current administrative law system. Broadly formulated misdeeds, including hooliganism and acts viewed as counter-revolutionary or anti-socialist, were widely punished in a disorderly fashion, changing according to the quickly turning political climate.[430] The period from 1953 onwards was overall described as "tentative regularisation overcome by mass line politics"[431]. One important lesson the CPC drew from Mao's late regime[432] was that for governing the country (not the CPC internally), it needed to provide rules and procedures that are predictable, stable and can effectively implement policies. Legal reform was significantly shaped as a response to arbitrary rule by single officials.[433] Further, the new agenda to build a socialist market economy required a formalised legal system (法制) to serve it.[434]

A catchphrase for reforming governance at that time, coined by Deng Xiaoping, was "to put things in order 整顿"[435], indicating that the late Mao Zedong rule was acknowledged as chaos that was to be reversed. Deng's reform plans seamlessly linked wording on democracy with legal system building, which, from the perspectives of liberal-democratic countries, was often interpreted to mean a fundamental ideological renunciation of CPC-led socialism.[436] However, Deng's underlying definitions of the terms were derived from the socialist lexicon rather than the liberal-democratic one.[437] When Deng spoke of "ensuring people's democracy by strengthening our legal system"[438], he meant 'democratic centralism 民主集中制' – collective leadership based on deliberation and consensus as opposed to "hasty decision making made by one or a few

[430] See, for instance, the 治安管理处罚条例 (Security Administration Punishment Regulations), promulgated 22 October 1957. Published in the 中华人民共和国国务院公报 (PRC State Council Paper) issue 47/1957, 4 November 1957, https://www.gov.cn/gongbao/shuju/1957/gwyb195747.pdf, archived at https://web.archive.org/web/20250311082816/https://www.gov.cn/gongbao/shuju/1957/gwyb195747.pdf; Leaders were given broadly phrased instructions and abandoned older norms once a new one gained higher priority, see Stanley Lubman (1999) *Bird in a cage: Legal reform in China after Mao,* Stanford University Press, p. 81.

[431] Stanley Lubman (1999) *Bird in a cage: Legal reform in China after Mao,* Stanford University Press, p. 74.

[432] The early years still saw the value of law-based governance, as reflected in the 1954 Constitution which emphasized a structured state order based on the law and stipulated basic rights for citizens.

[433] See for instance, Ruiping Ye (2021) Shifting meanings of fazhi and China's journey toward socialist rule of law, *International Journal of Constitutional Law* 19(5), pp. 1859-1888, p. 1862.

[434] Section 9 (44), 中共中央关于建立社会主义市场经济体制若干问题的决定 (Decision of the CPCCC on Some Issues Concerning the Establishment of the Socialist Market Economy), adopted by the Third Plenary Session of the 14th CPCCC, on 14 November 1993.

[435] Deng Xiaoping 邓小平, 各方面都要整顿 (Things Must be Put in Order in all Fields), 27 September and 4 October 1975, in 邓小平文选 – 第二卷 (Selected Works of Deng Xiaoping, volume 2), 人民出版社 (People's Press), 1994, pp. 35-37.

[436] E.g., Carlos W. H. Lo (1992) Deng Xiaoping's ideas on law: China on the threshold of a legal order, *Asian Survey* 32(7), pp. 649-665, p. 665.

[437] Which explains why he constantly rejected other notions that liberal-democratic-minded reformers raised, such as the separation of powers.

[438] Deng Xiaoping 邓小平, "解放思想，事实求是，团结一致向前看" (Emancipate the mind; Seek truth from facts and unite as one in looking to the future), 13 December 1978, in 邓小平文选 – 第二卷 (Selected Works of Deng Xiaoping, volume 2), 人民出版社 (People's Press), 1994, pp. 140-153.

individuals"[439], and unrelated to general elections and universal suffrage. The *enabling the public administration* function of administrative law is best captured in the key phrase 'governing the country by law 依法治国'. It refers to the use of law to rule, as opposed to using other instruments.[440] Cornerstones of administrative law were laid with a view to the ills that impeded the efficient functioning of the public administration in China at the advent of Reform and Opening: Over-concentration of power in just a few leaders, resulting in a lack of expertise for certain areas, lifelong tenure arrangements, 'patriarchal methods' and corruption.[441]

A rapid formalisation of the public administration began in the 1980s. Legislation was passed quickly and often in temporary formats to be constantly overhauled to keep up with the growing expertise. Experimental legislation remains a feature shaping the PRC's legislative practices to this day.[442] From coarse fundamentals, within a few decades, specialised laws developed, supported by concurrently developing technical standards under the newly formed Standardisation Administration of China.[443] Laws still are formulated in vague language. Many laws come with regulations for implementation and are followed by judicial interpretations that clarify their provisions, a style described as a pragmatic approach to legislation.[444] After a series of substantial laws were passed, the focus shifted to procedural law. Concepts from liberal-democratic countries were integrated into the new administrative legal system, though to a much lesser extent than in the civil law field.[445] Meanwhile, administrative agencies issued administrative normative documents (规范性文件, hereafter AND) and other local rules to standardise their operations. No unified terminology exists in the titles of these documents. To determine their legal nature, the reader must examine who issued them and in which context they emerged.[446] Administrative rule-making regularly inspires formal legislation.[447] The moulding of political agendas and internal Party disciplinary rules into

[439] See Deng Xiaoping 邓小平, "党和国家领导制度的改革" (On the reform of the system of Party and state leadership), 18 August 1980, in 邓小平文选 – 第二卷 (Selected works of Deng Xiaoping, volume 2), 人民出版社 (People's Press), 1994, pp. 320-343. For an expansive discussion of the relationship of law and democratic centralism in the Xi Jinping Era, see Sarah Biddulph (2018) Democratic centralism and administration in China, in Hualing Fu, Pip Nicholson and William Edmund Partlett (eds.) *Socialist law in socialist East Asia,* Cambridge University Press, pp. 195-223.

[440] In 2018, the CPCCC established a special committee for promoting 'governing the country by law 依法治国', the CCPCC for Comprehensive Law-based Governance 中央全面推进依法治国委员会.

[441] Deng Xiaoping 邓小平, "党和国家领导制度的改革" (On the reform of the system of Party and state leadership), 18 August 1980, in 邓小平文选 – 第二卷 (Selected works of Deng Xiaoping, volume 2), 人民出版社 (People's Press), 1994, pp. 320-343.

[442] Weidong Ji (2021) *Toward the rule of law in China*, Cambridge University Press, pp. 32-33; Marianne von Blomberg and Jingyi von Strasser (2023) Von Ideologie bis Normenkontrolle: Die Revision des Gesetzgebungsgesetzes der VR China, *ZChinR* 3-4, pp. 158-172.

[443] On technical standards as one form of administrative rules: *Baoying Guan: Reconstruction of the functions*, p. 17.

[444] Yuanshi Bu (2017) *Einführung in das Recht Chinas*, C.H. Beck Verlag, p. 3; and to describe PRC law more broadly, see: Xingzhong Yu (1989) Legal pragmatism in the People's Republic of China, *Columbia Journal of Chinese Law* 3(1), pp. 29-51, p. 31.

[445] Note that private law took a different path, drawing more on legal systems from liberal democratic countries. On this 'dualistic strategy' of legal reform, see: Xiaodan Zhang and Wejia Yan (2022) Forty-years of the modernization of Chinese socialist legality: Strategy, lacuna, and outlook, *German Law Journal* 23/2022, pp. 691-712.

[446] See section 4.2.2.

[447] E.g., *Baoying Guan: Reconstruction of the functions*, p. 17.

law has further accelerated due to the CPC's decision to elevate legality to one new key pillar of governance.[448] Both are increasingly enforced through different types of laws and regulations enumerated in the Legislation Law. [449]

Older means of administrative law enforcement through mass trials and campaigns were replaced by catalogues of permissible enforcement measures, which eventually solidified in the Administrative Punishment Law (APL), passed in 1996. It delimited, for the first time, a (though still non-exhaustive) catalogue of punitive measures that state agencies may take against individuals and legal persons violating laws within the agency's respective jurisdiction of regulation. The APL stipulates procedural requirements for imposing administrative punishment, such as the duty for agencies to notify the target subjects beforehand, and specifies rights of appeal. It signifies a clear departure from arbitrary enforcement and previous presuming of guilt qua affiliation, class, biography, and hearsay. The APL brought a significant paradigmatic turn from administrative action as 'free' (or only guided by political agendas) unless regulated, towards 'restricted' unless authorised by law.

Administrative enforcement work, institutionalised through the ministries and their local branches and sub-branches, was streamlined and differentiated into regulatory realms and sub-realms. Judicial decisions, administrative or civil, are enforced through designated enforcement departments within the courts 司法执行部. Problems in enforcement work, as discussed above, remain significant and are related to local protectionism, the lack of resources, and officials protecting each other (官官相护), among others.[450]

Finally, with the advent of the welfare state, administrative law's function in *enabling the public administration* has gained a new facet. In the early 2000s, the public administration in the PRC began to emphasise the provision of services and to actively shape every field of society and human life:[451] "[I]n addition to the command-and-obedience, top-down, hierarchical, and state-monopolised governance models, decentralised, planar, interactive, consultative, and cooperative governance models are emerging"[452]. The transition is described with concepts including the 'administrative

[448] Likely to compensate for the crumbling of previous main pillars such as the provision of rapid economic growth: Taisu Zhang (2023) "Xi's law-and-order strategy – The CCP's quest for a fresh source of legitimacy", Foreign Affairs, 27 February 2023, available at https://www.foreignaffairs.com/china/xis-law-and-order-strategy. For an example of the renewed focus on the rule-based order, see 习近平在中国共产党第十九次全国代表大会上的报告 (Report by Xi Jinping at the 19th National Congress of the CPC), 18 October 2017, http://cpc.people.com.cn/n1/2017/1028/c64094-29613660.html, archived at https://web.archive.org/web/20250311102419/https://cpc.people.com.cn/n1/2017/1028/c64094-29613660.html.

[449] For a particularly impactful example, consider the 监察法 Supervision Law, issued by the NPC on 20 March 2018, amended on 25 December 2024: It establishes the National Supervision Commission, a new state organ charged with countering corruption whose "mandate has clearly gone beyond legal enforcement and is extended to political discipline and loyalty." Hualing Fu (2020) Understanding the evolving relationship between the Party and the law: The case of China's National Supervision Commission, SSRN, 6 December 2020, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3743636#.

[450] See for instance, Donald C. Clarke (1995) The execution of civil judgments in China, *The China Quarterly* 141, pp. 65-81; Benjamin van Rooij (2006) *Regulating land and pollution in China*, Leiden University Press, p. 269; *Baoying Guan: Reconstruction of the functions*, p. 17.

[451] *Baoying Guan: Reconstruction of the functions*, p. 13.

[452] *Kui Shen: The theoretical foundations*, p. 50.

state 行政国家', the 'welfare state 福利国家', and the 'active state 积极国家'.[453] New types of rules, which were not formerly part of the legal lexicon, form and gain authority, a development subsumed under the concept of 'soft law': "In addition to legal provisions, 'departmental soft laws', represented by advocacy norms, guiding norms, voluntary standards, and credit assessment norms issued by market supervision departments, industry associations, and social organizations, have shown a vigorous development trend." [454] Not just state administrations, but also private organisations and non-governmental organisations take part in the formation and enforcement of these rules to the extent that they are described as "acquiring the characteristics of administrative organs".[455] This transition around the advent of soft law is described as "revolutionary and subversive" with regard to current understandings of administrative law. [456] For *enabling the public administration* function of administrative law, this implies an extension which current research has not yet found a conclusive description of.

One effort may be found in what has been described as the New Service Theory coined by Haikun Yang 杨海坤 and Baoying Guan 关保英.[457] The New Service Theory is best described as a re-invigoration of the older Service Theory (为民服务论) that emerged in the debate following Reform and Opening. It emphasized that administrative law in China should not only organize the administration and realize administrative litigation, two functions they observe administrative law to perform in other countries. Rather, by virtue of its socialist embeddedness, administrative law shall also manage "nearly every aspect of society and people's lives".[458] Baoying Guan states that "In the new historical context [New Era], perhaps active administrative law and its positive functions constitute the mainstream of administrative law's functions." [459] He proposes that against the background of recent transformations, administrative law's new mainstream functions encompass the following five: Promoting wealth accumulation, payments in the public interest (welfare), protecting the ecological civilization, promoting cultural development, and handling administrative power flexibly.[460] It is notable how these scholarly efforts to conceptualize and theorize on the rise of the welfare state and the expansion of the public administration that occurs in economically developed countries globally circle back to ideological socialist concepts associated with the planned economy.

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[453] *Kui Shen: The theoretical foundations*, p. 28.
[454] Peixin Luo 罗培新 (2020) 企业的食品安全社会责任及其法律化路径研究, 社会科学研究 (Social Science Research) 1/2020, pp. 21-27, p. 25.
[455] *Kui Shen: The theoretical foundations*, p. 28.
[456] *Kui Shen: The theoretical foundations*, p. 49.
[457] Haikun Yang 杨海坤 and Baoying Guan 关保英 (2002) 行政法服务论的逻辑结构 (The logical structure of the Service Theory in administrative law), 中国政法大学出版社 (ECUPL Press). The name New Service Theory stems from Kui Shen 沈岿 rather than the authors, who describe their work as Service Theory, leaning on the older theory that originated 1983. Because I agree with Shen that their account differs significantly from the Service Theory, I adopt Shen's suggested title New Service Theory.
[458] Songnian Ying 应松年, Weijiu Zhu 朱维究 and Yan Fang 方彦 (1983) 行政法学理论基问题初探 (Exploration of basic theoretical questions of administrative law), 中国政法大学学报 (CUPL Journal) 4/1983, pp. 78-82, p. 82.
[459] *Baoying Guan: Reconstruction of the functions*, p. 13.
[460] *Baoying Guan: Reconstruction of the functions*, pp. 14-16. He further argues that a new administrative law culture must be actively created, guided by the 'service-oriented government' as described in the 19th CPC Congress Report.

In a nutshell, administrative law enables the public administration in the modern state by channelling the will of state officials through statutory procedures of rulemaking and law enforcement as opposed to allowing them to act arbitrarily or guided by broad agendas only. Administrative law, then, is both the primary instrument of governance and one normativity through which the state self-organizes.

2.2.4. Function two: Protecting legal rights and interests

"Whether 'the Party is greater or the law is greater' is a political trap, a false proposition."

- Xi Jinping (2015)[461]

To recall, besides enabling the public administration, administrative law in the PRC further has the function to protect legal rights and interests. The *protecting legal rights and interests* function is highlighted by advocates of the Power Control Theory and as such constitutes one of the two sides of the Balane Theory. It can be broken down into two elements: (1) principles of administrative law defining lawfulness of state actions that exert impact on citizens, and (2) channels for citizens to challenge administrative decisions such as objection procedures, administrative litigation and administrative reconsideration.

It is a common assumption that law in socialist countries cannot – because by Constitution it is not superior to the administration, but part of it – restrict the executive in the pursuit of protecting citizens' rights.[462] In this view, the separation of powers, rejected in many authoritarian states including the PRC, is a necessary condition for effective judicial control of the executive branch. In the wake of the judicial reforms, Stanley Lubman pointed out what is today discussed as the dictator's (legality) dilemma:

> "by promoting the growth of the legal system, China's leadership is also stimulating a new hospitality to individual rights, which, if the legal system flourishes, might some day be asserted to challenge some of the basic notions of a Communist state."[463]

The Xi Jinping regime addressed the 'legality dilemma' by declaring the question of whether the law or the Party is superior as a false one.[464] Qua the highest law itself – the

[461] 习近平在省部级主要领导干部学习贯彻党的十八届四中全会精神全面推进依法治国专题研讨班上的讲话 (Speech of Xi Jinping at the seminar for provincial and ministerial-level leading cadres on studying and implementing the spirit of the fourth plenary session of the 18th CPCCC on comprehensively advancing the rule of law), 2 February 2015, see CPC News 中国共产党新闻网 (2015) 习近平论法治：“党大还是法大”是伪命题，是政治陷阱 (Xi Jinping on the rule of law: Whether 'the Party or the law is greater' is a political trap, a false proposition)" 11 May 2015, at http://cpc.people.com.cn/xuexi/n/2015/0511/c385475-26978527.html, archived at https://web.archive.org/web/20250610082753/https://cpc.people.com.cn/xuexi/n/2015/0511/c385475-26978527.html.

[462] See, e.g. Konrad Zweigert and Hans-Jürgen Puttfarken (1972) Possibilities of comparing analogous institutions of law in different social systems, *Acta Juridica Academiae Scientiarium Hungaricae* 15(1), pp. 107-130, p. 120.

[463] Stanley Lubman (1983) Emerging functions of formal legal institutions in China's modernization, *China Law Reporter* 2/1983, pp. 195-266, p. 259.

[464] "We must not oppose upholding the Party's leadership to the people being the masters of the country and ruling the country according to law, and we must not use the people being the masters of the country and ruling the country according to law to shake or negate the Party's leadership. Doing so is ideologically wrong and politically extremely dangerous. 习近平在中央政法工作会议上的讲话 (Xi Jinping speech at the

Constitution – law is not supreme to CPC rule. CPC officials, however, can (and must) be held accountable to the law (they must further be held accountable to Party discipline laid down in internal Party regulations and enforced through the CPC's discipline inspection apparatus[465]). According to contemporary legal ideology of the CPC, then, it is inaccurate that in China "the birth of administrative litigation is deeply rooted and underpinned by the doctrine of the separation of powers and systems of checks and balances."[466] Rather, the official language casts socialist ideology not as a trap but as the framework of judicial checks on the government. Law, therefore, is always political by the constitutional setup already. As Zeming Liu and Benjamin Liebman formulate: "It is the nature of China's political system that determines how China should construct its legal system, and China's legal system must conform to China's political reality."[467] If the law must protect citizens from harm from public authorities and simultaneously the CPC leads governance by law, the crucial question about administrative law's function in protecting legal rights and interests is: how closely does the CPC monitor and control the state? Within the limitations of its political-ideological superstructure, the field of PRC administrative law provides at least two crucial elements for protecting legal rights and interests: (1) legal principles; and (2) remedial channels.

The development of contemporary legal principles began most formally with Reform and Opening in the late 1980s. A number of legal principles from other jurisdictions were introduced and are continuously adapted to the PRC context.[468] The often-heralded mission was "putting power into cages of the system 把权力关进制度的笼子理"[469]. For its realisation, legal expertise was demanded, and a wave of legal transplants from non-socialist systems formed the first-generation administrative litigation infrastructure.[470] Mao Zedong had emphasised that cadres be revolutionary generalists rather than experts, and only after his passing, the state began funding the development of a legal profession. The concept of rights gained clearer contours, procedural requirements and principles operating in civil and common law countries, such as the proportionality principle, the

work conference of the Political-legal Affairs Commission), 7 January 2014, see CPC News 中国共产党新闻网 (2015) 习近平论法治：“党大还是法大”是伪命题，是政治陷阱 (Xi Jinping on rule of law: Whether 'the Party or the law is greater' is a political trap, a false proposition)" 11 May 2015, at http://cpc.people.com.cn/xuexi/n/2015/0511/c385475-26978527.html, archived at https://web.archive.org/web/20250610082753/https://cpc.people.com.cn/xuexi/n/2015/0511/c385475-26978527.html.

[465] The 1982 Constitution, Art. 38, subjects CPC members to the law, but also to 'administrative discipline': "Party members who violate the law and administrative discipline should be subject to administrative disciplinary action or legal action, instituted by administrative or judicial organs. Those who seriously violate criminal law should be expelled from the Party." See also, Flora Sapio (2008) Shuanggui and extralegal detention in China, *China Information* 22(1), pp. 7-38.

[466] Yuwen Li and Yun Ma (2016) Introduction: Battling in the courts: Dynamics of administrative litigation systems across jurisdictions, in: Yuwen Li (ed.) *Administrative litigation systems in greater China and Europe*, Routledge, pp. 1-12, p. 1.

[467] Zeming Liu and Benjamin Liebman (2025) Redefining law in China*, The American Journal of Comparative Law* 73(3), pp. 672–735, p. 678.

[468] *Kui Shen: The theoretical foundations*, p. 29.

[469] A common phrase that resurfaced in the SCSP legality debate, see Lin Tian 田林 (2020) 行政处罚与失信惩戒的立法方案探讨 (Discussing legislation plans for administrative punishment and disciplines for trust-breaking), 中国法律评论 (China Law Review) 5/2020, pp. 10-17, p. 11.

[470] Described as "hastily and somewhat superficially 'transplanting' concepts, principles, and even theoretical frameworks from Japan and Taiwan" by Lingyun Yu 余凌云 (2024) 行政法讲义 （第四版） (Lecture on Administrative Law (4th edition)), 清华大学出版社 (Qinghua University Press), p. 41.

prohibition of double sanctioning and due process, were adapted to PRC administrative law. These and other principles' formation and substance are further laid out in section 4.1.

The second element of the *protecting legal rights and interests* function is a structure of remedial channels available to citizens to address the undue impact they suffered from the public administration's actions. To illustrate, this section zooms in on the remedial channel of administrative litigation as an exemplary case for illustrating the *protecting legal rights and interests* function of PRC administrative law. The becoming of other remedial channels are in more detail introduced in the respective sub-section of section 4.2.

The currently prevalent Balance Theory affords an important, but limited role to administrative litigation as a function of PRC administrative law. Administrative law must balance power, control and efficiency.[471] Its coiner, Haocai Luo, argues that the idea of controlling public administration through granting citizens rights to claim in court, as prevalent in liberal-democratic systems, runs the risk of sacrificing the efficient operations of the public administration.[472] The degree to which administrative litigation functions to protect citizens' legal rights and interests is approximated in the following paragraphs.

Notably, it is in the CPC's own interest to strategically provide designated spaces for citizens to sue state agencies, checking on their exercise of power. Paths for citizens to counter administrative action are well-developed, where they, first, help foster trust in the state and its institutions, second, help uncover and restrict local officials' deviation from central-level interests and fight rent-seeking, and third, offer a means of keeping track of people's grievances by offering official channels to voice them. [473] Legal institutions to challenge authoritative acts of the state are constantly developing. However, they are not derived from liberal-democratic values with individual freedom at the centre, but the CPC's interest in developing means of caging sectoral and local state power and available where it serves this interest. [474] For instance, when policy goals shifted towards containing the COVID-19 pandemic, no administrative lawsuit against

[471] Haocai Luo 罗豪才, Shuhong Yuan 袁曙宏, and Wendong Li 李文栋 (1993) 现代行政法的理论基础——论行政机关与相对一方的权利义务平衡 (The theoretical foundation of contemporary administrative law –On the balance of rights and obligations between administrative organs and the opposing party), 中国法学 (Chinese Legal Science) 1/1993, pp. 52-59, p. 52.

[472] This criticism is commonly raised to counter reformers' arguments, see Mingzhi Fan 范明志 (2018) 西方"司法独立"为什么在中国走不通 (Why the West's 'judicial independence' does not work in China), 求实网 (QS Theory), 15 January 2018, http://www.qstheory.cn/dukan/qs/2018-01/15/c_1122241714.htm, archived at https://web.archive.org/web/20250610094055/http://www.qstheory.cn/dukan/qs/2018-01/15/c_1122241714.htm.

[473] Tianhao Chen, Wei Xu and Xiaohong Yu (2024) Administrative litigation in China: Assessing the chief officials' appearance system, *The China Quarterly* 259, pp. 744-764; Björn Ahl (2015) *Justizreformen in China*, Band 4: Studien zu Recht und Rechtskultur Chinas, Nomos, p. 31; Chun-Chih Chang and Chien-Min Chao (2022) Can Xi Jinping stop the bureaucrats from seeking rents via legislation? In Shiping Hua (ed.) *Chinese legality – Ideology, law and institutions,* Routledge, pp. 131-143, p. 132.

[474] Björn Ahl (2015) *Justizreformen in China*, Band 4: Studien zu Recht und Rechtskultur Chinas, Nomos, p. 67; Tom Ginsburg (2008) Administrative law and the judicial control of agents in authoritarian regimes, in: Tom Gisburg and Tamir Moustafa (eds.) *Rule by law. The Politics of courts in authoritarian regimes,* pp. 58-72.

pandemic prevention measures taken by authorities was accepted by courts.[475] The selective provision of rights and channels to claim them has been termed "authoritarian legality"[476].

Today's system of administrative litigation only materialised when the catchphrase 'revolutionary legality', throughout which law and courts were fully put in the name of class struggle, ceased to operate in the wake of reforms.[477] It drew on Republican Era predecessors such as the *Pingzhengyuan* 平政院 of the Kuomintang regime, which handled cases brought against officials,[478] as well as the Soviet system, which had operated in the early years of the PRC and on Western countries' systems. The Administrative Litigation Law (ALL) was passed in 1989[479] and lays out procedures for citizens to sue state agencies (not Party agencies) for administrative acts that infringe upon their property or personal 人身 rights. As more substantive laws containing rights were passed throughout the 1990s, courts actively expanded their jurisdiction, which in turn inspired legislative amendments.[480] Today's ALL renders all infringements by administrative agencies upon legal rights and interests with few exceptions actionable (Art. 12(12)). One particularly important subject of administrative litigation was compensation claims for relocation and demolition of housing arising from rapid urban development.

The number of first-instance administrative litigation cases filed and accepted (收案) increased from 87,919 in 2003 to 108,398 in 2008, to 123,194 in 2013, to 256,656 in 2018, and 298,711 in 2023.[481] The number of filings accepted is rising in concordance with a low

[475] Xin He (2014) *The judicial system of China,* Oxford University Press, p. 214.
[476] E.g., Weitseng Chen and Hualing Fu (2020) Authoritarian legality in Asia: Formation, development and transition, in: Weitseng Chen and Hualing Fu (eds.) *Authoritarian legality in Asia*, pp. i – ii, Cambridge University Press.
[477] Yuwen Li and Yun Ma (2016) The hurdle is high: The administrative litigation system in the People's Republic of China, in: Yuwen Li (ed.) *Administrative litigation systems in greater China and Europe*, Routledge, pp. 15-40, p. 17; Stanley Lubman (1999) *Bird in a cage: Legal reform in China after Mao,* Stanford University Press, p. 74.
[478] Then, the 临时约法 (Provisional Constitution) of the Republic of China of March 1912 provided in Art. 10 that citizens are entitled to bring a lawsuit to the *Pingzhengyuan* against the actions of officials that violate their rights. See, e.g., Yizhi Hu 胡译之 (2025) 开启行政诉讼 – 全样本下的平政院立案史 (Initiating administrative litigation – The history of case filing in the Pingzhengyuan), 中外法学 (Peking University Law Journal) 37(3), pp. 585-604.
[479] 行政诉讼法, issued by the NPC in 1989, last amended in 2017. CPC Secretary Ziyang Zhao 赵紫阳 called for the creation of administrative law in his report to the Party Congress in October 1987, and Xi Jinping's father Xi Zhongxun 习仲勋 promoted the enactment of the ALL. The latest draft amendment, published in 2022, was officially withdrawn 21 August 2023. See, e.g., Jerome A. Cohen (2023) "Xi Jinping revered his father. So why isn't he more like him?" Washington Post, 20 June 2023, https://www.washingtonpost.com/opinions/2023/06/13/xi-jinping-father-china-fathers-day; Susan Finder (1989) Like throwing an egg against a stone – Administrative litigation in the People's Republic of China, *Journal of Chinese Law* 3(1), pp. 1-28.
[480] For instance, court decisions have inspired changes in the age restrictions for taking the national civil servant examination. See also Shijun Fei 费世军 (2011) 关于我国公务员考试录用年龄限制的思考 (Thoughts on China's civil servant examination enrolment age limit), 邵阳学院学报（社会科学版）(Journal of Shaoyang University (Social Science Edition) 10(1), pp. 27-30.
[481] Statistics from the National Bureau of Statistics website 国家数据, retrieved 9 March 2025, https://data.stats.gov.cn/easyquery.htm?cn=C01, https://web.archive.org/web/20250610131214/https://data.stats.gov.cn/easyquery.htm?cn=C01. The increase is likely due to the passing of laws on an increasing number of social and economic matters: Björn Ahl (2015) *Justizreformen in China*, Band 4: Studien zu Recht und Rechtskultur Chinas, Nomos, p. 53.

probability of courts accepting filings, indicating that many more are filed. The rates of winning administrative lawsuits against government agencies peaked at 30% in 2004, and since then continuously dropped. Tellingly, statistics on the outcomes of lawsuits were no longer published after 2016. A report in 2014 read: "Awkward status quo: The winning rate of citizens suing officials has dropped to 10%"[482]. In 2016, the last year the numbers were published, only 0.44% (994/225,485) of accepted administrative litigation cases resulted in the court upholding the claim of the plaintiff (typically, the non-state party). Of the decisions published, the proportion of administrative lawsuits against state agencies that were won rose from 2016 to 2024,[483] in the light of the increasingly selective publication of judgments however this picture, based on disclosed decisions, is hardly representative.

Local and sectoral protectionism of officials significantly weakens the courts' position.[484] Central-level reforms improved the situation only to a limited extent. For instance, an experiment to allocate disputes to courts of jurisdictions outside of the locality for which the state agency in question is responsible has reportedly increased winning rates in Henan.[485] Another reform, requiring the heads of state departments to appear in person for the proceedings (行政机关负责人出庭应诉制度), showed mixed results.[486] The 2014 amendment of the ALL added enforcement measures that target the person in charge of the defending administrative agency, including shaming measures (Art. 66) and shifted court financing to the provincial level, strengthening courts' position vis-à-vis administrative agencies.

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[482] Yuwen Zhang 张渝文 (2014) "中国民告官案原告胜诉率从10年前30%降至10%以下" (The winning rate of citizens suing officials in China has dropped from 30% to under 10% in the last 10 years), Renminwang, 5 November 2014, http://politics.people.com.cn/n/2014/1105/c1001-25976290.html, archived at https://web.archive.org/web/20250307215715/https://politics.people.com.cn/n/2014/1105/c1001-25976290.html. See also Caixin Global (2023) "Editorial: Anticipating a renewed push for 'citizens suing officials'", 28 August 2023, https://www.caixinglobal.com/2023-08-28/editorial-anticipating-a-renewed-push-for-citizens-suing-officials-102097551.html, archived at https://web.archive.org/web/20250307212301/https://www.caixinglobal.com/2023-08-28/editorial-anticipating-a-renewed-push-for-citizens-suing-officials-102097551.html.

[483] Yuxia Zhang and John Zhuang Liu (2025) The rise of the Chinese judiciary and its limits: Administrative litigation in the reform period, *The China Quarterly* 262, pp. 330-351, p. 331

[484] The sector-by-sector structure of the public administration in China makes the implementation of administrative litigation difficult, Murray Scot Tanner argues: "Given the strong historical orientation toward separate sector-by-sector administration in China, the prospect of making policy through a law which purports to universal applicability creates special fears amongst ministry bureaucrats. With tenacious defensiveness, many ministries bargain to block the adoption of any law or clause which might give other units a pretext for encroaching on their powers, resources or policy 'turf.'" Murray Scot Tanner (1995) How a bill becomes a law in China, *The China Quarterly* 141, pp. 39-64, p. 54.
Arguing that bureaucrats feared the ALL precisely because of that reason: It potentially grants courts and other outsiders the authority to intervene in in-house ministerial activities: Pitman Potter (2019) The Administrative Litigation Law of the PRC: Judicial review and bureaucratic reform, in: Pitman Potter and Stanley Lubman (eds.) *Domestic law reforms in post-Mao China*, Routledge, pp. 270-304.

[485] Zhixiong Lü 吕志雄 (2015) "民告官异地管辖让权力不任性 排除干预方公正" (The jurisdiction of the people suing officials in different places makes power less arbitrary and eliminates interference to ensure justice), 央广网 (CNR), 5 May 2015, https://hn.cnr.cn/hngbxwzx/20150505/t20150505_518457529.shtml, archived at https://web.archive.org/web/20250311133931/https://hn.cnr.cn/hngbxwzx/20150505/t20150505_518457529.shtml.

[486] Tianhao Chen, Wei Xu and Xiaohong Yu (2024) Administrative litigation in China: Assessing the chief officials' appearance system, *The China Quarterly* 259, pp. 744-764.

The improvements are to be seen in their political context as laid out above: Guaranteeing rights is a means to the end of "upholding the functionality of the administrative branch"[487]. The Constitution positions courts of law within the administration, rather than as an independent power. Courts are not to be independent, but embedded in various ways.[488] Judicial independence is not intended.[489] In September 1979, the general practice of the CPC cell of a court formally approving every judgment was abolished. However, courts' decision-making continues to be impacted through the CPC cells, and is reviewed by the local People's Congresses.[490] Court structures and work rules for judges imply that decisions are to be based on the law but that judges should also take into account views of the Party as well as the public opinion.[491] To some extent, administrative litigation serves to resolve the ideological contradiction between the state serving the people, but the people opposing certain acts of the state, by firmly taking the Party leadership out of the equation: only actions of state organs, not Party organs, can be subject to litigation. The Party's righteousness cannot be questioned, instead, 'undisciplined' officials are put on the line. Chances for litigants are best if they can prove that the officials' being out of line with CPC ideology caused the conflict.[492]

While the legal framework for administrative litigation is improved, simultaneously, a wider push is underway to cut down the number of lawsuits brought to court and re-

[487] Art. 1, ALL as interpreted by Weidong Ji (2021) *Toward the rule of law in China*, Cambridge University Press, p. 147. See, also Jianfu Chen (2016) Chinese law: Context and transformation, Brill Niejhoff, p. 288; Conita S.C. Leung (1992) Conceptual and Constitutional bases for Chinese administrative law, *Bulletin of the Australian Society of Legal Philosophy* 17, pp. 174-198, p. 176.

[488] Identifying four types of embeddedness, administrative embeddedness, political embeddedness, social embeddedness and economic embeddedness: Kwai Hang Ng and Xin He (2017) *Embedded courts: Judicial decision-making in China*, Cambridge University Press.

[489] Weidong Ji (2021) *Toward the rule of law in China*, Cambridge University Press, p. 138; Shen Kui (2008) Commentary on 'China's courts: Restricted reform', *The China Quarterly* 8, pp. 85-89.

[490] Ling Li (2016) The Chinese Communist Party and People's Courts: Judicial dependence in China, *The American Journal of Comparative Law* 64(1), pp. 37-74.

[491] Judges are to 'unify the three effects 三个效果相统一', meaning political, legal and social effects of judicial decisions. See for instance judge Zhengming Li 李征明 (2025) "在司法办案中实现'三个效果'有机统一" (Realize the organic unification of the 'three effects' in handling judicial cases), 法治日报 (Legal Daily), 20 February 2025, available at http://www.legaldaily.com.cn/xjpfzsx/content/content_9133224.html, archived at https://web.archive.org/web/20250312142018/http://www.legaldaily.com.cn/xjpfzsx/content/content_9133224.html. Especially after the unrests in the early 2000s and the subsequent focus on stability maintenance of the authorities, policies of 'mass line justice', '大调解' and 'active judiciary' and the Justice Department's 2009 open call for lawyers to uphold the correct political standing: Qingxin Cui 崔清新 (2009) 司法部：切实做好律师代理敏感案件和群体性事件的指导工作 (Ministry of Justice: Effectively guide lawyers in handling sensitive cases and mass incidents), Sina News, 7 August 2009, https://news.sina.com.cn/o/2009-08-07/083016083200s.shtml, archived at https://web.archive.org/web/20090812132721/https://news.sina.com.cn/o/2009-08-07/083016083200s.shtml. More than half of the judges surveyed report that they take sentiments of local government authorities into account when adjudicating: Lihong Lin 林莉红 and Guotao Song 宋国涛 (2013) 中国行政审判法官的知与行–《行政诉讼法》实施状况调查报告·法官卷 (The knowledge and practice of administrative judges in China – report on the state of the implementation of Administrative Litigation Law), 行政法学研究 (Administrative Law Review) 2/2013, pp. 49–62. On the processes of political oversight of judges' work, see Ling Li (2019) Political-legal order and the curious double character of China's courts, *Asian Journal of Law and Society* 6(1), pp. 19-39.

[492] See also Kevin J. O'Brien and Lianjiang Li (1995) The politics of lodging complaints in rural China, *The China Quarterly* 143, pp. 756-783, p. 781.

allocate disputes to other channels.[493] Following Xi Jinping's motto that China is never to become a 'big litigation country', and that it rather is to follow the Mao-Era Fengqiao Experience model of mass justice,[494] plaintiffs are regularly redirected to mediation[495] and the CPC-managed petitioning system.[496]

In sum, PRC administrative law provides means for the protection of legal rights and interests from state interference within the limitations of the CPC's political agenda. The *protecting legal rights and interests* function is not centred on the liberal notion individual freedom. The administrative litigation system's "primary goal is to boost governance by exerting greater control over local agencies." [497] Constitutionally, competences to oversee government are vested solely with the NPC and its Standing Committee, leaving the judiciary the part of a special executive branch of the state.[498] The constitutional top imperative is to uphold 'Party leadership'. This brought about what has been called 'pure' legality, a form of legality stripped of the substantive and normative components that would bring it closer to mainstream understandings of "the rule of law"[499]. SPC judge Baojian Geng's 耿宝建 described courts in China as follows: "China's judicial organs, to a certain extent, are not 'courts' in the sense of traditional law textbooks, but rather 'departments' to resolve legal disputes under the leadership of Party and government"[500]. The *protecting legal rights and interests* function of PRC administrative law serves the political agenda of controlling local and departmental governance.

[493] For most recent developments, see Zeming Liu and Benjamin Liebman (2025) Redefining law in China, *The American Journal of Comparative Law* 73(3), pp. 672–735.

[494] Fengqiao Township of Zhejiang Province was in 1964 elevated to a national model by the Mao Zedong regime for conducting class struggle correctly, specifically, mobilizing the masses to transform class enemies into "socialist new humans". 中共中央关于依靠群众力量，加强人民民主专政，把绝大多数四类分子改造成新人的指示 (Directive Of The CPCCC On Relying On The Power Of The Masses, Strengthening The People's Democratic Dictatorship, And Transforming the Overwhelming Majority Of The Four Categories of People Into New People), 14 January 1964.

[495] Mostly, within courts, see Xin He (2014) *The judicial system of China,* Oxford University Press, p. 205. In addition, localities implement the directives by creating presentable fora for dispute resolution beyond courts staffed with retired local Party cadres and other residents as mediators. When rejecting claims, courts can refer plaintiffs to such institutions. They carry different titles, often reminiscent of courts of law, such as 'shared courts 共享法庭'. Fieldwork document 057.

[496] E.g., Qiang Fang (2009) Hot potatoes: Chinese complaint systems from early times to the late Qing (1898), *The Journal of Asian Studies* 68(4), pp. 1105-1135.

[497] Xin He (2014) *The judicial system of China,* Oxford University Press, p. 215.

[498] According to Björn Ahl, this rids the SPC of one of the most powerful instruments for expanding its sphere of power vis-à-vis other state organs. Björn Ahl (2015) *Justizreformen in China*, Nomos: Baden-Baden, p. 37.

[499] Yiqin Fu, Yiqing Xu and Taisu Zhang (2023) Does legality produce political legitimacy? An experimental approach, Working Paper, Stanford King Center for Global Development, https://kingcenter.stanford.edu/sites/g/files/sbiybj16611/files/media/file/wp2008_0.pdf.

[500] SPC Judge Baojian Geng 耿宝建 (2016) "泛司法化"下的行政纠纷解决——兼谈《行政复议法》的修改路径 (Administrative dispute resolution under 'over-judicialization': Discussing the amendment path of the ARL) , 中国法律评论 (China Law Review) 3/2016, pp. 229-237, p. 229

Chapter 3: The SCSP and *enabling the public administration*

This Chapter analyses the impact of the SCSP on the *enabling the public administration* function of administrative law in the PRC. To recall, this function serves to make the public administration capable and is best understood as a departure from programmatic rule by individuals and through temporary campaigns during the Mao Zedong era. As laid out above, the *enabling the public administration* function may be broken down into, firstly, the stipulation and making transparent of substantive rules and procedures by which state agents act (making "law for people to follow"[501]). Secondly, the *enabling the public administration* function entails the enforcement of these rules. The following sections 3.1. and 3.2. address how the SCSP impacts these two elements, respectively.

3.1. Making "law for people to follow" or blurring law?

The SCSP, a trustworthiness-centred normativity itself, profoundly shapes legal norm-setting in China. It pushes the boundaries of what law is, develops legal principles, and potentially pulls extra-legal governance practices into clear legal frameworks. First, this section observes the SCSP's normativity, hereafter referred to as 'social credit norms', with regard to their clarity and relationship to norms of law. Secondly, it turns to the notable impact the SCSP has had on the development of legislation and legal principles, shedding light on two exemplary cases: The development of personal data protection law, and the development of the prohibition of improper connection principle of administrative law. Thirdly, I discuss in how far the SCSP impacts the transparency of previously undisclosed normative regimes in China, zooming in specifically on the old personnel dossier (Dang'an 档案) system and the secret blacklists for repetitive petitioners.

3.1.1. Social credit norms: Clear and transparent rules?

"'What are the SCS's criteria?' is the most frequent question we get when it comes to social credit. Lately, we saw some regulators produce social credit assessments based on information other than just compliance records."

– lawyer from Suzhou (SuZ02)

Administrative agencies use SCSP mechanisms to sanction and reward 'trust-breaking 失信' and 'trust-keeping 守信' behaviour, forming a normativity around 'trust' within administrative law. The many norms that constitute 'trust-breaking' and 'trust-keeping' across the various SCSP schemes are hereafter termed 'social credit norms'. For instance, if an employer withholds wages from migrant workers, triggering mass incidents[502], he is to be entered into a blacklist and sanctioned through the SCSP mechanism of joint agency disciplining (JAD, section 3.2.3.).[503] Social credit norm-setting

[501] Deng Xiaoping, see section 2.2.2., contextualized in: Carlos W. H. Lo (1992) Deng Xiaoping's ideas on law: China on the threshold of a legal order, *Asian Survey* 32(7), pp. 649-665, p. 654.

[502] '群体性事件': A euphemism used in laws and regulations referring to strikes and protests.

[503] E.g., Art. 5(2), 拖欠农民工工资失信联合惩戒对象名单管理暂行办法 (Interim Measures for the Management of the List of Joint Disciplining of Trust-breaking for Subjects who Withhold Migrant Workers Wages), issued by the Ministry for Human Resources and Social Security on 10 November 2021,

implicates the PRC administrative law's function of stipulating and making transparent rules by which the public administration acts. Are social credit norms as new, sanctionable norms in the administrative legal framework clear and transparent and thereby strengthen administrative law or are they blurry and opaque, weakening administrative law?

3.1.1.1. Social credit norm disclosure in public credit information catalogues

Even though central authorities call to "ensure that credit building has law to rely on and rules to follow"[504], there is no law or central-level policy document that stipulates the entirety of social credit norms as such. However, social credit norms are directly reflected in what is collected as social credit information, and social credit information is increasingly well-delimited. Policy documents and local legislation define two categories of social credit information items: The first, public credit information 公共信用信息 (PCI), is information gathered by state agencies throughout the exercise of their duty.[505] In addition, social credit information encompasses market credit information 市场信用信息 (MCI), information gathered by private actors.[506] The latter is only of secondary relevance for functions of administrative law and is thus backgrounded in this investigation.

PCI consists of records of regulatory agencies' engagement with SCSP subjects throughout the routine inspection, supervision and licensing work prescribed in relevant regulatory laws. It is thus not newly gathered information. A selection of such records is labelled PCI by local state agencies in charge of SCSP building, mostly the Development and Reform Commissions (DRCs) and their designated SCSP building leading small groups 领导小组 (here referred to as social credit agencies). Specifically, these agencies choose from the records those types they deem relevant to a subject's trustworthiness and list them in *PCI catalogues* 公共信用信息目录, thereby 'inventing' the category of social credit information.[507] The PCI catalogues may be regarded as normative

https://www.gov.cn/gongbao/content/2022/content_5672667.htm, archived at https://web.archive.org/web/20250617124814/https://www.gov.cn/gongbao/content/2022/content_5672667.htm.

[504] National PCI Centre 国家公共信用信息中心 (2023) 建设符合高水平社会主义市场经济体制的社会信用体系建设法 (Building an SCS Building Law that conforms with the high-standard socialist market economy), Website of the NDRC, 15 March, https://www.ndrc.gov.cn/wsdwhfz/202303/t20230315_1350980_ext.html, archived at https://web.archive.org/web/20250603090923/https://www.ndrc.gov.cn/wsdwhfz/202303/t20230315_1350980_ext.html.

[505] So described in local social credit legislation and central policies, see for instance: 国家发展改革委 中国人民银行关于印发《全国公共信用信息基础目录（2024年版）》和《全国失信惩戒措施基础清单（2024年版）》的通知 (Notice Of The NDRC And The PBoC On Issuing The 'National Catalogue Of Public Credit Information' And The 'National Basic List Of Disciplinary Measures For Trust-breaking'), 8 February 2024, available from https://www.gov.cn/zhengce/zhengceku/202403/content_6935680.htm, archived at https://web.archive.org/web/20241211202924/https://www.gov.cn/zhengce/zhengceku/202403/content_6935680.htm.

[506] See, for instance, Art. 9, 江西省社会信用条例 (Jiangxi Provincial Social Credit Regulations), passed by the Standing Committee of the Jiangxi People's Congress, 19 November 2021.

[507] *Ruixue Wang: The contemporary picture*, p. 450; Chenchen Zhang (2020) Governing (through) trustworthiness: technologies of power and subjectification in China's social credit system, *Critical Asian Studies* 52(4), pp. 565-588, p. 574. Arguing that there is no equivalent of PCI in other legal systems: Doudou Jiang 蒋都都 and Zhiyong Tang 唐志勇 (2022) 社会信用立法定位的多维透视及其立法模式选择———以《社会信用法》的草拟问题为核心展开 (A multidimensional perspective on the legislative positioning of

frameworks of the social credit mode of governance. They lay down which local state agency contributes what types of records to the social credit files of SCSP subjects.[508] Following Hangzhou's example,[509] they are generally disclosed.

The scope of PCI varies locally but generally includes records of administrative punishments, administrative licenses, or official rewards that legal and natural persons have received, and their basic registration information. For instance, the agency for traffic and transportation contributes records of persons speeding, the bureau for civic matters contributes information about marriage and divorce registrations,[510] and the local finance regulator contributes records of 'warning talks 约谈' held with financial institutions that acted in violation of laws.[511] The catalogues generally categorize information into 'basic information', including registration number, address, founding date and legal representatives; "trust-keeping information 守信信息, including awards received, honorary titles and subsidies granted; and negative information 不良信息, including administrative punishments and specific violations of laws such as "not indicating when exiting the highway"[512]. Negative social credit information consists largely of breaches of previously existing legal norms. Per inclusion in the new PCI category, they are simply elevated to social credit norms by respective SCSP policies.

That said, aligned with the long-standing tradition of experimental policy making in China,[513] localities and departments have, under the roof of the broad core notion of 'trust', designated social credit norms as they saw fit. Many PCI catalogues, instead of indicating specific original information items, refer to vague, locally invented social credit categories. For instance, Zhejiang Province's PCI catalogue indicates that the Human Resources and Social Security Bureau contributes "Labour Security Sincerity Ranking Information 劳动保障诚信等级信息"[514]. What legal norms and respective deviations

social credit and the choice of the legislative model—focusing on the drafting issues of the Social Credit Law), 法治社会 (Law-based Society) 6/2022, pp. 86-99, p. 94.

[508] Stipulated in local social credit regulations as well as Art. 65, *SCS Building Law draft*.

[509] Yidan Liu 刘一丹 (2015) 2015 中国城市商业信用环境指数（CEI）蓝皮书 (2015 China municipal commercial credit environment index blue book), China Commercial Credit Environment Indicator Keti Group 中国商业信用环境指数课题组, 北京燕山出版社 (Beijing Yanshan Press), 2015蓝皮书.ps, archived at https://web.archive.org/web/20250611183531/http://www.chinacei.org/2015%E8%93%9D%E7%9A%AE%E4%B9%A6%EF%BC%88%E4%B8%AD%E5%9B%BD%E5%9F%8E%E5%B8%82%E5%95%86%E4%B8%9A%E4%BF%A1%E7%94%A8%E7%8E%AF%E5%A2%83%E6%8C%87%E6%95%B0%EF%BC%89.pdf, p. 206.

[510] An exemplary form the Shanghai Civil Affairs Bureau uses for reporting trust-breaking behaviour in marriage registration may be found in the annex to the 关于将婚姻信息失信行为纳入信用管理的通知 (Notice on Including Marriage Information Trust-Breaking Behaviours In Credit Management), issued by the Shanghai Civil Affairs Bureau, the Shanghai Credit Reporting Office and the Shanghai Economy and Informatization Commission on 16 December 2016.

[511] 淮北市市级公共信用信息目录（2020 年版）(Huaibei Municipal PCI Catalogue (2020 Version)), issued by the 淮北市社会信用体系建设工作领导小组办公室 (Office of the Huaibei City SCS Building Work Small Leading Group) on 8 July 2020, hereafter: Huaibei PCI Catalogue, on file with the author.

[512] Huaibei PCI Catalogue, p. 20.

[513] Which has widely been observed for the SCSP, too, see Wen-Hsuan Tsai, Hsin-Hsien Wang and Ruihua Lin (2021) Hobbling big brother: Top-Level design and local discretion in China's Social Credit System, *China Journal* 86, pp.1-20.

[514] 浙江省公共信用信息目录（2023年版） (Zhejiang Provincial PCI Catalogue (2023 Version)), issued by the Zhejiang Province DRC on 4 February 2024, https://fzggw.zj.gov.cn/art/2024/2/6/art_1229629046_5263765.html, archived at https://web.archive.org/web/20250403171450/https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fzjjcmspublic.oss-cn-hangzhou-zwynet-d01-

exactly this category speaks to is only understandable by tracing down the relevant specific measures the agency applies. It is typically not indicated in the PCI catalogue. Local PCI catalogues vary strongly in terms of what information they include and how specific that information and the source is described.[515]

The diverse landscape of social credit norms in PCI catalogues underwent a major round of standardization when the NDRC and the PBoC in 2021 firstly issued a National PCI Basic Catalogue 全国公共信用信息基础目录 (hereafter National PCI Catalogue), which was henceforth updated regularly.[516] The National PCI Catalogue explicitly restricts the scope of what all state agencies nationwide may designate social credit information and collect in respective files to eleven categories.[517] Most significantly, the document limits PCI collection to behaviours stipulated in laws, regulations, as well as, interestingly, documents jointly issued by the CPCCC and the State Council:

> "This catalogue standardizes and defines the scope of inclusion of PCI. Unless otherwise provided by laws, regulations or policy documents of the CPCCC or the State Council, public management agencies shall not include information beyond what is contained in this catalogue in credit records. Information collected by public management agencies outside the scope listed in this catalogue in accordance with the need to perform their duties shall not be used as PCI."[518]

The National PCI Catalogue calls local governments to rescind these PCI catalogues and respective information collection and designation that surpasses the categories listed in the National PCI Catalogue. It thereby limits the thriving local experiments which had by 2020 seen a wide range of behaviours being designated social credit information, including "attracting investments", "causing trouble when petitioning"[519], and "visiting one's parents often"[520]. Since its issuance, local and sectoral departments in charge of

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a.internet.cloud.zj.gov.cn%2Fjcms_files%2Fjcms1%2Fweb3185%2Fsite%2Fattach%2F0%2Fd388eb237d9c4bdbbf6e908cc7bb6ddd.xlsxandwdOrigin=BROWSELINK.

[515] For a comparatively detailed example, see Shanghai's draft PCI catalogue of 2025: https://credit.fgw.sh.gov.cn/cmsres/08/0838e57a3ccb4967b1b5927cb048d732/367182dba52ac5c774e46852d30a30dd.pdf, archived at: https://web.archive.org/web/20251210123016/https://credit.fgw.sh.gov.cn/sjdt/20250210/7c2ce08d2aa0403e9544f6d3e632eb02.html.

[516] First version: 国家发展改革委 中国人民银行关于印发《全国公共信用信息基础目录（2021年版）》和《全国失信惩戒措施基础清单（2021年版）》的通知 (Notice Of The NDRC And The PBoC On The Issuance Of The 'National Basic Catalogue Of PCI' And The 'National Basic List Of Disciplinary Measures For Trust-breaking'), 1 January 2022. The Publication of the catalogue was predated by an announcement of the NDRC calling to curb the "generalisation and expansion of determining trust-breaking behaviour and entering it into credit files": Xinhua (2019) "国家发改委：防止失信行为认定和记入信用记录泛化、扩大化 (NDRC: Prevent the generalization and expansion of trust-breaking behaviour designation and credit file entries)", 16 August 2019, available at https://www.gov.cn/xinwen/2019-08/16/content_5421760.htm, archived at https://web.archive.org/web/20250416153942/https://www.gov.cn/xinwen/2019-08/16/content_5421760.htm.

[517] For a breakdown of the *National PCI Catalogue*, see Jeremy Daum (2022) "Social credit 2022: Public credit information catalogues", 27 September 2022, China Law Translate, https://www.chinalawtranslate.com/en/social-credit-2022-public-credit-information-catalogs/.

[518] Point 2, *National PCI Catalogue*.

[519] *Wang and Pan: Not going back home often*.

[520] Jianguo Mao 毛建国 (2016) "信用惩戒能否让子女"常回家看看"？(Can credit disciplines make sons and daughters come back home more often?)", Beijing Youth Daily 北京青年报, 8 April 2016, https://epaper.ynet.com/html/2016-04/08/content_191320.htm?div=-1, archived at https://web.archive.org/web/20160426224053/https://epaper.ynet.com/html/2016-04/08/content_191320.htm?div=-1.

SCS building have overhauled their own catalogues.[521] The move to standardize PCI collection to the information items listed in the National PCI Catalogue appeased the pushback that arose against seemingly arbitrary social credit norm setting,[522] critique over inflationary use of the SCSP as a "master key"[523], a "big basket"[524] or a "panacea"[525] that can be applied to all issues, and opposition from the financial credit sector[526] and its watchdog, the PBoC.[527]

The new National PCI Catalogue significantly enhanced the clarity over what may and what must not be collected in social credit files.[528] However, its issuance in practice has consequences towards the opposite. Sub-provincial level governments rescinded or took down their own respective PCI catalogues. Instead, they disclose the respective province-level version (local legislation only requires provincial-level PCI catalogues to be disclosed[529]). The province-level PCI catalogues are much less specific than PCI catalogues at the lower levels of governance. PCI is gathered largely by grassroots-level regulators. Province-level PCI catalogues largely include broad categories rather than specific information items. For instance, Zhejiang's provincial PCI catalogue stipulates

[521] For instance, the 2019 version of Pucheng City's PCI catalogue 普城市公共信用信息目录（2019版）(on file with the author) did not include information on the basis for the information collected, and the 2024 version includes a column detailing the "basis for inclusion 纳入依据", listing the relevant policies and laws: 晋城市市级公共信用信息目录（2024年版）
https://xxgk.jcgov.gov.cn/jcsrmzf/zc/bmgfxwj_42751/bmgfwj/202501/t20250116_2088354.shtml, archived at
https://web.archive.org/web/20250416102039/https://xxgk.jcgov.gov.cn/jcsrmzf/zc/bmgfxwj_42751/bmgfwj/202501/t20250116_2088354.shtml.

[522] For instance, in Suining: Marianne von Blomberg (2019) The Social Credit System and China's rule of law, in: Oliver Everling (ed.) *Social credit rating*, Springer Gabler, pp. 111-137, p. 124.

[523] Honghong Hu 胡弘弘 and Yufei Liu 刘宇飞 (2020) "公共场所不戴口罩算失信？社会信用制度要防滥用 (Does not wearing a mask in public places count as trust-breaking? The social credit system must prevent abuse)", Xinhua, 22 March, https://www.sohu.com/a/382192694_267106, archived at https://web.archive.org/web/20250423164241/https://www.sohu.com/a/382192694_267106.

[524] *Wang and Pan: Not going back home often*.

[525] Jianguo Mao 毛建国 (2016) "信用惩戒能否让子女"常回家看看"？(Can credit disciplines make sons and daughters come back home more often?)", Beijing Youth Daily 北京青年报, 8 April 2016, https://epaper.ynet.com/html/2016-04/08/content_191320.htm?div=-1, archived at https://web.archive.org/web/20160426224053/https://epaper.ynet.com/html/2016-04/08/content_191320.htm?div=-1.

[526] Weigang Fu 傅蔚冈 (2016) "征信"扩大化，或变身"道德档案"" (Expanding 'credit reporting' may turn it into 'moral archives'), 华夏时报 (China Times), 21 April 2016, https://www.chinatimes.net.cn/article/55512.html, archived at https://web.archive.org/web/20250506143201/https://www.chinatimes.net.cn/article/55512.html, 傅蔚冈 is the Executive Director of Shanghai Institute for Finance and Law (上海金融与法律研究院执行院长).

[527] Lu Wang 汪路 (2021) ""侮辱字句进个人征信报告"的反思" (Reflecting on 'entering insulting into credit reports'), Caixin, 4 June 2021, available at https://opinion.caixin.com/2021-06-04/101722889.html. See also his other opinion pieces of the series "反华信用十日谈1-10".

[528] Notably, some residential neighbourhood and village SCSP pilot projects developed decoupled from the PCI databases and thus beyond the scope of the *National PCI Catalogue*'s reach. These projects, typically nudging individuals and households to engage in trustworthy behaviour with rewards, gather information in files separate from the social credit files. Their records are not linked to the SCSP subject's social credit identifier. They sometimes draw on public social credit information records but do not themselves inform them, further, they are largely voluntary and do not impose disciplinary measures. See section 3.2.5.

[529] See, e.g., Art. 12, 浙江省公共信用信息管理条例 (Zhejiang Province Public Credit Information Management Regulations), passed by the Standing Committee of the Zhejiang People's Congress on 30 September 2017; and Art. 15, 山西省社会信用条例 (Shandong Province Social Credit Regulations), passed by the Standing Committee of the Shandong Provincial People's Congress on 27 May 2022.

"Information from the List of Environmental Serious Trust-breaking 生态环境严重失信单信息" collected by the environmental protection regulator of Zhejiang Province.[530] Such categorical information items require the reader to consult the specific rules behind the List to understand the behaviours that here violate social credit norms.

Concerns over breaching rules are one reason for many local state agencies to take down their PCI catalogues, as explained by one official of a local culture and tourism regulatory agency: It is hard for him to assess whether their own PCI catalogues are always in line with central-level guidelines. Besides the National PCI catalogue, the sectoral department in charge – in the case of the interlocutor, the Ministry of Culture and Tourism – has its own, internal guidelines for PCI collection.[531]

When local agencies take their PCI catalogues offline for worries of being held accountable for mistakes, however, this does not mean that such catalogues are no longer drafted and used by the agencies. As a result, the decline in publicly available PCI catalogues means a loss of clarity over social credit norms that are de facto in operation. The uncertainty over what behaviour is relevant to social credit norms used by regulatory agencies has led many companies to reach out to law firms and consultancies for advice on compliance. In 2025, Luping Zhang 张鲁萍 summarizes the situation as follows:

> "Although the central and local governments have attempted to clarify PCI through legislation and the compilation of catalogues, in practice, it is not uncommon to see an overly generalized understanding of PCI."[532]

3.1.1.2. Social credit norms are flexibly adjusted

The National PCI Catalogue restricts local variation in PCI contents but retains flexibility for local regulators to adapt the scope of PCI to national policy priorities. During the Covid-19 pandemic, several localities designated new social credit norms they deemed useful to counter the spread of the virus. For instance, concealing an infection with Covid-19, "spreading rumours about pandemic prevention measures" and selling medical equipment at inflationary prices were in Lanzhou as early as February 2020 designated trust-breaking behaviours to be entered into one's social credit file. Likewise, for going to Hubei (the first epicentre of the pandemic) to support pandemic prevention, donating medical supplies, waiving tenants' rents and other behaviours one could expect a positive social credit information entry in one's file.[533]

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[530] Which requires a consulting of the respective underlying rules and assessment criteria of the said list for serious 'trust-breaking' in the field.

[531] SQ08.

[532] Luping Zhang 张鲁萍 (2025) 信用监管异议制度的法治建构 (The legal structure of the objection mechanism in credit supervision), 征信 (Credit Reference) 6/2025, pp. 11-21, p. 12, hereafter: *Luping Zhang: Objection mechanism*.

[533] For instance: 关于进一步加强信用管理工作积极防空新冠肺炎疫情的若干措施 (On Some Measures to Further Strengthen Credit Management Work to Actively Prevent the Pandemic), issued by the Office of the Lanzhou Municipal SCS Building Leading Small Group on 20 February 2020. For a comprehensive treatment of the SCSP's use in Covid-19 prevention, see Adam Knight and Rogier Creemers (2021) Going viral: The Social Credit System and COVID-19, SSRN, 20 January 2021, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3770208; and Alexander Chipman Koty (2020) "China's Social Credit System: COVID-19 triggers some exemptions, obligations for businesses", China Briefing, 26 March 2020, https://www.china-briefing.com/news/chinas-social-credit-system-covid-19-triggers-some-exemptions-obligations-businesses/, archived at

Similarly, as garbage separation campaigns kicked off nationwide, relevant regulations were brought into the SCSP's orbit of power: Breaches of garbage separation rules would entail a recording in one's social credit file, apart from just the regular administrative fine.[534] The relevant garbage separation rules as so many other legal norms were thus by virtue of their integration in PCI catalogues elevated from just *rules of law*, to *rules of trust,* becoming part of the trust-centred normativity equipped with SCSP enforcement mechanisms.

It was widely claimed that "social credit had become such an all-encompassing concept that it could mean whatever one wanted it to"[535]. Up until the National PCI Catalogue entered into force in 2021, this observation is to some extent accurate. Afterwards however, even the adjustments of social credit norms according to policy agendas largely adhered to the principle that norms must not surpass what is stipulated in the law. Relevant provisions are overwhelmingly formulated in a manner centring around the violation of law rather than just the behaviour: "Air environment law violations of pollutant discharging units shall be included in the credit information platform."[536] Similarly, only as for-profit tutoring services for high school students were formally banned in 2021, the Ministry of Education announced that it would enter violations into the social credit files of non-compliant institutions and social credit blacklists of respective institutions soon were circulated by regulators.[537] Social credit norms can be adjusted rapidly to serve pressing policy priorities, but only within the scope of rules that have already found entry into legal regulations of some sort. Clarity of the norms is thereby given by virtue of law being transparent, and SCSP subjects can in theory be assured that norms beyond those codified in law do not become part of the SCSP normativity.

3.1.1.3. Social credit norms blur in assessment production

Clarity of social credit norms fades where state agencies produce credibility assessments (社会信用评价 or 公共信用评价, see also section 3.2.4). Credibility assessments are a grade, rating, score or other indicator of an SCSP subject's social credit status based on PCI and MCI. They are yet a small but rapidly expanding part of the SCSP and concern first and foremost legal persons rather than individuals.[538] In some

https://web.archive.org/web/20241208160346/https://www.china-briefing.com/news/chinas-social-credit-system-covid-19-triggers-some-exemptions-obligations-businesses/.

[534] Art. 72, 杭州市生活垃圾管理条例 (Hangzhou City Domestic Waste Management Regulations), passed by the Standing Committee of the Hangzhou Municipal People's Congress on 26 June 2015.

[535] Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 137.

[536] Art 18(3), 包头市大气污染防治条例 (2024修订) (Baotou City Air Pollution Prevention and Control Regulations (Revised in 2024)), passed by the Standing Committee of the Baotou Municipal People's Congress on 28 November 2024.

[537] Qiaojia Fan and Wei Han (2023) "China plugs in national platform for after-school tutoring", Caixin Global, 28 July 2023, https://www.caixinglobal.com/2023-07-28/china-plugs-in-national-platform-for-after-school-tutoring-102086601.html, archived at https://web.archive.org/web/20230728021943/https://www.caixinglobal.com/2023-07-28/china-plugs-in-national-platform-for-after-school-tutoring-102086601.html; For an example blacklist publication, see The Paper 澎湃新闻 (2024) "最新！校外培训"黑白名单"公布！ (Breaking! The off-campus training 'white and blacklist' is published!)", 20 July 2024, https://www.thepaper.cn/newsDetail_forward_28141184, archived at https://web.archive.org/web/20251021141413/https://www.thepaper.cn/newsDetail_forward_28141184.

[538] First elevated to top priority by the State Council in 2019, *State Council Opinion on CBR*; The SAMR took a leading role: 职场监管总局关于加强重点领域信用监管的实施意见 (Opinions of the SAMR On The

areas however, social credit agencies have begun to create credibility assessments from PCI records of individuals, social organizations, public institutions, and local governments.[539] Local regulators across all realms, especially departments in charge of transportation and construction, likewise began experimenting with creating credibility assessments for their respective regulatory subjects.

Two characteristics of credibility assessments impede the clarity of social credit norms: First, how assessments are calculated cannot always be traced. In the original SCSP setup, positive PCI and negative PCI coexist in social credit files and/or on red lists and blacklists and do not cancel each other out. However, where assessments are produced, 'trust-breaking' and 'trust-keeping' behaviour records are weighed up against each other. For instance, according to credibility assessment rules in Zhejiang, individuals can make up for points deducted due to having evaded taxes by engaging in volunteering work.[540] An SCSP subject who has engaged in both behaviours could receive the same assessment as one that has engaged in neither behaviour. Whatever form the credibility assessment result takes, credibility assessments simplify information contained in social credit files and thus veil the background and contexts of the actual behaviour.

Some agencies have disclosed the formulas they apply for the assessments, offering insights into what information they are based on and how much each information item weighs.[541] Several stipulate at the outset that their respective credibility assessments shall adhere to the principle of openness and transparency 公开透明, among others.[542]

Implementation Of Strengthening Credibility-Based Regulation In Key Sectors), issued 19 May 2021. On the use of credibility assessments: Section 3.2.4.

[539] Kendra Schaefer (2020) China's Social Credit System: Context, competition, technology and geopolitics, Trivium China, 4 December 2020, available at https://www.uscc.gov/sites/default/files/2020-12/Chinas_Corporate_Social_Credit_System.pdf; Lauren Yu-Hsin Lin and Curtis Milhaupt (2021) China's corporate Social Credit System and the dawn of surveillance state capitalism, *The China Quarterly* 256, pp. 835–853, p. 842.

[540] 浙江省五类主体公共信用评价指引（2020版）(Zhejiang Province Public Credit Assessment Guideline For Five Subjects (2020 Version)), issued by the Zhejiang Province DRC on 4 August 2020, available at https://www.hzxh.gov.cn/art/2021/4/10/art_1229400_59007175.html, archived at https://web.archive.org/web/20250416143813/https://www.hzxh.gov.cn/art/2021/4/10/art_1229400_59007175.html.

[541] Complex seeming formulas that might as well be broken down to simple sums are detailed in relevant documents, such as in the Implementing Opinions on Credibility Assessments of Registered Constructors in Zhejiang Province:

$$\sum \frac{Di \times Gi}{250} \times 20 \text{ 或} \sum \frac{Hi \times Gi}{2000} \times 20$$

The maximum score of 60 points is composed of a fixed score of 40 points given upon provision of complete and truthful registration information and a flexible score of 20 points which is calculated based on Di or Hi (number of days, or hours, the subject worked at a project site, respectively), Gi (coefficient of the position held, such as technical leader, safety management leader,...). In this case, negative or positive PCI items are not involved, neither are any other behavioural records. 浙江省住房和城乡建设厅关于印发《浙江省注册建造师信用评价的实施意见》的通知 (Notice of the Zhejiang Province Housing and Urban and Rural Construction Office on Issuing the 'Zhejiang Province Opinions on the Implementation of The Credit Assessment of Registered Constructors') , issued 1 January 2024.

[542] Art. 3, 北京市交通委员会关于印发《北京市交通运输行业信用评价及分级分类监管工作管理办法(试行)》的通知 (Notice Of The Beijing Traffic Commission On Issuing The 'Beijing City Trial Measures On Credibility Assessments And Classified Regulation Work In The Traffic And Transportation Sector'), issued 26 May 2021, geo-blocked, on file with the author, hereafter: *Beijing Trial Measures On CBR In Traffic And Transportation*.

For instance, companies carrying out road construction in Zhejiang will see a drop by two ranks for a period of six months if they are found responsible for a safety incident that lead to the death of two people.[543]

The large number of credibility assessment results available throughout social credit platforms and official websites of regulatory agencies however indicate that many more procedures for assessment calculations are at work than are published across China. Further, as a project in progress, the assessment rules are amended at a quick pace, with some being revoked only a year after they took effect. Qua design already, credibility assessment norm setters should "dynamically manage the credibility assessment indicators of social credit subjects"[544]. This experimental environment, at least for the time being, undermines the clarity of social credit norms.

A promising development with regard to social credit norm clarity is the shift of relevant procedure setting processes from regulatory agencies to technical standardization fora. Standardization bodies in China host technical committees specializing in social credit-related rule-making and bring together experts, corporate representatives, researchers and other societal actors besides officials to lay down technical specifications for making credibility assessments.[545] The emerging standards documents, "DBs 地方标准" if drafted locally, and "GBs 国家标准" if drafted by the national SCS Technical Committee TC470 全国社会信用标准化技术委员会, are publicly available in principle.[546] The publicity of standards is not subject to any one state agency's discretion.[547]

Even when social credit agencies and regulators actively disclose social credit norms they set, the technique of credibility assessments itself inhibits clarity because it requires more or less complex automated technological applications. Operations of such applications is described as a 'technology black box' in algorithmic public regulation scholarship: Once assessments are produced, even the designers of the relevant software may not be able to trace back how exactly it came to be.[548] Credibility assessments are no exception.

Several credibility assessments are not yet the result of complex calculations, according to currently published procedures. Rather, even behind complex looking formulas stand

[543] 浙江省交通运输厅关于印发《浙江省交通建设工程从业主体信用评价管理细则》(试行)的通知 (Notice Of The Zhejiang Provincial Department Of Transportation On Issuing The 'Detailed Rules For The Management Of Credit Evaluation Of Practitioners In Zhejiang Provincial Transportation Construction Projects (Trial Implementation)'), issued 30 April 2024.
[544] Representative of several: Art. 12, 厦门市人民政府关于印发社会信用评价机制和分级分类管理办法的通知 (Notice of the Xiamen Municipal Government in Issuing the Social Credit Assessment Mechanism and Classified Regulation Management Measures), issued 7 June 2023.
[545] See, for instance, DB33/T 1331–2023 公共信用评价规范 (Public credit evaluation specification [official transl]), published 5 November 2023 by the Zhejiang Administration for Market Regulation, retrievable through https://std.samr.gov.cn/.
[546] 全国标准信息公开服务平台 (National public service platform for standards information), https://std.samr.gov.cn/.
[547] Art. 17, 标准化法 (Standardization Law), passed by the NPC Standing Committee on 29 December 1988, last amended 4 November 2017.
[548] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 178, unintended bugs in the software further can impede clarity: p. 213; Han-Wei Liu, Ching-Fu Lin and Yu-Jie Chen (2019) Beyond State v Loomis: Artificial intelligence, government algorithmization and accountability, *International Journal of Law and Information Technology* 27(2), pp. 122-141, p. 135.

simple sums of values each of which are assigned different weights.[549] So far, elementary addition and multiplication skills suffice to understand their creation. In other cases however, credibility assessments are produced in the form of profiles and highly complex. Tian Tan 谈天 et al. describe one such case from Jiangsu Province:

> "In the credit profiling function, the industry management department, based on the content requirements of the precise profiling of legal persons and individuals, obtains information on the basic attributes, social attributes, credit characteristics and value attributes of market entities from relevant industries, extracts and refines, comprehensively evaluates and calculates the performance ability, credit history, behavioural preferences, and relationship network of market entities, finds out the characteristics, rules and connections, and uses graphics and other means to clearly and effectively convey information. Then, through the continuous updating of data and the continuous adjustment of dimensions, the 'credit profiling' becomes more accurate and three-dimensional."[550]

Complicating the clarity of social credit norms as manifested in credibility assessments further, assessment software is by state agencies regularly outsourced to private firms. It thereby falls under the protection of commercial secrets. Anja Geller writes: "By their conscious decision to use protected software for social scoring, states have brought about the lack of transparency in the first place."[551] Currently, private firms' software used in credibility assessment production does not underly uniform rules to document and disclose relevant principles and decisions made in the process of translating social credit norms into code. Respective contracts made between state agencies and, often local, firms come in various shapes and it hinges on the particular relationship between the two parties whether the regulator or the firm has the dominant position in designing the software.

The second characteristic of credibility assessments which render them a factor impeding the clarity of social credit norms is that they include information items from beyond PCI catalogues (recall the case of credit profiles in Jiangsu cited above). In consequence, the limitations on information collection that the National PCI Catalogue imposed on PCI catalogues nationwide, as described above, do not necessarily reign in social credit norms used in credibility assessment production. Policies as well as technical standards detailing credibility assessment creation, instead of referring to existing PCI catalogues, stipulate other information items themselves such as reputation in local media[552], professional ethics,[553] and costumer reviews.[554] None of these

[549] See footnote 534.

[550] Tian Tan 谈天, Xin Li 李鑫 and Hexiang Zhong 钟鹤翔 (2022) 信息化视角下江苏省行业信用监管机制研究 (Research on the Jiangsu Province sectoral CBR mechanism from the perspective of informatization), 信息系统工程 (China CIO News) 11/2022. pp. 152-160, p. 155.

[551] *Anja Geller: Social Scoring*, p. 55.

[552] See for instance, GB/T 36312-2018 电子商务第三方平台企业信用评价规范 (Credit-rating specification for third-party platform enterprise of electronic commerce [official trans]), published 7 June 2018, available at https://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=AAFBEF945F0EF9658E09A001BE17AC43. Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243.

[553] GB/T 37927-2019.

[554] GB/T 36312-2018 and GB/Z 41465-2022. At the local levels, see, for instance a group standard by the Wenzhou Domestic Service Association 温州市家庭服务业协会: T/WZJX 0001—2023 家政服务机构信用等级评价规范, published 6 February 2023, https://www.ttbz.org.cn/StandardManage/Detail/76797/, archived at https://web.archive.org/web/20250603081732/https://www.ttbz.org.cn/StandardManage/Detail/76797/;

information items have the basis "laws, regulations or policy documents of the CPCCC or the State Council" that the National PCI Catalogue prescribes for PCI (see above). Even though the information items that inform credibility assessments are themselves clearly laid out in standards, the fact that they contradict the relatively closed PCI definition causes confusion about the bottom lines of social credit norms. Latest Opinions on SCS building by the State Council and the CPCCC appear to back the trend to include more than just PCI, as they call to "raise the level of sharing commercial contract information, industrial chain information, and transaction information" in the section on improving the National Credit Information Sharing Platform (the NDRC-run locus of all social credit files [555]). [556] In addition, in the process of coding credibility assessment software, programmers, intentionally or not, embed their own norms and values in the application.[557]

In conclusion, local diversity and ambiguity in social credit norms prevalent in the beginning has been reduced through the 2020 reform lead by the NDRC and PBoC. However, new sources of ambiguity evolve not only as unintended consequences of reforms, but from SCSP innovations put forward by the central government, too, like credibility assessments. Where credibility assessments are produced, it will hinge crucially on the return to strict catalogued management 目录管理 whether social credit norms will be clear. Most recently, the State Council issued the Government Data Sharing Regulations which highlight catalogued management as the key regulatory mode for all kinds of government data being shared among departments,[558] which would include PCI. As non-PCI records increasingly inform credibility assessments, however, the publication of respective MCI catalogues clarifying which market-sourced data is used will be necessary to maintain social credit norm clarity.

In Guangzhou, DB4401/T 110.1-2021 家政服务信用等级评价规范, published 14 May 2021, https://dbba.sacinfo.org.cn/stdDetail/833225568d7f5586103eb258cd523b07be923033a0e028202ba44c05c65abbc5, archived at https://web.archive.org/web/20250603083104/https://dbba.sacinfo.org.cn/stdDetail/833225568d7f5586103eb258cd523b07be923033a0e028202ba44c05c65abbc5, publication of results of these assessments are published by the Guangzhou Municipal Commerce Bureau 广州市商务局 at https://sw.gz.gov.cn/xxgk/tzgg/ywgs/content/post_10287131.html, archived at https://web.archive.org/web/20250603082349/https://sw.gz.gov.cn/xxgk/tzgg/ywgs/content/post_10287131.html; In Hangzhou, DB3301/T 0399—2023 家政服务机构信用评价规范, published 27 March 2023, https://dbba.sacinfo.org.cn/stdDetail/858ba4976721a685ff3c322b49660b151cc9ce4ab0427ab87b3c1aacf267eccb, archived at https://web.archive.org/web/20250603084009/https://dbba.sacinfo.org.cn/stdDetail/858ba4976721a685ff3c322b49660b151cc9ce4ab0427ab87b3c1aacf267eccb.

For an explanation, see Zhengyang Sui 岁正阳 (2024) ""信用+家政"，让找"好阿姨"不再难 ("Credit + housekeeping" makes finding a 'good auntie' no longer difficult)", 澎湃 (The Paper), 13 May 2024, https://www.thepaper.cn/newsDetail_forward_27359141, archived at https://web.archive.org/web/20250507152550/https://www.thepaper.cn/newsDetail_forward_27359141.

[555] By the SPC described as "the "general hub" for the collection and sharing of public credit information, [where the SPC] shares the list of trust-breaking judgment defaulters with all departments and local credit platforms connected to the platform." 最高人民法院对十三届全国人大四次会议第 5927 号建议的答复 (SPC Reply to Suggestion No. 5927 of the Fourth Session of the 13th NPC), issued 5 July 2021.

[556] 中共中央办公厅 国务院办公厅关于健全社会信用体系的意见 (Opinions Of The CPCCC General Office And The State Council General Office On Completing The SCS), issued on 21 March 2025.

[557] Danielle Keats Citron (2008) Technological due process, *Washington University Law Review* 85(6), pp. 1249-1314, p. 1254.

[558] 政务数据共享条例 (Government Data Sharing Regulations), issued by the State Council on 28 May 2025.

3.1.2. SCSP development: Driving legal development?

"Third and finally, the SCS can be understood as a project of the legalization of, or, better put, legalization around, the projects of information aggregation and regulatory enforcement."

- Larry Catá Backer (2024) [559]

SCSP practices challenge administrative law frameworks revolving around data, thereby driving relevant debates and developments.[560] Local SCSP-related legislation[561] is at the forefront of putting SCSP practices on legal tracks and has in that course developed legislative principles and norms that henceforth became part of national law beyond the field of social credit. Below, two instances of SCSP-inspired legal development are traced: The case of personal data protection, and the case of the prohibition of improper connection principle in administrative law.

3.1.2.1. Personal information protection law

In so far as the SCSP subjects are individuals, personal data is at the heart of the SCSP. SCSP policies like no other contemporary political project in China brought to the fore the question of how to regulate state agencies' and private companies' handling of personal information.[562] It relies on massive collection and processing of information on SCSP subjects, including information on individuals that fulfils the legal definition of personal information as "any type of information that identifies or can identify natural persons recorded electronically or by other means, but does not include anonymized information."[563] First legislation responding to local SCSP initiatives from provincial and municipal people's congresses and governments has pioneered several data protection principles that later entered into the Personal Information Protection Law (PIPL), the Cybersecurity Law and other national laws. [564] The SCSP regulation's personal

[559] Larry Catá Backer (2024) Social credit "in" or "as" the cage of regulation of socialist legality, *China Review* 24(3), pp. 71-106, p. 88.

[560] Referring to the SCSP as a "project of legalization", see: Larry Catá Backer (2024) Social credit "in" or "as" the cage of regulation of socialist legality, *China Review* 24(3), pp. 71-106, p. 88.

[561] For a rather comprehensive list and official categorization of local SCSP legislation, see the National PCI Centre 国家公共信用信息中心 (2023) 建设符合高水平社会主义市场经济体制的社会信用体系建设法 (Building an SCS Building Law that conforms with the high-standard socialist market economy), Website of the NDRC, 15 March, https://www.ndrc.gov.cn/wsdwhfz/202303/t20230315_1350980_ext.html, archived at https://web.archive.org/web/20250603090923/https://www.ndrc.gov.cn/wsdwhfz/202303/t20230315_1350980_ext.html.

[562] As Cunzhi Wang, advisor to the PBoC and former director of the Credit Reporting Management Bureau pointed out "in the processes of economic digitalization and credit digitalization, data migration, data flow and data protection are both interrelated and contradicting each other." Xinhua: "2023 中国信用4.16高峰论坛暨2023大公国际年度论坛举办 (The China Credit 4.16 Summit Forum and the 2023 Dagong International Annual Forum held)", 14 December 2023, http://www.xinhuanet.com/money/20231214/58033bb712d24ef09e9e766d1bfebf65/c.html archived at https://web.archive.org/web/20250224163023/http://www.xinhuanet.com/money/20231214/58033bb712d24ef09e9e766d1bfebf65/c.html.

[563] Art. 4, 中华人民共和国个人信息保护法 (Personal Information Protection Law of the People's Republic of China), passed by the NPC Standing Committee on 20 August 2021. Translation by China Law Translate (Jeremy Daum), https://www.chinalawtranslate.com/en/Personal-Information-Protection-Law/ "个人信息是以电子或者其他方式记录的与已识别或者可识别的自然人有关的各种信息，不包括匿名化处理后的信息。"

[564] 中华人民共和国个人信息保护法 (Personal Information Protection Law of the People's Republic of China), passed by the NPC Standing Committee on 20 August 2021, http://www.npc.gov.cn/npc/c30834/202108/a8c4e3672c74491a80b53a172bb753fe.shtml.

information protection clauses became an important reference point for disputes about personal data protection unrelated to the SCSP itself, such as the use of facial recognition by real estate companies, as they provided clearest language on the limits of personal information handling.[565]

SCSP policies emerged at a time when data protection law rose to a central legislative question. Two expert drafts for a PIPL had already been published in 2003 but were subsequently shelved.[566] Piecemeal initiatives that concerned some economic actors only included provisions issued by the MIIT in 2011 regarding internet information service providers.[567] Then, in support of the Cybersecurity Law passed in 2016, the first national-level personal data protection rules were issued in 2017 in the form of a technical standard. Even though not formal law, the technical standard nevertheless was widely invoked in court[568] and discussed by the legal community.[569] In 2016, the Standing Committee of the NPC promulgated the Cybersecurity Law which not only first defines "personal information" but also includes five provisions on the rights natural persons have concerning their data (Art. 40-44). In November 2021, the PIPL was passed.

[565] For instance, Guangmingwang (2020) "杜绝滥用！多地下线违规人脸识别系统个人信息保护我们还需要做些啥? (Stop abuse! Many illegal facial recognition systems are offline. What else to we need to do to protect personal information?)", 3 December 2020, https://m.gmw.cn/2020-12/03/content_1301898342.htm, archived at https://web.archive.org/web/20240308183852/https://m.gmw.cn/2020-12/03/content_1301898342.htm.

[566] See for instance: Hanhua Zhou 周汉华 (2006) 中华人民共和国个人信息保护法及立法研究报告 (Research report on the PRC Personal Information Protection Law and legislation), 法律出版社 (Law Press China).

[567] 规范互联网信息服务市场秩序若干规定 (Some Provisions to Standardize Internet Information Service Market Order), issued by the Ministry of Industry and Information Technology on 29 December 2011, alongside its supporting standard detailing the rules, 信息安全技术 公共及商用服务信息系统个人信息保护指南 (Information Security Technology: Guidelines for Personal Information Protection in Public and Commercial Service Information Systems), GB/Z 28828-2012, issued by the TC260 on 5 November 2012.

[568] See, e.g. Changyang Tujiazu Autonomous County People's Court 湖北省长阳土家族自治县人民法院, （2018）鄂0528刑初52号 (first instance criminal judgement no. 52), decided on 14 September 2018; Guangxi Zhuang Ethnicity Autonomous District Liuzhou City Middle People's Court 广西壮族自治区柳州市中级人民法院,（2023）桂02民终1260号 (second instance civil judgment no. 1260), decided 29 June 2023.

[569] 信息安全技术 公共及商用服务信息系统个人信息保护指南 (Information Security Technology – Guidelines for the Protection of Personal Information in Public and Commercial Service Information Systems), issued 5 November 2012, issued by the State Administration of Quality Supervision, Inspection and Quarantine and the National Standardization Administration (国家质量监督检验检疫总局、国家标准化管理委员会), https://tisi.org/1674.

Figure 2: Appearance of PIPL clauses in early SCSP-related local legislation[570]

	Informed consent-based information collection	**Principles limiting information collection**	**Prohibited information items**	**Duty for information handler to correct disputed personal credit information**	**Penalties for data handler's violations**
On private actors handling personal credit information (financial credit)					
2001 Shenzhen City Personal Credit Reporting and Credit Scoring Management Measures	Needed for all information, exception: lawfully disclosed personal credit information (Art. 7)	Objectivity and fairness; Information integrity; Not selectively collect (Art. 10)	None, instead: a positive list of information that may be collected ("information collection is limited to…") (Art. 8)	Duty to correct and reply to objections within 10 days (Art. 16); If the handler cannot verify/falsify disputed information, it must add the complainant's objection to the file (Art. 17(1)); Duty to pause issuance of credit reports during time of objection (Art. 17(2))	Notice of criticism 通报批评; Administrative punishment; Criminal liability for person in charge (Art. 23)
2003 Shanghai City Personal Credit Reporting Management Trial Measures	Needed for all information with listed exceptions (Art. 7)	Independence; Objectivity and impartiality; Respect personal privacy; Safeguard the legitimate rights and interests of the persons (Art. 5)	Information irrelevant to personal credit; Ethnicity, race, family background, religion, political belief, medical record, "and other info that may lead to discriminatory treatment" (Art. 8)	Duty to correct (Art. 21) and settle objections within 30 days (Art. 23); If the handler cannot verify/falsify the disputed information, it must indicate the individuals' objection and corresponding reasons (Art. 21(2))	Warning; Fine 1000-30,000 RMB (Art. 29-30); Criminal liability; Civil liability (Art. 32)
On state agencies handling personal credit information					
2011 Shaanxi Province Public Credit Information Regulations	Written consent necessary for: personal income, deposits, tax amounts, securities, real estate (Art. 19)	Legality; Objectivity; Fairness; Timeliness; Respect state secrets and commercial secrets; Protect personal privacy 隐私 (Art. 4)	PCI handlers must not collect information on religious belief, genes, fingerprints, blood type, medical history (Art. 19)	Duty to correct credit files and settle objections within 5 days (Art. 34); If the disputed information was provided by another agency, it must contact the other agency for verification (Art. 34); Duty to pause disclosure of credit information during time of objection (Art. 35)	Notice of criticism 通报批评 (Art. 36); Administrative punishment for the officials in charge (Art. 39); Criminal liability (Art. 39)
2015 Shanghai City Public Credit Information Gathering and Use Management Measures	Information is collected directly from other administrative agencies, no consent requirement (Art. 9-13)	Legality; Security; Timeliness; Accuracy; Protecting information subjects' legal rights and interests; Respect state secrets and commercial secrets (Art. 3)	Must not collect information on religious belief, genes, fingerprints, blood type, medical history (Art. 14)	Duty to correct credit files and settle objections within 5 days (Art. 29); Duty to delete positive information upon request of the person (Art. 27); Duty to mark disputed credit information during time of objection and after if it was rejected and the individual upholds the objection (Art. 30)	Warning; Administrative punishment for official in charge; Civil liability; Criminal liability

[570] Including local normative documents 地方规范性文件.

A selection of key principles of the PIPL that had first surfaced in SCSP-related local legislation is shown in the table above. They include, first, rules on financial credit reporting (the upper two rows of the table above), and second, rules on the state-driven personal credit information system (the lower two rows).

First, efforts to build a financial credit reporting system (SCSP root one, section 2.1.1.) require rules on handling and protecting personal information. Unsurprisingly, then, it was in the context of building a legal framework for the new financial credit reporting industry that the first personal data protection rules appeared in PRC law. In 2001 and 2003, early credit reporting pilots were launched in the designated pilot cities for economic reform policies Shenzhen and Shanghai. Both cities soon issued rules regarding the collection of personal credit information. They stipulate a series of duties for personal information handlers and procedures for subjects to take control of their own files[571] and were soon followed by similar norms in other localities.[572]

Most fundamentally, the Shenzhen and Shanghai rules laid the groundwork for the strict confidentiality of personal credit information. Institutions were allowed to disclose files only upon request of the subjects.[573] As described in the table above, several other of the PIPL's core pillars already showed in the Shanghai and Shenzhen rules. For instance, the Shenzhen City Personal Credit Reporting and Credit Scoring Management Measures of 2001 introduce the notion of consent-based information collection.[574] Shanghai's Draft Management Measures on Personal Credit Information Collection likewise stipulate that as a general rule, the credit information collecting agency must obtain consent from the individual concerned, with a finite list of exceptions listed. These include financial records regarding loans, information that is public already, and records that administrative agencies and judicial institutions hold about a person. They stipulate general principles that information handlers must abide by: A credit information collecting institution, the Shanghai rules read, "shall abide by the principle of independence, objectivity and impartiality, respect personal privacy and safeguard the legitimate rights and interests of the persons whose credit information is collected [...]" (Art. 5). They lay out information items that must not be collected, including ethnicity, religious belief, political party affiliation,[575] blood type and medical history, as well as

[571] 深圳市个人信用征信及信用评级管理办法 (Administrative Measures of Shenzhen Municipality on Individual Credit Information Collecting and Credit Rank Evaluating), issued by the Mayor Youjun Yu 于幼军 on 18 December 2001; 上海市个人信用征信管理试行办法 (The Administrative Measures of Shanghai Municipality on Personal Credit Information Collecting (for Trial Implementation)), expired, passed 22 December 2003 by the Shanghai Municipal People's Government, Mayor Zheng Han 韩正.

[572] For instance in Changsha, 长沙市信用征信管理办法（试行） (Changsha City Trial Measures on Credit and Credit Reporting Management), issued 10 June 2005; and Kunming 昆明市个人信用信息征集使用管理暂行办法 (Kunming City Temporary Measures on Personal Credit Information Collection and Use), issued 19 November 2009.

[573] Except when creditors demand the repayment of debt (Art. 14 in Shenzhen and Art. 15 in Shanghai), likely referring to unfulfilled court orders.

[574] Art. 7, 深圳市个人信用征信及信用评级管理办法 Administrative Measures of Shenzhen Municipality on Individual Credit Information Collecting and Credit Rank Evaluating, issued by the Mayor Youjun Yu 于幼军 on 18 December 2001 (and still officially effective).

[575] This item in Shanghai is 政治信仰 (Art. 8) and is no longer included in the list of items not to be collected.

other information that might lead to discriminatory treatment in credit reporting. Crucially, these early sets of norms on personal information protection include duties for information handlers to objections brought by the individuals concerned and, if they can verify a complaint, correct the file, or, if they cannot verify the complaint, mark the information as disputed in the file. Several data accuracy requirements are first stipulated.[576]

Several of the rules found entry into the Regulations on the Administration of the Credit Investigation Industry (RACII) that were promulgated by the State Council in 2012[577] and are a pioneer in central-level law on personal information protection.[578]

The focus of the early local rules on personal credit information lies on information collection rather than its processing, for instance into assessments, which is a key pillar of personal data protection regimes today. However, in the early 2000s, the internet and related technologies had barely spread in China,[579] means of processing information into assessments were extremely limited. Against that background, the rules of the early 2000s regarding personal credit information were already comparatively sophisticated, even without more elaborate rules on processing data into reports and scores.

Rules binding *private actors* in collecting and processing personal information have subsequently become part of several laws and departmental regulations. The SCSP has further become an arena for developing personal information protection vis-à-vis *state actors*. The success of most SCSP initiatives relies crucially on a free flow of accurate data between state agencies, bringing the question of how state actors are restricted when handling personal information to the fore. Consider the following three SCSP mechanisms:

- The NDRC builds a social credit information database (National Credit Information Sharing Platform 全国信用信息共享平台) with social credit files for all SCSP subjects, including individuals (sections 3.2.1. and 3.2.2.).
- To facilitate the 'joint agency disciplining of trust-breaking' (JAD, section 3.2.3.), administrative agencies and courts share compliance records among each other and publish blacklists of trust-breakers.

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[576] Duty for personal credit information collecting institutions to update the records in time and not fabricate or distort (Art. 10), as well as ensure that records are matched to the right persons (Art. 11): Shanghai Municipality on Personal Credit Information Collecting (for Trial Implementation)), expired, passed 22 December 2003 by the Shanghai Municipal People's Government, Mayor Zheng Han 韩正.

[577] 征信业管理条例 (Credit Reporting Industry Management Regulations), issued by the State Council 26 December 2012.

[578] Lu Yu and Björn Ahl (2021) China's evolving data protection law and the financial credit information system: court practice and suggestions for legislative reform, *Hong Kong Law Journal* 51, pp. 287-308. Other early laws containing stipulations on personal information protection that liken the early local SCSP-related rules were the 电信和互联网用户个人信息保护规定 (Regulations on the Protection of Personal Information of Telecommunications and Internet Users), issued by the Ministry of Industry and Information Technology on 16 July 2013; Art. 29, 消费者权益保护法 (Consumer Protection Law), issued 31 October 1993, last amended 25 October 2013; Art. 253, 刑法 (Criminal Law), issued 6 July 1979, last amended 29 December 2023.

[579] 第47次中国互联网格发展状况统计报告 (The 47th China Statistical Report on Internet Development), issued by the CAC on February 2021, https://www.cac.gov.cn/2021-02/03/c_1613923423079314.htm, archived at https://web.archive.org/web/20250603114431/https://www.cac.gov.cn/2021-02/03/c_1613923423079314.htm.

- Municipal governments' sincerity scores for individuals draw together and process into scores behavioural records from multiple municipal administrative agencies (section 3.2.5.).

The wide implementation of these and other SCSP mechanisms foregrounded the need for protecting personal information not only within the industry, but also within state agencies.[580] First rules emerged in Shaanxi Province, Shanghai (see table above), and Hubei. The rules are significantly weaker than those regulating the financial credit industry. For instance, consent is not required or only to a limited extent. The focus lies on data security[581] and achieving data accuracy, which are means to facilitate a good functioning of the public administration more than just means to empower the individual's informational self-determination.[582] Within this frame however, objection procedures and respective liabilities for public officials are clearly spelled out and a list of information items that must not be collected is included.

With the PIPL regime not having found a clear stance yet over when it applies to state agencies[583] and other respective laws absent,[584] these local SCSP rules are one first step. They have developed first restrictions on state agencies' data handling, and in particular, procedures through which the data subject can re-assert control over their files. Crucially, scholars refer to the extensive personal information protection framework applying to private credit information processors to advance arguments to better protect personal social credit information processed by state agencies. Intentionally or not, such contributions use the parallel in language between market-sourced financial credit

[580] Calling for better personal information protection for SCSP subjects, see for instance Luping Zhang 张鲁萍 (2020) 行政黑名单的法律性质及规制研究 (Research on the legal nature of administrative blacklists and their regulation), 河南财经政法大学学报 (Journal of Henan University of Economics and Law) 2/2020, pp. 20-29, p. 27, hereafter: *Luping Zhang: Administrative blacklists*.

[581] Data security is for instance highlighted in the recent 中共中央办公厅 国务院办公厅关于健全社会信用体系的意见 (Opinions Of The CPCCC General Office And The State Council General Office On Completing The SCS), issued on 21 March 2025. In fact, apart from spurring data protection legislation, the SCSP also significantly spurs data security rules and structures, especially as the national database is being expanded. As one official of the Ministry of Public Security stated: "If there are data leaks, it will not only cause huge economic losses but also hurt the governments' reputation," in: Yuzhe Zhang and Wei Han (2019) "In depth: China's burgeoning Social Credit System stirs controversy", Caixin Global, 1 April 2019, https://www.caixinglobal.com/2019-04-01/in-depth-chinas-burgeoning-social-credit-system-stirs-controversy-101399430.html, not archivable.

[582] For a comprehensive account of data accuracy provisions under the SCSP, see Hannah Klöber (2023) The regulation of personal data accuracy in China's public Social Credit System, *Hong Kong Law Journal* 53(1) pp. 375-402.

[583] The PIPL applies to state organs in principle (Art. 33), however, generous exception clauses are included. For instance, the duty to notify a person of processing their data does not apply if "notification will hinder state organs' fulfilment of their statutory functions" (Art. 35).
The PRC approach to personal data protection is well-reflected in the 2024 move by the CAC to establish a voluntary Network ID. In China's internet, since 2015, real name registration is required. The new proposal enables users to identify through a government app. This is to keep internet service providers from obtaining the users' ID, and at the same time reroutes the user data to the state. See James Gong (2024) "A deep dive into China's network ID proposal", 6 November 2024, BirdandBird, https://www.twobirds.com/en/insights/2024/china/a-deep-dive-into-chinas-network-id-proposal.

[584] As noted by Jeremy Daum, "[...] instead of a "Social Credit Law", China would benefit more from a "Law on the Collection and Use of Administrative Regulatory Information", which would address the core questions of credit regulation." Jeremy Daum (2022) ""Franken-Law": Initial thoughts on the Draft Social Credit Law", China Law Translate, 15 November 2022, https://www.chinalawtranslate.com/en/franken-law-initial-thoughts-on-the-draft-social-credit-law/.

information and the SCSP's invention of PCI to extend data privacy laws to the public administration.[585]

In sum, personal data protection legislation in China significantly grew from local pilot projects and legislative experiences, [586] and the SCSP is at the heart of such experimentation. It enjoyed tailwind by virtue of being a designated prestige project, pulling arising legislative matters such as that of personal data protection into its political agenda. Personal data protection thereby becomes framed as one necessary step on the way of realizing the SCSP.[587] Thus, to some extent, the emergence of personal data protection rules and principles is enabled by the significant political priority the SCSP has. This experimental legislative tradition in China has previously manifested in other fields, such as the use of rural land[588] and is underway in development of a data property rights regime, too.[589]

That said, current personal data protection law by no means keeps up with the power expansion that credit information handlers, private and state, have experienced throughout the past two decades. Thorough checks on data handlers have yet to be stipulated and enforced. So far,

> "the SCSP may play a positive role by creating a salient focal point in China for instigating debates and channelling the previously lacking political capital, institutional efforts, and market resources to data regulations."[590]

It remains to be seen whether it can surpass the role of an inspiration-giver to central legislation and achieve true advances in developing personal data protection law in China that correspond to the risks posed by SCSP mechanisms.

3.1.2.2. The prohibition of improper connection principle

The prohibition of improper connection principle (禁止不当联结原则) is not codified in the law. However, scholarship describes it as the requirement that an administrative action must be substantively and reasonably connected with its purpose. According to the prohibition of improper connection principle, administrative agencies must not consider normative or factual elements that have no connection to the purpose when making administrative decisions.[591]

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[585] Yuanyuan Jia 贾媛媛 (2024) 统而分殊：大数据时代中国式信用权益保护新模式 (Unified and differentiated: A new model of China style credit rights protection in the era of big data), 行政法学研究 (Administrative Law Review) 1/2024, pp. 40-51.

[586] Bingwan Xiong, Jiangqiu Ge and Li Chen (2023) Unpacking data: China's 'bundle of rights' approach to the commercialization of data, *International Data Privacy Law*, 13(2), pp. 93–106.

[587] With a similar argument on data protection legislation surfing the prestige project wave of the SCSP, see also Xin Dai 戴昕 (2019) 理解社会信用体系建设的整体视角法治分散、德治集中与规制强化 (A comprehensive understanding of the social credit system's decentralized law, centralized morality, and empowered regulation), 中外法学 (Peking University Law Journal) 31(6), pp. 1469-1491, p. 1487 ff; *Anja Geller: Social Scoring*, p. 86.

[588] Shitong Qiao and Frank Upham (2015) Evolution of relational property rights: A case of Chinese rural land reform, *Iowa Law Review* 100, pp. 2479-2506, p. 2479.

[589] Bingwan Xiong, Jiangqiu Ge and Li Chen (2023) Unpacking data: China's 'bundle of rights' approach to the commercialization of data, *International Data Privacy Law* 13(2), pp. 93–106, p. 97.

[590] *Xin Dai: Reputation state*, p. 23.

[591] *Kui Shen: The Prohibition of improper connection*; Youyong Zhou 周佑勇 and Qianqian Du 杜茜茜 (2024) 论行政法上禁止不当联结原则的理论基础与基本内容 (On the principle of prohibition improper connection

One key element in multiple SCSP initiatives is the teaming up of administrative agencies to jointly counter legal noncompliance, as captured in the lead political slogan of "breaking trust in one area leads to restrictions everywhere" (一处失信，处处受限).[592] Consider for the following SCSP mechanisms:

- Through the joint agency disciplining mechanism, SCSP subjects are punished by one state agency for an unlawful behaviour recorded by another state agency. For instance, agency A revokes the driving license of a company's truck driver as a punishment for the same company's environmental pollution found by agency B. The very idea of the SCSP's joint agency disciplining mechanism (JAD) is to enhance regulatory enforcement by leveraging the collective power that only the cooperation of multiple state agencies can set free. Through "joint action of departments 部门联动" a "transregional, trans-departmental and trans-realm joint reward and disciplining mechanism" shall be built.[593]
- Another instance of administrative agencies joining forces is in CBR, where administrative agencies create credibility assessments by linking up datasets of behavioural records obtained from other agencies or private actors.

Both SCSP practices entail the decontextualization of original behaviours and have raised alarm among legal scholars.[594] The prohibition of improper connection principle best captured the concerns and soon became a core theme in scholarly debate on the SCSP. Disciplinary measures for 'trust-breaking', scholars argue widely, must not be imposed without any substantive connection to the original trust-breaking behaviour, in order to not breach the prohibition of improper connection principle (discussing the arguments in detail, see section 4.1.).[595] The prohibition of improper connection principle

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in administrative law: Theoretical foundation and fundamental elements), 华东政法大学学报 (ECUPL Journal) 4/2024, pp. 111-123, p. 112.

[592] Also common, "让失信着寸步难行，让守信着一路畅通", Li Keqiang, State Council 政府工作报告, 5 March 2014 at the 21st NPC, second session, https://www.gov.cn/guowuyuan/2014-03/14/content_2638989.htm, archived at https://web.archive.org/web/20250430163353/https://www.gov.cn/guowuyuan/2014-03/14/content_2638989.htm.

[593] 国务院关于建立完善守信联合激励和失信联合惩戒制度加快推进社会诚信建设的指导意见 (State Council Guiding Opinions On Establishing And Improving The System Of Joint Rewards For Trust-Keeping And Joint Disciplining Of Trust-Breaking And Accelerating The Advancement Of Societal Integrity Building), issued 30 May 2016, hereafter: *State Council Opinions On Joint Rewards And Disciplining*.

[594] For an overview, see *Cheung and Chen: From datafication to data state*.

[595] *Kui Shen: The rule of law approach*, p. 39; *Luping Zhang: Administrative blacklists*, p. 23; *Xing and Yu: On the application*, p. 105; *Haiyuan Zhou: Correcting the trend*, p. 80; *Binglin Tan: Disciplining trust-breaking*, p. 43; Shuo Li 李烁 (2021) 论失信联合惩戒的合法性及其补强——以《对失信被执行人实施联合惩戒的合作备忘录》为样本的分析 (On the legality of joint disciplining for trust-breaking: An analysis based on the 'MoU for joint disciplining of trust-breaking judgment defaulters'), in 中国法律评论 (China Law Review) 1/2021, pp. 141-160, p. 157, hereafter: *Shuo Li: On the legality*; Mingchao Li 明超李 (2020) 行政"黑名单"的法律属性及其行为规制 (The legal attributes and behaviour rules of administrative blacklists), 学术研究 (Academic Research) 5/2020, pp. 73-77, p. 75; Hufeng Lu 卢护锋 (2021) 信用惩戒滥用的行政法规制—基于合法性与有效性耦合的考虑 (Administrative regulation of the abuse of credit disciplines: Considerations on coupling legality and effectiveness), 北方法学 (Northern Legal Science) 1/2021, pp. 77-90, p. 88. The prohibition of improper connection principle is in some accounts understood as one part of the larger "Rational Connection Principle 理性关联原则": *Wang and Huang: On the legal constraints*, p. 107.
Addressing the prohibition of improper connection principle but concluding that the common criticism is often ill-informed, see *Chun Peng: Legal dilemmas*, p. 57 and 59.

is also invoked in criticism over decontextualized profiling and credibility assessment production of administrative agencies.[596]

Notably, the prohibition of improper connection principle is far from a well defined principle in PRC law. Rather, it only matured in the debate surrounding the SCSP. In Chinese literature, it is often described as deriving from the German administrative law term 'Kopplungsverbot'[597] and applicable in some fields of PRC administrative law. However, it has barely appeared in academic discussion or legislation until the advent of the SCSP. Discussing the legality of SCSP measures, legal scholars highlight the importance for such measures to concord with the prohibition of improper connection principle. Several depict the prohibition of improper connection principle as an important element of the proportionality principle (比例原则).[598] In his article on the prohibition of improper connection principle in the SCSP, Kui Shen 沈岿, the most prominent voice in the debate, remarked that former prime minister Li Keqiang omitted the "breaking trust in one area leads to restrictions everywhere" slogan in a speech in November 2020, noting that this might indicate an end to improper connections in SCSP-related administrative practices.[599]

Since 2021, then, the prohibition of improper connection principle appeared in different forms of legislative authority. The SPC, in a response to a suggestion from the NPC, explained that it uses the prohibition of improper connection principle in grading trust-breakers according to the severity of their acts.[600] New local SCSP legislation integrated the prohibition of improper connection principle in paragraphs highlighting that state organs must exercise power cautiously and not violate citizens' rights: The social credit

[596] *Shen Yan and Boyang Wang: Credit assessment*, p. 49; Keping Ran 冉克平 (2023) 数字时代个人信用权的构造与规制 (The construction and regulation of personal credit rights in the digital age), 中国法学 (China Legal Science) 4/2023, pp. 49-68, p. 58.

[597] *Chun Peng: Legal dilemmas*, p. 58; *Xing and Yu: On the application*, p. 105; *Haiyuan Zhou: Correcting the trend*, p. 80; also referring to Art. 36 German Administrative Procedure Law: Youyong Zhou 周佑勇 and Qianqian Du 杜茜茜 (2024) 论行政法上禁止不当联结原则的理论基础与基本内容 (On the principle of prohibition improper connection in administrative law: Theoretical foundation and fundamental elements), 华东政法大学学报 (ECUPL Journal) 4/2024, pp. 111-123, p. 113.
The 'Kopplungsverbot' in German law however is a more specific requirement that a main administrative act must not be accommodated by side provisions (Nebenbestimmungen) that run counter to the main act. Specifically, no additional duties may be imposed on the addressee of the administrative act which have no material connection with the main act: Rolf Stober and Winfried Kluth (2017) Verwaltungsrecht I, 13. Auflage 2019, https://doi.org/10.17104/9783406747250-513, §47, 5. Teil, 2. Abschnitt, Der Verwaltungsakt. Rn. 52.

[598] *Xing and Yu: On the application*, p. 105.

[599] *Kui Shen: The Prohibition of improper connection*, citing Gov.cn (2020) "李克强主持召开国务院常务会议确定完善失信约束制度健全社会信用体系的措施等 (Premier Li Keqiang chaired an executive meeting of the State Council, which determined measures to improve the system of trust-breaking restrictions and strengthening the SCS)", 26 November 2020, https://www.gov.cn/xinwen/2020-11/26/content_5565216.htm, archived at https://web.archive.org/web/20240724082443/https://www.gov.cn/xinwen/2020-11/26/content_5565216.htm.

[600] 最高人民法院对十三届全国人大四次会议第 5927 号建议的答复 (SPC Reply to Suggestion No. 5927 of the Fourth Session of the 13th NPC), issued 5 July 2021.

regulations of Yunnan Province,[601] Guangdong Province,[602] Jilin Province,[603] Chongqing City,[604] Heilongjiang Province,[605] Jiangsu Province,[606] Guangxi Province,[607] among others, require that in implementing disciplinary measures, state agencies must, among other things, adhere to the "relevance principle 关联原则" which according to official explanations and scholarship encapsulates the idea of the prohibition of improper connection principle.[608] The Liaoning[609] and Shandong[610] social credit regulations, among others, further require that any collection, gathering, disclosure and use of social credit information must adhere to the relevance principle. In Zhejiang, the Planning Outline for Building Rule of Law Zhejiang (2021-2025) on the matter of blacklists calls to "prohibit improper connections".[611]

Further, in general legal discourse, references to the prohibition of improper connection principle surged. Mentions of the prohibition of improper connection principle in journal articles have more than doubled from 177 in 2017 to 498 in 2024, according to China's national scientific publication database CNKI (中国知网). Central Party School professor Youyong Zhou 周佑勇 and Qianqian Du 杜茜茜 used the emergence of the SCSP as occasion for a first in-depth exploration of the prohibition of improper connection principle, citing court decisions which invoke the prohibition of improper connection principle.[612]

Hence, to a limited extent, the SCSP inspired new discussions in administrative law over risks emerging when state agencies collaborate in law enforcement in the era of

[601] Art. 24, 云南省社会信用条例 (Yunnan Province Social Credit Regulations), passed by the Yunnan Province People's Congress Standing Committee on 30 November 2022.
[602] Art. 36, 广东省社会信用条例 (Guangdong Province Social Credit Regulations), passed by the Guangdong Province People's Congress Standing Committee on 18 March 2021.
[603] Art. 42, 吉林省社会信用条例 (Jilin Province Social Credit Regulations), passed by the Jilin Province People's Congress Standing Committee on 28 September 2021.
[604] Art. 36, 重庆市社会信用条例 (Chongqing City Social Credit Regulations), passed by the Chongqing Municipal People's Congress Standing Committee on 27 May 2021.
[605] Art. 30 黑龙江省社会信用条例 (Heilongjiang Province Social Credit Regulations), passed by the Heilongjiang Province People's Congress Standing Committee on 13 May 2022.
[606] Art. 47, *Jiangsu SCS Regulations*.
[607] Art. 27, 江西省社会信用条例 (Jiangxi Province Social Credit Regulations), passed by the Jiangxi Province People's Congress Standing Committee on 19 November 2021.
[608] Official explanations reveal that this refers to the requirement of a substantive connection between the disciplinary measure and the state agency's field of responsibility, see for instance 解读：关于《南京市社会信用条例》的说明 (Interpretation: Explanation Of The 'Nanjing City Social Credit Regulations'), issued by the Nanjing Emergency Management Office on 1 July 2020, available at https://safety.nanjing.gov.cn/njsaqscjdglj/202007/t20200701_2090155.html, archived at https://web.archive.org/web/20250428145950/https://safety.nanjing.gov.cn/njsaqscjdglj/202007/t20200701_2090155.html.
[609] Art. 8, 辽宁省公共信用信息管理条例 (Liaoning Province PCI Management Regulations), passed by the Liaoning People's Congress Standing Committee on 26 November 2021.
[610] Art. 6, 山东省社会信用条例 (Shandong Province Social Credit Regulations), passed by the Shandong People's Congress Standing Committee on 24 July 2020.
[611] 中共浙江省委关于印发《法治浙江建设规划(2021—2025年)》的通知 (Notice of the CPC Zhejiang Provincial Committee On Issuing The 'Plan For Building Zhejiang Ruled by Law (2021-2025)'), issued 31 December 2020.
[612] Youyong Zhou 周佑勇 and Qianqian Du 杜茜茜 (2024) 论行政法上禁止不当联结原则的理论基础与基本内容 (On the principle of prohibition improper connection in administrative law: Theoretical foundation and fundamental elements), 华东政法大学学报 (ECUPL Journal) 4/2024, pp. 111-123.

ubiquitous trustworthiness assessments. The case of the prohibition of improper connection principle demonstrates that scholarly debate in administrative law actively adapts and innovates principles of administrative law in the face of rising risks stemming from SCSP practices. Local legislation incorporated the prohibition of improper connection principle, however, causal relations between the scholarly debate and legislative action are hard to establish.[613] The prohibition of improper connection principle speaks to a series of substantial risks that are not adequately reflected in existing principles of administrative law and may constitute one of the conceptual innovations that literature on algorithmic regulation and automated decision-making in the public sector widely calls for.[614] In the larger debate about adjusting administrative law to better control the risks emerging from automated decision-making systems[615] (such as the SCSP practice of CBR), the emergence of the prohibition of improper connection principle can thus be understood as one paradigmatic example. The principle thus serves as a focal point through which where contemporary risks emerging from SCSP practices become expressed and dealt with. Through giving rise to the prohibition of improper connection principle, the SCSP indirectly strengthens the *enabling the public administration* function of administrative law by making clear the rules by which state agencies act.

3.1.3. The SCSP legal framework: Bringing law to grey areas?

"No individual may view or borrow the dossier of him/herself or his/her relatives (including parents, spouse, children, siblings, etc.). "

- Art 17 (4), Regulation on Management Work of Corporate Employee Dang'ans[616]

"The credit information subject has the right to know about the collection, aggregation, processing and sharing of credit information related to him/her, as well as the source of information and reasons for changes in his/her credit report."

- Art. 93, Draft Social Credit System Building Law[617]

To sum up, we have now pinpointed two ways in which the SCSP impacts administrative law's *rule by law* function to stipulate and make transparent substantive rules and procedures by which state agents act: by setting more or less clear social credit norms, and by developing legislative framework for personal data protection and the prohibition of improper connection principle of administrative law. Apart from setting social credit norms and developing legal frameworks and principles, the SCSP may further impact the clarity of rules by which state agencies act through pulling previously undisclosed

[613] Legal scholars in China are regularly invited to legislative meetings and invited to share their comments to draft laws and regulations.
[614] Cautioning of the 'guise of legality': Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 304 ; *Guodong Chen: Credit disciplining*, p. 25; Qingsong Yu 虞青松 (2020) 算法行政: 社会信用体系治理范式及其法治化 (Algorithmic governmentality: The governance paradigm of the Social Credit System and its legalization), 法学论坛 (Legal Forum) 35(188), pp. 36-49.
[615] See, e.g., Jennifer Cobbe (2019) Administrative law and the machines of government: Judicial review of automated public-sector decision-making, *Legal Studies* 39(4), pp. 636-655, p. 637.
[616] 企业职工档案管理工作规定 (Regulation on Management Work of Corporate Employee Dang'an), issued by the Ministry of Labor and the National Archives Bureau on 9 June 1992.
[617] *SCS Building Law draft*.

normative regimes into the formal legal system. Specifically, this concerns old personnel dossier system (Dang'an 档案) (section 3.1.3.1.) and the secret blacklists for repetitive petitioners (section 3.1.3.2.). Both regimes found themselves in the midst of the discussion over government transparency that the SCSP unleashed anew.

3.1.3.1. The Dang'an system

Like social credit blacklists bring secret administrative blacklists back to the legality debate, social credit files for individuals inspired a legal discussion about the transparency of the CPC's old secretive personnel dossier system, the Dang'an 档案. Dang'an translates to file, and the respective system refers to a secret personnel dossier registry used to keep track of workers in the planned economy. It originated during the Yan'an period, the formative years of the CPC, then with the aim to "to ensure the political loyalty and moral purity of the members of the Party and the League."[618] The Dang'an system was extended to all workers in 1956 as the planned economy developed.[619] It may be understood as the human resources database of the sole employer in a planned economy, the state.[620] The dossier, kept in a paper envelope tied together with a string, accompanied its subject throughout life. It was administered by the respective school or employer, with a copy kept at the local public security bureau, but not accessible to the subject it concerned. A dossier's contents were not standardized but a melange of documents and comments including records about family life, school reports, essays, notable work achievements and disciplines received.[621] During the Cultural Revolution much of the files were destroyed, forged or supplemented with content reflecting the ideological swings of the time: "until the 1980s, they played a political role and were always a weapon of struggle in political movements."[622] By the end of Mao Zedong's rule, in February 1980, efforts to clean up the politically charged dossier system led to the issuance of formal rules for its management. However, although issued in the spirit of Reform and Opening, the new rules did not make the dossiers more transparent or provide for limits on what may be included: The 1992 Regulation on Management Work of Corporate Employee Dang'an includes only a non-exhaustive a list of permissible

[618] 中央关于审查干部问题的指示 (CPCCC Guidance On Investigating Cadres), issued on 1 August 1940, retrieved from: 中共中央文件选集十二（1939-1940） (Part 12 of the Collected Documents of the CPCCC), 中国共产党文献库 (CPC Archive).

[619] During the First National Symposium on Cadre Dossiers 第一次全国干部档案座谈会 in August 1956 through the issuance of the 干部档案管理工作暂行规定 (Interim Provisions on Cadre Dossier Management Work), see Zhiwei Zheng 郑智维 (2014) "解密人事档案 (Decrypting personnel files)", 民生周刊 (Minsheng Weekly), 8 September 2014, http://paper.people.com.cn/mszk/html/2014-09/08/content_1476010.htm, archived at https://web.archive.org/web/20250504185910/https://paper.people.com.cn/mszk/html/2014-09/08/content_1476010.htm.

[620] In China, however, the communist Dang'an drew on a several century-old culture of state leaders keeping files on civil and military officials, which functioned as basis for selecting, appointing and evaluating talents. It likely originated in the Western Zhou Dynasty (1045-771 BC), and continued with interruptions and in different forms into the Qing Dynasty. See Quanxiang Li 李全祥 and Tielian Wang王铁莲 (1990) 我国古代人事档案考 (An inquiry into ancient Chinese personnel files), 档案学通讯 (Archives Science Bulletin) 5/1990, pp. 43–49.

[621] Jie Yang (2011) The Politics of the Dang'an: Spectralization, spatialization, and neoliberal governmentality in China, *Anthropological Quarterly* 84(2), pp. 507–533, p. 508.

[622] Xu Guo 郭旭 (2021) 干部人事档案的保密性与知情权问题研究 (Research on the confidentiality and right to know of cadres and personnel files), in 兰台内外 (Lantai World) 5/2021, pp. 82-84, p. 82.

material to be included in dossiers.[623] The rules further make explicit the practice that the files must be kept confidential from the individuals they concern. Article 17 (4) states: "No individual may view or borrow the dossier of him/herself or his/her relatives (including parents, spouse, children, siblings, etc.). "

The dossiers lost practical importance with the rise of the market economy and the concomitant withdrawal of the state as the sole employer. While the dossiers theoretically followed the individuals they shadowed into private companies, the latter had no incentive to manage them.[624] They were rarely necessary to take jobs in private companies, where "resumes have taken their place" and in consequence, individuals largely neglect their files (*qidang* 弃档 phenomenon).[625] Nevertheless, job opportunities are still sometimes denied due to misinformation contained in dossiers. Those affected often only find out after receiving a series of inexplicable rejections from employers and managing to gain access to their own files through contacts.[626] A legal interpretation by the SPC shows that Dang'an dossiers continue to exert influence in the private sector: It clarifies that courts should accept cases from employees seeking compensation from employers for the loss of their dossiers.[627] Efforts to reform the Dang'an system into local 'talent mobility service agencies' led to massive material forgery.[628]

As the SCSP emerged, observers noted the functional and programmatic similarities between the Dang'an's dossiers and personal social credit files: Making state-held reputation information available for state and private actors for hiring and other decision-making is the objective of both systems. Dang'an reformers recognized the potential a linking up with the SCSP could hold for the dusty and crisis-ridden Dang'an and raised a series of SCSP-inspired suggestions:

> "At present, our country is launching a campaign to build an SCS throughout the whole society. We should take this opportunity to re-examine the management of personnel files with modern management concepts and methods, so that it can become an important part of building an SCS."[629]

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[623] 企业职工档案管理工作规定 (Regulation On Management Work Of Corporate Employee Dang'an), issued by the Ministry of Labor and the National Archives Bureau on 9 June 1992.
[624] Jie Yang (2011) The Politics of the Dang'an: Spectralization, spatialization, and neoliberal governmentality in China, *Anthropological Quarterly* 84(2), pp. 507–533, p. 518.
[625] Yet, to take up positions in the public administration or state-owned enterprises, they remain important, as an official in charge stated: "when it is not needed, it is worthless; when it is needed, it is more important than anything else." Zhiwei Zheng 郑智维 (2014) "解密人事档案 (Decrypting personnel files)", 民生周刊 (Minsheng Weekly), 8 September 2014, http://paper.people.com.cn/mszk/html/2014-09/08/content_1476010.htm, archived at https://web.archive.org/web/20250504185910/https://paper.people.com.cn/mszk/html/2014-09/08/content_1476010.htm.
[626] See, for instance, Kathrin Hille (2009) "China's lost files", Financial Times, 5 September 2009, https://www.ft.com/content/b5194a40-997d-11de-ab8c-00144feabdc0.
[627] 最高人民法院关于人事档案被原单位弄失后当事人起诉原用人单位补办人事档案并赔偿经济损失是否受理的复函 (SPC Response To The Question On Whether To Accept Cases Where Parties Sue Previous Work Units For Reissuing The Dossier And Compensating For Economic Losses When The Latter Lost The Dossier), issued 13 June 2006.
[628] Yunyi Yang 杨芸伊 and Liqun Wang 王立群 (2020) 干部人事档案研究：回顾、反思与前瞻 (Research on cadre personnel archives: retrospect, reflection and prospect), 兰台世界 (Lantai World) 9/2020, pp. 71-74, p. 73.
[629] Jianxiang Lu 陆建香 (2006) 论人事档案与个人信用档案 (On the personnel dossiers and the personal credit files), in 兰台世界 (Lantai World), 7/2006, pp. 7-8, p. 7.

Several suggest that the Dang'an should replace its old "control" approach with a "regulation"[630] or "service"[631] approach, and turn the system into a society-run enterprise ('社会化'), in the spirit of the SCSP.[632] In this vein, dossiers should no longer just represent iron rice bowl jobs but achieve a wider coverage to include peasants.[633] Reformers suggest to integrate social credit information in Dang'an dossiers to depoliticize them and enhance their usefulness in the socialist market economy.[634]

Most importantly, discussants suggest granting individuals a right to view their own dossier. The dossier's confidentiality, Xu Guo 郭旭 argues, is a leftover from the planned economy and contravenes constitutionally guaranteed human rights.[635] Openness of the Dang'an is further necessary to ensure the correctness of the information contained therein. Given that the human resource departments in charge barely have the time to administer the files, many mistakes continue to be made, and "black-box operations" will persist if subjects concerned cannot review and, where necessary, apply for correction of their own files.[636] The confidentiality of the dossiers has, Jianxiang Lu 陆建香 holds, given rise to undue control power of the work unit over its employees which is not in line with current societal development.[637]

Again, the SCSP, by the central government equipped with a transparent framework of rights for its subjects offered a legitimate arena for discussing the Dang'an system's flaws and suggest reform without appearing too radical to be published or taken seriously. Ideas are framed as the "credit-based reform"[638] or "people-oriented reform"[639] of the Dang'an system.

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[630] *Wang and Zhang: Personnel file management*.
[631] Jianxiang Lu 陆建香 (2006) 论人事档案与个人信用档案 (On the personnel dossiers and the personal credit files), in 兰台世界 (Lantai World), 7/2006, pp. 7-8, p. 7.
[632] See, for instance, language on society-izing in 中共中央办公厅 国务院办公厅关于健全社会信用体系的意见 (Opinions Of The CPCCC General Office And The State Council General Office On Completing The SCS), issued on 21 March 2025.
[633] *Wang and Zhang: Personnel file management*.
[634] Zhao Yu 于钊 and Dongyan Wang 王东艳 (2014) 人事档案与个人信用报告互动研究 (Research on the interaction between personnel file and personal credit report), in 浙江档案 (Zhejiang Archives) 8/2014, pp. 9-11, p. 9; *Wang and Zhang: Personnel file management*; Jianxiang Lu 陆建香 (2006) 论人事档案与个人信用档案 (On the personnel dossiers and the personal credit files), in 兰台世界 (Lantai World), 7/2006, pp. 7-8, p. 7; Xiuqing Zhang 张秀青 (2006) 从社会信用体系建设看传统人事档案管理的转型 (Seeing the transformation of traditional personnel file management from the construction of social credit system), 兰台世界 (Lantai World) 20/2006, pp. 36-37; Xia Gong 巩霞 (2006) 中国与美国人事档案管理之比较 (Comparing personnel dossiers in China and the USA), 兰台世界 (Lantai World) 20/2006, pp. 32-33, p. 32.
[635] Xu Guo 郭旭 (2021) 干部人事档案的保密性与知情权问题研究 (Research on the confidentiality and right to know of cadres and personnel files), in 兰台内外 (Lantai World) 5/2021, pp. 82-84, p. 82.
[636] Xu Guo 郭旭 (2021) 干部人事档案的保密性与知情权问题研究 (Research on the confidentiality and right to know of cadres and personnel files), in 兰台内外 (Lantai World) 5/2021, pp. 82-84, p. 83.
[637] Jianxiang Lu 陆建香 (2006) 论人事档案与个人信用档案 (On the personnel dossiers and the personal credit files), in 兰台世界 (Lantai World), 7/2006, pp. 7-8.
[638] *Wang and Zhang: Personnel file management*.
[639] Xu Guo 郭旭 (2021) 干部人事档案的保密性与知情权问题研究 (Research on the confidentiality and right to know of cadres and personnel files), in 兰台内外 (Lantai World) 5/2021, pp. 82-84, p. 82.

The suggestions have not (yet) led to a substantive reform of Dang'an transparency. The latest round of Dang'an reforms does not build an official bridge to the SCSP.[640] A linking up of social credit files and Dang'an dossiers likewise has not been realized, as far as is discernible from publicly available documents. NPC representative Weihong Luo 罗卫红 for instance suggests drawing on Dang'an dossiers to improve the SCSP,[641] however, respective suggestions remain rather superficial and do not aim at a reform of the Dang'an system. The National Archives Administration of China (heading the Dang'an system, among other matters) is a member of the Inter-Ministerial Joint Conference on SCS Building and its local branches do cooperate with SCSP building departments. However, upon closer observation, such cooperation involves only bringing the expertise of archival work in terms of managing files and building respective interoperable databases to the new social credit file administrators.[642] The Dang'an system itself remains intact.

It is unlikely that in the open, the SCSP will be connected to the Dang'an, because the former, as mentioned above, is devised as a prestige project signifying reform and opening spirit. SCSP authority repetitively emphasizes that the SCSP is in the service of a market economy (prominently omitting 'socialist', to clarify that it does not so much support the socialist aspects but the pure market economy as a concept)[643]. Drawing connections to the unpopular leftover of the planned economy undermines the building of the powerful 'trustworthiness' rhetoric which is, as we will see in sections 3.3.1. and 3.3.2., also crucial for the SCSP to function effectively. The reform suggestions described above are unlikely to be implemented in the near future. A formal disposal or fundamental reconstruction of the Dang'an has severe consequences as long as some parts of the job market still relies on them. More importantly, it is unlikely as it would signify a symbolic cut with the very roots of communism in China and the CPC itself.

Seen against the background of the Dang'an, it is notable that with the SCSP, a state-run personal dossier system in China is subject to a legal framework and transparency rules for the first time. Dang'an reformers hope for the old system to piggyback on the SCSP

[640] E.g., 中共中央组织部 人力资源社会保障部等五部门关于进一步加强流动人员人事档案管理服务工作的通知 (The CPCCC Organization Department, The Human Resource and Social Security Ministry, and Five Other Departments Notice On Further Strengthening The Personnel Dossier Management And Service Work For Mobile Personnel), issued 10 December 2014, which eliminated file storage fees for subjects and eliminating some subjective information such as 'personal relations'; 人力资源社会保障部办公厅关于简化优化流动人员人事档案管理服务的通知 (Human Resource And Social Security Ministry General Office Notice On Simplifying And Improving The Management And Service Of Personnel Dossiers Of Mobile Personnel), 25 May 2016.

[641] Zhenzhen Cui 崔珍珍 (2019) "全国人大代表罗卫红建议：用"档案+信用+"理念助力社会信用体系建设 (NPC Representative Weihong Luo suggests: Use 'dossier+credit+' concept to assist SCS building)", National Archives Administration of China website, 15 March 2019, https://www.saac.gov.cn/daj/c100326/201903/6f3523dfadaa42c9838d9e8fbd889353.shtml, archived at https://web.archive.org/web/20250504072734/https://www.saac.gov.cn/daj/c100326/201903/6f3523dfadaa42c9838d9e8fbd889353.shtml.

[642] For instance, the Hangzhou Archives Bureau 杭州市档案局 and the DRC 杭州市发展和改革委员会 issued Measures for the Management of Credit Dossiers, extending operational standards from archival management to the management of social credit files. 杭州市信用档案管理办法 (Hangzhou City Measures for the Management of Credit Files), issued 27 March 2020.

[643] The first sentence of the 中共中央办公厅 国务院办公厅关于健全社会信用体系的意见 (Opinions Of The CPCCC General Office And The State Council General Office On Completing The SCS), issued on 21 March 2025, reads: "The SCS is the basic system of the market economy."

policies and growing legal framework, subjecting it to the existing Open Government Information project with rules on privacy, the right to know, and objection procedures, among others.[644] With the two being inherently similar in function and objectives, the SCSP holds potential to lift the dusty Dang'an system out of a state of stagnation and existential crisis that the market reforms have left it in and transform it into a transparent and useful tool for the market economy without extracting it from the grip of the state. However, given the little progress on that front so far, it is unlikely that the SCSP inspires Dang'an reform towards strengthening administrative law's *enabling the public administration* function, namely, setting clear and public rules for its administration.

Instead of re-inventing the Dang'an, the SCSP appears to replace it functionally as a new generation of China's century old citizen dossier culture, fit for the market economy and the digital era. Notably, the social credit files for individuals collected in local and the central database have the potential to be used for control just as the Dang'an dossiers were, even though they contain less intimate information. It remains to be seen how the social credit files will be put to use.

3.1.3.2. Secret blacklists of 'abnormal' complainants

The above demonstrates that the official designation of the SCSP as a prestige project of the central government sparked a legislative push to ensure its credibility by ensuring its (formal) legality. This legalization wave also re-ignited debate over other administrative practices that are similar to some SCSP mechanisms and that have long existed in a legal grey area. Specifically, efforts to create legislative frameworks for social credit lists of 'trust-breakers' brought an older type of blacklists back on the table, namely, secret lists of abnormal petitioners 非正常上访 and litigants. Long before the SCSP's JAD mechanism banned 'trust-breakers' from buying plane and train tickets, these secret blacklists were by courts and public security offices administered and shared with the civil transportation institutions to ban the listed persons from buying tickets.[645] The aim is to immobilize persons they consider 'system blockers' and keep them from travelling to the next higher government entities to raise their objections.[646] Courts and public security offices hope to counter the wave of repetitive filing of lawsuits and administrative reconsideration (for instance on the matter of government information disclosure[647]). Secret blacklists of abnormal petitioners would include for instance those who "skip

[644] 政府信息公开, launched with the 政府信息公开条例 (Open Government Information Regulations), issued by the State Council 17 January 2007, amended 3 April 2019.

[645] See for instance the 最高人民法院关于《中华人民共和国民事诉讼法》的解释 (SPC Interpretation of the Civil Procedure Law), issued at the 1636 Meeting of the SPC Adjudication Committee on 18 December 2014, Art. 247 on "repetitive suing 重复起诉", but no legal basis exists for blacklisting relevant subjects. Likewise, procedural rules on petitioning offers the basis for relevant offices to reject petitions that for instance skip a level, but again, no basis is stipulated for blacklisting petitioners.

[646] See, for instance, Xin He (2014) *The judicial system of China,* Oxford University Press, p. 208. Rules and procedures on the secret blacklists are internal and the author relies on mentions in Chinese legal literature and the oral accounts of several judges retrieved during fieldwork as evidence of their existence.

[647] Youhai Wang 王由海 (2019) 政府信息公开黑名单研究——以上海市政府信息公开实践为视角 (Research on blacklists in government information disclosure – the perspective of shanghai government's information disclosure experience), 中共郑州市委党校学报 (Journal of the Party School of CPC Zhengzhou Municipal Committee) 1/2019, pp. 59-64.

administrative levels and directly go to Beijing 越级进京" instead of first turning to local authorities to seek relief, as the administrative hierarchy requires[648].

The secret blacklists are largely kept away from the public eye as they conflict with China's government transparency aspirations. Where the existence of a list becomes public, criticism ensues.[649] Their administrators regularly deny their existence or classify them as "non-independent administrative act attached to the original handling decision", which forecloses the possibility for those concerned to seek judicial remedy.[650] In the rare event that courts accept cases over potentially wrongful blacklisting, they reject plaintiffs' claims arguing that no external negative consequences derived from one being listed.[651]

With the discussion over the SCSP's lists for 'trust-breaking', the secret blacklists, too, found a way into the legality debate. The policy agenda for the SCSP foresees it to function within a clear legal framework and offer objection procedures for the SCSP subjects. Specifically, the State Council Opinions of 2020 tackled what was perceived as "blacklists flying all over the place 黑名单满天飞"[652] by clarifying limits on what deeds may lead to blacklisting and require a basis in laws, administrative regulations 法规, and joint CPCCC-State Council documents.[653] Even though this official design is far from well-implemented, it does stablish a yardstick of legality. This legal framing for SCSP

[648] Generally, see Tingting Wang 王廷婷 (2024) 信访信用治理制度的生成与作用逻辑 (The emergence and functional logic of the credit governance system for petitioning), 浙江警察学院学报 (Journal of Zhejiang Police College) 5/2024, pp. 48-56. This issue is addressed in several procedural documents issued by central level organs, for instance the 最高人民检察院办公厅对十二届全国人大三次会议第6735号建议的答复 (SPP General Office Response to Suggestion No. 6735 Raised at the Third Session of the 12th NPC), issued 7 August 2015 addresses 重复起诉. The seriousness of the increasing rate of "repetitive petitioning 重复上访, petitioning multiple times 多重上访, and administrative level-skipping petitioning 越级上访" was described as the core challenge by a local procuratorate, further describing it as vicious cycle: The subject matter of petitions are regularly decisions of courts, which cannot be re-opened by petitioning offices in principle. Fieldwork document 042.

[649] A wave of criticism against the issuance of a relevant policy document in Zhengzhou spurred public pushback to the extent that the document was declared "not yet mature" and revoked: Global Times 环球时报 (2021) "3天后，郑州中院删除了" (After 3 days, the Zhengzhou Middle Court Deleted", Wechat Account of the Global Times, 27 December 2021, https://mp.weixin.qq.com/s?__biz=MjM5MDk1NzQzMQ==andmid=2653537628andidx=4andsn=62fd2358aecc9526bddad624c59f9271andchksm=bd618f448a160652754cdebb6e94d4a2665a78b8295c6ced0ec1ef3ad9cc6d8502d12ce23bde#rd, archived at https://web.archive.org/web/20250430200434/https://mp.weixin.qq.com/mp/wappoc_appmsgcaptcha?poc_token=HE6CEmijQEpocfFAEKSUStrL93gBtP2nvABDVHBLandtarget_url=https%3A%2F%2Fmp.weixin.qq.com%2Fs%3F__biz%3DMjM5MDk1NzQzMQ%3D%3D%26mid%3D2653537628%26idx%3D4%26sn%3D62fd2358aecc9526bddad624c59f9271%26chksm%3Dbd618f448a160652754cdebb6e94d4a2665a78b8295c6ced0ec1ef3ad9cc6d8502d12ce23bde.

[650] *Luping Zhang: Administrative blacklists*, p. 25.

[651] Licheng District People's Court, Fujian 福建省泉州市鲤城区人民法院, 行政裁定书（2016）闽 0502 行初 259 号 (Administrative ruling no. 259), decided 19 December 2016; Beijing Municipal High People's Court 北京市高级人民法院, 行政裁定书 （2020）京行申443号 (Administrative ruling no. 443), decided 29 September 2020.

[652] Wei Wang 王伟 (2021) 社会信用建设法治化的新起点、新境界、新思维——解读《国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见》(New starting points, frontiers and thinking on legalizing social credit building – Interpreting the 'Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-Breaker Constraint System And Building A Long-Term Mechanism For Credit Construction), 中国经贸导刊 (China Economic and Trade Herald) 1/2021, pp. 15-16, p. 15.

[653] 国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见 (Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-Breaker Constraint System And Building A Long-Term Mechanism For Credit Construction), issued 18 December 2020.

blacklists stands in notable contrast to the unclear rules governing pre-SCSP administrative blacklists. It thereby reinvigorated the discussion of undisclosed operation procedures of the secret blacklists, with discussants harnessing it to leverage criticism of the existing landscape of secret administrative blacklists.

Under the headline "administrative blacklists", scholars, judges and local legislators came to subsume both types of lists and propose means to legalize the yet "fragmented and unsystematic" [654] landscape of blacklists. Jiangsu Provincial High Court Judge Changcheng Lü 吕长城 and Yuyan He 贺妍玉 note that with the SCSP, the blacklist system has first been mentioned in a central policy document. [655] They write: "Even though this law [the SCS Building Law Draft] does not directly uses the term 'blacklist', its article 92 mentions a 'list of seriously trust-breaking entities' which de facto refers to the currently widely used blacklist." [656] Their subsequent analyses and reform suggestions aim at all administrative blacklists rather than just the social credit-related lists. Luping Zhang 张鲁萍 surveys the types of administrative blacklists currently in operation, includes SCSP blacklists, categorizes them and highlights their respective issues with regard to legality.[657] Kui Shen 沈岿 leverages the officially declared intent of the state to protect SCSP subjects from undue disciplinary measures to criticize court decisions denying plaintiffs relief for wrongful inclusion in petitioner blacklists.[658] Youhai Wang 王由海 advocates to reform secret blacklists of government information disclosure applicants by improving the transparency of blacklisting procedures (ironically).[659]

Local legislators, too, acted in the spirit of making SCSP blacklist procedures work for the secret blacklists. New administrative measures on social credit blacklists addressed behaviours that hitherto were subject to secret blacklist rules. For instance, Shengzhou City in Zhejiang issued the Trial Measures for Implementing Credit Management of Petitioners including provisions on blacklisting 'trust-breaking' petitioners [660] and Zhenjiang City issued the Trial Measures for Implementing the Credit Management of

[654] Changcheng Lü 吕长城 and Yuyan He 贺妍玉 (2023) 行政黑名单的法治化规制路径探析 (An analysis of the path to the legal regulation of administrative blacklists), 法治现代化研究 (Law and Modernization) 5/2023, pp. 125-138, p. 128, hereafter: *Lü and He: An analysis of the path to legal regulation*.
[655] *Lü and He: An analysis of the path to legal regulation*, p. 125.
[656] *Lü and He: An analysis of the path to legal regulation*, p. 126.
[657] *Luping Zhang: Administrative blacklists*, similarly: Haoxiang Lan 兰皓翔 (2017) 行政黑名单制度研究：一个权利保护的视角 (Research on the administrative blacklist system: A rights protection perspective), 山东行政法学学报 (Shandong Administrative Law Review) 1/2017, pp. 48-52.
[658] Kui Shen 沈岿 (2023) 论失信惩戒的行政诉讼可诉性 (On the litigability of disciplining trust-breaking in administrative litigation), 中国应用法学 (China Journal of Applied Jurisprudence) 2/2023, pp. 73-88, p. 84, citing the case of Jiangsu High People's Court 江苏省高级人民法院, 行政裁定书（2019）苏行总 1518 号 (Administrative ruling no. 1518).
[659] Youhai Wang 王由海 (2019) 政府信息公开黑名单研究——以上海市政府信息公开实践为视角 (Research on blacklists in government information disclosure – the perspective of shanghai government's information disclosure experience), 中共郑州市委党校学报 (Journal of the Party School of CPC Zhengzhou Municipal Committee) 1/2019, pp. 59-64, p. 63.
[660] Zhejiang Daily (2019) "嵊州市信访人信用管理实施办法（试行）问答 (Q&A on the Shengzhou Trial Measures for Implementing Credit Management of Petitioners)", 11 November 2019, https://baijiahao.baidu.com/s?id=1649893442835579844andwfr=spiderandfor=pc, archived at https://web.archive.org/web/20250502125702/https://baijiahao.baidu.com/s?id=1649893442835579844andwfr=spiderandfor=pc.

Seriously Trust-breaking Petitioners.[661] These local normative documents widely cast behaviours like the above-described "skipping administrative levels and directly going to Beijing" in social credit language, as "seriously trust-breaking behaviour".[662] Local legislative practice to pull secret blacklists out of the grey area is summarized by Chun Peng 彭錞 as follows:

> "In fact, the petition blacklist was originally a kind of implicit rule to a large extent〔20〕, but with the full implementation of the trust-breaker disciplining system, its multi-level and multi-field nature, many grassroots governments, in the absence of superior legal basis, took advantage of the situation to make the implicit rules explicit, making them part of trust-breaking disciplining system."[663]

From the perspective of building clear legal frameworks corresponding to PRC administrative law's *enabling the public administration* function, these developments leave room for two interpretations: Either, previously secret blacklists are now in fact being remoulded into social credit blacklists with respective rules published. In this scenario, the SCSP setup brings transparency to previously secretive administrative practices and lays the ground for judicial review of legality in courts. This way, blacklisting would be more systematically publicly announced, as has happened in some cases,[664] and potentially fully become subject to the SCSP framework with its duties for blacklist administrators to notify subjects they list of the reasons and the consequences of being blacklisted and afford them the right to object. Chun Peng 彭錞 illustrates this scenario with a dispute from Zhenjiang city: The plaintiff sued for wrongful inclusion in a list of seriously trust-breaking petitioners, and the first instance and second instance courts both rejected the claim. They argued that petitioning is a matter not subject to administrative litigation according to the ALL.[665] Peng points out that the courts'

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[661] 镇江市严重失信信访人信用管理实施办法（试行）(Trial Measures On The Implementation Of Seriously Trust-Breaking Petitioners' Credit Management Of Zhenjiang City), issued jointly by the Zhenjiang Municipal Petition Work Conference Office and the Zhenjiang Municipal SCS Building Leading Small Group 镇江市信访工作联席会议办公室和镇江市社会信用体系建设领导小组办公室联合发布 on 30 July 2018, https://www.zjna.gov.cn/zjna/zcwjf/201809/87aac0ba262c4652ad3b37893aedbb82.shtml, archived at https://web.archive.org/web/20250502134750/https://www.zjna.gov.cn/zjna/zcwjf/201809/87aac0ba262c4652ad3b37893aedbb82.shtml.

[662] For instance, Lianshui Daily 涟水日报 (2018) "《淮安市信访人信用管理实施办法（试行）》新闻发布会召开 (The press conference on the issuance of the Huai'An Measures on Implementing Credit Management of Petitions was held)", 12 November 2018, https://lsrb.lsxw.net.cn/Article/index/aid/2518720.html, archived at https://web.archive.org/web/20250502131019/https://lsrb.lsxw.net.cn/Article/index/aid/2518720.html; Lianshui Daily 涟水日报 (2018) "淮安市信访人信用管理实施办法（试行）（节选） (A selection from the Huai'An City Measures for Implementing Credit Management of Petitioners)", 12 November 2018, https://lsrb.lsxw.net.cn/Article/index/aid/2518722.html, archived at https://web.archive.org/web/20250502130615/https://lsrb.lsxw.net.cn/Article/index/aid/2518722.html;

[663] *Chun Peng: The dilemma*, p. 173.

[664] The Paper (2020) "绍兴首次对信访人进行失信评定，5人被拉"黑名单" (Shaoxing for the first time determines petitioners as trust-breaking, 5 persons are blacklisted)", 18 March 2020, https://m.thepaper.cn/baijiahao_6568890, archived at https://web.archive.org/web/20250502133302/https://m.thepaper.cn/baijiahao_6568890.

[665] 最高人民法院关于不服县级以上人民政府信访行政管理部门、负责受理信访事项的行政管理机关以及镇（乡）人民政府作出的处理意见或者不再受理决定而提起的行政诉讼人民法院是否受理的批复 (Official Reply Of The SPC Regarding Whether People's Courts Accept Administrative Lawsuits Filed Against Opinions Or Decisions Of Non-acceptance Made By The Petitioning Management Departments Of The People's Governments At Or Above The County Level, The Administrative Organs Responsible For

decisions are inaccurate: Not the petitioning is the subject matter of the lawsuits, but the blacklisting, which in line with the list's respective local Measures triggers punishment and is therefore litigable.[666] Had the blacklist's relevant Measures not been published, the plaintiff would hardly be able to prove that restrictions she was subjected to derived from blacklisting, not to mention petition behaviour.

The SCSP's blacklists might also lead to a more troubling scenario: The secret blacklists might not so much be remoulded into but supplemented by the social credit blacklists for petitioners and 'annoying' litigants that are on the rise.[667] The SCSP framing somewhat legitimizes the administrative practice of using blacklists in general, potentially leading to their wider adoption. Adopting state agencies might disregard the procedural rules that the SCSP sets at the top or fabricate exceptions for blacklists concerning petitions under the pretext that matters around petitioning are per SPC order not litigable.[668] Tingting Wang 王廷婷 of the School of Marxism, Zhejiang Industrial University, for instance regards the SCSP structures as a formal system which should be combined with the existing informal structures. That way, she argues, officials can gain more confidence and more strictly tackle with abnormal petitioning behaviour.[669] Integrating trustworthiness assessments for petitioners with the current informal means of managing petitioning could ensure that ultimately, "abnormal petitioners can return to the normal track of life."[670] It is hardly possible to assess how many of the petitioner blacklists and respective rules that surfaced under the SCSP umbrella are in fact making transparent formerly secret blacklist schemes, and how many set up new blacklist schemes where there were none before.[671]

3.1.4. Conclusion of section 3.1.

In section 3.1., I evaluated to what extent the SCSP impacts the first element of administrative law's *enabling the public administration* function, namely, making the public administration capable by stipulating and making transparent the substantive and procedural rules by which state agencies act. I highlighted three pertinent cases in which

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Accepting Petition Matters, And The People's Governments Of Towns (Townships)), issued 12 December 2005. For a discussion of the case, see *Chun Peng: The dilemma*, p. 174.

[666] *Chun Peng: The dilemma*, p. 174.

[667] In the absence of a comprehensive mapping of practices of secret blacklists, the relation between secret blacklists and social credit blacklists targeting the same behaviours cannot be confirmed.

[668] As explained above, the ALL does not permit litigation of petitioning matters: Art. 1 no. 9, 最高人民法院关于适用〈中华人民共和国行政诉讼法〉的解释 (SPC Interpretation On The Application Of The 'PRC APL'), issued 6 February 2018.

[669] Tingting Wang 王廷婷 (2024) 信访信用治理制度的生成与作用逻辑 (The emergence and functional logic of the credit governance system for petitioning), 浙江警察学院学报 (Journal of Zhejiang Police College) 5/2024, pp. 48-56, p. 55.

[670] Tingting Wang 王廷婷 (2024) 信访信用治理制度的生成与作用逻辑 (The emergence and functional logic of the credit governance system for petitioning), 浙江警察学院学报 (Journal of Zhejiang Police College) 5/2024, pp. 48-56, p. 56.

[671] The situation is complicated by the fact that many petitioning-related rules are no longer available from outside of China. For instance, the 浙江省实施信访信用管理的指导意见 (Guiding Opinion On Carrying Out Credit Management of Petitioners in Zhejiang Province), issued by the Zhejiang DRC in September 2019, are no longer available. An explainer: Sohu (2019) "非访与失信挂钩！浙江严打非访放大招！ (Unauthorized petitioning is now linked to trust-breaking! Zhejiang Province is cracking down on unauthorized petitioning!)", 9 September 2019, https://www.sohu.com/a/339774085_99927377, archived at https://web.archive.org/web/20250508004823/https://www.sohu.com/a/339774085_99927377.

the SCSP impacts this capacity: The forming of social credit norms and their transparency; the ways in which the SCSP drives legal development, e.g. in personal data protection law and the development of the prohibition of improper connection principle of administrative law; and the impact the SCSP has on legal grey areas of the PRC public administration, like secret petitioner blacklists and the Dang'an system.

I found that firstly, the substantive norms the SCSP creates – social credit norms – are for the greatest part not noncodified moral norms but legal rules selected by state agencies. They are set through PCI catalogues which again are laid down according to procedures put forward by the NDRC and PBoC.[672] At the same time, the experimental creation of credibility assessments for all kinds of SCSP subjects, corporate, organizational or individual does not always follow the limitations set in PCI catalogues. The recent State Council Government Data Sharing Regulations underline the primacy of "catalogued management" [673] . Even if effectively restricted through catalogues, credibility assessments will continue to pose challenges to social credit norm clarity as their creation relies on the private sector's technologies – a situation in turn promoted politically by the SCSP authorities themselves. Further, the general critique of trustworthiness assessment production constituting a 'black box' also applies to credibility assessments, meaning that not even the designers of assessment technologies are reliably able to retrace how an assessment came to be. Overall, the setting of social credit norms is at the planning level fairly well restricted and transparent, but in practice, especially as the SCSP evolves into a 2.0 version relying on assessments rather than binary blacklist mechanisms, rather blurry.

Secondly, SCSP practices spur broader legal developments beyond the field of social credit. The rise of financial credit reporting, one root of the social credit mode of governance, inspired first developments of personal data protection law in China, some of which reflect in today's PIPL. Likewise, the decontextualization of law violations that are part and parcel of both, JAD and the production of credibility assessments have inspired or at least significantly driven the development of the prohibition of improper connection principle in administrative law. Among the three instances of the SCSP impacting administrative law's *enabling the public administration* function's first element of setting and disclosing rules by which state agents act, the driving of legal development is of most strengthening impact.

Finally, the SCSP's ambition to function as a super tool for market regulation has translated into a strong procedural framework of rules on transparency, correction rights, objection channels, among others. This legalization re-ignited debates around two practices of public administration in the PRC that used to exist in a legal grey area: Secret petitioner blacklists and the Dang'an system. Both mechanisms feature conceptual parallels to SCSP practices and inspired scholarship and local legislators to leverage reform suggestions. Rules on blacklists for 'abnormal petitioning' become cast as part of the SCSP framework. However, it is unclear in how far thereby previously secret rules are made public or merely new rules in addition to secret blacklist rules are issued. The

[672] The *National PCI Catalogue*.
[673] Art. 12, 政务数据共享条例 Government Data Sharing Regulations, passed 28 May 2025 by the State Council.

secret lists might continue to exist simultaneously. A series of reform suggestions for making transparent the secretive Dang'an personnel file system that the SCSP framework inspired have not been implemented. As the significance of the files fades, it is likely that social credit files for individuals take their spot as the inheritor of the PRC's personnel dossier system tradition fit for the socialist market economy in the digital era.

3.2. Empowering or undermining law enforcement?

To recall, the *enabling the public administration* function of administrative law refers to, firstly, the setting and making public of rules by which state agencies act, and, secondly to the enforcement of these rules. The section above addressed the first of the two elements, in this section, I turn to the second.

The SCSP introduces a series of enforcement mechanisms. Policy on building the socialist rule of law in China frame the SCS as a way to amplify law enforcement.[674] The documents imply that traditional law enforcement mechanisms are insufficient to implement socialist rule of law and require upgrading with the help of a series of trust-centred enforcement mechanisms. The overarching goal of these mechanisms as clear from SCSP policies, however, is not merely enforcing law but 'building trust'. Due to this particularity, the SCSP's enforcement mechanisms bring structural changes to the PRC's law enforcement landscape. This section discusses in how far the mechanisms strengthen the enforcement of law and where their focus on 'trust building' weaken law enforcement. I evaluate the SCSP's trust-centred law enforcement mechanisms one by one in the following sections: Publicity-centred law enforcement through social credit information disclosure (3.3.1.), reputational disciplining (3.3.2.), joint agency disciplining (3.3.3.), credibility-based regulation (3.3.4.) and joint rewarding (3.3.5.).

After sorting out the concepts and concrete implementations of each mechanism, the discussion sections address the impact of each on law enforcement along two guiding questions: First, in how far does the mechanism pertain to legal rules at all? Second, is the mechanism implemented and effective?

[674] E.g., 中共中央关于全面推进依法治国若干重大问题的决定 (CPCCC Decision Concerning Several Major Issues In Comprehensively Advancing Governing The Country According To Law), issued 23 October 2014; 中共中央印发《法治社会建设实施纲要（2020－2025年）》 (The CPCC Issues The 'Outline For The Establishment Of A Society Based On The Rule By Law (2020-2025)'), issued 7 December 2020, Xinhua, available at https://www.gov.cn/zhengce/2020-12/07/content_5567791.htm, archived at https://web.archive.org/web/20240315161908/https://www.gov.cn/zhengce/2020-12/07/content_5567791.htm.

3.2.1. Publicity-centred law enforcement with social credit information

"If administrative licenses and punishment information is 100% reported to the Credit China website for publishing: 2 points. For every 1% less in publication rate: 0.2 points deduction"

- From the indicators for assessing localities for becoming SCS Building Model Cities[675]

Traditional regulatory measures such as the revocation of licences and imposition of fines often failed to effectively solve the law enforcement problems plaguing China.[676] Instead, they further exacerbated financial problems that underfunded local governments faced because they debarred much-needed local corporate taxpayers.[677] Acknowledging that coercive instruments from the repertoires of state agencies and judicial enforcement bureaus alone were incapable of solving the problem, SCSP planners devised information disclosure schemes to make use of the decision-making power of non-state forces to achieve enforcement.

3.2.1.1. Concept

Under the SCSP, platforms disclosing social credit information are set up and linked. This curation of social credit information disclosure is the centrepiece of the original idea of the SCSP: Long before tangible social credit penalties appeared, SCSP designers, mostly economists and engineers, envisaged the project as one to make information about market actors available to others so as to enable them to refrain from engaging with entities with bad records.[678] They drew on theories and thinking from developed market economies[679] which hold that a market can self-regulate if given sufficient information[680]

[675] 社会信用体系建设示范城市评估指标细则（2019年参考版） (Detailed Indicators for SCS Building Model City Assessment (2019 version for reference), published attached to local SCS building plans, see for instance: 关于印发《关于迎接第二批社会信用体系建设示范城市评审验收工作方案》的通知 (Notice On Issuing The 'Work Plan For Welcoming The Review And Acceptance Of The Second Batch Of Demonstration Cities For SCS Construction'), issued by the Office of the Zhengzhou Municipal SCS Building Small Leading Work Group on 14 December 2018, https://credit.henan.gov.cn/res_root/upload/fileCenter/res_base/rjcms/application/2019/06/06/5cf87c078af8d1bb86b2f291.pdf, not digitally archivable, on file with the author.

[676] Section 2.1.

[677] Junyue Lin 林钧跃 (2002) 失信惩戒机制的设计和维护 (The design and safeguard of the disciplining of trust-breaking mechanism), 经济社会体制比较 (Comparative Economic and Social Systems) 2/2002, pp. 1-6, p. 5.

[678] The first mentions of the SCSP highlight the information disclosure function, see., e.g., Mingkang Liu, former chairman of the China Banking Regulatory Commission, in a 2007 interview with Caijing Magazine Interview which was translated and published in Wall Street Journal (2007) "Chinese regulator lays out rural-bank overhaul", 17 May 2007, https://www.wsj.com/articles/SB117934026643805191.

[679] Adam Knight (2023) Basket case: Reform and China's Social Credit Law, *China Law and Society Review* 6, pp. 181-210, p. 183. Drawing on Julian Gewirtz (2017) *Unlikely partners: Chinese reformers, Western economists, and the making of Modern China,* Harvard University Press.

[680] See, on reputational regulation in general: "[t]he engine for change is reputation, and the fuel for that engine is information", Kishanthi Parella (2018) Reputational regulation, *Duke Law Journal* 67(5), pp. 907-979, p. 910; "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman", Louis Dembitz Brandeis (1914) *Other people's money and how bankers use it*, Frederick A. Stokes Company, p. 92; John Braithwaite and Peter Drahos (2002) Zero tolerance, naming and shaming: Is there a case for it with crimes of the powerful? *The Australian and New Zealand Journal of Criminology* 35(3), pp. 269–288; John Braithwaite and Toni Makkai (1991) Testing an expected utility model of corporate deterrence, *Law and Society Review* 25(1), pp. 7–40; John Braithwaite and Toni Makkai (1994) Trust and compliance, *Policing and Society* 4(1), pp. 1–12;

(hereafter termed publicity-centred law enforcement). Malfeasance, fraud, and legal noncompliance that was so prevalent in China was to be resolved by giving to market actors the information that is useful to predict risks. This essentially recasts legal compliance of a firm as necessary for its economic success.

The state's role, then, is to provide or incentivize other actors to provide relevant information, in other words, to institutionally support the 'invisible hand'.[681] Specifically, mandated through the SCSP [682] and drawing on the open government information project,[683] state agencies build online social credit information platforms. They display social credit information of market entities, including records on corporate structures, personnel, compliance history and financial situation. [684] The state's disclosure of reputational information was to realise "the basic principle of the operation of the market joint defence mechanism [which] is that each market participant resists credit transactions with dishonest persons". [685] The other declared aim is to cut down the cumbersome bureaucratic apparatus and reduce direct regulatory intervention in the

David Weil, Archon Fung, Mary Graham, Elena Fagotto (2006) The effectiveness of regulatory disclosure policies, *Journal of Policy Analysis and Management* 25(1), pp. 155–181.

[681] Arguing that government information disclosure is necessary as "credit information and data are the basic 'raw materials' for the development of the credit industry": Hongwen Jia 贾洪文 and Hua Ao 敖华 (2020) 社会信用管理体系建设研究———基于市场机制的视角 (Research on social credit management system building – a perspective based on the market mechanism), 浙江工商大学 (Journal of Zhejiang Gongshang University) 1/2020, pp. 119-128, p. 127.

[682] *SCS Planning Outline*; also in documents on other matters related to administrative regulation: "By the end of 2016, local governments should initially realize the collection of administrative licenses, administrative penalties and other corporate information that should be disclosed by various government departments in the process of performing their duties." Section (7), 国务院关于"先照后证"改革后加强事中事后监管的意见 (State Council Opinions On Strengthening Regulation During And After The Matter After The 'License First, Evidence Later' Reform), issued 13 October 2015.

[683] 政府信息公开, launched with the 政府信息公开条例 (Open Government Information Regulations), issued by the State Council 17 January 2007, amended 3 April 2019.

[684] It is in this capacity, for instance, that the "Establishing and completing of a credit information gathering and sharing mechanism" is included in Art. 26, 民营经济促进法 (Private Economy Promotion Law), passed by the NPC Standing Committee NPC on 30 April 2024.

[685] Junyue Lin 林钧跃 (2012) 市场联防机制:充分发挥社会信用体系功能的一项基础工程 (The market joint prevention mechanism: A fundamental project to fully leverage the functions of the Social Credit System), 征信 (Credit Reference) 5/2012, pp. 4-8, p. 6; Junyue Lin 林钧跃 (2002) 失信惩戒机制的设计和维护 (The design and safeguard of the disciplining of trust-breaking mechanism), 经济社会体制比较 (Comparative Economic and Social Systems) 2/2002, pp. 1-6, p. 3; Junyue Lin 林钧跃 (2002) 社会信用体系原理 (Principles of the Social Credit System), 中国方正出版社 (China Fangzheng Press) p. 253.
See also, writing on one SCSP lead mantra, 'co-building, co-governing and sharing 共建共治共享', demonstrating that market subjects play an instrumental role simply by using disclosed information to make decisions in their own best interest: Xiang Cao 曹向, Qiuzhi Ye 叶秋志, Jian Yin 印剑 (2022) 共建共治共享社会治理格局下社会信用体系建设研究 (Research on the construction of the SCS under the social governance pattern of co-construction, co-governance and sharing), 广西财经学院学报 (Journal of the Guangxi University of Finance and Economics) 4/2022, pp. 118-128.

market.[686] This publicity-centred regulatory approach of the SCSP was thus described as ”liberal, even libertarian”[687].

3.2.1.2. Implementation

One manifestation of publicity-centred law enforcement, “double publicity 双公示”, predates the SCSP and was eventually drawn in by it.[688] “Double” refers to two types of compliance information: Decisions over administrative licenses granted and decisions over administrative punishments imposed. Both items are also fundamental components of social credit information. Relevant information was typically published through multiple different government websites irregularly.[689] With the advent of the social credit information platforms, the occasional disclosure became more systematic. State organs established a series of credit information platforms and disclose regulatory information thereon.[690]

The SPC administers an information platform of ‘trust-breaking’ judgment defaulters[691] and a judicial decision enforcement database.[692] The SAMR operates the National Enterprise Credit Information Publicity System 国家企业信用信息公示系统[693] and its provincial branch platforms, where PCI including company registration information, administrative licenses obtained, administrative penalties imposed, and inclusion in corporate social credit blacklists[694] is displayed. By the time of writing, 188 million business entities’ social credit records are available through the system.[695] In line with

[686] The *SCS Planning Outline* of 2014 characterizes the SCS aims as to “减少政府对经济的行政干预” in the opening paragraphs, and to “streamline the administration放管服”, further cited throughout SCS planning documents, see, e.g. 国家发展改革委办公厅关于充分发挥信用服务机构作用加快推进社会信用体系建设的通知 (Notice Of The NDRC General Office On Giving Full Play To The Function Of Credit Service Institutions In Accelerating The Advancement Of SCS Building), issued 2 February 2018; and *State Council Opinion on CBR*.

[687] Xin Dai 戴昕 (2019) 理解社会信用体系建设的整体视角法治分散、德治集中与规制强化 (A comprehensive understanding of the social credit system’s decentralized law, centralized morality, and empowered regulation), 中外法学 (Peking University Law Journal) 31(6), pp. 1469-1491, p. 1474. These means of spurring legal compliance were believed to lead to results unattainable through the state-imposed social credit disciplines and rewards alone: *Guodong Chen: Credit disciplining*, p. 31.

[688] 国务院办公厅关于运用大数据加强对市场主体服务和监管的若干意见 (Several Opinions Of The State Council General Office On Using Big Data To Strengthen Market Entity Services And Supervision), issued on 1 July 2015.

[689] For instance, website of the People’s Government of Donglan County, Guangxi Province: http://www.donglan.gov.cn/xxgk/zdlyxxgk/sgs/, not archivable, screenshot on file.

[690] A series of regulations revolving around credibility assessments and social credit information were passed to this end, see for instance Art. 16, 上海市企事业单位生态环境信用评价管理办法（试行） (Shanghai Municipal Trial Measures For Credit Assessment Management Of Ecological And Environmental Credit), issued by the Shanghai Bureau for Ecology and Environment on 1 August 2022.

[691] http://jszx.court.gov.cn/front/zxxx.jspx (geo-blocked).

[692] http://zxgk.court.gov.cn/zhzxgk (geo-blocked).

[693] https://www.gsxt.gov.cn/index.html. The ‘double publicity’ duty is now realized on the social credit platform: 市场监督管理行政处罚信息公示规定 (Provisions On The Publication Of Market Regulation Administrative Punishment Information), originally issued 30 July 2021, amended 18 March 2025.

[694] The Abnormal Operations List 经营异常名录 and the Enterprise Serious Illegal and Untrustworthy Acts List 严重违法失信企业名单. I use ‘blacklist’ or ‘social credit blacklist’ in this thesis to refer to all types of lists that include legal or natural persons on the grounds of ‘trust-breaking’ behaviour.

[695] People’s Daily 人民日报 (2024) “依法公示1.88亿户经营主体信用信息 (Lawfully Publicizing 188 Million Business Entities’ Credit Information)”, 4 November 2024, http://gd.people.com.cn/n2/2024/1104/c123932-41030087.html, archived at https://web.archive.org/web/20250605091812/http://gd.people.com.cn/n2/2024/1104/c123932-41030087.html.

the relevant regulations' Art. 18 (2), a fine of up to 200,000 RMB is imposed on enterprises which conceal information or provide false information.[696] The Ministry of Civil Affairs operates an inquiry platform covering registered social organizations,[697] and the Ministry of Justice, with the All China Lawyers Association, runs a similar platform disclosing 'sincerity information' of licensed lawyers.[698]

At the core of the SCSP's disclosure schemes and functioning as its official face stands Credit China, a website operated by the NDRC.[699] It hosts both an inquiry platform covering all types of SCSP subjects, and news on latest SCSP-related policy developments as well as stories about local initiatives.[700] The information displayed about corporate SCSP subjects overlap to a large extent with that on the SAMR's National Enterprise Credit Information System, but further feature redlists of 'trust-keeping 守信', credit commitments, credibility assessment, judicial rulings, and others, as far as available.[701] Credit China has local branch websites,[702] but many local Development and Reform Cs also run their own respective social credit information platforms in different formats.[703] This local variety is likely due to the competitive SCSP building environment that the SCS Building Model City campaign fostered. Officials' performance was evaluated based on whether their locality made the list[704] – and one strongly weighted decision criterium is the establishment of social credit information platform, the amount of information shared thereon, and click counts.[705]

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[696] 企业信息公示暂行条例 (Regulations on Enterprise Information Disclosure), issued by the State Council on 7 August 2014, amended 10 March 2024.

[697] https://xxgs.chinanpo.mca.gov.cn/gsxt/newList (geo-blocked).

[698] https://credit.acla.org.cn/, archived at https://web.archive.org/web/20250507165121/https://credit.acla.org.cn/.

[699] Suggesting that eventually, Credit China will "centrally disclose all types of PCI. In principle, industry regulatory departments will no longer disclose PCI outside their areas" :中共中央办公厅 国务院办公厅关于健全社会信用体系的意见 (Opinions Of The CPCCC General Office And The State Council General Office On Completing The SCS), issued on 21 March 2025.

[700] https://www.creditchina.gov.cn/, in the words of the State Council: Credit China website shall "provide to the public a 'one-stop' inquiry service": *State Council Opinions On Joint Rewards And Disciplining*.

[701] Finding that records on the NDRC's *Credit China* database are more comprehensive than those on the SAMR's National Enterprise Credit Information Publicity System: Omar Ramon Serrano Oswald, Sandra Selmanovic, Benjamin Lee, Laua Arndt (2022) "Techno-regulation in China: How are Bavarian firms faring under the Social Credit System?" Report by the Bavarian Research Institute for Digital Transformation (bidt), July 2022, DOI: 10.35067/xypq-kn21, https://www.bidt.digital/wp-content/uploads/sites/2/2022/08/08_bidt-Reihe-Analysen-Studien-Technoregulierung-in-China-Web_EN.pdf, p. 20.
The State Council designated the NDRC's *Credit China* database as the central hub for social credit information publication, to which all departments must contribute their records: section 17, *State Council Opinions On Joint Rewards And Disciplining*.

[702] E.g., Shanghai: https://credit.fgw.sh.gov.cn/, archived at https://web.archive.org/web/20250506170031/https://credit.fgw.sh.gov.cn/.

[703] E.g., the Credit China (Zhejiang) portal administered by the provincial Credit Centre 浙江省信用中心, https://credit.zj.gov.cn/jyh/#/home/searchHome?ticketId=andflag=, archived at https://web.archive.org/web/20250512080928/https://credit.zj.gov.cn/jyh/#/home/searchHome?ticketId=andflag=.

[704] A common trait of the policy making culture in the PRC, as previously observed in the Civilized City Campaign: Ding Li, Han Xiao, Junsong Ding and Shuang Ma (2021) Impact of performance contest on local transformation and development in China: Empirical study of the National Civilized City program, *Growth and Change* 53(2), pp. 559-592.

[705] Criteria laid down in 社会信用体系建设示范城市评审指标（2017年版） (SCS Building Model City Evaluation Criteria (2017 version)), issued by the NDRC and PBoC on 11 August 2017, and the versions for the consecutive years, respectively (on file with the author, retrieved through local government agencies).

A technical key feature enabling the platforms is the 'social credit identifier', a unique number assigned to every legal person and other organization. Its significance cannot be overstated. The identifier facilitates the traceability of social credit information items and SCSP subjects across platforms for both, the inquirers and the operators.[706] SCSP subjects' exchanges with any state organ, be it a license application or a court case filing, is to be handled with reference to the social credit identifier.[707]

Industry associations[708] and regulators further built credit information platform for 'key target groups', individuals who are licensed service providers such as accountants, auditors, insurance brokers, medical personnel, teachers, tour guides, among others.[709]

For an overview of Social Credit Model City designation, see Jeremy Daum (2019) "What is a social credit demonstration city?" China Law Translate, 16 August, https://www.chinalawtranslate.com/en/what-is-a-social-credit-demonstration-city/; Marianne von Blomberg (2020) "How to build your municipal Social Credit System", European Chinese Law Research Hub, 26 October 2020, https://blog.uni-koeln.de/eclrhub/2020/10/26/how-to-build-your-municipal-social-credit-system/.

[706] GB 32100-2015 法人和其他组织统一社会信用代码编码规制 (The Coding Rule Of The Unified Social Credit Identifier For Legal Entities And Other Organizations), issued 17 September 2015. Allocating Social Credit Identifiers is the first and most comprehensively implemented of the SCSP building tasks: The NDRC's indicators for evaluating SCS Model Cities as early as 2016 required that 100% of the legal persons and other organizations have a social credit identifier, and local implementation plans reveal that they replaced the old 存量代码 with the social credit identifier: "存量代码100%转换为统一社会信用代码". The fact that nearly every court case in the judicial decisions database (Caipan Wenshu) indicates the litigating party's social credit identifier suggests that coverage is high.

[707] 国务院关于批转发展改革委等部门法人和其他组织统一社会信用代码制度建设总体方案的通知 (Notice Of The State Council On Approving And Forwarding The General Plan Of The NDRC And Other Departments On The Development Of A Unified Social Credit Code System For Legal Persons And Other Organizations), issued 11 June 2015.

[708] Since 2016, the NDRC Deputy Director highlighted the role of industry associations in SCS building: Zhejiang Chamber of Commerce 浙江商会发展 (2017) "连维良副主任主持召开行业协会信用体系建设工作座谈会 (Deputy director Weiliang Lian hosts the industry association credit system building work symposium)", WeChat, 20 March 2017, https://mp.weixin.qq.com/s?__biz=MzI0MDY1MDcyMg==andmid=2247483808andidx=1andsn=5d1c936c3a4d41ea2b4b5a412b60df68andchksm=e916d12dde61583bf7a0939f52904cfcdb9cccbd8cc1ee7616cb29c45a75e35919eb3b8dba38andscene=27, archived at https://web.archive.org/web/20250508154229/https://mp.weixin.qq.com/mp/wappoc_appmsgcaptcha?poc_token=HOLQHGijnrnrWJMyjRAhwdb-E6QNfZRHWkRlAiqHandtarget_url=https%3A%2F%2Fmp.weixin.qq.com%2Fs%3F__biz%3DMzI0MDY1MDcyMg%3D%3D%26mid%3D2247483808%26idx%3D1%26sn%3D5d1c936c3a4d41ea2b4b5a412b60df68%26chksm%3De916d12dde61583bf7a0939f52904cfcdb9cccbd8cc1ee7616cb29c45a75e35919eb3b8dba38%26scene%3D27. Most detailed top-level official language on the role of industry associations for creating, disclosing, and forwarding social credit records and assessments can be found in 国家发展改革委办公厅关于推送并应用市场主体公共信用综合评价结果的通知 (NDRC General Office On Promoting And Applying The Comprehensive Evaluation Results Of The Public Credit Of Market Subjects), issued 1 September 2019, https://www.gov.cn/xinwen/2019-09/16/content_5430181.htm, archived at https://web.archive.org/web/20250916191904/https://www.gov.cn/xinwen/2019-09/16/content_5430181.htm.

[709] The SCSP in so far it concerns individuals predominantly addresses selected professional 'target groups 重点人群': Civil servants, legal representatives of enterprises, lawyers, accounting practitioners, certified public accountants, statisticians, certified tax agents, auditors, appraisers, certification and inspection practitioners, securities and futures practitioners, senior executives of listed companies, insurance brokers, medical personnel, teachers, scientific researchers, patent service practitioners, project managers, news media practitioners, tour guides, practicing veterinarians. See *SCS Planning Outline*. Industry associations and chambers of commerce are also called to publish social credit blacklists from the relevant industry regulators through their channels: Part 4, 国家发展改革委 人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And PBoC On Strengthening And Regulating The Management Of The List Of Targets For Joint Rewards Of Trust-keeping And Joint Disciplining Of Trust-Breaking), issued 30 October 2017.

The Shanghai Bar Association, for instance, administers a platform of social credit records of lawyers and law firms in its jurisdiction.[710] The China Certified Tax Agents Association publishes lists of particularly trustworthy and lists of 'trust-breaking' tax agents on its website regularly.[711] The National Hygiene and Health Committee operates a platform displaying health professional's credit records.[712] Zhejiang's Traffic and Transportation Bureau operates a platform informing about registration information and the social credit status of logistics companies and their drivers.[713] Since incidents of apartment fires, accidents with children and domestic abuse related to domestic workers went viral in the media,[714] the Ministry of Commerce instructed the provinces to establish social credit information platforms, collecting and disclosing social credit files of domestic service industry workers including housekeepers and nannies.[715] Eventually, it launched an app that allows for social credit checks of 20,000 domestic service companies and more than 16 million domestic workers as of December 2024 (screenshot below).[716]

[710] https://credit.lawyers.org.cn/, archived at https://web.archive.org/web/20250506155907/https://credit.lawyers.org.cn/.
[711] https://www.cctaa.cn/.
[712] https://credit.jdzx.net.cn/portal/, archived at https://web.archive.org/web/20250506161633/https://credit.jdzx.net.cn/portal/.
[713] https://xyfw.jtyst.zj.gov.cn/publicity/web/cont, archived at https://web.archive.org/web/20250506163946/https://xyfw.jtyst.zj.gov.cn/publicity/web/cont.
[714] For instance, media reported on a series of housekeepers who have poisened the elderly clients under their care, Baidu Baike: "毒保姆 (Poison nannies)", https://baike.baidu.com/item/%E6%AF%92%E4%BF%9D%E5%A7%86/19212270?fr=aladdin, archived at https://web.archive.org/web/20250523110625/https://baike.baidu.com/item/%E6%AF%92%E4%BF%9D%E5%A7%86/19212270?fr=aladdin; One high profile case resulted in a death penalty for the worker: Huanqiu 环球网 (2018) "杭州保姆纵火案庭审：罪名刑责成为争议焦点 (Hangzhou nanny arson case trial: rime and criminal responsibility become the focus of controversy)", 3 February 2018, https://baijiahao.baidu.com/s?id=1591332902358152569andwfr=spiderandfor=pc, archived at https://web.archive.org/web/20250523112116/https://baijiahao.baidu.com/s?id=1591332902358152569andwfr=spiderandfor=pc.
[715] 商务部 国家发展改革委关于建立家政服务业信用体系的指导意见 (Ministry Of Commerce And The NDRC Guiding Opinions On Establishing A Domestic Service Industry Credit System), issued 27 June 2019. See, for instance, Gansu Province's version: https://cxpt-gssjx.cn/#/, archived at https://web.archive.org/web/20250507113127/https://cxpt-gssjx.cn/#/.
[716] See also, Zhengyang Sui 岁正阳 (2024) ""信用+家政"，让找"好阿姨"不再难 ('Credit + housekeeping' makes finding a 'good auntie' no longer difficult)", 澎湃 (The Paper), 13 May 2024, https://www.thepaper.cn/newsDetail_forward_27359141, archived at https://web.archive.org/web/20250507152550/https://www.thepaper.cn/newsDetail_forward_27359141.

Screenshot of the Ministry of Commerce's app 家政信用查服务, December 2024

The PBoC early on established a public credit registry, the Credit Reference Centre, which issues credit reports and provides online inquiry.[717] Generally speaking, the PBoC's financial credit records are separate from the compliance record disclosure mechanisms described above. They however now also include courts' records about fulfilled and unfulfilled judgments[718] and state departments previously signed deals to insert compliance records in financial credit files[719] even though this does not serve a credit registry's main aim of informing about financial liquidity and has been subject to fierce criticism from the finance world.[720] The inclusion of compliance records makes the legal compliance of an SCSP subject become one informational basis for decision-makers in the market, binding loan availability to compliance. The widening of financial

[717] http://www.pbccrc.org.cn/. The PBoC's Credit Reference Centre was by 2011 with nearly 18 million corporate and 795 million individual records the largest in the world, according to PBoC official Jinfu Du 杜金富: Feng Su 苏枫 (2012) "世界最大征信系统是如何建成的?——专访中国人民银行党委委员、副行长杜金富" (How was the world's largest credit reporting system built? How was the world's largest credit reporting system built? — An interview with Jinfu Du, member of the PBoC Party Committee and Vice Governor of the PBoC), 小康杂志 (Insight China) 1/2012, pp. 34-38.

[718] 最高人民法院关于公布失信被执行人名单信息的若干规定 (Several Provisions Of The SPC On The Disclosure Of Trust-Breaking Judgment Defaulter List Information), issued 1 June 2013. Sample consumer credit report of the Credit Reference Centre: http://www.pbccrc.org.cn/ewebeditor/uploadfile/20230426112754595001.pdf, archived at: https://web.archive.org/web/20240209132454/http://www.pbccrc.org.cn/ewebeditor/uploadfile/20230426112754595001.pdf.

[719] For instance: 国家环境保护总局、中国人民银行、中国银行业监督管理委员会关于落实环保政策法规防范信贷风险的意见 (Opinion By The State Administration for Environmental Protection, The PBoC And The China Banking Regulatory Commission On Implementing Environmental Protection Policies And Regulations To Prevent Credit Risks), issued 18 July 2007, https://www.mee.gov.cn/gkml/zj/wj/200910/t20091022_172469.htm.

[720] "Why are the relevant government departments so keen on the credit registry?" Weigang Fu 傅蔚冈 (2016) "征信"扩大化，或变身"道德档案"" (Expanding 'credit reporting' may turn it into 'moral archives'), 华夏时报 (China Times), 21 April 2016, https://www.chinatimes.net.cn/article/55512.html, archived at https://web.archive.org/web/20250506143201/https://www.chinatimes.net.cn/article/55512.html. 傅蔚冈 is the Executive Director of Shanghai Institute for Finance and Law (上海金融与法律研究院执行院长).

credit files to include non-financial behavioural records is in some accounts described as the unique feature of China's credit system,[721] however it also corresponds to a broader global trend outlined by Xin Dai 戴昕:

> "[...] there is no insurmountable boundary between financial credit and the reputation mechanism in a broader field. The impact of the information technology revolution is that, on the one hand, market entities that can process reputation information on a large scale and in a systematic manner have emerged outside of banks and financial institutions [...]; on the other hand, although "modern" financial credit evaluation has gradually moved away from the seemingly "boundless" family reasoning and turned to a structured model with a relatively limited range of independent variables, the rise of big data has made financial credit itself return to the tradition of "universal connection of all things"."[722]

The above-described landscape of state-driven social credit information platforms[723] is the fundament in the SCSP's publicity-centred law enforcement mechanism.[724] To enhance the platforms' power, services based in the private sector are called to action. In 2007 already, the State Council stated that "open government information is the cornerstone of the development of the credit service market" and encouraged all state departments to actively disclose social credit information so that market actors can develop "credit service institutions"[725]. Top-level SCSP authority continues to call private actors to make their own MCI publicly available and build respective services as well as to draw on PCI[726] and credibility assessments[727] from regulatory agencies and insert them into decision-making in the market, especially through "credit products 信用产品"[728].

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[721] Observers within and outside of China regard this feature of the SCS, the law enforcement feature, as the Chinese characteristic of the credit system in China: Chuangyu Fu 伏创宇 (2023) 信用惩戒适用行为人责任的法理及其限度 (Jurisprudence and limitation of the actor's responsibility in the application of credit disciplines), 法学研究 (Chinese Journal of Law) 6/2023, pp. 37-52, p. 37; *Luping Zhang: Administrative blacklists*, p. 27.

[722] Xin Dai 戴昕 (2019) 理解社会信用体系建设的整体视角法治分散、德治集中与规制强化 (A comprehensive understanding of the social credit system's decentralized law, centralized morality, and empowered regulation), 中外法学 (Peking University Law Journal) 31(6), pp. 1469-1491, p. 1473.

[723] Significantly pushed through the National Credit Information Centre 国家信用信息中心, whose officials are in charge of an industry each, ordered to build websites for spreading social credit information: VT02.

[724] State-run information platforms are particularly effective as they are deemed reliable. Nathan Cortez (2011) Adverse publicity by administrative agencies in the internet era, *Brigham Young University Law Review* 5, pp. 1371-1448.

[725] *State Council 2007 SCS Opinions*.

[726] E.g., in 国家发展改革委办公厅关于充分发挥信用服务机构作用加快推进社会信用体系建设的通知 (Notice Of The NDRC General Office On Fully Bringing Into Play The Function Of Credit Service Institutions To Accelerate SCS Building), issued 2 February 2018; (4), 国家发展改革委 人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And PBoC On Strengthening And Regulating The Management Of The List Of Targets For Joint Rewards Of Trust-keeping And Joint Disciplining Of Trust-Breaking Breaking), issued 30 October 2017. This manifests not only in local policy but also local legislation, e.g. calling state and private entities to decide over partners/suppliers/clients using social credit information: Art. 37-38, 重庆市社会信用条例 (Chongqing City Social Credit Regulations), passed by the Standing Committee of the Chongqing Municipal People's Congress on 27 May 2021.

[727] *State Council Opinion on CBR*; Art. 8(7), 厦门市人民政府关于印发社会信用评价机制和分级分类管理办法的通知 (Notice of the Xiamen Municipal Government in Issuing the Social Credit Assessment Mechanism and Classified Regulation Management Measures), issued 7 June 2023.

[728] For instance, "support credit reporting institutions and credit rating institutions in using public/state information to provide credit products and services to civil-run companies": Part 7, 中共中央办公厅、国务

The credit services market thus thrived and diversified in the past decade, even though it still takes up a much smaller proportion of overall (public and private) credit information services, than is the case in the USA and Germany.[729] Private corporate credit information services that provide detailed company analyses based on social credit information include Qichacha 企查查, Tianyancha 天眼查, and 爱企查 Aiqicha (by Baidu)[730]. To what extent personal credit information services, too, draw on PCI and thereby further law enforcement is not clear. Notably, the only three currently licensed personal credit rating companies are majority state-owned, with a fourth one to come. A two-year experiment throughout which several established technology companies including Alibaba's Ant Financial piloted personal credit scores was deemed unsuccessful by the PBoC in 2017. Citing reasons of conflicts of interests (several of the companies also provide lending services) and wide discrepancies between their credit rating results and those of the PBoC, none of the participants obtained a license to continue operating.[731] Instead, three majority state-owned companies were successively created and licensed to conduct personal credit scoring: Baihang Credit 百行征信, Pudao Credit 仆道征信 and, most recently joining the ranks, Qiantang Credit 钱塘征信. A fourth company, most likely based in Shanghai, is preparing to begin operations.[732] The early and rich-in-consumer-data pilot companies were made minority shareholders with the intention that they would provide their consumer data. However, they voiced opposition to sharing data with the three new personal credit rating firms.[733] The three credit rating companies' proximity to the state indicates that compliance information of individuals is in arms-reach for their ratings. Should they tap into personal social credit files, their credit ratings might become useful law enforcement vehicles. However, the PBoC still appears to cling to rather 'clean' financial credit files,[734] even though its move to tap into the consumer data of the eight

院办公厅印发《关于加强金融服务民营企业的若干意见》 (CPCCC General Office And The State Council General Office On Issuing 'Several Opinions On Strengthening Financial Service Corporations'), issued 14 February 2019. Further discussed in section 3.2.5.

[729] Theresa Krause, Mo Chen, Lena Wassermann, Doris Fischer and Jens Grossklags (2022) China's corporate credit reporting system: A comparison with the United States and Germany, *Regulation and Governance* 17, pp. 755-771, p. 760.

[730] The websites are no longer accessible from beyond PRC territory.

[731] Yuzhe Zhang, Qinqin Peng and Tongjian Dong (2017) "China gives little credit to companies handpicked to develop credit-reporting sector", Caixin Global, 15 May 2017, https://www.caixinglobal.com/2017-05-15/china-gives-little-credit-to-companies-handpicked-to-develop-credit-reporting-sector-101089851.html, archived at https://web.archive.org/web/20250521094721/https://www.caixinglobal.com/2017-05-15/china-gives-little-credit-to-companies-handpicked-to-develop-credit-reporting-sector-101089851.html.

[732] Yuzhe Zhang and Na Qing (2025) "Exclusive: Shanghai state-owned enterprise to lead new personal credit reporting firm", Caixin Global, 2 July 2025, https://www.caixinglobal.com/2025-07-02/exclusive-shanghai-soe-to-lead-new-personal-credit-reporting-firm-102337407.html, archived at https://web.archive.org/web/20250720114031/https://www.caixinglobal.com/2025-07-02/exclusive-shanghai-soe-to-lead-new-personal-credit-reporting-firm-102337407.html.

[733] Sun Yu (2021) "Jack Ma's Ant defies pressure from Beijing to share more customer data", Financial Times, 2 March 2021, https://www.ft.com/content/1651bc67-4112-4ce5-bf7a-d4ad7039e7c7, archived at https://web.archive.org/web/20250521101421/https://www.ft.com/content/1651bc67-4112-4ce5-bf7a-d4ad7039e7c7.

[734] Representatives of the PBoC reiterate this intention frequently, see e.g. Wan Cunzhi, the director of the PBOC's Credit Information System Bureau in: Yuzhe Zhang, Qinqin Peng and Tongjian Dong (2017) "China gives little credit to companies handpicked to develop credit-reporting sector", Caixin Global, 15 May 2017, https://www.caixinglobal.com/2017-05-15/china-gives-little-credit-to-companies-handpicked-to-develop-credit-reporting-sector-101089851.html, archived at

former personal credit scoring pilot firms demonstrates a willingness to in principle widen the scope of its files.

The non-state actors in information disclosure further include a series of semi-private platforms that provide various services related to credit.[735] For instance, the Corporate Credit Rating Network 企业信用评级网, licensed by the Ministry of Commerce, introduces its credit rating service as "important component of building our country's SCS".[736] It works with information retrieved from local and central level state-driven social credit platforms, as well as industry associations. Apart from traditional commercial credit rating, it also provides SCSP-specific services such as preparing applications for a 'sincere model company' title or other distinctions and providing material evidencing creditworthiness of bidders in public procurement processes for the use by the bidding and tendering service companies who in turn are commissioned by governments to find adequate contractors.[737] Services include creating QR codes that link directly to the company's official social credit record.[738] A series of products and services bringing social credit information to decision-makers were developed under the headline of "Credit + (信易+, sometimes 信用+, further discussed in section 3.2.5.)": A good social credit record unlocks loans to SMEs,[739] prioritized handling by travel service agents[740] and favourable treatment in renting commercial spaces[741].

Other political efforts to make market actors use social credit information include deals between platform companies and state departments. For instance, in 2016, the NDRC alongside other departments convinced major platform companies including Alibaba, Jingdong, Tencent, and Didi, to sign an action plan promising to integrate negative social credit information records into the user profiles of businesses and individuals conducting

https://web.archive.org/web/20250521094721/https://www.caixinglobal.com/2017-05-15/china-gives-little-credit-to-companies-handpicked-to-develop-credit-reporting-sector-101089851.html.

[735] 国家发展改革委办公厅关于充分发挥信用服务机构作用加快推进社会信用体系建设的通知 (Notice Of The NDRC General Office On Fully Bringing Into Play The Function Of Credit Service Institutions To Accelerate SCS Building), issued 2 February 2018.

[736] Company website at xyhb315.com/s/about.asp, archived at https://web.archive.org/web/20240308162237/http://www.xyhb315.com/s/about.asp.

[737] 招投标企业信用等级证书, see for instance http://www.xyhb315.com/s/show/?id=9731, archived at https://web.archive.org/web/20240308173012/http://www.xyhb315.com/s/show/?id=9731.

[738] Such QR codes in turn are required by SCSP rules: For instance, taxis, uses and other transportation providers in Beijing shall display their QR code for inquiring social credit files in their operation venues and vehicles, so that the public can inquire their social credit files. Art. 22, *Beijing Trial Measures On CBR In Traffic And Transportation*.

[739] 国家发展改革委、银保监会联合印发《关于深入开展 '信易贷' 支持中小微企业融资的通知》 (NDRC and China Banking and Insurance Regulatory Commission Jointly Issue The 'Notice On Further Developing 'Xinyi Loan' To Support The Financing Of Micro, Small, And Medium-sized Micro Enterprises'), 21 September 2019; 中共中央办公厅 国务院办公厅印发 《关于促进中小企业健康发展的指导意见》 (CPCCC General Office And The State Council On Issuing The 'Guiding Opinion On Promoting The Sound Development Of Small And Medium Enterprises') , issued 7 April 2019.

[740] 国家发展改革委关于印发《海南省建设国际旅游消费中心的实施方案》的通知 (Notice Of The NDRC On Issuing The 'Hainan Province International Tourism And Consumption Destination Building Implementation Plan'), issued 12 December 2018.

[741] Alongside a series of other programs: 国家发展和改革委员会关于探索开展守信激励创新试点的通知 (Notice Of The NDRC On Exploring And Conducting Pilot Programs On Innovations In Rewarding Trust-Keeping), issued 24 April 2018.

transactions within their respective ecosystems.[742] The aim to bring public data to use is not limited to social credit information. A broader push around the government's designation of 'data as a factor of production 数据要素' is underway and includes putting government-held data to economic use.[743]

3.2.1.3. Discussion

Is the SCSP's publicity-centred law enforcement mechanism conducive to law enforcement in China? The institutional design of the mechanism indicates so. Achieving law enforcement through information disclosure is hardly a social credit invention, rather, "China is no exception"[744] in the global trend towards using transparency as a mode of governing:

> "Broadly speaking, it [the SCSP] therefore seeks to achieve many of the same public policy goals that are driving governments elsewhere to adopt corporate disclosure and due diligence regulations, and that have led private standard setters and certification bodies to develop rating systems for corporate sustainability, governance, and financial performance."[745]

Unsurprisingly, then, the SCSP and its information platforms are in the literature conceptualized as an institution creating stability and predictability for transactions in the market. Organization theorists study the SCSP as one case for better understanding typologies of transparency.[746] Haemin Jee views the SCSP as a new information-consolidating institution which effectively remedies shortcomings in an autocracy's law

[742] Gov.cn (2016) "国家发展改革委等8部门联合发布《关于对电子商务及分享经济领域炒信行为相关失信主体实施联合惩戒的行动计划》 (NDRC and 8 other departments jointly publish the 'Action Plan On Implementing Joint Disciplinary Measures For Trust-Breaking Subjects Related To Credibility In The Field Of E-Commerce And The Sharing Economy')", 11 November 2016, https://www.gov.cn/xinwen/2016-11/11/content_5131427.htm, archived at https://web.archive.org/web/20250508160420/https://www.gov.cn/xinwen/2016-11/11/content_5131427.htm. The plan is available at https://credit.sxgp.gov.cn/news/content/777585766061572096, archived at https://web.archive.org/web/20250508160103/https://credit.sxgp.gov.cn/news/content/777585766061572096.

[743] The fifth factor, apart from land, labour, capital and technology. First so-designated by the CPCC and the State Council in 2020: 中共中央国务院关于构建更加完善的要素市场化配置体制机制的意见 (CPCCC and State Council Opinions On Constructing A More Complete System And Mechanism For The Market-Oriented Distribution Of Factors), issued 9 April 2020, https://www.gov.cn/zhengce/2020-04/09/content_5500622.htm, archived at https://web.archive.org/web/20250512083727/https://www.gov.cn/zhengce/2020-04/09/content_5500622.htm. For an overview, see Qiheng Chen (2022) "China wants to put data to work as an economic resource – but how?" DigiChina, 9 February 2022, https://digichina.stanford.edu/work/china-wants-to-put-data-to-work-as-an-economic-resource-but-how/. Claiming that NECIPS sells data to Qichacha etc: Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 59. This could not be verified by the author, and it contradicts SCSP policies stating that PCI is in principle publicly available through state-driven social credit portals. 中共中央办公厅 国务院办公厅关于健全社会信用体系的意见 (Opinions Of The CPCCC General Office And The State Council General Office On Completing The SCS), issued on 21 March 2025.

[744] Virginia Harper-Ho (2024) China's corporate credit system and the boundaries of corporate liability, in Paul S. Davies and Hans Tjio (eds) *Fraud and risk in commercial law*, Bloomsbury Publishing, pp. 323-346.

[745] Virginia Harper-Ho (2024) China's corporate credit system and the boundaries of corporate liability, in Paul S. Davies and Hans Tjio (eds) *Fraud and risk in commercial law*, Bloomsbury Publishing, pp. 323-346.

[746] Hans Krause Hansen and Richard Weiskopf (2021) From universalizing transparency to the interplay of transparency matrices: Critical insights from the emerging Social Credit System in China, *Organization Studies* 42(1), pp. 109-128.

enforcement apparatus by means of institutional layering.[747] Considering the previous status quo of market transparency architecture in the PRC, social credit platforms may well be described as a breakthrough.

It is well documented in legal and political science literature that disclosing compliance records is positively related to legal compliance of market actors.[748] Other than fines, disclosure-based regulatory practices do not run the risk of simply being factored in as cost of business.[749]

First empirical studies find the SCSP's publicity-centred law enforcement mechanism to be effective: "The fact that businesses welcome increased transparency shows that the self-regulatory effects which the designers of the SCS intended to create have manifested themselves in practice."[750] It in fact decreases transaction costs.[751] The SCSP first instituted inquiry platforms nationwide that allow for systematic background checks of companies across localities and regulatory realms using their social credit identifier. Even just a company's basic registration information, bound to a SCSP subjects' unified social credit identifier and thus traceable across different platforms, is of crucial importance for market actors to deriddle corporate group structures[752] and in fact the type of information on social credit platforms inquired by most managers according to a survey.[753] Credit report downloads from Credit China reached approximately 80,000 in 2025 and inquiries into the website's red and blacklists reached 490 million, according to the website operator.[754] According to official numbers, the SAMR's National Enterprise Credit Information Publicity System reaches around 17,000,000 clicks daily.[755] Interviews with managers confirmed that social credit

[747] Haemin Jee (2022) Credit for compliance: How institutional layering ensures compliance in China, Dissertation, Stanford University Department of Political Science, available at https://purl.stanford.edu/tg087jk8675.

[748] E.g., Judith van Erp (2007) Effects of disclosure on business compliance: A framework for the analysis of disclosure regimes, *European Food and Feed Law Review* 2(5), pp. 255-263; Nadja Dwenger and Lukas Treber (2018) Shaming for tax enforcement: Evidence from a new policy, Hohenheim Discussion Papers in Business, Economics and Social Sciences 21, University Hohenheim, http://nbn-resolving.de/urn:nbn:de:bsz:100-opus-15260; Generally on transparency as a mode of governing, see: Amitai Etzioni (2010) Is transparency the best disinfectant? *The Journal of Political Philosophy* 18(4), pp. 389-404; Christopher Hood and David Heald (ed., 2006) *Transparency: The key to better governance?* British Academy.

[749] Brent Fisse and John Braithwaite (1983) *The impact of publicity on corporate offenders*, State University of New York Press.

[750] Theresa Krause (2024) *Corporate compliance and the Social Credit System in China*, Nomos, p. 272.

[751] Lena Wassermann and Theresa Krause (2023) The impact of the Social Credit System on foreign companies using the case of German firms, paper draft submitted to the *Conference on ADM in Chinese Societies* at the Royal Melbourne Institute of Technology in January 2023, on file with the author.

[752] Virginia Harper-Ho (2024) China's corporate credit system and the boundaries of corporate liability, in Paul S. Davies and Hans Tjio (eds.) *Fraud and risk in commercial law*, Bloomsbury Publishing, pp. 323-346, p. 343.

[753] Theresa Krause (2024) *Corporate compliance and the Social Credit System in China*, Nomos, p. 265.

[754] National PCI and Geospatial Information Centre http://www.ncpci.org.cn/tzfb/202504/W020250429529837727122.pdf, archived at https://web.archive.org/web/20250528134802/http://www.ncpci.org.cn/tzfb/202504/W020250429529837727122.pdf.

[755] People's Daily 人民日报 (2024) "依法公示1.88亿户经营主体信用信息" (Lawfully publicizing 188 million business entities' credit information), 4 November 2024, http://gd.people.com.cn/n2/2024/1104/c123932-41030087.html, https://web.archive.org/web/20250605091812/http://gd.people.com.cn/n2/2024/1104/c123932-41030087.html.

platforms, state driven as well as private platforms, have become a key resource for decision making[756] Their very existence have a signalling effect that rendered firms to pay more attention to regulatory compliance.[757]

The SCSP promotes the growth of the private credit information industry, but also uniquely shapes it. As Theresa Krause et al. note, in other countries, state departments provide 'raw' information such as annual reports, but they leave it to private credit service companies to create assessment categories including scores and grades, augmenting the information with a value judgment. Under the SCSP, not just private but also state actors process public records into assessments of trustworthiness under the SCSP-invented category 'trust-breaker'. State agencies produce various blacklists and grades, trustworthiness assessments which then inform the assessments the private credit information industry produces. The NDRC decided that "[t]he great development of the construction of the SCS is inseparable from the great development of credit service institutions and the credit service market" and goes on to point out that MCI and PCI are to blend.[758] The state thereby inserts its own evaluation of a regulatory record in the market, not replacing, but certainly impacting the assessments produced by the private credit agencies (and those market actors inquiring directly through the state-administered platforms). This ensures that the compliance records the state feeds into the credit information industry embody regulatory priorities. The credit information industry is thereby leveraged for the SCSP goal of enhancing legal compliance. This model might "present a challenge to U.S.-led sovereign debt and corporate bond rating models developed by S&P, Moody's, and Fitch Ratings."[759]

However, it remains to be seen whether the state's expectations regarding the role of the credit information industry for enhancing regulatory compliance will materialize. It relies on at least two factors: First, it assumes that financial credibility and compliance with law correlate. As one interviewed manager from Beijing said, he isn't interested in whether a company they purchase material from is on a blacklist for environmental pollution. He suggested that in fact, many of the suppliers his firm works with likely have bad compliance records, but as long as they perform their contractual duties, he is unconcerned.[760] The outcome of the SCSP plans to draw in private credit information service agencies for its goals hinges on the question of how much state intervention (i.e.

[756] 70% of German companies interviewed in a survey by KPMG and the German Chambers of Commerce Abroad reported that they use social credit information platforms to acquire information about potential business partner before a transaction, see German Chambers of Commerce Abroad and KPMG (2022) German business in China: Business confidence survey 2021/22. Technical Report, https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2022/03/german-business-in-china.pdf, p. 39.
[757] Theresa Krause (2024) *Corporate compliance and the Social Credit System in China*, Nomos, p. 257.
[758] 国家发展改革委办公厅关于充分发挥信用服务机构作用加快推进社会信用体系建设的通知 (NDRC General Office Notice On Fully Bringing Into Play The Function Of Credit Service Institutions To Accelerate SCS Building), issued 2 February 2018.
[759] Kendra Schaefer (2020) China's Social Credit System: Context, competition, technology and geopolitics, Trivium China, 4 December 2020, available at https://www.uscc.gov/sites/default/files/2020-12/Chinas_Corporate_Social_Credit_System.pdf, p. 8.
[760] BJ22. Empirical studies elsewhere have shown that "[l]egal norms are not always shared by stakeholders and that the publication of an offence is not a signal for the unreliability of a company or institution": Judith van Erp (2008) Reputational sanctions in private and public regulation, *Erasmus Law Review* 1(5), pp. 145-162, p. 159.

inclusion of compliance records in financial credit files) the credit information industry can tolerate without losing credibility and reliability for its clients.[761]

Secondly, the effectiveness of the social credit information disclosure platforms to further legal compliance hinges on the quality of the platforms, specifically, on the accuracy and wealth of information contained therein and on how well the inquiry channels function. The coverage of social credit information platforms is wide, including records of registered companies, individual professionals, and other service providers. However, the platforms are useless or even counterproductive if market actors consider them incomplete or plagued with errors. To date, a full and real-time provision of correct social credit information is far from achieved and credit information databases are fragmented. Some types of records are reliably included in public platforms, while records of some state agencies are absent overall, some are provided for some years, not for others. Regulators[762] and courts[763] have given in to single requests of targeted companies and refrained from publishing administrative punishment decisions. Several high-profile fines reported in the media are absent from social credit databases, such as the record fine imposed on Alibaba's Ant Financial in 2023.[764] Further, state agencies are reluctant to share or forward regulatory records, fearing repercussions for erroneous records.[765] Tellingly, the 2025 top-level guidance on SCS building marks "closing the SCS data basis" as one of seven key areas.[766] Data formats are not compatible, impeding effective exchange.[767] As a result of both, data silos (in Chinese: 'lonely islands of data' 数据孤岛, sometimes 信息孤岛) are prevalent and surfaced especially during the Covid-19 pandemic.[768] Channels for SCSP subjects to object to and correct own files are crucial to achieve data accuracy but are not available everywhere. Generally, it is difficult for SCSP subjects to have wrong or outdated negative records deleted from the platforms.[769]

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[761] As noted in chapter 2, credit information service providers and credit registries in many developing countries draw on compliance information, simply because it is one comparably reliable and available source of data in predominantly unbanked environments. This practice however is by the World Bank deemed of temporary nature to bridge steps on the way to a mature banking network and respective financial information records: World Bank (2019) Credit reporting knowledge guide 2019. World Bank Group, https://openknowledge.worldbank.org/handle/10986/31806.

[762] Theresa Krause (2024) *Corporate compliance and the Social Credit System in China*, Nomos, p. 258.

[763] Judges BJ11; SZ04; Ningbo judge cited in William Zhengdong Hu (2022) No way out? The fate of 'dishonest judgment debtors' in China's Social Credit System, Dissertation submitted at the University of Warwick, http://wrap.warwick.ac.uk/179311.

[764] Decision announced here: 中国证监会浙江监管局行政处罚决定书（蚂蚁基金销售、林思思）, by the China Securities Regulatory Commission, 6 July 2023, http://www.csrc.gov.cn/csrc/c101928/c7418541/content.shtml, not archivable.

[765] Sections 3.2.3.2.; 3.2.4.3.

[766] 中共中央办公厅 国务院办公厅关于健全社会信用体系的意见 (Opinions Of The CPCCC General Office And The State Council General Office On Completing The SCS), issued on 21 March 2025.

[767] Assessing the landscape: "[...] there is a lack of guidance on unified credit information catalogues, formats, methods, and paths. Some departments do not know what information belongs to CBR information and how to share credit information [...]" Xianghua Li 李向华, Li Zhou 周莉, Lihong Zhu 朱李红 (2023) 经营主题信用监管信息融合关键技术标准研究 (Research on key technical standards for the integration of CBR information of business entities), 中国标准化 (China Standardization) 9/2023, pp. 48-53, p. 49, hereafter: *Li et al.: Research on key technical standards*.

[768] Adam Knight and Rogier Creemers (2021) Going Viral: The Social Credit System and COVID-19, SSRN, 20 January 2021, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3770208.

[769] Section 4.2.5.

The inconsistencies lead to unfair enforcement realities, which in turn dampen the platforms' overall credibility.

Summing up, the social credit information disclosure platforms are both in line with the SCSP core concept to build a socialist market economy and practices of publicity-centred law enforcement that have proven feasible in developed market economies. Evidence points to their effectiveness in improving legal compliance. In fact, social credit information disclosure is today one often-called for practice in departmental regulatory documents.[770] That said, how well publicity-centred law enforcement curated by the SCSP works depends fully on the credibility of the platforms, in other words, the reputation of the reputation information platforms. The current inaccuracy and incompleteness of the records and the bleak prospects for solving the underlying issues cast doubts over the use of social credit information for publicity-centred law enforcement.

3.2.2. Publicity with a twist: Reputational disciplining

"In both traditional and contemporary political thought, the encouragement of a sense of 'shame' (*chigan 耻感*) is the agent or mechanism by which transformation in the individual is motivated. Shame becomes an agent of enlightenment."

- Delia Lin[771]

"[the blacklist system] can also serve as a warning to other members of society, and to a certain extent, it can make "speculators" give up their fluke mentality."

- Judge Changcheng Lu 吕长城 and Yanyu He 贺妍玉[772]

The disclosure of social credit information described above speaks to the neoliberal concept that an informed market is the best regulator. The SCSP however also developed a mechanism which takes information disclosure a step further: In reputational disciplining, social credit information is framed morally to achieve a shaming effect. This both amplifies the effects but also risks inducing counter-reactions by the public that undermine law enforcement.

3.2.2.1. Concept

Reputational disciplining[773] is similar to social credit information disclosure described above, in that here, too, SCS planners envisage that corporate organizations and

[770] For instance: Point 48, 中共中央关于进一步全面深化改革 推进中国式现代化的决定 (CPCCC Decision Regarding Further Comprehensively Deepening Reform And Promoting Chinese-Style Modernization), issued by the Third Meeting of the 12th CPCCC on 18 July 20124, under the subtitle "improving environmental governance systems": "Deepen the lawful disclosure of environmental information system reform, build an environment credit supervision system."

[771] Delia Lin (2017) *Civilising citizens in post-Mao China: Understanding the rhetoric of suzhi*, Routledge, p. 11.

[772] *Lü and He: An analysis of the path to legal regulation*, p. 126.

[773] Chinese scholarship has usefully summarized the widespread dissemination of negative compliance records of SCSP subjects framed as "trust-breaking" under this term, reputational punishment 声誉罚 or reputational sanction 声誉制裁. See Wei Wang 王伟 (2019) 失信惩戒的类型化规制研究———兼论社会信用法的规则设计 (Research on regulating the categorization of trust-breaker disciplines – Discussing the design of social credit law principles), 中州学刊 (Academic Journal of Zhengzhou) 5/2019, pp. 43-52; *Ruixue Wang: The contemporary picture*; Chun Peng 彭錞(2024) 再论行政处罚决定公开: 性质、逻辑与方式 (Further discussion of the disclosure of administrative punishment decisions: Substance, logic and mode), 现代法学 (Modern Law Science) 46(1), pp. 48-63; Qi Yao 姚琦 (2017) 声誉罚研究——以欠税公告、行政黑

individualsreject cooperating with, purchasing from, hiring, or otherwise entering relations with 'trust-breakers', thereby pushing them to comply with the law.[774] As SCS theory coiner Junyue Lin 林钧跃 phrased it, the SCSP aims to "intensify the contradiction [contract breach/violation of law] into a contradiction between the trust-breaking party and the whole society"[775]. Reputational disciplining is best considered separately from publicity-centred law enforcement as it differs qualitatively in three respects: It (1) *explicitly aims to punish,* (2) *provides the necessary moral rhetoric* and (3) *disseminates the message* to the "shaming community",[776] actors who are in a position to exert pressure on the target subject.[777] SCSP reputational disciplining thereby falls within what regulation scholarship has conceptualized as regulatory shaming.[778]

Instances of regulatory agencies using regulatory shaming are prevalent globally.[779] Agencies in different fields and countries designed shaming tools according to their own regulatory needs. The U.S. Department of Labour for instance uses Twitter and other publication formats to shame companies for violating work safety rules,[780] the U.K. Health and Safety Executive has an online register of convictions and enforcement notices,[781] and Australia's Competition and Consumer Commission employed shaming strategies in cartel enforcement,[782] The disclosure of law violations on the German capital market were found to be of definite punitive nature, even though regulators frame it as mere government transparency work.[783] Against this background, the PRC

名单与公共警告为例 (Research on reputational punishment – The cases of tax debtor announcement, administrative blacklists and public warnings), 法制博览 (Legality Vision) 21, pp. 20-22; Wenhan Yuan 袁文瀚 (2019) 信用监管的行政法解读 (An administrative law interpretation of credibility-based regulation), 行政法学研究 (Administrative Law Review) 1/2019, pp. 18-31, hereafter: *Wenhan Yuan: Administrative Law and credibility-based regulation*; *Binglin Tan: Disciplining trust-breaking*; *Wei Fan: The legal character*.

[774] Junyue Lin 林钧跃 (2002) 社会信用体系原理 (Principles of the Social Credit System), 中国方正出版社 (China Fangzheng Press); Junyue Lin 林钧跃 (2012) 市场联防机制:充分发挥社会信用体系功能的一项基础工程 (The market joint prevention mechanism: A fundamental project to fully leverage the functions of the Social Credit System), 征信 (Credit Reference) 5/2012, pp. 4-8.

[775] Junyue Lin 林钧跃 (2002) 失信惩戒机制的设计和维护 (The design and safeguard of the disciplining of trust-breaking mechanism), 经济社会体制比较 (Comparative Economic and Social Systems) 2/2002, pp. 1-6, p. 6.

[776] Sharon Yadin (2019) Regulatory shaming, *Environmental Law* 49(2), pp. 407-451, p. 431.

[777] This threefold structure is borrowed from Marianne von Blomberg and Haixu Yu (2023) Shaming the untrustworthy and paths to relief in China's Social Credit System, *Modern China* 49(6), pp. 744-781.

[778] E.g., Sharon Yadin (2019) Regulatory shaming, *Environmental Law* 49(2), pp. 407-451; Judith van Erp (2011) Naming and shaming in regulatory enforcement, in Christine Parker and Vibeke Lehmann Nielsen (eds.) *Explaining compliance*, Elgar Online; Judith van Erp (2008) Reputational sanctions in private and public regulation, *Erasmus Law Review* 1(5), pp. 145-162; Toni Makkai and John Braithwaite (1994) Reintegrative shaming and compliance with regulatory standards, *Criminology* 32(3), pp. 361-385. Or, denoting the same practice, "adverse publicity": Ernest Gellhorn (1973) Adverse publicity by administrative agencies, *Harvard Law Review* 86(8), pp. 1380-1441; Nathan Cortez (2011) Adverse publicity by administrative agencies in the internet era, *Brigham Young University Law Review* 5, pp. 1371-1448.

[779] Sharon Yadin (2019) Regulatory shaming, *Environmental Law,* 49(2), pp. 407-451, p. 429.

[780] See, for instance, Twitter activity around https://web.archive.org/web/20250519130803/https://www.dol.gov/newsroom/releases/whd/whd20240709.

[781] https://www.hse.gov.uk/enforce/convictions.htm.

[782] Christine Parker (2006) The 'compliance' trap: The moral message in responsive regulatory enforcement, *Law and Society Review* 40(3), pp. 591-622.

[783] Philipp Koch (2019) *Naming and shaming im Kapitalmarktrecht. Die Veröffentlichung von Verstößen als repressive Sanktion*, Nomos.

government is arguably the first to provide a standardized, national framework for the use of shaming in public regulation across all regulatory realms.[784]

The PRC regulatory apparatus had previously hosted institutionalized, that is, non-campaign based regulatory shaming. Administrative "circulation of criticism 通报批评", overall stipulated in over 40 laws and regulations, is for instance imposed on mass media operators for letting unverified fundraising organizations advertise in their outlets. "Public condemnation 公开谴责" is used to regulate the securities market and imposed by the stock exchanges of Shanghai and Shenzhen.[785] In its new, field-transcending strategy of reputational regulation, the SCSP firmly integrates these previous measures.[786]

3.2.2.2. Implementation

The first factor that distinguishes shaming from other forms of regulatory disclosure is that its main purpose is punitive. Regulatory agencies occasionally publish negative information about regulatory subjects in order to warn of imminent physical or economic harm, such as contaminated food products. Such practices, even though achieving a similar effect, aim to warn more than to punish and are thus substantively different from regulatory shaming.[787] Language in the SCS Planning Outline on disclosure clearly manifests its punitive intent, calling to "give rein to the role of the masses in appraisal, discussion, criticism and reports, shape social deterrence through social moral condemnation, and censure trust-breaking acts"[788]. The personal credit system is specifically to "disclose, expose, and report individuals' serious trust-breaking acts [...] fully putting into play the oversight function of public opinion, forming a powerful social deterrent"[789]. The corporate credit system likewise is not just to "enhance market transparency" but do so by having societal actors "punish trust-breaking behaviour"[790]. Most significantly, in 2021, "blacklisting" and "the public sharing of information on trust-breaking" both were included in the SCSP's first National Catalogue of Disciplinary

[784] Marianne von Blomberg and Haixu Yu (2023) Shaming the untrustworthy and paths to relief in China's Social Credit System, *Modern China* 49(6), pp. 744-781.

[785] Proven useful in regulation: Benjamin Liebman and Curtis Milhaupt (2008) Reputational sanctions in China's securities market, *Columbia Law Review* 108: pp. 929-983. 公开谴责 also appears in other realms, such as the Art. 83, 保险公司股权管理办法 (Measures for the Administration of Equity of Insurance Companies), issued by the China Insurance Regulatory Commission on 2 March 2018.

[786] 《社会信用体系建设规划纲要（2014-2020年）》任务分工 (Labour Division Plan For The SCS Construction Planning Outline (2014-2020), issued by the PBoC and NDRC on 16 December 2014: Includes "punitive measures such as warnings, circulation of criticism within an industry, and public condemnation of the untrustworthy"; similarly, the State Council document first outlining the SCSP's punitive repertoire: *State Council Opinions On Joint Rewards And Disciplining*.

[787] See Ernest Gellhorn (1973) Adverse publicity by administrative agencies, *Harvard Law Review* 86(8), pp. 1380-1441, p. 1383; Philipp Florian Irmscher (2019) *Öffentlichkeit als Sanktion*, Mohr Siebeck, p. 25; Qi Yao 姚琦 (2017) 声誉罚研究——以欠税公告、行政黑名单与公共警告为例 (Research on reputational punishment – The cases of tax debtor announcement, administrative blacklists and public warnings), 法制博览 (Legality Vision) 21, pp. 20-22, p. 22.

[788] *SCS Planning Outline*. Augmented in 2016: *State Council Opinions On Joint Rewards And Disciplining*.

[789] Part 6(3), 国务院关于加强个人诚信体系建设的指导意见 (State Council Guiding Opinions On Strengthening The Establishment Of The Personal Creditworthiness System), issued 23 December 2016.

[790] State Administration for Industry and Commerce (2017) "织好织密'全国一张网'—国家企业信用信息公示系统建设纪实之一" (Weaving a dense 'national unified network'—One of the chronicles of the construction of the National Enterprise Credit Information Publicity System), Credit Dongying 信用东营, 21 March 2017, http://credit.dongying.gov.cn/312/60859.html, archived with the author.

Measures for Trust-breaking.[791] Some argued that the disclosure of negative social credit information even of the morally charged sort is only one link in the chain to facilitate other, more tangible social credit disciplines and not itself punishment.[792] However, in the catalogue, the other, tangible measures that blacklisting and the disclosure of trust-breaking information give rise to are listed separately, showing that the shaming itself is by SCSP planners designated a disciplinary measure.[793]

The second key factor characterizing regulatory shaming is moral messaging.[794] An information recipient might not be deterred by negative compliance records of a market actor, records may appear irrelevant to the planned transaction: Recall the manager from Beijing cited above in section 3.3.1., arguing that a supplier's negative environmental compliance record is no factor that would make him look for a different supplier.[795] To ensure that noncompliance information is acted upon in the way that noncompliant entities are punished, government agencies must colour the records negatively, charging them with a negative moral message.[796] When it comes with a clear normative message, news media and other information amplifiers are more likely to pick it up and further spread it.[797] To this end, the SCSP provides a suitable vocabulary revolving around "trustworthiness" that is equally applicable across all regulatory realms, regardless of whether the target subject is an individual, a company, a social organization or a government entity; and regardless of what the underlying wrongdoing is.[798] Compliance information is disseminated under categories such as "blacklist for trust-breaking"[799],

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[791] The NDRC and PBoC list blacklisting as well as the public sharing of information on 'trust-breaking' in their annual catalogue of social credit disciplinary measures since 2021 alongside other, more tangible social credit disciplinary measures such as restricting market access: 国家发展改革委 人民银行关于印发关于印发《全国公共信用信息基础目录(2021 年版)》和《全国失 信惩戒措施基础清单(2021 年版)》的通知 (Notice Of The NDRC And PBoC On Issuing The 'Catalogue Of National Public Credit Information (2021)' And The 'National Basic List Of Disciplinary Measures For Trust-Breaking (2021)'), issued 28 December 2022.

[792] Opponents argue that the effects of shaming are not directly brought about by the administrative agency but by other actors who act on the information the agencies merely publish: Arguing that blacklisting does not directly impair the rights and interests of the counterparty and therefore is an administrative supervision measure: *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 20; Arguing that 'publication' is to be distinguished from 'punishment': Peixin Luo 罗培新 (2016) 善治须用良法：社会信用立法论略 (Good governance requires good law: A general view on social credit legislation), 信用中国 (Credit China) 12/2016, pp. 104–112, p. 111.

[793] See also: Hong Zhu 朱红 (2019) 基于被公示人权利保护的失信名单公示制度改革 (Reform of the trust-breaker list publication system based on the protection of the rights of the person published), 黑龙江生态工程职业学院学报 (Journal of Heilongjiang Vocational Institute of Ecological Engineering) 32(5), pp. 65–67.

[794] Sharon Yadin (2019) Regulatory shaming, *Environmental Law,* 49(2), pp. 407-451, p. 429.

[795] BJ22.

[796] Judith van Erp (2007) Effects of disclosure on business compliance: A framework for the analysis of disclosure regimes, *European Food and Feed Law Review* 2(5), pp. 255-263, p. 262.

[797] Describing the news media as the fourth party in modern shaming sanctions: Ray Pawson (2002) Evidence and policy and naming and shaming, *Policy Studies* 34(3), pp. 211-230, p. 222.

[798] Terms include trust-breaking 失信, blacklist 黑名单, deadbeat 老赖, negative behaviour 不良行为, and on the flipside sincerity 诚信, trust-keeping 守信, among others.

[799] Even where the term blacklist is not in the official name of the category, it is widely used in press releases to inform of latest inclusion of subjects, see for instance 生态环境部关于2024年下半年环评信用管理对象列入"黑名单"情况的通报 (Notice Of The Ministry Of Ecology And Environment On The Inclusion Of Environmental Impact Assessment Credit Management Targets In The 'Blacklist' In The Second Half Of 2024), issued by the Ministry of Ecology and Environment General Office on 16 January 2025, https://www.fjyx.gov.cn/ztzl/xyzl/202502/t20250207_2099059.htm, archived at

"seriously trust-breaking enterprises"[800], "Blacklist of seriously trust-breaking natural persons"[801], among others[802]. On the introduction and widespread use of the term "老赖" (deadbeat), Shazeda Ahmed writes:

> "The implicit characterization of judgment defaulters as "the enemy" may read as far-fetched, but a glance at Chinese news and social media confirms the harsh stereotypes inherent to the social construct of the judgment defaulter as laolai (老赖). [...] laolai is used in place of the formal term for judgment defaulter to channel disgust and blame while simultaneously justifying the social credit system's state-legitimizing objective. [...] In Chinese news media, interviews with unrepentant judgment defaulters are by all appearances non-existent; only their reformed counterparts give testament to how public shaming or consumption restrictions nudged them into fulfilling their court obligations. This straitjacketing of judgment defaulters into the singular image of the laolai leaves no room for hearing from people who may be caught up in judgment defaulter blacklists for reasons related to bureaucratic error or other explanations. Citizens' grievances with weak state institutions are rerouted and directed at the convenient scapegoat of the laolai."[803]

Rankings and scores, too, signify a moral message.[804] The Shanghai Municipal Bureau of Ecology and Environment publicizes annually the social credit assessment results it has produced in PDF documents on their website,[805] and the Zhejiang social credit platform

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https://web.archive.org/web/20250520094921/https://www.fjyx.gov.cn/ztzl/xyzl/202502/t20250207_2099059.htm (original at national level geo-blocked).

[800] E.g., the website of the National Bureau of Statistics: https://www.stats.gov.cn/fw/sxqygs_19065/gsxx/, archived at https://web.archive.org/web/20250520091353/https://www.stats.gov.cn/fw/sxqygs_19065/gsxx/. Basis: 统计严重失信企业信用管理办法 (Measures For The Management Of Credit Of Seriously Trust-Breaking Enterprises In Statistics), issued by the National Bureau of Statistics on 19 May 2022.

[801] Sichuan Province People's Government website, https://tftb.sczwfw.gov.cn:8085/hos-server/pub/jmas/jmasbucket/jmopen_files/webapp/html5/gyszrryzsxhmdpc/index.html?areaCode=510800000000, archived at https://web.archive.org/web/20250520093328/https://tftb.sczwfw.gov.cn:8085/hos-server/pub/jmas/jmasbucket/jmopen_files/webapp/html5/gyszrryzsxhmdpc/index.html?areaCode=510800000000.

[802] A forwarded list of 'trust-breaking' judgment defaulters with headshots, ID numbers, judgment no. and amount of money due opens with the ancient saying: "人无信不立，业无信不兴 – 家无信不旺，国无信不强" (A person cannot stand without trust, a business cannot flourish without trust – A family cannot prosper without trust, a country cannot be strong without trust): The Paper (2023) "雅安法院"失信大曝光2023年第8期 (Ya'an Court's 'Exposure of Trust-Breakers', 8th Edition of 2023)", 15 June 2023, https://m.thepaper.cn/baijiahao_23495736, archived at https://web.archive.org/web/20250602134001/https://m.thepaper.cn/baijiahao_23495736.

[803] Shazeda Ahmed (2023) Strategies for state-firm co-production of China's Social Credit System, draft presented at the workshop "The Digital Reach of the Chinese State", Hannover Schloss Herrenhausen, June 2023, p. 4.

[804] See, e.g., Ruixue Wang 王瑞雪 (2020) 公法视野下的信用联合奖惩措施 (Research on joint credit disciplinary and reward measures from the perspective of public law), 行政法学研究 (Administrative Law Review) 3/2020, pp. 82-94, hereafter: *Ruixue Wang: Research on joint credit disciplinary and reward measures*.

[805] 上海市生态环境局关于2024年度企事业单位生态环境信用评价结果的公告 (Announcement Of The Shanghai Municipal Ecology And Environment Bureau On The Results Of The 2024 Ecological Environment Credit Evaluation Of Enterprises And Institutions), issued by the Shanghai Municipal Bureau of Ecology and Environment on 3 April 2025, https://sthj.sh.gov.cn/hbzhywpt2025/20250407/091faffc2c7b4fd89ce715a5febe6f83.html, archived at https://web.archive.org/web/20250520120903/https://sthj.sh.gov.cn/hbzhywpt2025/20250407/091faffc2c7b4fd89ce715a5febe6f83.html. Basis for the practice are the 上海市企事业单位生态环境信用评价管理办法（试行）(Shanghai City Trial Management Measures for Eco-environmental Credit Assessment Of Public Institutions), issued by the Shanghai Municipal Bureau of Ecology and Environment on 1 August 2022.

displays SCSP subjects' social credit scores in a dashboard design.[806] The moral messages deliver a general value judgment about the plain regulatory record(s), conveying the impression that the entity in question is overall untrustworthy, that something more is wrong with it than the plain record suggests. This both strengthens the warning message to recipients and at the same time blurs the underlying behaviour that triggered the punishment which in its plain form might not have deterred potential transaction partners.

Thirdly, the message must be delivered to the persons who are in a position to act upon it in a manner that punishes the target subject. To some extent, the above-described social credit information platforms achieve this. Periods of display of negative social credit information records vary according to the severity of the 'trust-breaking' behaviour, and may be actively ended if the target subjects opts for undergoing 'credit repair' procedures (section 4.2.3.).[807]

Dissemination of the shaming message might require various communication channels[808] beyond the social credit information platforms described above. The SCSP devised multiple such dissemination channels for morally framed noncompliance information. Firstly, several regulators regularly disclose social credit assessments or blacklists they compiled through press releases and forward them through the media.[809] News outlets and their WeChat and Weibo accounts further spread the information because they are newsworthy, however, they are also formally ordered to do so by relevant sectoral and local regulations.[810] Other dissemination channels include public

[806] Credit China (Zhejiang) portal administered by the provincial credit center, https://credit.zj.gov.cn/jyh/#/home/searchHome?ticketId=andflag=, archived at https://web.archive.org/web/20250512080928/https://credit.zj.gov.cn/jyh/#/home/searchHome?ticketId=andflag=.

[807] 国务院办公厅印发《关于进一步完善信用修复制度的实施方案》的通知 (Notice Of The State Council General Office On Issuing The 'Implementation Plan On Further Improving The Credit Repair System'), issued 22 June 2025, https://www.gov.cn/zhengce/content/202506/content_7029483.htm, archived at https://web.archive.org/web/20250913114911/https://www.gov.cn/zhengce/content/202506/content_7029483.htm, hereafter: *State Council Credit Repair Plan*.

[808] Albert J. Meijer and Vincent Homburg (2009) Disclosure and compliance: The 'pillory' as an innovative regulatory instrument, *Information Polity* 14, pp. 163-278; Nathan Cortez (2018) Regulation by database, *University of Colorado Law Review* 89(1), pp. 1-91, p. 88; Sharon Yadin (2019) Regulatory shaming, *Environmental Law* 49(2), pp. 407-451, p. 431; making relevant suggestions for making social credit information 'leave a deep impression on the information receiver': Tian Tan 谈天, Xin Li 李鑫 and Hexiang Zhong 钟鹤翔 (2022) 信息化视角下江苏省行业信用监管机制研究 (Research on the Jiangsu Province sectoral CBR mechanism from the perspective of informatization), 信息系统工程 (China CIO News) 11/2022. pp. 152-160, p. 156.

[809] E.g., The Paper 澎湃 (2025) "《失信曝光台》15人失信曝光，也许TA就在你身边！ ([Trust-breaker Exposure Platform] 15 persons exposed for trust-breaking, perhaps one of them is right next to you!)", 26 January 2025, https://m.thepaper.cn/baijiahao_30039007, archived at https://web.archive.org/web/20250521155044/https://m.thepaper.cn/baijiahao_30039007.

[810] E.g. Art. 10(1), 体育市场黑名单管理办法 (Management Measures For The Sports Market Blacklist), issued by the General Administration of Sport on 9 August 2018.

billboards in the locality,[811] announcements at public events,[812] and TV and radio broadcast.[813] As the SPC[814] and the CPCCC with the State Council[815] called upon courts to cooperate with telecommunication companies and other technology service providers, several courts have devised creative dissemination strategies for their blacklists.[816] Examples include a "Deadbeat Map", a mini-programme in Wechat developed by the Hebei Provincial People's Court where residents can spot and report 'trust-breakers' in their vicinity. They can further share the spotted person's details on their WeChat timelines.[817] A common dissemination channel is the result of collaborations between courts and China Mobile and China Unicom: When dialling the number of a blacklisted person, callers hear a ringtone announcement, informing them of the risks of engaging with a 'trust-breaker'.[818] Similar partnerships with Toutiao leveraged its program for finding missing persons (头条寻人) to also track down trust-breaking judgment defaulters.[819] In sum, while still in an experimental phase, these channels bring the

[811] E.g. Art. 8, 泰州市信用"红黑名单"管理办法 (Management Measures On Taizhou City's Credit Red- And Blacklists) issued by the Taizhou City Government on 27 March 2019; Changning Court's practice of posting 'trust-breakers' on billboards was promoted as exemplary by the SPC: case 4, 最高人民法院司法改革领导小组印发《人民法院司法改革案例选编(四)》的通知 (Notice Of The SPC Small Leading Group For Judicial Reform On Issuing The 'People's Courts Judicial Reform Case Selection (4)'), issued 24 October 2018.

[812] Example: Credit China (2020) "海南陵水县税务局开展税收违法"黑名单"系列宣传"(Lingshui County Taxation Bureau in Hainan launched a series of publicity on the tax violation "blacklist"), 9 September 2020. www.creditchina.gov.cn/lianhejiangcheng/hongheimingdanzhidujianshe/202009/t20200909_209811.html, archived at https://web.archive.org/web/20250522084208/https://www.creditchina.gov.cn/lianhejiangcheng/hongheimingdanzhidujianshe/202009/t20200909_209811.html.

[813] E.g., Art. 20, 陕西省环境保护失信"黑名单"管理办法(试行) (Sha'anxi Province Environmental Protection Trust-breaker 'Blacklist' Management Measures (Trial)), issued by the Sha'anxi Provincial Environmental Protection Bureau on 27 June 2016.

[814] 最高人民法院关于公布失信被执行人名单信息的若干规定 (Several Provisions Of The SPC On The Disclosure Of Trust-Breaking Judgment Defaulter List Information), issued 1 June 2013.

[815] 中共中央办公厅、国务院办公厅印发《关于加快推进失信被执行人信用监督、警示和惩戒机制建设的意见》 (The CPCCC And The State Council Issue The Opinions On Accelerating The Construction Of Credit Supervision, Warning And The Disciplining Mechanism For Trust-Breaking Judgment Defaulters), issued 25 September 2016.

[816] Fanxi Tang (2019) "Court harnesses the social power of WeChat to shame debtors", Sixth Tone, 25 September 2019, https://www.sixthtone.com/news/1004602, archived at https://web.archive.org/web/20250521160213/https://www.sixthtone.com/news/1004602.

[817] Jialiang Fang 房家梁 (2019) "微信小程序惩治"老赖" 河北高院"老赖地图"上线 (WeChat Microapp to Punish Deadbeats, Hebei High Court's 'Debtor Dodger Map' officially online)", China News, 15 January 2019, https://www.chinanews.com/sh/2019/01-15/8729968.shtml, archived at https://web.archive.org/web/20250521160556/https://www.chinanews.com/sh/2019/01-15/8729968.shtml.

[818] Yijun Yin (2017) "Chinese app gives blacklisted people 'dishonest' caller ID", Sixth Tone, 30 August 2017, www.sixthtone.com/news/1000762/chinese-app-gives-blacklisted-people-dishonest-caller-id, archived at https://web.archive.org/web/20250521161032/https://www.sixthtone.com/news/1000762; Fan Zhang 张帆 (2017) "失信彩铃：您拨打的机主是老赖 (Trust-breaker ringtone: The owner of the number you dialled is that of a Deadbeat)", 北京青年报 (Beijing Youth), 16 June 2017, https://weibo.com/ttarticle/p/show?id=2309351002464119190276564100, archived at https://web.archive.org/web/20250521161448/https://weibo.com/ttarticle/p/show?id=2309351002464119190276564100.

[819] Extensive account: Shazeda Ahmed (2023) Strategies for state-firm co-production of China's Social Credit System, draft presented at the workshop "The Digital Reach of the Chinese State", Hannover Schloss Herrenhausen, June 2023.

morally framed information directly to the shaming community, namely, a target subjects' friends, family, neighbours, colleagues, and business partners.

Regulatory shaming under the SCSP concerns largely corporations and other organizations, but also, to a limited extent, natural persons. Many pilot projects for shaming individuals have been rolled back likely due to public backlash.[820] Personal social credit information held with regulatory agencies used to be available on social credit platforms but now is only open to the individual concerned via personal authentication.[821] Individuals do become targets of shaming in their capacity as legal representatives, owners or top managers of firms which have been blacklisted.[822] Further, courts continue to shame individuals on blacklists, sometimes providing photos and contact details.[823] However, the threshold is much higher: Social credit measures by courts apply only after a court case has been fought and lost by the target subject, and only if she/he is able but not willing to carry out the judgment, mostly, a payment to the other party.[824] Other than when regulatory agencies disclose social credit information, the aim of courts' shaming is not as much punitive but rather coercive, that is, to spur a particular behaviour – fulfilment of a court decision – the completion of which should end the publication.

It remains to be noted that not all laws are equally endowed with the 'social credit superpower' of reputational disciplining, and the selection largely lies with the regulators.[825] Other than publicity-centred law enforcement, shaming addresses only

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[820] Marianne von Blomberg (2019) The Social Credit System and China's Rule of Law, in: Oliver Everling (ed.) *Social Credit Rating*, Springer Gabler, pp. 111-137, p. 124.

[821] See Art. 15(4), 失信行为纠正后的信用信息修复管理办法（试行） (Measures on the Management of Credit Information Repair Following The Rectification Of Trust-breaking Behaviour (Trial)), issued by the NDRC on 13 January 2023, https://www.gov.cn/zhengce/2023-01/13/content_5737788.htm, archived at https://web.archive.org/web/20250910092654/https://www.gov.cn/zhengce/2023-01/13/content_5737788.htm, hereafter: *Credit Repair Measures (trial)*.
Inquiry channels on social credit information platforms have disappeared around a year after the disclosure was halted, but inquiry is usually possible by going through municipal social credit scoring programs. See for instance, the Haihe Score 海河分 WeChat mini app by Tianjin City: Credit China (2025) "天津：个人公共信用信息报告实现"掌上查、随时办" (Tianjin: Personal public credit information report can be checked 'on the palm of your hand and processed at any time')", 20 May 2025, https://www.creditchina.gov.cn/chengxinwenhua/chengshichengxinwenhua/202505/t20250520_464241.html, archived at https://web.archive.org/web/20250526095214/https://www.creditchina.gov.cn/chengxinwenhua/chengshichengxinwenhua/202505/t20250520_464241.html.

[822] E.g., Art. 57, 广东省商事登记条例 (Guangdong Province Commercial Registration Regulations), passed by the Standing Committee of the Guangdong Province People's Congress on 3 March 2015, amended on 29 November 2019. For a case concerning a blacklisted former manager: 广东省深圳市龙岗区人民法院, 民事判决书 (Civil Judgment of the Longgang District People's Court), （2019）粤0307民初19798号.

[823] E.g., Yulin Rongmei 榆林融媒 (2024) "42名！涉案4000多万！榆林公布第37批失信被执行人"黑名单"" (42 names! Cases on over 40 million! Yulin published the 37th batch of trust-breaking subjects to enforcement 'blacklist'), 29 March 2024, https://mp.weixin.qq.com/s?__biz=MzU5MzA0NDE3Ng==andmid=2247607148andidx=2andsn=a2a9e1b4e411042ca9c5fa20d29654d2, archived at https://web.archive.org/web/20250520162614/https://mp.weixin.qq.com/s?__biz=MzU5MzA0NDE3Ng==andmid=2247607148andidx=2andsn=a2a9e1b4e411042ca9c5fa20d29654d2.

[824] Art 1(1), 最高人民法院关于公布失信被执行人名单信息的若干规定 (Several Provisions Of The SPC On The Disclosure Of Trust-Breaking Judgment Defaulter List Information), issued 1 June 2013.

[825] 国家发展改革委、人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And PBoC On Strengthening And Regulating The Management Of The List

targets which have been designated 'trust-breakers'. Administrative punishment information is to be disclosed fully, but blacklists, the shame-inducing category on social credit platforms, exist only for selected legal norms. For instance is the failure to pay wages to migrant workers a behaviour that can lead to the inclusion in the List of Joint Disciplining of Trust-breaking for Entities Withholding Migrant Workers Wages, [826] whereas other unlawful behaviour stipulated in the same law[827] and other labour-related laws have only regular administrative punishment but no reputational disciplining as a consequence. Above in section 3.2.1. on setting social credit norms I pointed out that regulators, not legislators, select which norms are empowered by means of inclusion in PCI catalogues. Regulators also decide which legal norms are endowed with the punitive powers of social credit blacklists, highlighted to others in the market. They create blacklists for reputational disciplining based on how pressing a compliance matter is,[828] and how well the SCSP subject may be influenced by adverse publicity. Tellingly, the most prominent blacklists concern newsworthy issues with readily stigmatizable 'enemies', namely work safety, [829] corporate tax payment, [830] culture and tourism companies[831] and judgment defaulting.[832]

3.2.2.3. Discussion

The above demonstrates that the SCSP mechanism of reputational disciplining aims to enhance law enforcement by fructifying the SCSP's trust rhetoric, the vagueness of which renders it applicable across all regulatory realms. However, reputational disciplining fails when the targeted community does not act in the intended manner or counteracts.

Comprehensive empirical studies on the effectiveness of reputational disciplining for 'trust-breaking' have yet to be conducted. Theresa Krause found that firms in fact refuse to cooperate with blacklisted companies. [833] Perhaps more importantly, the sheer existence of the SCSP's reputational disciplining apparatus and its presence in the minds of SCSP subjects has a definite deterrent effect.[834] News reports[835] and interviews with

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Of Targets For Joint Rewards Of Trust-keeping And Joint Disciplining Of Trust-Breaking), issued 30 October 2017, at 3(2).

[826] List Of Joint Disciplining For Trust-breaking For Subjects Who Withhold Migrant Workers Wages, established through the 拖欠农民工工资失信联合惩戒对象名单管理暂行办法 (Interim Measures For The Management Of The List Of Joint Disciplining For Trust-breaking For Subjects Who Withhold Migrant Workers Wages), issued by the Ministry for Human Resources and Social Security on 10 November 2021.

[827] 保障农民工工资支付条例 (Regulations On Ensuring The Payment Of Migrant Worker Wages), issued by the State Council on 4 December 2019.

[828] Also evident by whether or not it has been criminalized, for the example at hand: Art. 276 of the Criminal Law criminalizes not paying due wages to migrant workers ("拒不支付劳动报酬罪").

[829] 安全生产严重失信主体名单管理办法 (Measures On Managing The List For Seriously Trust-Breaking Entities In Production Safety), issued by the China Emergency Management Ministry on 8 August 2023.

[830] 重大税收违法失信主体信息公布管理办法 (Measures On Publishing The Case Information Of Seriously Trust-Breaking Tax Violations), issued by the State Taxation Administration on 31 December 2021.

[831] 文化和旅游市场信息管理规定 (Provision On The Management Of Culture And Tourist Market Credit), issued by the Ministry of Culture and Tourism on 11 November 2021.

[832] 最高人民法院关于公布失信被执行人名单信息的若干规定 (Several Provisions Of The SPC On The Disclosure Of Trust-Breaking Judgment Defaulter List Information), issued 1 June 2013.

[833] Theresa Krause (2024) *Corporate compliance and the Social Credit System in China*, Nomos, p. 267.

[834] Theresa Krause (2024) *Corporate compliance and the Social Credit System in China*, Nomos, p. 259; *Anja Geller: Social Scoring*, p. 2, among others.

[835] Tailai Zhou 周泰来, Yuzhe Zhang 张宇哲, Yanhao Huang 黄晏浩, Jinli Chen 陈丽 and Zhuoer Ma 马卓儿 (2020) "信用修复如何"过罚相当 (How to make credit repair 'balance fault and punishment'?)", 财新周刊 (Caixin Weekly) 18/2020, https://weekly.caixin.com/2020-05-

corporate representatives[836] and lawyers[837] even reveal that the fear of reputational harm is the biggest worry of local and international corporations with regard to the government's SCSP plans. Some assert that given China's reputation-sensitive culture revolving around face-saving and guanxi, reputational disciplining functions even better in China than it would in 'Western' countries.[838] This may apply where target subjects are individuals, which is, as explained above, largely the case with judgment defaulters. A range of managers interviewed reported that they draw on the blacklist of 'trust-breaking' judgment defaulters in hiring decisions and internal investigations.[839] The cooperation with Toutiao for shaming 'trust-breaking' judgment defaulters in Henan described above reportedly had a 8% success rate.[840] Data retrieved from Ningbo hints that in cases where businesses have a long-term reputation in the industry and cater to the same clients, reputational disciplining hardly tarnishes the reputation.[841] To the question of whether they would cut off business relations with firms that were blacklisted but continued normal communications, business representatives from two third tier cities in Zhejiang I interviewed replied "no" or "maybe". Ten out of overall twelve of my interlocutors however stated that they would not or probably not commence a business relationship with a firm they know to be on an administrative or court blacklist.

Enforcement judges from different jurisdictions I spoke to point to either one of two very different stories: In the first, the actual enforcement work relies on cooperations with banks[842] and technology companies to freeze bank accounts and Alipay accounts.[843] The disclosure is just a deterrent to spur other, future subjects to judicial orders to

09/101551832.html?originReferrer=caixinsearch_pc, archived at https://web.archive.org/web/20251212142800/https://weekly.caixin.com/2020-05-09/101551832.html?originReferrer=caixinsearch_pc, hereafter: *Tailai Zhou et al.: Credit Repair*.

[836] E.g., BJ22; BJ04; HZ12; HZ13; HZ16; CQ03; SZ02, among others.

[837] SZ01; B01 and HZ07.

[838] Daithí Mac Síthigh and Mathias Siems (2019) The Chinese social credit system: A model for other countries? *Modern Law Review* 82(6), pp. 1034-1071, p. 1057; Nilanjan Raghunath (2020) A sociological review of China's Social Credit Systems and guanxi opportunities for social mobility, *Sociology Compass* 14(5), pp. 1-11, p. 9; Karen Li Xan Wong and Amy Shields Dobson (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), pp. 220-232, p. 221.

[839] Theresa Krause (2024) *Corporate compliance and the Social Credit System in China*, Nomos, p. 269; Managers of Bavarian firms in China reported that their HR department uses the platforms for hiring decisions or might do so in the future: Omar Ramon Serrano Oswald, Sandra Selmanovic, Benjamin Lee, Laua Arndt (2022) "Techno-regulation in China: How are Bavarian Firms Faring Under the Social Credit System?" Report by the Bavarian Research Institute for Digital Transformation (bidt), July 2022, DOI: 10.35067/xypq-kn21, https://www.bidt.digital/wp-content/uploads/sites/2/2022/08/08_bidt-Reihe-Analysen-Studien-Technoregulierung-in-China-Web_EN.pdf, p. 18.

[840] "Underwhelming", as Shazeda Ahmed assesses, citing that "Out of 2,592 judgment defaulters publicized on Toutiao, 207 paid off their court debts." Shazeda Ahmed (2023) Strategies for state-firm co-production of China's Social Credit System, draft presented at the workshop "The Digital Reach of the Chinese State", Hannover Schloss Herrenhausen, June 2023, p. 10.

[841] William Zhengdong Hu (2022) No way out? The fate of 'dishonest judgment debtors' in China's Social Credit System, PhD Thesis submitted to the University of Warwick, Department of Sociology in December 2022, https://wrap.warwick.ac.uk/id/eprint/179311/1/WRAP_Theses_Hu_2022.pdf.

[842] The SPC runs a National Court Internet Enforcement Investigation and Control System 全国法院网络执行查控系统 linked to 16 Ministries and more than 3900 finance institutions.

[843] Courts cooperate with Alibaba and other big data corporations to investigate hidden assets that might impact the court's evaluation of whether the judgment defaulter is able to perform a judgment. See for instance Zhiheng Chen 陈智恒 (2022) 民事执行中大数据技术应用问题研究 (Research on issues of the application of big data technology in civil enforcement), 学理论 (Theory Research) 2/2022, pp. 84-86.

immediately satisfy them. The other story is that reputational disciplining of judgment defaulters works very well because the judgment defaulters in question often rely on friends and family to get by even with frozen accounts. These social circles are precisely in a position to exert pressure as they fear that the reputational harm will impact them, too. [844] It speaks for the measures' effectiveness that courts, continue to apply reputational disciplining and the SPC lauded the successes.[845] Most SCSP-designated 'key groups' such as researchers operate in reputation-sensitive fields where shaming is particularly effective.[846]

However, reputational disciplining also runs risk to undermine efficient law enforcement. Where the shaming practices by regulators as well as courts are not met with general public support, shaming effects do not unfold or backfire. For instance, shaming practiced by Australia's Competition and Consumer Commission was perceived as overstepping a line, leading to the targets organizing counter-publicity.[847] In China, the controlled information environment and its punishments for voicing discontent publicly decrease the likelihood of public counteraction. Nevertheless, shaming measures may still run empty if the audience disapproves. Individuals shamed as 'deadbeats', for instance, have developed strategies to circumvent the restrictions by involving family members.[848]

Thus, whether regulatory shaming backfires hinges on whether the publicity measures are supported by the public. For shaming targeting corporations, approval is generally high.[849] However, the use of the trust rhetoric that the entire apparatus relies on is seen critically. In 2020, a poll by Xinhua asserts that 70% of the respondents find that the "concept of credit has been over-generalized or even abused".[850] SCSP practices related to reputationally disciplining individuals are among the least supported. A survey by

[844] SH05; SZ 04; BJ03; HK01. Also supported by a study in Ningbo conducted by William Zhengdong Hu (2022) No way out? The fate of 'dishonest judgment debtors' in China's Social Credit System, PhD Thesis submitted to the University of Warwick, Department of Sociology in December 2022, https://wrap.warwick.ac.uk/id/eprint/179311/1/WRAP_Theses_Hu_2022.pdf, p. 124.

[845] 最高人民法院公布五起"失信被执行人"典型案例 (SPC Issues Five 'Trust-Breaking Judgment Defaulter' Exemplary Cases", 5 November 2013, Case four: 李某与上海松东百味佳餐饮经营管理公司买卖合同纠纷执行案, http://gongbao.court.gov.cn/Details/330f99a6ef5b3c8202e181454ad484.html, archived at https://web.archive.org/web/20250523132941/http://gongbao.court.gov.cn/Details/330f99a6ef5b3c8202e181454ad484.html.

See also: "Fourth, the CEO of one [state-owned enterprise] instrumentalizes the SCS as a deterrent to enforce his company's rights. Specifically, he threatens to sue customers that do not pay their debt, with the aim of getting them listed on the defaulter list and consequently having their luxury consumption restricted (BUS19-10). This concrete pressure has, at times, helped him to obtain payments." Theresa Krause (2024) *Corporate compliance and the Social Credit System in China*, Nomos, p. 268.

[846] Jiaxin Lü, Luyi Xu and Xintong Wang (2023) "China punishes dozens for academic fraud at medical universities", Caixin Global, 5 January 2023, https://www.caixinglobal.com/2023-01-05/china-punishes-dozens-for-academic-fraud-at-medical-universities-101985776.html, archived at https://web.archive.org/web/20250918232721/https://www.caixinglobal.com/2023-01-05/china-punishes-dozens-for-academic-fraud-at-medical-universities-101985776.html.

[847] Christine Parker (2006) The 'compliance' trap: The moral message in responsive regulatory enforcement, *Law and Society Review* 40(3), pp. 591-622.

[848] Hailing Zhao and Tingting Liu (2024) China's social credit system and the family: Punishment and collective resistance, *Economy and Society* 54(1), pp. 49-69, p. 65.

[849] Genia Kostka (2019) China's social credit systems and public opinion: Explaining high levels of approval, *New Media & Society* 21(7), pp. 1565-1593, p. 1584; BJ04, BJ22, BJ23, GD03, SH05, among others.

[850] *Wang and Pan: Not going back home often*.

MERICS found that ringtone announcements for 'deadbeats' are opposed more strongly than other SCSP measures inquired about, with 31% of the respondents rating them negatively or very negatively.[851] In another survey, opposition to "publishing personal information in residential community" was at close to 30%, with close to 50% supportive of the measure. Those opposing the "publishing of personal information on national or local credit platforms" stood at 20%, with close to 60% of the respondents indicating support of the measure. The levels of support are similar to those concerning the disciplinary measures of restricting children's enrolment in private schools and restrictions on internet use.[852] The increased availability of "credit repair" procedures to targets of shaming, through which they can attain the correction of negative social credit information disclosure on relevant platforms (see section 4.2.5.), may re-install support for reputational disciplining to some degree.

Finally, reputational disciplining might lose efficiency as it is being further institutionalized and regularized. The SCSP establishes regulatory shaming as a tool for regulators of all realms and at all levels, devising one unified shaming vocabulary around 'trust' and standardizing dissemination channels. Even sporadic disclosure of lists is now, as seen with the Shanghai environmental regulator above, regularized – they are published annually. As blacklists become a common part of the regulatory framework, may they lose stigma? To use Lawrence Friedman's words, "stigma and shame are, in a way, self-limiting."[853] It remains to be seen to what extent the effectiveness of shaming hinges on its sporadic, campaign-like character, and thus stands contrary to the regularization the SCSP seeks.

3.2.3. Joint agency disciplining of trust-breaking

"Break trust in one area, and you face restrictions everywhere."

- Slogan appearing across SCSP-related policy documents[854]

The above-described informational SCSP mechanisms are reputational, that is, they rely on the public to unfold their effects. A third mechanism is composed of tangible measures taken by state agencies directly. Coordinated by the central government, ministries, local administrative agencies, courts, companies and Party organizations sign deals to jointly carry out disciplinary measures for trust-breaking.

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[851] Marc Oliver Rieger, Mei Wang, Mareike Ohlberg (2020) "What do young Chinese think about social credit? It's complicated", MERICS report, 26 March 2020, https://merics.org/sites/default/files/2020-04/200326%20MERICS%20China%20Monitor%20What%20do%20young%20Chinese%20think%20about%20social%20credit_final.pdf.

[852] Chuncheng Liu (2022) Who supports expanding surveillance? Exploring public opinion of Chinese social credit systems, *International Sociology* 37(3), pp. 391-412, p. 400.

[853] Lawrence M. Friedman (1975) *The legal System: A social science perspective*, Russell Sage Foundation, p. 104.

[854] "一处失信，处处受限". E.g., in 国务院办公厅关于全面开展工程建设项目审批制度改革的实施意见 (State Council General Office Opinion On The Implementation of the Comprehensive Engineering Project Approval System Reform), issued 13 March 2019. An earlier iteration, "一处失信，寸步难行", appeared since 2007: *State Council 2007 SCS Opinions*.

3.2.3.1. Concept

Initially, SCSP planners envisaged its regulatory mode as a societal mechanism, enabled merely through the dissemination of information on trustworthiness.[855] In the 2000s, SCS building was framed as in need of support from the state at the beginning, but eventually moving completely to the market.[856] To underline that the sanctioning mechanism in the SCSP should not reach the threshold of criminal or administrative punishment, the initially used term 'punishing trust-breaking 失信惩罚' was changed to 'disciplining trust-breaking 失信惩戒'.[857]

The 2010s brought a departure from the previous focus on reputational mechanisms. Tangible punishments were included in the repertoire of social credit disciplinary measures.[858] The term joint disciplining for trust-breaking 联合失信惩戒, previously referring to the leveraging of non-state actors, such as industry associations, market participants and citizens to achieve reputational effects now referred to the teaming up of administrative agencies among each other, too.[859] I refer to joint agency disciplining (JAD) in the following to describe the non-reputational punitive measures.[860]

Called upon by the State Council in 2016, government agencies sign Memoranda of Understanding (MoU) in which they declare to share their blacklists among one another, and to impose punitive measures from their respective regulatory toolkit onto entities listed on the blacklists they receive.[861] JAD may be applied against first, acts endangering

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[855] *Junyue Lin: The Social Credit System*, p. 5.

[856] Jingmei Wu 吴晶妹 (2004) 政府在社会信用体系建设中的作用探讨 (Examining the function of the government in SCS building), 北京行政学院学报 (Journal of the Beijing School of Administration) 2/2004, pp. 9-13. However, scattered local blacklist schemes existed already, see Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 107.

[857] Junyue Lin 林钧跃 (2019) "为什么说社会信用体系建设起始于1999年? (Why did the construction of the Social Credit System start in 1999?)", 信用体育 (Credit Sports), 22 October 2019, http://www.sport.gov.cn/n4/n15094/n15097/c930697/content.html, archived at web.archive.org/web/20250316202013/https://www.sport.gov.cn/n4/n15094/n15097/c930697/content.html; Junyue Lin 林钧跃 (2022) 论公共和市场两种不同类型的失信惩戒机制及其互补关系 (On the two different types of trust-breaker disciplining mechanisms, by the state and the market, and their complementary relationship), 征信 (Credit Reference) 1/2022, pp. 11-25, p. 13.

[858] Most impactfully, with the *SCS Planning Outline*. JAD was by early SCS planners called "state mechanism for disciplining trust-breaking" as opposed to the "market mechanism for disciplining trust-breaking": Junyue Lin 林钧跃 (2022) 论公共和市场两种不同类型的失信惩戒机制及其互补关系 (On the two different types of trust-breaker disciplining mechanisms, by the state and the market, and their complementary relationship), 征信 (Credit Reference) 1/2022, pp. 11-25.

[859] Other terms used interchangeably in policy documents: 联合惩戒机制, 失信联合惩戒.

[860] SCSP policy documents do not usually clearly differentiate between the reputational and the administrative measures, using "credit disciplinary measures" or "disciplinary measures for trust-breaking" to cover them indiscriminately. This caused much legal scholarly discussion around whether social credit disciplinary measures constitute administrative punishment, which ones do so, and how to classify them. From an administrative law perspective, a qualitative difference lies in whether a state agency imposes direct measures on an SCSP subject or whether it discloses information in certain ways to render other actors to adjust their behaviour towards the deviator. See e.g., Yulin Wu 吴堉琳, and Heng Liu 刘恒 (2020) 信用联合奖惩合作备忘录：运作逻辑、法律性质与法治化进路 (MoU on joint disciplining and rewards for social credit: Modus operandi, legal nature and the approach to bringing them into line with the rule of law), 河南社会科学 (Social Science Journal of Henan) 28(3), pp. 11–20, hereafter: *Wu and Liu: MoU on joint disciplining and rewards*.

[861] *State Council Opinions On Joint Rewards And Disciplining*; 国家发展改革委 人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And The PBoC On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint

health, such as food safety, product safety, fire safety; second, "acts seriously damaging the fair competition order of markets and social order" such as bribery, breaching contracts, running pyramid schemes and infringing upon IP rights; third, refusing to perform statutory obligations, including not fulfilling court decisions; and fourth, dodging military duty and related behaviour. [862] Notably, these acts include violations of administrative law, but also crimes and civil law violations which are not usually enforced by regulatory agencies but by courts.

Measures to be imposed onto entities who committed the above-listed 'trust-breaking' behaviours are various but largely consist of measures that state agencies already have in their regulatory toolkits.

> "Relevant departments of all regions should list seriously trust-breaking entities as key supervision targets and adopt administrative restrictions and disciplines in accordance with laws and regulations."

An open-ended list of respective measures follows, including to "strictly review" administrative permissions, "strictly control the issuance of production licenses", restricting new project registrations as well as the issuing of stocks and bonds and restrict the participation in public resource trading and public utility provision. For "seriously trust-breaking entities", market and industry entry bans are to be imposed. [863]

Administrative agencies impose the restrictions not just on entities which they themselves have determined (认定) 'trust-breakers and thus blacklisted, but further on entities who have been blacklisted by other agencies and whose names and relevant records they have been handed. The State Council calls departments to launch cross-departmental and cross-regional cooperation for realizing JAD and rewards, as well as for a "mutual recognition of credibility assessment results". [864]

A notable feature is that, where a company is found to have seriously 'broken trust', not just the company itself but its legal representative, principle persons in charge and registered practitioners who are directly responsible for the 'trust-breaking' behaviour are personally banned from the industry and to have all honorary titles revoked. [865] This cross-departmental 'administrative piercing of the corporate veil' adds to the SCSP law

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Rewarding For Trust-Keeping And Joint Disciplining For Trust-Breaking), issued 30 October 2017; 国家发展改革委办公厅关于做好《关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见》贯彻落实工作的通知 (Notice Of The NDRC General Office On Doing Well The Implementation Work Of The 'Guiding Opinions Of The NDRC And The PBoC On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint Rewarding For Trust-Keeping And Joint Disciplining For Trust-breaking'), issued 19 January 2018.

[862] *State Council Opinions On Joint Rewards And Disciplining*.

[863] *State Council Opinions On Joint Rewards And Disciplining*.

[864] (16), *State Council Opinions On Joint Rewards And Disciplining*.

[865] (10) and (14), *State Council Opinions On Joint Rewards And Disciplining*. Mirrored in subsequent local legislation, see for instance Art. 33, 重庆市社会信用条例 (Chongqing City Social Credit Regulations), passed by the Standing Committee of the Chongqing Municipal People's Congress on 27 May 2021.

enforcement powers a means of punishing natural persons behind the corporate or organizational SCSP subject for law violations of the latter.[866]

The JAD setup drew on one successful model initiated by the SPC before the advent of the SCSP: The SPC has long run lists of judgment defaulters that facilitated a series of coercive measures to spur their fulfilment of court decisions.[867] In 2010, the SPC first decided to enhance its coercive measures' repertoire by cooperating with other state agencies. In a quest to limit judgment defaulters' high consumption ("高消费"), entities who can but are unwilling to fulfil a court order were for instance through a cooperation with the Civil Aviation Agency de facto blocked from buying plane tickets. Through other such cooperations, they are restricted from taking soft sleepers in trains, checking into luxury hotels, entering golf courts, purchasing real estate, sending their children to private schools, among others.[868] Only in 2024, 2.457 million persons were newly included in the list of trust-breaking judgment defaulters.[869]

3.2.3.2. Implementation

The process of JAD is best understood in three steps: The setting up and administering of blacklists by regulatory agencies, the sharing of these blacklists with other agencies, and finally the imposition of restrictions on those entities that appear on the lists received from others. Administrative agencies also impose restrictions on the entities they blacklist themselves, however, I focus on the 'joint' element of the project – the imposition of restrictions on entities on a list received from other regulatory agencies – as here lies an innovation brought by the SCSP.

MAKING BLACKLISTS

In a first step, regulatory departments create blacklists by laying down the respective listing and de-listing requirements, disciplinary measures and related procedures themselves.[870] Local state agencies initially had considerable room to devise blacklists

[866] Previous model cases did not mention veil-piercing measures, see e.g. 国家工商总局公布9起失信联合惩戒典型案例 (The MOFCOM Publishes 9 Typical Cases of Joint Disciplining Of Trust-Breaking), issued on 11 November 2015 and already revoked.

[867] Listing judgment defaulters is a concept introduced in 2003, 最高人民法院关于在中国法院网公布民事案件被执行人名单的通知 (Notice On Publishing The List Of Judgment Defaulters In Civil Cases On The China Court Website), issued 18 September 2003. The 2007 amendments to the Civil Procedure Law in Art. 231 first specify coercive measures to be taken.

[868] Art. 3(1), 最高人民法院关于限制被执行人高消费的若干规定法释 (Several Provisions Of The SPC On Restricting High Consumption Of Judgment Defaulters), issued 7 January 2010. Specified in 2011, 最高人民法院印发《关于依法制裁规避执行行为的若干意见》的通知 (The SPC On Issuing 'Several Opinions On Sanctioning Evasion Of Execution In Accordance With The Law'), issued 23 July 2018.

[869] WeChat Account of the SPC (2025) "最高人民法院发布严格区分失信、失能被执行人强化信用修复典型案例 (The SPC issued typical cases of credit repair, strictly differentiating between trust-breaking and unable judgment defaulters", 25 July 2025, https://mp.weixin.qq.com/s/E3Fa4qI0lXtj9hdGOroYRA, archived at https://web.archive.org/web/20250725080719/https://mp.weixin.qq.com/s/E3Fa4qI0lXtj9hdGOroYRA.

[870] 3(2), 国家发展改革委、人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And The PBoC On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint Rewarding For Trust-Keeping And Joint Disciplining For Trust-Breaking), issued 30 October 2017.
See for a national level example: 安全生产严重失信主体名单管理办法 (Measures For The Management Of The List Of Seriously Trust-Breaking Entities In Production Safety), issued by the Ministry of Emergency Management on 8 August 2023; for a local level example: 甘肃省养老服务市场失信联合惩戒对象名单管理

according to need. They merely required the approval of superior departments and the local government.[871] The basis for determining entry of an entity into a blacklist was not limited: the NDRC and PBoC provided an open-ended list of records that may be used, including any administrative decision regarding a subject.[872] They may also draw on records beyond those gathered by administrative agencies throughout the performance of their duties, such as records gathered by industry associations, chambers of commerce, big data enterprises, financial institutions, news media and social organization as well as citizens.[873]

A blacklist entry consists of the entity's name, identification number (the social credit identifier or, if a natural person, her/his ID number), the cause and date of listing and its validity period,[874] what disciplinary measures have been imposed and whether or not credit repair has been approved.[875] Removal from a blacklist occurs if, first, the target subject submitted a successful objection on the grounds that the determination was erroneous; second, upon successful credit repair; third, once the validity period expires. In the second and third cases, the deletion from the blacklist leads to an inclusion in an internal focus scrutiny (重点关注) list with the validity period determined by the relevant department.[876]

The considerable leeway agencies had in blacklist creation was restricted when in 2021, the NDRC and PBoC issued its National Basic List of Disciplinary Measures for Trust-breaking.[877] The September 2018 cleanup of Memoranda of Understanding (MoU) and administrative normative documents surrounding blacklists in Zhejiang Province likely

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实施办法(试行) (Gansu Province Trial Implementation Measures For The Management Of The List Of Subjects To Joint Disciplining For Trust-Breaking In The Elderly Service Market), issued by the Gansu Provincial People's Government Office on 23 May 2023.

[871] 3(2), 国家发展改革委、人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And The PBoC On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint Rewarding For Trust-Keeping And Joint Disciplining For Trust-Breaking), issued 30 October 2017. Public opinion shall also be solicited.

[872] 3(4), 国家发展改革委、人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And The PBoC On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint Rewarding For Trust-Keeping And Joint Disciplining For Trust-Breaking), issued 30 October 2017. Open-ended: "根据法律法规规章或规范性文件可作为红黑名单认 定依据的其他信息".

[873] 3(6), 国家发展改革委、人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And The PBoC On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint Rewarding For Trust-Keeping And Joint Disciplining For Trust-Breaking), issued 30 October 2017.

[874] Determined according to the respective normative document underlying the specific blacklist.

[875] Part 9, 国家发展改革委、人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And The PBoC On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint Rewarding For Trust-Keeping And Joint Disciplining For Trust-Breaking), issued 30 October 2017.

[876] Part 18, 国家发展改革委、人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And The PBoC On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint Rewarding For Trust-Keeping And Joint Disciplining For Trust-Breaking), issued 30 October 2017.

[877] This came in response to the 国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见 (Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-Breaker Constraint System And Building A Long-Term Mechanism For Credit Construction), issued on 18 December 2020.

served as a pioneer.[878] The National Basic List of Disciplinary Measures for Trust-breaking came as social credit blacklists and respective MoU surged and were criticized for arbitrarily selecting norms and linking them to disciplinary measures.[879] SCSP co-planner and professor at the Central Party School Wei Wang 王伟 wrote:

> "For a long time, we have lacked effective legal regulations on the list of seriously trust-breaking entities, resulting in 'blacklists' flying all over the place, several localities and departments easily entered law violating behaviour of administrative subjects into 'blacklists', credit subjects' legitimate rights and interests are difficult to protect."[880]

The then-issued National Basic List of Disciplinary Measures for Trust-breaking includes 14 types of measures and comes with the order for all administrative agencies to "not carry out disciplining trust-breaking beyond the what is within the scope of this list."[881] As a result, many localities tuned down their JAD arrangements[882] or included rules on creating lists of measures that they apply, to whom, on what basis.[883]

SHARING BLACKLISTS

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[878] *Wu and Liu: MoU on joint disciplining and rewards*, p. 18.

[879] For instance, implementation procedures and procedures for review lacked, leading to chaos in carrying out JAD and a general loss of its trustworthiness, see *Kui Shen: The rule of law approach*; *Wu and Liu: MoU on joint disciplining and rewards*.

[880] Wei Wang 王伟 (2021) 社会信用建设法治化的新起点、新境界、新思维——解读《国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见》(New starting points, frontiers and thinking on legalizing social credit building – Interpreting the 'Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-Breaker Constraint System And Building A Long-Term Mechanism For Credit Construction), 中国经贸导刊 (China Economic and Trade Herald) 1/2021, pp. 15-16, p. 15. See also, Xin Dai 戴昕 (2019) 理解社会信用体系建设的整体视角法治分散、德治集中与规制强化 (A comprehensive understanding of the social credit system's decentralized law, centralized morality, and empowered regulation), 中外法学 (Peking University Law Journal) 31(6), pp. 1469-1491, p. 1485. See for the whole debate: chapter 4.

[881] 国家发展改革委 中国人民银行关于印发《全国公共信用信息基础目录（2021年版）》和《全国失信惩戒措施基础清单（2021年版）》的通知 (Notice Of The NDRC And The PBoC On The Issuance Of The 'National Basic Catalogue Of PCI' And The 'National Basic List Of Disciplinary Measures For Trust-Breaking'), 1 January 2022. Most recent version: 国家发展改革委 中国人民银行关于印发《全国公共信用信息基础目录（2025年版）》和《全国失信惩戒措施基础清单（2025年版）》的通知 (Notice Of The NDRC And The PBoC On Issuing The 'National Basic Catalogue Of PCI' And The 'National Basic List Of Disciplinary Measures For Trust-Breaking'), issued 14 March 2025, https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm, archived at web.archive.org/web/20250331232307/https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm. The list includes what I classified as reputational measures and describe in sections 3.3.1. and 3.3.2. The document further gives leeway for local experimentation: Where local laws provide a basis for other measures and the local SCS building authorities agree, they may be implemented (introductory explanation, point 5).

[882] Compare, for instance, 荣成市个人信用奖惩管理办法 (Rongcheng Municipal Measures On Personal Credit Rewards And Disciplines), issued by the Rongcheng People's Government on 24 June 2016, no longer available, CLT has a translation here: https://www.chinalawtranslate.com/rongcheng-personal-credit-reward-and-punishment-measures/, with the later legislation from 2021 荣成市人民政府关于印发《荣成市社会信用管理办法》《荣成市个人诚信积分管理办法》《荣成市市场主体信用分级分类管理办法》的通知 (Notice By The Rongcheng People's Government On Issuing The 'Rongcheng Municipal Social Credit Management Measures', The 'Rongcheng Municipal Personal Sincerity Scoring Management Measures', And 'Rongcheng Municipal Measures For Managing Credit Categorization Of Market Entities'), issued 18 June 2021, http://www.rongcheng.gov.cn/art/2021/6/18/art_103965_1936.html, archived at https://web.archive.org/web/20250517032313/http://www.rongcheng.gov.cn/art/2021/6/18/art_103965_1936.html.

[883] E.g., Art. 26, *Beijing Trial Measures On CBR In Traffic And Transportation*.

The second step in the JAD process is that administrative agencies share their lists with others. The primary channel for this exchange is the National Credit Information Sharing Platform, an internal system that hosts all social credit files and is accessible only from inside the state administration.[884] Adjacent to the Platform, a database for lists of targets of joint reward and disciplining is built, through which state agencies nationwide can inquire into the status of SCSP subjects.[885]

The sophistication of the internal information system is difficult to assess.[886] Several clues indicate that it is not yet very comprehensive. Officials report that in order to get JAD off the ground, they resort to bilateral exchanges of lists in PDF formats, as datasets on hard drives, and even in paper form.[887] One official described the status quo as a trading environment among local regulatory agencies that builds on relationships: "you do me a favour, I do you a favour."[888] Aware that the central level policy required to upload self-administered lists to the National Credit Information Sharing Platform, another official from a third tier city in the same eastern-Chinese province maintained that information retrieved directly from colleagues with whom a good relationship is established is much more trustworthy than datasets from a platform fed by thousands of strangers. He further underlined that the consequences of direct trading of lists are more predictable than those of uploading ones lists to a national platform where they may be scrutinized from higher levels of the administration.[889] The numbers of JAD cases carried out in the official's jurisdiction are highest in all of China[890] despite of the their lack of technological sophistication. This demonstrates that JAD does not rely on digital infrastructure to function.

IMPOSING MEASURES

[884] (18), *State Council Opinions On Joint Rewards And Disciplining*.
[885] (10), 国家发展改革委、人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And The PBoC On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint Rewarding For Trust-Keeping And Joint Disciplining For Trust-Breaking), issued 30 October 2017.
[886] Previous literature regards the blacklist system as largely fragmented: Katja Drinhausen and Vincent Brussee (2021) "China's Social Credit System in 2021: From fragmentation towards integration", 3 March 2021, updated 2022, MERICS, https://merics.org/en/report/chinas-social-credit-system-2021-fragmentation-towards-integration; Severin Engelmann, Mo Chen, Lorenz Dang and Jens Grossklags (2021) Blacklists and redlists in the Chinese Social Credit System: Diversity, flexibility, and comprehensiveness, in: Proceedings of the 2021 AAAI/ACM Conference on AI, Ethics, and Society (AIES '21), 19–21 May 2021, New York, https://doi.org/10.1145/3461702.3462535.
[887] ZJ08.
[888] ZJ06.
[889] ZJ09; If this and other interlocutors statements' are representative, this would explain the surprising proportion of data about natural and legal person's blacklist entries reported by the National PCI Centre: In April 2019, 230,528 new natural persons were blacklisted, and only 69,470 legal persons: 失信治理月度分析报告 (Monthly Analytical Report on Governing Trust-breaking for May 2019), issued by the National PCI Centre 国家公共信用信息中心, http://credit.wuzhi.gov.cn/news/content/1560409375004, not archivable, on file with the author.
[890] In 2019, 70.3% of all JAD application cases were reported from Hangzhou: 失信治理月度分析报告 (Monthly Analytical Report on Governing Trust-breaking for May 2019), issued by the National PCI Centre 国家公共信用信息中心 (now 国家公共信用和地理空间信息中心 National Public Credit and Geospatial Information Centre), http://credit.wuzhi.gov.cn/news/content/1560409375004, not archivable, on file with the author.

Third, for the imposition of the disciplinary measures, MoU are signed among administrative agencies and courts.[891] MoU under the SCSP are usually multilateral and have either disciplining of trust-breaking behaviour, rewarding of trust-keeping behaviour, or both as an object.[892] MoU concerning 'redlists' for rewarding are not pertinent for JAD and addressed in section 3.2.5. on rewarding trust-keeping.

MoU first list the signatories, usually administrators of the lists as well as implementors of the measures.[893] They then define the target subjects of the JAD measures, the 'trust-breaking entities 失信相关人'. The MoU on Joint Disciplining of Seriously Trust-Breaking Entities in the Field of Public Resource Trading, for instance, defines target subjects as those who

> "violated laws or regulations on public resource trading, violated the principles of honesty and trust-keeping, have engaged in any of the following conducts, and have been subject to administrative punishment by the competent departments in accordance with law."[894]

It continues to list particular violations of law which constitute 'trust-breaking'.[895]

The second part of MoU usually enumerates the disciplinary measures, including a series of measures to be taken by the agencies in charge of public resource trading themselves, and a series of measures to be taken by cooperating entities. They include measures that leave room for administrative discretion, such as to consider the information on trust-breaking when reviewing the issuance of stocks, in reviewing major asset reorganizations or in evaluating tax compliance. [896] Other measures are to be implemented directly without space for administrative discretion, such as not accepting applications to issue

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[891] (12), 国家发展改革委、人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And The PBoC On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint Rewarding For Trust-Keeping And Joint Disciplining For Trust-Breaking), issued 30 October 2017.

[892] An overview of existing MoU at the national level with English translations is provided by China Law Translate at https://www.chinalawtranslate.com/en/social-credit-documents/.

[893] Several MoU are further signed by some entities that are neither list administrators nor implementors of respective measures, such as the Central Organization Department, the Central Political and Legal Affairs Commission, the All China Woman's Federation and the All China Federation of the Disabled.

[894] 印发《关于对公共资源交易领域严重失信主体开展联合惩戒的备忘录》的通知 (Notice on Issuing the 'MoU On Joint Disciplining of Seriously Trust-Breaking Entities in the Field of Public Resource Trading'), issued by the NDRC on 21 March 2018, https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434576.htm, archived at https://web.archive.org/web/20250527095025/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434576.htm.

[895] Some MoU here refer to a separate normative document that defines 'trust-breaking behaviour' in the respective field, see e.g. 印发《关于对环境保护领域失信生产经营单位及其有关人员开展联合惩戒的合作备忘录》的通知 (Notice On Issuing The 'Mou On Joint Disciplining Trust-Breaking Production And Business Units And Related Personnel In The Field Of Environmental Protection'), issued by the NDRC, PBoC and 29 others on 20 July 2016, https://www.ndrc.gov.cn/xxgk/zcfb/tz/201608/W020241217685389880833.pdf, archived at https://web.archive.org/web/20250813074129/https://www.ndrc.gov.cn/xxgk/zcfb/tz/201608/W020241217685389880833.pdf.

[896] Supportive of that, general national level documents on the JAD setup call administrative departments to "[…] create conditions to embed the information in their administrative approval, market regulation, public service and other information systems and specific work process, take the lead in consulting and using the information of red lists and blacklists […]" (12), 国家发展改革委、人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And The PBoC On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint Rewarding For Trust-Keeping And Joint Disciplining For Trust-Breaking), issued 30 October 2017.

corporate bonds, restricting the receipt of government subsidies and social security funding support and banning luxury consumption.[897] Just like the acts of 'trust-breaking', disciplinary measures listed are for the most part not new. Because MoU simply link punishments based in different laws and regulations to law violatinos in other fields, they have been described as 'interfaces'.[898]

When the disciplining period ends, the agency that blacklisted the entity issues a blacklist removal announcement through the channel it first used to announce the blacklisting. Notably, the information of past inclusion in a blacklist continues to be shared, meaning that the reputational disciplining continues in a slightly weaker form, even after the JAD measures are lifted.[899]

The State Administration of Taxation was the first to sign an MoU in 2014 with 20 central-level Party and government organs, including the NDRC, the PBoC, the CPC's Civilization Commission, the CPC's Office of the Central Cyberspace Affairs Commission, the SPC, the Ministry of Industry and Information Technology, the Ministry of Public Security, the Ministry of Civil Affairs, among others.[900] 50 MoU are in place at the central level at the time of writing, each speaking to a different regulatory area or issue: tourism[901], transport

[897] 印发《关于对公共资源交易领域严重失信主体开展联合惩戒的备忘录》的通知 (Notice On Issuing The 'Mou On Joint Disciplining Of Seriously Trust-Breaking Entities In The Field Of Public Resource Trading'), issued by the NDRC on 21 March 2018, https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434576.htm, archived at https://web.archive.org/web/20250527095025/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434576.htm.

[898] *Chun Peng: Legal dilemmas*, p. 56. For a more detailed breakdown of the types of JAD punitive measures, see chapter 4.

[899] (20), 国家发展改革委、人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And The PBoC On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint Rewarding For Trust-Keeping And Joint Disciplining For Trust-Breaking), issued 30 October 2017.

[900] The MoU was revised in 2016 and another 13 signatories were added. 印发《关于对重大税收违法案件当事人实施联合惩戒措施的合作备忘录》的通知 (MoU on Carrying Out Joint Disciplinary Measures On The Parties To Cases Of Serious Tax Violations), 17 December 2014, https://www.chinatax.gov.cn/chinatax/n810341/n810765/n1465977/n1465997/c1671320/content.html, archived at https://web.archive.org/web/20251213142543/https://www.chinatax.gov.cn/chinatax/n810341/n810765/n1465977/n1465997/c1671320/content.html.

[901] 印发《关于对旅游领域严重失信相关责任主体实施联合惩戒的合作备忘录》的通知 (Notice On Issuing The 'MoU on Carrying Out Joint Disciplinary Measures On Entities Responsible For Serious Trust-Breaking In The Tourism Field'), issued by the NDRC and others on 18 May 2018, https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5433537.htm, archived at https://web.archive.org/web/20251213141331/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5433537.htm.

and logistics[902], the cultural market[903], government procurement[904], social security[905], taxes[906], medical care[907], production safety[908], statistics[909], science and research[910], the oil and gas industry[911], among others. MoU exist targeting individuals who are part of the

[902] 印发《关于对运输物流行业严重违法失信市场主体及其有关人员实施联合惩戒的合作备忘录》的通知 (Notice On Issuing The 'MoU On Carrying Out Joint Disciplinary Measures On Law Violating Trust-Breaking Market Entities In The Transportation And Logistics Field'), Issued by the NDRC and others on 18 December 2017, https://www.ndrc.gov.cn/xxgk/zcfb/tz/201709/W020190905503485671865.pdf, archived at https://web.archive.org/web/20251213142134/https://www.ndrc.gov.cn/xxgk/zcfb/tz/201709/W020190905503485671865.pdf.

[903] 印发《关于对文化市场领域严重违法失信市场主体及有关人员开展联合惩戒的合作备忘录》的通知 (Notice On Issuing The MoU On Carrying Out Joint Disciplining On Law Violating Trust-Breaking Market Entities In The Cultural Market Field'), issued by the NDRC and others on 28 December 2018, http://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5433190.htm, archived at https://web.archive.org/web/20251213143128/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5433190.htm.

[904] 印发《关于对政府采购领域严重违法失信主体开展联合惩戒的合作备忘录》的通知 (Notice On Issuing The MoU On Launching Joint Disciplining On Law Violating Trust-Breaking Entities In The Government Procurement Field'), issued by the NDRC and others on 20 November 2018, http://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434217.htm, archived at https://web.archive.org/web/20251213144004/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434217.htm.

[905] 印发《关于对社会保险领域严重失信企业及其有关人员实施联合惩戒的合作备忘录》的通知 (Notice On Issuing The MoU On Carrying Out Joint Disciplining On Seriously Trust-Breaking Companies And Responsible Employees In The Social Security Field'), issued by the NDRC and others on 22 November 2018, https://www.ndrc.gov.cn/xxgk/zcfb/tz/201811/t20181129_962323.html, archived at https://web.archive.org/web/20221103063457/https://www.ndrc.gov.cn/xxgk/zcfb/tz/201811/t20181129_962323.html.

[906] 印发《关于对重大税收违法案件当事人实施联合惩戒措施的合作备忘录（2016年版）》的通知 (Notice On Issuing The 'MoU on Carrying Out Joint Disciplinary Measures On The Parties To Cases Of Serious Tax Violations (2016 Version)'), issued by the NDRC and others on 30 December 2016, https://www.shui5.cn/article/62/120158.html, archived at https://web.archive.org/web/20250324035959/https://www.shui5.cn/article/62/120158.html.

[907] 印发《关于对严重危害正常医疗秩序的失信行为责任人实施联合惩戒合作备忘录》的通知 (Notice On Issuing The 'MoU on Carrying Out Joint Disciplinary Measures On Persons Responsible For Seriously Trust-Breaking Behaviour Endangering The Regular Medical Order'), issued by the NDRC and others on 25 September 2018, https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434917.htm, archived at https://web.archive.org/web/20250507120046/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434917.htm.

[908] 印发《关于对安全生产领域守信生产经营单位及其有关人员开展联合激励的合作备忘录》的通知 (Notice On Issuing The 'MoU On Launching Joint Rewarding On Trust-Keeping Operating Production Units And Related Personnel In The Work Safety Field'), issued by the NDRC and others on 25 December 2017, https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5435297.htm, archived at https://web.archive.org/web/20240910214822/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5435297.htm.

[909] 印发《关于对统计领域严重失信企业及其有关人员开展联合惩戒的合作备忘录（修订版）》的通知 (Notice On Issuing The 'MoU On Launching Joint Disciplining On Seriously Trust-Breaking Companies and Related Personnel In The Statistics Field'), issued by the NDRC and others on 17 December 2018, http://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5433635.htm, archived at https://web.archive.org/web/20251213145849/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5433635.htm.

[910] 印发《关于对科研领域相关失信责任主体实施联合惩戒的合作备忘录》的通知 (Notice On Issuing The 'MoU On Carrying Out Joint Disciplining Of Entities Responsible For Trust-Breaking In The Research Field'), issued by the NDRC and others on 5 November 2018, http://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434835.htm, archived at https://web.archive.org/web/20251213164540/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434835.htm?ivk_sa=1023197a.

[911] 印发《关于对石油天然气行业严重违法失信主体 实施联合惩戒的合作备忘录》的通知 (Notice On Issuing The 'MoU On Carrying Out Joint Disciplining Of Seriously Law Violating Trust-Breaking Entities In The Oil And Gas Industry'), issued by the NDRC and others on 2 August 2017, https://www.ndrc.gov.cn/fzggw/jgsj/yxj/sjdt/201708/t20170828_986964.html, archived at

designated 'key groups', such as researchers[912] and accounting professionals[913], as well as other persons engaging in criminal conduct that was designated as trust-breaking behaviour such as disturbing the order in medical facilities.[914] This testifies that JAD also applies to individuals beyond judgment defaulters.[915]

In several instances, the JAD process is automated.[916] For instance, the Shaanxi Province Management Measures for Online Intermediary Service Supermarkets provide that where intermediary service companies break relevant laws to the extent that it reaches the "trust-breaking" threshold, "automated disciplining" is carried out.[917] The SPC has repetitively clarified that its own JAD mechanism involves "automated disciplining".[918] However, while this feature increasingly appears throughout administrative normative documents on JAD, the mechanism does not require automation.[919]

https://web.archive.org/web/20251213165040/https://www.ndrc.gov.cn/fzggw/jgsj/yxj/sjdt/201708/t20170828_986964.html.

[912] See e.g. Lü Jiaxin, Xu Luyi and Wang Xintong (2023) "China punishes dozens for academic fraud at medical universities", Caixin Global, 5 January 2023, https://www.caixinglobal.com/2023-01-05/china-punishes-dozens-for-academic-fraud-at-medical-universities-101985776.html, archived at https://web.archive.org/web/20250918232721/https://www.caixinglobal.com/2023-01-05/china-punishes-dozens-for-academic-fraud-at-medical-universities-101985776.html.

[913] 关于印发《关于对会计领域违法失信相关责任主体实施联合惩戒的合作备忘录》的通知 (Notice On Issuing The 'MoU On Carrying Out Joint Disciplining Of Entities Responsible For Trust-Breaking Law Violations In The Accounting Field'), issued by the NDRC and others on 1 December 2018, https://www.ndrc.gov.cn/xxgk/zcfb/tz/201812/t20181225_962348.html, archived at https://web.archive.org/web/20251213171640/https://www.ndrc.gov.cn/xxgk/zcfb/tz/201812/t20181225_962348.html.

[914] 印发《关于对严重危害正常医疗秩序的失信行为责任人实施联合惩戒合作备忘录》的通知 (Notice On Issuing The 'MoU on Carrying Out Joint Disciplinary Measures On Persons Responsible For Seriously Trust-Breaking Behaviour Endangering The Regular Medical Order'), issued by the NDRC and others on 25 September 2018, https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434917.htm, archived at https://web.archive.org/web/20250507120046/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434917.htm.

[915] Often overlooked in the literature, e.g. Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 111.

[916] See, e.g. Xuanjiang Zhan 詹旋江 (2018) "福建失信联合惩戒平台取得突破性进展 对接单位达 100 家 65 家实现自动对接 (Fujian's joint disciplining of trust-breaking platform achieved a breakthrough. 100 entities connected, 65 entities achieve automated connection)", 人民法院报 (People's Court Daily), 8 October 2018.

[917] Art. 30, 陕西省人民政府办公厅关于印发网上中介服务超市管理办法的通知 (Notice Of The Shaanxi Provincial People's Government On Issuing The Shaanxi Province Management Measures For Online Intermediary Service Supermarkets), issued 18 June 2021.

[918] E.g., section 1(1), 最高人民法院对十三届全国人大四次会议第5927号建议的答复 (SPC Reply to Suggestion No. 5927 of the Fourth Session of the 13th NPC), issued 5 July 2021; Originally provided for in the 中共中央办公厅、国务院办公厅印发《关于加快推进失信被执行人信用监督、警示和惩戒机制建设的意见》 (The CPCCC And The State Council Issue The Opinions On Accelerating The Construction Of Credit Supervision, Warning And The Disciplining Mechanism For Trust-Breaking Judgment Defaulters), issued 25 September 2016.

[919] "This process creates a very flexible, human-driven framework. The role of technology is limited to information sharing and assisting in evidence gathering, which means that a new blacklist does not require wholly new infrastructure. Instead, all that is needed is an official directive outlining the provisions of the new blacklist and a reference to laws and regulations that provide the legal basis for punishments." Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p.155.

Where a central-level MoU exists, the local branches of the respective regulatory agency in some instances mirror the MoU at the local level[920] or issue normative documents further detailing the procedures for local blacklists.[921] Local JAD amplification and the number of respective blacklists and MoU remains significantly weaker in Western regions of China.[922] An official of a local DRC in Sichuan indicated that it is less expedient for them to enforce JAD strictly than it is for economically well-off coastal regions, as JAD measures de facto put their local firms at disadvantage in the competition with larger firms from other regions which typically have a more mature compliance management.[923]

Notably, local MoU more often involve companies among their signatories. For instance, among the 35 signatories of the MoU on Jointly Disciplining the Entities Responsible for Trust-breaking in the Scientific Research Field in Qinghai Province are the China Railway Qinghai-Tibet Group Co. Ltd and the Qinghai Airport Group Ltd.[924] That companies, too, impose disciplinary measures on SCSP subjects blacklisted by state agencies is a firm part of the disciplinary setup,[925] as also evident from publicized model cases describing how Alibaba imposed disciplinary measures on a merchant who was included in a social credit blacklist.[926] To date, there exists no legal authority stipulates duties for companies to impose restrictions on trust-breakers, MoU are declarations of intent rather than binding.

3.2.3.3. Discussion

The advent of JAD turned disciplining trust-breaking from an indirect soft regulation tool into one leveraging the hard power of administrative punishments from one regulator's toolkit for disciplining a range of SCSP subjects from other regulators' jurisdictions. Does JAD thereby strengthen legal compliance?

As with all of the SCSP's mechanisms, a direct impact on legal compliance can hardly be measured, especially given that regulatory agencies typically leverage multiple

[920] E.g., in Haerbin: 关于印发《对统计领域严重失信企业及其有关人员开展联合惩戒的合作备忘录》的通知, issued by the Haerbin DRC and others on 27 September 2019. On the different modes of implementing the JAD mechanism locally, see *Wu and Liu: MoU on joint disciplining and rewards*, p. 12.

[921] In total, around 195 MoU for JAD are public in the Peking University law database by June 2025.

[922] Severin Engelmann, Mo Chen, Lorenz Dang and Jens Grossklags (2021) Blacklists and redlists in the Chinese Social Credit System: Diversity, flexibility, and comprehensiveness, in: Proceedings of the 2021 AAAI/ACM Conference on AI, Ethics, and Society (AIES '21), 19–21 May 2021, New York, https://doi.org/10.1145/3461702.3462535.

[923] HQ02.

[924] 青海省社会信用体系建设领导小组办公室关于印发《青海省对科研领域相关失信责任主体实施联合惩戒合作备忘录》的通 (Notice Of The Qinghai Province Small Leading Group for SCS Building On Issuing The 'MoU On Carrying Out Joint Disciplining Of Entities Responsible For Trust-Breaking In The Research Field') , issued on 25 March 2020.

[925] Disciplinary measures imposed by non-state actors constitute the third of three categories of disciplinary measures for 'trust-breaking': 国家发展改革委 中国人民银行关于印发《全国公共信用信息基础目录（2025年版）》和《全国失信惩戒措施基础清单（2025年版）》的通知 (Notice Of The NDRC And The PBoC On Issuing The 'National Basic Catalogue Of PCI' And The 'National Basic List Of Disciplinary Measures For Trust-Breaking'), issued 14 March 2025, https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm, archived at web.archive.org/web/20250331232307/https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm.

[926] case 4, 国家工商总局公布9起失信联合惩戒典型案例 (The MOFCOM Publishes 9 Typical Cases of Joint Disciplining Of Trust-Breaking), issued on 11 November 2015.

enforcement campaigns of different types simultaneously to address an issue.[927] Official numbers do indicate that JAD is widely applied. According to official data, in May 2019, Guangdong province reported most blacklist entries among the provinces in that month (2891 entities), followed by Zhejiang (2676 entities), and Jiangsu (2456 entities).[928] In the same month, out of 58,883 total cases of disciplining trust-breaking that were reported nationwide, 37,223 were JAD (involving at least two state agencies).[929] In the year 2024, Chongqing realized more than 280,000 disciplining trust-breaking measures,[930] 70,000 more than in 2020.[931]

However, official statistics on the implementation of SCAP mechanisms are to be observed with even more caution than is always required.[932] Official data on whether corporations or individuals are blacklisted more often contradicts scholarly findings: According to official statistics, numbers of blacklisted natural persons are nearly three times as high as numbers of corporations and other organizations.[933] Research counting blacklist entries from the outside, on the other hand, reaches opposite results.[934]

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[927] Enumerating results of JAD in connection to those of other reforms such as "秋风2018", "剑网2018", "2018网剑", "红盾护农", "龙腾行动", and so on: 失信治理月度分析报告 (Monthly Analytical Report on Governing Trust-breaking for May 2019), issued by the National PCI Centre 国家公共信用信息中心 (now 国家公共信用和地理空间信息中心 National Public Credit and Geospatial Information Centre), http://credit.wuzhi.gov.cn/news/content/1560409375004, not archivable, on file with the author.

[928] Overall, blacklisting numbers decreased month-on-month from 2018 in China: 失信治理月度分析报告 (Monthly Analytical Report on Governing Trust-breaking for May 2019), issued by the National PCI Centre 国家公共信用信息中心 (now 国家公共信用和地理空间信息中心 National Public Credit and Geospatial Information Centre), http://credit.wuzhi.gov.cn/news/content/1560409375004, not archivable, on file with the author.

[929] 失信治理月度分析报告 (Monthly Analytical Report on Governing Trust-breaking for May 2019), issued by the National PCI Centre 国家公共信用信息中心 (now 国家公共信用和地理空间信息中心 National Public Credit and Geospatial Information Centre), http://credit.wuzhi.gov.cn/news/content/1560409375004, not archivable, on file with the author. Numbers on delisted entities, as the National PCI Centre in its May 2019 report admits itself, are inconclusive as many regions have engaged in cleaning up zombie firms. As a result, many not actually existing firms have been deleted.

[930] 重庆市发展和改革委员会关于2024年法治政府建设情况的报告 (Chongqing Municipal DRC 2024 Report On Building A Law-Based Government), issued 20 February 2025, http://fzggw.cq.gov.cn/zwgk/zfxxgkml/fzzfjsndbg/202502/t20250220_14323789_wap.html, archived at https://web.archive.org/web/20250611125212/https://fzggw.cq.gov.cn/zwgk/zfxxgkml/fzzfjsndbg/202502/t20250220_14323789_wap.html.

[931] 重庆市发展和改革委员会关于2020年法治政府建设情况的报告 (Chongqing Municipal DRC 2020 Report on Building a Law-based Government), issued 19 March 2021, https://www.cqjb.gov.cn/zwgk_190/zfxxgkml/qtfdzdgklr/202103/t20210319_9014390.html, archived at https://web.archive.org/web/20250611125536/https://www.cqjb.gov.cn/zwgk_190/zfxxgkml/qtfdzdgklr/202103/t20210319_9014390.html.

[932] E.g., Carsten A. Holz (2003) 'Fast clear and accurate': How reliable are Chinese output and economic growth statistics?" *China Quarterly* 173, pp. 122-163.

[933] 失信治理月度分析报告 (Monthly Analytical Report on Governing Trust-breaking for May 2019), issued by the National PCI Centre 国家公共信用信息中心 (now 国家公共信用和地理空间信息中心 National Public Credit and Geospatial Information Centre), http://credit.wuzhi.gov.cn/news/content/1560409375004, not archivable, on file with the author. These statistics are likely not representing the real situation: Most individuals in the data are likely judgment defaulters and thus not the courts' blacklists for judicial enforcement which differ from administrative blacklists. Administrative agencies are notoriously cautious with forwarding their blacklist data, whereas courts have a better-established system and are more likely to forward their lists.

[934] Severin Engelmann, Mo Chen, Felix Fischer, Ching-yu Kao and Jens Grossklags (2019) Clear sanctions, vague rewards: How China's Social Credit System currently defines 'good' and 'bad' behavior, FAT* '19: Proceedings of the Conference on Fairness, Accountability, and Transparency, 29-31 January 2019, pp. 69-78, https://doi.org/10.1145/3287560.3287585, p. 76.

In any case, the application of JAD locally does not necessarily imply that it is efficient in enhancing legal compliance. Officials are incentivized to implement it to fulfil higher-level requirements, so they may do so even if they find it useless to reach enforcement goals. That said, in some early adopting areas of JAD, successes can be observed: a series of court decisions and mature normative document frameworks suggest that JAD has matured especially in the field of government procurement and subsidy provision.[935] Further, JAD has proven effective in enforcing laws in the tax field.[936]

In judicial enforcement, JAD is by far most sophisticated and therefore efficient.[937] The SPC reports that by April 2021, 7.96 million targets of JAD have fulfilled the obligations imposed by courts and frames it as a success story of disciplining trust-breaking, although causality between successfully enforced cases and the application of JAD is not proven.[938] Scholarly studies in localities often involve explanatory interviews with enforcement judges and are thus slightly more reliable: Successful judicial decision enforcement rates have increased due to JAD according to records collected from a Beijing district court and a court in Chongqing.[939] It speaks for the effectiveness of JAD in judicial enforcement that when the COVID-19 pandemic took hold of China, the SPC acted quickly to relax blacklisting of companies who were classified as 'key to pandemic prevention'. It further gave a three month grace period to SMEs who were, as a result of the pandemic prevention policies, unable to repay loans.[940]

Likewise, JAD measures in place for administrative enforcement were relaxed during COVID-19 to ease compliance requirements in general and reduce the burden businesses faced already as a result of the pandemic restrictions.[941] For instance, the

[935] For instance: The Hubei High People's Court ordered the local DRC to freeze a 15 million RMB subsidy for new energy vehicle sales officially granted the subsidy by the Ministry of Finance to Wuzhoulong Ltd. Wuzhoulong Ltd., the court argues, is on the blacklist of trust-breaking judgment defaulters for not having repaid an amount owed to another company. Until it pays its dues, it is not eligible for government subsidies according to the relevant MoU. Wuzhoulong Ltd.'s counterarguments that the subsidy in the end benefits consumers, not itself, and the local DRC's point that its forwarding of the subsidy is its duty both do not convince the court. In this and similar enforcement cases, the JAD mechanism effectively forces firms to fulfil court orders in order to continue their operations normally. Hubei Province High People's Court 湖北省高级人民法院, 执行裁定书（2023）鄂执复68号 (Enforcement ruling no. 68), decided 17 April 2023.

[936] Haixu Yu (2024) The evolving complex of the Chinese corporate tax credit system and tax law, *The China Review* 24(3), pp. 47-70, p. 64.

[937] For an overview, see Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 120.

[938] 最高人民法院对十三届全国人大四次会议第5927号建议的答复 (SPC Reply to Suggestion No. 5927 of the Fourth Session of the 13th NPC), issued 5 July 2021.

[939] After facing JAD measures, 16.7 % of the individuals and 3.85 % of the corporations targeted by JAD measures performed their court-imposed obligations between 2019 and 2021: *Chunyan Ding: Judgment-defaulter blacklist system*, p. 432.

[940] 最高人民法院关于依法妥善办理涉新冠肺炎疫情执行案件若干问题的指导意见 (SPC Guiding Opinions Some Questions Regarding The Proper Handling Of Enforcement Cases Involving The COVID-19 Pandemic In Accordance With Law), issued on 13 May 2020.

[941] Alexander Chipman Koty (2020) "China's Social Credit System: COVID-19 Triggers Some Exemptions, Obligations For Businesses", China Briefing, 26 March 2020, https://www.china-briefing.com/news/chinas-social-credit-system-covid-19-triggers-some-exemptions-obligations-businesses/, archived at https://web.archive.org/web/20241208160346/https://www.china-briefing.com/news/chinas-social-credit-system-covid-19-triggers-some-exemptions-obligations-businesses/.

Shanghai Municipal Social Credit Building Bureau gave several orders to regulators of different realms that use JAD mechanisms. Among others, it decided that

> "Taxpayers who are unable to file tax returns on time due to the pandemic will be exempted from administrative punishment, the relevant information will not be considered trust-breaking information, and the relevant records will not be included in taxpayer credit assessments".[942]

It is likely that JAD has helped cut enforcement costs by streamlining public administration.[943] Administrative agencies in China have long faced difficulties in sharing compliance records,[944] resulting for instance in tax evaders still securing government funding for projects. JAD, by differentiating regulatory subjects according to their compliance, enables more targeted and fine-tuned enforcement work, channelling regulatory resources according to regulatory priorities. Just as the SCSP mechanisms discussed above, JAD is highly adaptable. Blacklists were specifically created and JAD measures imposed to respond to challenges of pandemic prevention.[945] As the above showed, JAD further has proven feasible even without digital platform infrastructure as officials resort to bilateral exchanges of blacklists. However, its promise to cut costs by more targeted use of administrative resources only realizes if its basic premise holds true: That a company noncompliant in one field is likely to also violate laws in another. This assumption is not yet proven (discussed in section 3.2.4.3.).

Recent headwinds to the JAD mechanism indicate that it might lose traction. Legal scholars have widely critiqued the absence of legal bases for some of the disciplinary arrangements, the prevalence of systematic double punishment, and the breach of the proportionality principle, among others (discussed in section 4.1.). For instance, Chunyan Ding points out that the "judicial power to make a moral conviction followed by a wide range of joint sanctions" requires but lacks a Constitutional basis.[946] Criticism is particularly directed at measures imposed on individuals who became targets of JAD because they act as leading personnel or representatives of organizations that have 'broken trust', impacts lives of individuals to different degrees. A study conducted in Ningbo confirms anecdotal evidence that especially travel and hotel restrictions force blacklisted individuals to resort to taking the slow trains which often takes several days rather than hours.[947] For the case of the judgment defaulter blacklists, the practice has

[942] pPoint 4, 上海市社会信用建设办公室印发《关于疫情防控期间进一步完善信用修复工作机制助力市场主体稳定发展的实施方案》的通知 (Notice Of The Shanghai Social Credit Building Office On Issuing The 'Implementation Plan For Further Improving The Credit Repair Mechanism To Assist The Stable Development Of Market Entities During The Pandemic Prevention And Control Period'), issued 3 April 2022.
[943] When asked whether law enforcement costs are saved through JAD, officials from regulatory agencies confirmed: HQ02, HQ01, HZ01, SAMR01, SZ03, ZJ02, ZJ08, ZJ09, WZ01. See also: *Wu and Liu: MoU on joint disciplining and rewards*, p. 12.
[944] E.g., Benjamin van Rooij, Qiaoqiao Zhu, Li Na and Wang Qiliang (2017) Centralizing trends and pollution law enforcement in China, *The China Quarterly* 231, pp. 583-606, p. 587.
[945] *Cheung and Chen: From datafication to data state,* p. 1148.
[946] *Chunyan Ding: Judgment-defaulter blacklist system*.
[947] William Zhengdong Hu (2022) No way out? The fate of 'dishonest judgment debtors' in China's Social Credit System, PhD Thesis submitted to the University of Warwick, Department of Sociology in December 2022, https://wrap.warwick.ac.uk/id/eprint/179311/1/WRAP_Theses_Hu_2022.pdf, p. 118; HZS01; HZS02 and BJ01.

been abolished already.[948] However, it continues for JAD applied by administrative agencies.[949] To SCS theory founders and their initial ideas revolving around market-based reputational sanctions, the JAD appears like a deviation which is not only legally problematic but also unnecessary in the long run. One interlocutor stated:

> "We cannot just amend all laws now to make joint disciplining lawful, and then change it all back in ten years when the problem is solved and state-imposed joint disciplining is no longer necessary."[950]

Finally, with credibility-based regulation (next section), an alternative to JAD is on the rise, which, on the surface, circumvents the legal issues scholars have pointed to.

3.2.4. Credibility-based regulation: Making administrative discretion risk-based, predictive, algorithmic

"[CBR is] the realizing of regulatory goals through applying different positive or negative measures in accordance with the target subject's past performance, using trust rhetoric as assessment carrier, and the cooperation of multiple administrative agencies as a form."

- Ruixue Wang 王瑞雪[951]

If the facilitating technology of JAD are blacklists, and that of reputational disciplining are information platforms, the facilitating technology of credibility-based regulation are credibility assessments 信用评价. By requiring agencies to create credibility assessments and apply them in their decision-making, CBR brings changes to administrative regulation which go beyond filling spaces of administrative discretion and arguably amount to a "governance revolution"[952].

3.2.4.1. Concept

JAD addresses regulatory subjects who are designated 'trust-breakers', a threshold that is rather high and often requires repetitive violation of law or legal violations of particularly serious character.[953] CBR on the other hand speaks to the much larger group

[948] 最高人民法院关于在执行工作中进一步强化善意文明执行理念的意见 (SPC Opinions On Further Strengthening The Concept Of Good Faith And Civilized Execution In Enforcement Work), issued on 16 December 2019.

[949] Gov.cn (2024) "税务总局公布2起"黑名单"联合惩戒典型案例" (The General Tax Administration publishes two typical cases of joint disciplining through the 'blacklist', 24 April 2024, https://www.gov.cn/xinwen/2019-04/24/content_5385717.htm, archived at https://web.archive.org/web/20250602074047/https://www.gov.cn/xinwen/2019-04/24/content_5385717.htm.

[950] Co-founder of SCS theory BJ05.

[951] *Ruixue Wang: Research on joint credit disciplinary and reward measures*, p. 82.

[952] E.g., Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic) , 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 46; Jing Hao 郝静 (2020) 论行政法视域下正当程序对信用监管机制的规制 (On the regulation of credibility-based regulation by due process through the lens of administrative law), 河北青年管理干部学院学报 (Journal Of Hebei Youth Administrative Cadres College) 32(5), pp. 82-87, p. 83.

[953] E.g., Art. 5, 拖欠农民工工资失信联合惩戒对象名单管理暂行办法 (Interim Measures For The Management Of The List Of Joint Disciplining For Trust-Breaking For Subjects Who Withhold Migrant Workers Wages), issued by the Ministry for Human Resources and Social Security on 10 November 2021, https://www.gov.cn/gongbao/content/2022/content_5672667.htm, archived at https://web.archive.org/web/20250617124814/https://www.gov.cn/gongbao/content/2022/content_5672667.htm.

of remaining regulatory subjects, too. It prescribes that all subjects in a regulator's jurisdiction are classified and assessed, and that regulatory interactions with subjects are adjusted according to the credibility assessment results. Within the broader debate on administrative regulation, CBR may be understood as a risk-based regulatory practice that "aims low"[954].

The NDRC, the PBoC, and the SAMR in 2019 consolidated local and departmental experiences[955] into a "New Type of Regulatory Mechanism with Credibility as Basis 以信用为基础的新型监管机制" (often abbreviated as 信用监管, here translated to CBR).[956] The SCS Building Law Draft defines CBR as

> "departments that have regulatory duties in accordance with the law, rationally and reasonably assessing the credibility status of regulatory subjects based on their credibility records and credibility assessments and carrying out hierarchical and categorized regulation on this basis".[957]

In 2020, the CPC listed CBR as one element of the Socialist Rule of Law in its respective five-year plan, clarifying that just like the other SCSP mechanisms, CBR is a component in realizing the socialist legal system with Chinese characteristics.[958]

It was the State Administration for Industry and Commerce (SAIC, now merged into the SAMR), that pioneered and thus shaped CBR as it is now practiced in other regulatory areas, too (similar to the SPC taking the pioneer role in JAD).[959] First experiments with credibility assessments produced by departmental regulators began in 2006.[960] An

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[954] Julia Black and Robert Baldwin (2012) When risk-based regulation aims low: A strategic framework, *Regulation & Governance* 6, pp. 131-148.

[955] The concept was under varying names promoted on the sidelines of other SCSP projects since 2014, see for instance "加快构建以信用为核心的新型市场监管体制", in *State Council Opinions On Joint Rewards And Disciplining*. For one particularly early and well-known local experiment with credibility assessments, see Rongcheng: 荣成市人民政府关于印发荣成市社会成员信用积分和信用评价管理办法的通知 (Notice Of The Rongcheng Municipal People's Government On Issuing The Rongcheng City Measures On The Management Of The Credibility Points And Credibility Assessments Of Members Of Society), issued 17 January 2019, archived at https://web.archive.org/web/20250624091308/http://www.rongcheng.gov.cn/attach/0/8909f36c009d44bcbf9e4a5eef5610bb.pdf, broken down by Jeremy Daum (2019) "Getting Rongcheng right", China Law Translate, 29 March 2019, https://www.chinalawtranslate.com/en/getting-rongcheng-right/.

[956] *State Council Opinion on CBR*.
Notably, 信用监管 is in some contexts used to denote the entirety of the SCSP's regulatory toolkit rather than just CBR.
For an overview, see Xinzhong Shi 石新中(2020) 构建中国特色信用监管机制 (Constructing a credibility-based regulation system with Chinese Characteristics), contribution in: 我国诚信建设法治化核心命题笔谈 (Essays on the core issues of legalization of integrity construction in China), 求实 (Seeker), 5/2020, pp. 22-24.

[957] Art. 8, *SCS Building Law draft*.

[958] 中共中央印发《法治中国建设规划 (2020–2025年)》 (The CPCCC Issues The 'Plan On Building A Rule Of Law China (2020–2025)'), issued 10 January 2021, accessed 6 December 2022.

[959] The SAMR came to call its own version of CBR "management by credit risk classification", see 市场监管总局关于推进企业信用风险分 类管理进一步提升监管效能的意见 (Opinions Of The SAMR On Advancing Corporate Credit Risk Classification Management And Further Elevating The Effectiveness Of Regulation), issued 13 January 2022.

[960] 全国整顿和规范市场经济秩序领导小组办公室、国务院国有资产监督管理委员会行业协会联系办公室关于印发《行业信用评价试点工作实施办法》的通知 (Notice Of The Office Of The National Small Leading Group On Rectifying And Regulating The Market Economy Order And The Office Of The State-Owned Assets Supervision And Administration Commission Of The State Council On Issuing The 'Measures On Implementing Industry Credit Assessment Experimentation Work'), issued 24 April 2006.

internal five-year research project commissioned by the SAIC in one locality where credibility assessments had been experimented with came to a clear conclusion: Regulatory challenges faced by market regulators today cannot be solved only through traditional "mandatory supervision methods such as administrative punishments" alone. Experiments with Hierarchical and Classified Supervision by Credit 信用分级分类信用监管, the categorization of regulatory subjects by social credit information and conducting of differentiated supervision accordingly, had proven successful and should be consolidated and expanded into a broader regulatory strategy.[961]

In 2015, the State Council picked up the idea and linked it to another reform aiming to cut regulatory arbitrariness, namely Random Inspections 随机抽查. Random Inspections set rules for regulatory agencies on the frequency of on-spot inspections of subjects. The State Council made clear that the frequency of random inspections by regulators is to be determined by reference to a regulatory subjects' social credit status.[962]

CBR provides that regulatory agencies, but also industry associations and corporations, create credibility assessments through the algorithmic processing of PCI and other social credit information. CBR therefore constitutes algorithmic regulation: "regulatory governance systems" that "use algorithmically generated knowledge systems to execute or inform decisions". [963] Within Karen Yeung's taxonomy of algorithmic regulatory systems, [964] CBR constitutes a simple predictive recommender system (when the normative setup includes credibility assessments as one factor in discretionary decision-making) or a simple predictive administration system (when according to the normative setup the credibility assessments completely close discretionary spaces).

In fact, in the CBR mechanism, connections of the SCSP to the agenda for digitizing governance become most clear. CBR is featured in the 14th Five Year Plan for National Informatization[965] and the General Office of the State Council explicitly calls to use "new era information technologies" including big data and AI to support it.[966] Scholars close to

[961] Fieldwork document 032.
[962] 3(2), 国务院办公厅关于推广随机抽查规范事中事后监管的通知 (Notice Of The General Office Of The State Council On Promoting Random Inspections To Standardize Supervision During And After The Event), issued 29 July 2017.
[963] Karen Yeung (2018) Algorithmic regulation: A critical interrogation, *Regulation and Governance* 12, pp. 505-523, p. 507. Likewise conceptualizing CBR as an instance of algorithmic regulation (translating the term 算法行政 she uses into *algorithmic regulation*): Xin Zhang 张欣 (2021) 算法行政的架构原理、本质特征与法治化路径：兼论《个人信息保护法（草案） (The framework, features and legalizing path of algorithmic regulation: A discussion on the Personal Information Protection Law (Draft)), 经贸法律评论 (Business And Economic Law Review) 1/2021, pp. 21-31; Kendra Schaefer (2020) China's Social Credit System: Context, competition, technology and geopolitics, Trivium China, 4 December 2020, available at https://www.uscc.gov/sites/default/files/2020-12/Chinas_Corporate_Social_Credit_System.pdf, p. 39.
[964] Karen Yeung (2017) Algorithmic regulation: A critical interrogation, *Regulation & Governance* 12(4), pp. 505-523.
[965] 国家发展改革委关于印发《"十四五"推进国家政务信息化规划》的通知 (Notice Of The NDRC On Issuing The '14th Five Year Plan For National Informatization'), 24 December 2021, https://www.gov.cn/xinwen/2021-12/28/5664873/files/1760823a103e4d75ac681564fe481af4.pdf, archived at https://web.archive.org/web/20250206154219/https://www.gov.cn/xinwen/2021-12/28/5664873/files/1760823a103e4d75ac681564fe481af4.pdf.
[966] 国务院办公厅关于加快推进社 会信用体系建设构建以信用为基础的新型监管机制的指导意见 (Guiding Opinions Of The State Council General Office On Accelerating And Advancing SCS Building And Constructing A New Type Of Regulatory Mechanism Based On Credibility), issued 16 July 2019. In 2020, the State Council specifies to "make full use of technologies such as big data, adopt differentiated

the drafting of relevant top-level planning documents describe it as the third phase of SCS building, following the second phase centred around JAD. [967] Beyond regulatory agencies, the SPC, too, turned from the binary blacklist scheme it pioneered to "explore the adoption of different disciplinary measures for trust-breaking judgment defaulters according to the severity of their trust-breaking and the specific areas involved"[968].

The following lays out the setup of CBR and examines how it strengthens and weakens administrative law's *enabling the public administration* function.

3.2.4.2. Implementation

CBR involves two steps: The creation of credibility assessments, and their application in administrative decision-making as well as beyond.

MAKING CREDIBILITY ASSESSMENTS

As outlined in section 3.1.1.3. above, central-level legislation on contents and procedures for the making of credibility assessments is yet lacking. The SCS Planning Outline of 2014 already called regulatory departments of a wide range of domains, including transport, healthcare, statistics, and construction to establish rules, principles, and indicators for creating credibility assessments.[969] Since then, new fields were added, for instance credibility assessments for blockchain information service providers.[970] As a

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classification supervision measures for inspection objects with different risk levels and credibility levels, and gradually achieve accurate identification, prediction and early warning of corporate credit risk status and major risk points", 国务院办公厅关于深化商事制度改革进一步为企业松绑减负激发企业活力的通知 (Notice Of The General Office Of The State Council On Deepening The Reform Of The Commercial System To Further Relax And Reduce The Burden On Enterprises In Stimulate Their Vitality), issued 10 September 2020. Listing the SCS in general as one of the areas where blockchain, among other technologies, was to be employed: 国务院关于印发新一代人工智能发展规划的通知 (State Council Notice On Issuing The 'New Generation AI Development Plan'), issued 8 July 2017.
Describing CBR as "at the intersection of digital government and the SCS": Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 39. Notably, the call for use of "the internet, big data and other technological means" in administrative supervision work is not limited to SCSP-related mechanisms. The SCSP is one of many governance projects that further informatization the public administration. See e.g. Art. 56, 优化营商环境条例 (Regulations On Optimizing The Business Environment), issued 22 October 2019.

[967] BJ10; Li Zhou 周莉, Yan Zhao 赵燕, Wei Wang 王伟, Bisong Liu 刘碧松 and Xianghua Li 李向华 (2022) 信用监管标准化有关问题思考与探讨 (Thoughts and explorative discussion on the standardization of credibility-based regulation), 征信 (Credit Reference) 278/2022, pp. 32-36.

[968] 最高人民法院对十三届全国人大四次会议第5927号建议的答复 (SPC Reply to Suggestion Number 5927 of the 4th Session of the 13th NPC), issued 5 July 2021.

[969] 社会信用体系建设规划纲要(2014–2020年)任务分工 (Task Division For The Planning Outline For Building The SCS (2014–2020)), issued 15 July 2015, http://www.pbc.gov.cn/zhengxinguanliju/128332/128434/128477/2885576/index.html, archived at https://web.archive.org/web/20250624134636/http://www.pbc.gov.cn/eportal/fileDir/image_public/UserFiles/zhengxinguanliju/upload/File/%E7%A4%BE%E4%BC%9A%E4%BF%A1%E7%94%A8%E4%BD%93%E7%B3%BB%E5%BB%BA%E8%AE%BE%E8%A7%84%E5%88%92%E7%BA%B2%E8%A6%81%EF%BC%882014-2020%E5%B9%B4%EF%BC%89%E4%BB%BB%E5%8A%A1%E5%88%86%E5%B7%A5.pdf.

[970] Art. 4, 区块链信息服务管理规定 (Management Provisions On Blockchain Information Services), issued by the Cyberspace Administration of China on 10 January 2019, https://www.cac.gov.cn/2019-01/10/c_1123971164.htm, archived at https://web.archive.org/web/20250328195143/https://www.cac.gov.cn/2019-01/10/c_1123971164.htm.

result, local DRCs[971] and regulatory agencies across all realms[972] create and update credibility assessments and issued respective rules, resulting in a diverse landscape of credibility assessment practices China-wide.[973]

Credibility assessments by the local DRCs draw on PCI from different agencies they manage to acquire, and on relevant market-sourced records (hereafter called comprehensive credibility assessments). Credibility assessments produced by the regulatory agencies on the other hand often draw on their own departmental PCI only (hereafter called sectoral credibility assessments).[974] However, local rules regularly require regulatory agencies to factor in the comprehensive credibility assessments produced by DRCs, too, which contain PCI from multiple other departments. For instance, in Xiamen, sectoral credibility assessments must be composed to at least 20% of the DRC's comprehensive credibility assessments.[975] Blacklist entries from all realms, too, are factored into credibility assessments and usually lead to an immediate drop to the lowest grade.[976] On the other end, under most CBR rules, newly registered entities can immediately be graded A if they submit a 'credit commitment 信用承诺' letter and enjoy relaxed handling in many administrative procedures.[977]

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[971] Often called 'comprehensive public credibility assessments 公共信用综合评价' as opposed to the departmental and other credibility assessments. E.g., Art. 2, 厦门市人民政府关于印发社会信用评价机制和分级分类管理办法的通知 (Notice Of The Xiamen Municipal Government In Issuing The Social Credit Assessment Mechanism And Classified Regulation Management Measures), issued 7 June 2023. See also: Kendra Schaefer (2020) China's Social Credit System: Context, competition, technology and geopolitics, Trivium China, 4 December 2020, available at https://www.uscc.gov/sites/default/files/2020-12/Chinas_Corporate_Social_Credit_System.pdf; Lauren Yu-Hsin Lin and Curtis Milhaupt (2021) China's corporate Social Credit System and the dawn of surveillance state capitalism, *The China Quarterly* 256, pp. 835–853, p. 841.

[972] E.g., 浙江省交通运输厅关于印发《浙江省交通建设工程从业主体信用评价管理细则》(试行)的通知 (Zhejiang Provincial Department Of Traffic And Transportation Notice On Issuing The 'Zhejiang Provincial Draft Provisions On The Management Of The Credibility Assessments For Entities Undertaking Traffic Construction Engineering'), issued 30 April 2024; 浙江省住房和城乡建设厅关于印发《浙江省注册建造师信用评价的实施意见》的通知 (Notice Of The Zhejiang Province Housing And Urban And Rural Construction Office On Issuing The 'Zhejiang Province Opinions On The Implementation Of The Credit Assessment Of Registered Constructors') , issued 1 January 2024; 重庆市企业公共信用综合评价指标 (Chongqing Municipal Company Comprehensive Public Credit Assessment Indicators), issued by the Chongqing City DRC General Office on 20 October 2023, https://www.cqfd.gov.cn/bm/fgw/zwgk_36090/fdzdgknr_36093/gggs/202310/t20231030_12491024.html, archived at https://web.archive.org/web/20250614112816/https://www.cqfd.gov.cn/bm/fgw/zwgk_36090/fdzdgknr_36093/gggs/202310/t20231030_12491024.html.

[973] For an overview of local comprehensive credibility assessment rules and criteria, see Liu Yang 杨柳 and Guanghui Zeng 曾光辉 (2023) 基于大数据的企业信用评价 – 理论与实务 (Corporate credit assessment based on big data – theory and practice), 中国金融出版社 (China Finance Press), p. 28; *Shen Yan and Boyang Wang: Credit assessment*. Credibility assessments are in early scholarship also called 'administrative ratings 行政评级', see Ruixue Wang 王瑞雪 (2018) 论行政评级及其法律控制 (Administrative ratings and their legal controls), 法商研究 (Studies in Law & Business) 3/2018, pp. 27-37.

[974] E.g.,深圳市生态环境局关于印发《深圳市排污单位环境信用评价指针》的通知 (Notice Of The Shenzhen Municipal Ecological And Environmental Bureau On Issuing The 'Shenzhen City Emission Entities Environmental Credibility Assessment Indicators'), issued 16 January 2024.

[975] Art. 8(7), 厦门市人民政府关于印发社会信用评价机制和分级分类管理办法的通知 (Notice Of The Xiamen Municipal Government In Issuing The Social Credit Assessment Mechanism And Classified Regulation Management Measures), issued 7 June 2023.

[976] E.g., Art. 12, *Beijing Trial Measures On CBR In Traffic And Transportation*.

[977] E.g., Art. 18, *Beijing Trial Measures On CBR In Traffic And Transportation*. For an application case, Tian Tan 谈天, Xin Li 李鑫 and Hexiang Zhong 钟鹤翔 (2022) 信息化视角下江苏省行业信用监管机制研究

Further diversifying the landscape of credibility assessments in operation, industry associations and enterprises such as digital platform companies and credit information service providers are to create credibility assessments.[978] The NDRC clarified that comprehensive credibility assessments by local DRCs do not replace the market-based types of credibility assessments.[979] Rather, state agencies are to acquire non-state credibility assessment results (for instance through procurement or systematic online data mining[980] and crawlers[981]) and to "organically combine them"[982] with their own credibility assessments. Hence, we cannot understand the impact credibility assessments have from departmental normative documents only. The many different sets of rules that non-state producers of credibility assessments use, too, require analysis.

The variety of credibility assessment rules currently in operation can hardly be systematically captured. One important authority in the diverse landscape of credibility assessments are a series of national-level technical standards (GB, 国家标准) containing procedures and criteria for making credibility assessments. They are voluntary but arguably provide the key link between central government CBR policy and its implementation.[983] In 2007, the State Council first called for standards to be drafted for the SCSP[984] and in 2019, it underlines that technical standards are "urgently needed for

(Research on the Jiangsu Province sectoral CBR mechanism from the perspective of informatization), 信息系统工程 (China CIO News) 11/2022. pp. 152-160, p. 155. This practice is akin to self-certification systems used by regulators globally, see, e.g. the Environmental Protection Agency of the US: https://www.epa.gov/pesticide-registration/prn-98-1-self-certification-product-chemistry-data-attachments.

[978] Part 5, 国家发展改革委办公厅关于推送并应用市场主体公共信用综合评价结果的通知 (NDRC General Office On Promoting And Applying The Comprehensive Evaluation Results Of The Public Credit Of Market Subjects), issued 1 September 2019, https://www.gov.cn/xinwen/2019-09/16/content_5430181.htm, archived at https://web.archive.org/web/20250916191904/https://www.gov.cn/xinwen/2019-09/16/content_5430181.htm. Scholars have endorsed this trend as a means to achieve evaluation neutrality: Jing Hao 郝静 (2020) 论行政法视域下正当程序对信用监管机制的规制 (On the regulation of credibility-based regulation by due process through the lens of administrative law), 河北青年管理干部学院学报 (Journal Of Hebei Youth Administrative Cadres College) 32(5), pp. 82-87, p. 85.

[979] Part 2, 国家发展改革委办公厅关于推送并应用市场主体公共信用综合评价结果的通知 (NDRC General Office On Promoting And Applying The Comprehensive Evaluation Results Of The Public Credit Of Market Subjects), issued 1 September 2019, https://www.gov.cn/xinwen/2019-09/16/content_5430181.htm, archived at https://web.archive.org/web/20250916191904/https://www.gov.cn/xinwen/2019-09/16/content_5430181.htm.

[980] Tian Tan 谈天, Xin Li 李鑫 and Hexiang Zhong 钟鹤翔 (2022) 信息化视角下江苏省行业信用监管机制研究 (Research on the Jiangsu Province sectoral CBR mechanism from the perspective of informatization), 信息系统工程 (China CIO News) 11/2022. pp. 152-160, P. 155.

[981] Jinyu Lu 陆进宇, Erlei Zhou 周二磊, Zhiqing Zhang 张志清, Tao Yang 杨涛 and Yan Zheng 郑岩 (2023) 食品安全信用监管领域数据治理的现状、问题及对策研究 (Research on the current state, problems and countermeasures of credibility-based regulation in the food safety field), 中国市场监管研究 (Research on China Market Regulation) 7/2023, pp. 56-60, p. 59

[982] Part 5, 国家发展改革委办公厅关于推送并应用市场主体公共信用综合评价结果的通知 (NDRC General Office On Promoting And Applying The Comprehensive Evaluation Results Of The Public Credit Of Market Subjects), issued 1 September 2019, https://www.gov.cn/xinwen/2019-09/16/content_5430181.htm, archived at https://web.archive.org/web/20250916191904/https://www.gov.cn/xinwen/2019-09/16/content_5430181.htm.

[983] Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243, p. 239; see also: *Li et al.: Research on key technical standards*, p. 49.

[984] *State Council 2007 SCS Opinions*.

the development of CBR"[985]. As a consequence, local SCSP implementation plans include the drafting of credibility assessment standards in their list of tasks.[986]

A technical committee dedicated to SCSP standardization has been formed under the National Standardization Administration, namely, TC470 全国社会信用标准化技术工作委员会 (National Social Credit Standardization Technical Working Committee).[987] The TC470 coordinates the drafting of national standards for CBR. It regularly assembles the relevant regulators, the SAMR in particular, alongside non-state actors such as industry representatives (70% of co-drafters are state-owned enterprises)[988] and scholars and has issued a total of 73 national standards since 2008.[989] One set of these social credit standards concern basic technical requirements for the interoperability of PCI.[990] However, the TC470 also coordinates drafting of standards containing credibility assessment criteria and methods, defining the types of information included and how much weight is given to the different items, thereby making substantive normative decisions on what constitutes 'credibility'. Of the overall 73 national standards by the TC470, more than 40 lay down the methods and normative indicators by which the credibility (or, social credit status) or legal and natural persons is to be assessed. Each standard addresses a different group of SCSP subjects, including e-commerce

[985] *State Council Opinion on CBR*. See also: Peixin Luo 罗培新 (2019) 信用监管：构建新型监管机制之基石 (Credibility-based regulation: the cornerstone of constructing a new type of regulatory mechanism), 中国银行业 (China Banking) 8/2019, pp. 25-28, p. 26.

[986] For instance, Suzhou's government calls to "implement national comprehensive public credit assessment standards (section 13), and further to develop local standards (DB) on that basis (section 15): 苏州市政府办公室关于印发 2023 年苏州市社会信用体系建设工作要点的通知 (Notice Of The Suzhou People's Government General Office On Issuing The 2023 Suzhou City SCS Building Work Plan), issued 13 June 2023, https://credit.suzhou.gov.cn/attaches/20240226/5c99223c96bba7bc9a0aab1ce39dff73.pdf, archived at https://web.archive.org/web/20250615221953/https://credit.suzhou.gov.cn/attaches/20240226/5c99223c96bba7bc9a0aab1ce39dff73.pdf.

[987] The TC470 operates under the auspices of the National Institute of Standardization, a research institute run by the Standardization Administration of China (SAC) and SAMR. Among its 67 members is Junyue Lin, one founder of SCS theory. Another social credit theorist, Jingmei Wu, co-drafted some of the SCS standards, such as GB/T 22118-2008. TC470 members were recruited via public announcement in 2013. TC470 was to bring together the very different members of the Joint Inter-ministerial Conference for the Construction of the SCS: See 关于公开征集全国社会信用标准化技术委员会委员的通知 (Notice On An Open Recruitment For Members Of The National Social Credit Standardization Technical Committee), issued by the SAC on 30 August 2013, http://scjgj.zhangzhou.gov.cn/cms/siteresource/article.shtml?id=530342752989130000&siteId=60456039315100001, not archivable, on file with the author.

[988] Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243.

[989] See the national public service platform for standards information on TC470, https://std.samr.gov.cn/search/orgDetailView?data_id=E57C70119B3D4DFDE05397BE0A0ADC4D, archived at https://web.archive.org/web/20250613122807/https://std.samr.gov.cn/search/orgDetailView?data_id=E57C70119B3D4DFDE05397BE0A0ADC4D.

[990] 国家发展改革委办公厅关于印发实施《公共信用信息标准体系框架》等六项工程标准的通知 (Notice Of The NDRC General Office On Issuing And Implementing The 'Framework Of The PCI Standard System'), issued 6 December 2017, https://www.mem.gov.cn/fw/cxfw/xycx/zdwj/201712/t20171206_245786.shtml, archived at https://web.archive.org/web/20250613103134/https://www.mem.gov.cn/fw/cxfw/xycx/zdwj/201712/t20171206_245786.shtml.

merchants and platforms,[991] managers,[992] judicial certification personnel,[993] researchers and research institutions,[994] social organizations,[995] and credit rating agencies,[996] among others. Technical standards laying down criteria for credibility assessments emerge locally, too (DB, 地方标准).

To what extent are credibility assessments produced based on these standards conducive to administrative law's *enabling the public administration* function? In other words, what are the criteria of 'credibility' according to the standards and do they include norms on legal compliance? The SCSP roof standard defines credibility broadly as "the willingness and ability of individuals or organizations to fulfil promises".[997] A content analysis of all credibility assessment standards at the national level has revealed that criteria for assessment of credibility speak to three kinds of behaviours[998]: compliance with laws and regulations,[999] observance of contract,[1000] and non-codified moral behaviour.[1001] All standards contain criteria on legal compliance. More than half of the standards further combine criteria on all three behaviours,[1002] somewhat realizing the 'broad notion of credit' at the heart of the social credit mode of governance.[1003]

The indicators speaking to moral behaviour – such as on the moral qualities of employees and the reputation an assessment subject enjoys in local media reporting – often exhibit a substantive teleological relation to legal norms. For instance, for good credibility assessment results, online merchants must display high levels of consumer satisfaction after transactions (e.g. GB/T 34056-2017), which is only achievable if the compliance with relevant consumer protection law provisions is already given. Similarly, several indicators speak to work environment quality such as salary levels, employee trainings offered (e.g. GB/T 23794-2015), and the overall protection of workers' rights and interests

[991] GB/T 36312-2018. All standards cited are available through https://std.samr.gov.cn/.
[992] GB/T 31864-2016.
[993] GB/T 27202-2013; GB/T 27201-2013.
[994] GB/T 37927-2019.
[995] GB/T 31867-2015.
[996] GB/T 22119-2017.
[997] GB/T 22117-2018 信用 基本术语 (Credit – General Vocabulary). "Fulfilling promises" is further defined as complying with "laws, regulations, mandatory standards, contracts, reasonable social expectations and other social responsibilities".
[998] Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243.
[999] Usually these are the administrative punishment record (i.e. GB/T 31952-2015) and several specific violations that have aroused public concern in the past. For instance, e-commerce merchants are assessed with regard to records of spreading false advertisements featuring misleading product information (e.g. GB/T 34057-2017), manipulating prices (e.g. GB/T 33717-2017), and protecting user data (e.g. GB/T 34057-2017). Operating a business without the respective administrative licence is a veto item that entails the lowest assessment (e.g. GB/T 34058-2017, GB/T 35434-2017).
[1000] Mostly, financial information: past records of debt repayment, as well as current outstanding payments, (e.g. GB/T 31952-2015), often in the form of the payment of public utility bills (e.g. GB/T 37927-2019). Further: whether merchants deliver what they promise in their contracts (e.g. GB/T 31870-2015).
[1001] Awards issued by regulators and industry associations (e.g. GB/T 31952-2015, GB/T 34058-2017), human rights in company management, supporting the development of the locality in which a company is based (e.g. GB/T 31870-2015), philanthropic behaviour (e.g. GB/T 23794-2015), reputation in local media, ratings in third-party credibility appraisals, reviews by users (e.g. GB/T 36312-2018, GB/Z 41465-2022), adherence to professional ethics (e.g. GB/T 37927-2019).
[1002] Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243.
[1003] Section 2.1.

(e.g. GB/T 31952-2015).[1004] Thus, even those indicators in credibility assessment calculation that do not directly contain norms of regulatory law are to a large extent conducive to strengthening legal compliance. That said, credibility assessment criteria in both, technical standards but also local administrative normative documents are not all 'extended arms' of norms of law. They also include, for instance, CSR-related rules, but also CPC ideology, as well as local variations of morality.[1005]

The credibility assessment criteria further transform law enforcement: They introduce quantified scales relating to a theme. For instance, "user information safety" measures the sophistication of the organization's data security system Z.[1006] Law compliance, then, is no longer assessed in binary form (in the case at hand: does the data security system Z satisfy Personal Information Protection Law requirements or does it not?). Instead, credibility assessment indicators set broadly phrased goals to measure of adherence to an ideal underpinning a law.[1007]

The reconfiguration of legal compliance into a flexible measure to predict the risk of future noncompliance in practice is illustrated where regulators create "credit profiles 信用画像" of SCSP subjects.[1008] Such profiling entails quantifying assessments as opposed to the older form of professing social credit information into simple categories or lists (单一型评价).[1009] Honghai Bi predicts that social credit profiles will soon cover all SCSP subjects, and that PCI and MCI will be fully combined therein.[1010] In a respective pilot project in Jiangsu province, social credit profiles have already reached relative accuracy and become 'three-dimensional'.[1011]

[1004] As elaborated on in: Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243.

[1005] *Ruixue Wang: Research on joint credit disciplinary and reward measures*, p. 84; Lauren Yu-Hsin Lin and Curtis Milhaupt (2021) China's corporate Social Credit System and the dawn of surveillance state capitalism, *The China Quarterly* 256, pp. 835–853, p. 850; Yongxi Chen (2021) Die Entwicklung des Social Credit Systems: Zu drei seiner Funktionen aus Sicht des Öffentlichen Rechts, in: Harald Gapski; Stephan Packard (eds.) *Super-Scoring? Datengetriebene Sozialtechnologien als neue Bildungsherausforderungen*, Kopaed, pp. 35-51, p. 45.

[1006] e.g. GB/T 33717-2017.

[1007] Interpreting this feature as one hallmark of "social credit ideology": Larry Catá Backer (2019) China's SCS: Data-driven governance for a 'New Era', *Current History* 118(809), pp. 209-214, p. 214. However, CBR is not a 'first'. Consider practices by tax authorities: Valerie Braithwaite (2007) Responsive regulation and taxation: Introduction, *Law & Policy* 29(1), pp. 3-10; Sagit Leviner (2008) An overview: A new era of tax enforcement – from 'big stick' to responsive regulation, *Regulation and Governance* 2(3), pp. 360-380.

[1008] Most sophisticated in the tax credit system, see e.g. Xin Zhang 张欣 (2021) 算法行政的架构原理、本质特征与法治化路径：兼论《个人信息保护法（草案）(The framework, features and legalizing path of algorithmic regulation: A discussion on the Personal Information Protection Law (Draft)), 经贸法律评论 (Business And Economic Law Review) 1/2021, pp. 21-31, p. 29; see also Tian Tan 谈天, Xin Li 李鑫 and Hexiang Zhong 钟鹤翔 (2022) 信息化视角下江苏省行业信用监管机制研究 (Research on the Jiangsu Province sectoral CBR mechanism from the perspective of informatization), 信息系统工程 (China CIO News) 11/2022. pp. 152-160, p. 155.

[1009] *Wang and Huang: On the legal constraints*. Because data profiling relies on regulatory indicators and scoring systems, they describe it as a type of rule by numbers 数治.
See also: *Ruixue Wang: Research on joint credit disciplinary and reward measures*.

[1010] *Honghai Bi: Old regulatory wine*, p. 313.

[1011] Tian Tan 谈天, Xin Li 李鑫 and Hexiang Zhong 钟鹤翔 (2022) 信息化视角下江苏省行业信用监管机制研究 (Research on the Jiangsu Province sectoral CBR mechanism from the perspective of informatization), 信息系统工程 (China CIO News) 11/2022. pp. 152-160, p. 155.

APPLYING CREDIBILITY ASSESSMENTS IN ADMINISTRATIVE DECISION-MAKING

Overall, credibility assessments (and respective credit profiles, where applicable) inform decisions ranging from regulatory scrutiny and inspection frequency, granting of administrative licenses, imposing of administrative penalties, bidding and tendering,[1012] financial subsidies, tax concessions, bond issuance, state-owned land use grants, enterprise stock market listing, allocation of public resources, business partnerships, honorary titles, treatment in government-led investment activities, but also market transactions of all kinds.[1013]

Credibility assessments largely inform decisions for which regulators are afforded administrative discretion by law. In other words, they support decision-making where laws remain unspecific and leave room for interpretation to the implementing officials. For instance, several administrative laws and regulations contain the vague requirement of a "good business reputation 良好的商业信誉". The Government Procurement Law stipulates this requirement for companies to participate in government procurement.[1014] The Regulations on Direct Selling Administration contains it as a requirement for investors seeking to establish of a business.[1015] Departmental rules contain similar requirements, for instance, to set up a logistics service for e-cigarette enterprises, the State Tobacco Monopoly Administration requires an applicant to have a "good business reputation and the ability to perform contracts".[1016] For a regulatory agency to operationalize the requirement of a "good business reputation", it can refer to credibility assessment results of the regulatory subject at hand.[1017] In Chuangyu Fu 伏创宇's words, "The demand for PCI is generated by legal discretion."[1018]

Credibility assessments impact administrative discretion in one of two ways. First, credibility assessments can entirely close rooms of administrative discretion. This is the case when respective rules provide exact consequences for SCSP subjects in certain grades or with certain scores. For instance, the Beijing transportation authority's rules

[1012] Particularly widespread, see also Jinquan Lin 林锦全 (2025) 基于新监管环境的招标投标领域信用监管体系完善 (Improving the CBR system in the bidding and tendering field based on the new regulatory environment), 招标采购管理 (Tendering & Purchasing Management) 4/2025, pp. 9-11.

[1013] *Ruixue Wang: Research on joint credit disciplinary and reward measures*, p. 87; see also Guodong Chen 陈国栋 (2021) 缔约资格排除类信用惩戒的法治化路径 (The legal path of trust disciplining for contract qualification exclusion), 现代法学 (Modern Law Science) 43(1), pp. 105-114, p. 111.

[1014] Art. 22(2), 政府采购法 (Government Procurement Law), passed by the NPC Standing Committee on 29 June 2002, amended on 31 August 2014.

[1015] Art. 7, 直销管理条例 (Direct Selling Management Regulations), issued by the State Council on 23 August 2005, amended 1 March 2017.

[1016] Art. 26(1), 国家烟草局关于修订印发电子烟物流管理细则的通知 (Notice of the State Tobacco Monopoly Administration On Amending Issuing The Management Provisions On Electronic Cigarettes Logistics), issued 8 August 2024.

[1017] Maintaining that credibility assessments are within the scope of references bidders may draw on as per the PRC Bidding Law: Hangzhou Railway and Transportation Court 杭州铁路运输法院, 行政判决书（2018）浙8601行初151号 (Administrative judgment no. 151), decided 11 January 2019.

[1018] Chuangyu Fu 伏创宇 (2025) 公共信用信息数字化的运行逻辑与法律限度 (The operation logic of public credit information digitization and its legal limits), 浙江工商大学学报 (Journal of Zhejiang Gongshang University), online first, pp. 1-12, https://www.cnki.net/KCMS/detail/detail.aspx?dbcode=CAPJ&dbname=CAPJLAST&filename=ZJZF20250427002&uniplatform=OVERSEA&v=NNkfRHV40moT0cAgBchBBJUpqvjLQLHYWi1KivxncjR-ZkzbRLfgXw0w8IsT8TSh, p. 4.

provide that random on-spot investigations for companies graded A+ for two years in a row, are not to be undertaken at all (Art. 24(1)). This leaves no room for officials' other considerations.

Second, credibility assessments function as but one discretionary factor in a decision-making process, leaving space for officials to decide on its weight according to own considerations. For instance, the aforementioned Beijing transportation authority rules stipulate that for C-graded subjects, "within the scope of administrative discretion, the administrative punishment range is raised by 10-20%" (Art. 14(5)). Similarly, A-graded subjects enjoy "priority 优先列为选择" when participating in government procurement and bidding processes, among others (Art. 25(1)). For another example, subjects C-graded subjects are re by the Shanghai environmental regulator subject to an "appropriate increase 适当加大" of the frequency of certain inspections.[1019] In these configurations, credibility assessments shrink but do not close rooms of administrative discretion.

I have pointed out above how private companies, especially technology firms, provide the crucial infrastructure and services for SCSP mechanisms to work. In CBR, this feature stands out particularly, because state agencies often lack the technological skills and software required to produce credibility assessments from different types of records.[1020] "Third party credibility assessment institutions"[1021] are delegated to create credibility assessments for state agencies. As public procurement documents show, private firms play a part in realizing every step of the process: setting up and operating PCI

[1019] 上海市生态环境局关于印发《上海市企事业单位生态环境信用评价管理办法（试行）》的通知 (Notice Of The Shanghai Municipal Bureau Of Ecology And Environment On Issuing The 'Trial Measures On The Management Of The Ecology And Environment Credit Assessments Of Municipal Public Enterprises And Institutions'), issued 1 August 2022.

[1020] Implementing officials HQ02; HZ01, SZ03. This is the case in most digital governance ambitions, see for instance an account on the support of the public administration by firms in the UK: Lina Dencik, Arne Hintz, Joanna Redden and Harry Warne (2018) Data scores as governance: Investigating uses of citizen scoring in public services, Project Report, Data Justice Lab of Cardiff University, December 2018, https://orca.cardiff.ac.uk/id/eprint/117517/1/data-scores-as-governance-project-report2.pdf.

[1021] E.g., Art. 9, 厦门市人民政府关于印发社会信用评价机制和分级分类管理办法的通知 (Notice Of The Xiamen Municipal Government In Issuing The Social Credit Assessment Mechanism And Classified Regulation Management Measures), issued 7 June 2023; Art. 13, 上海市生态环境局关于印发《上海市企事业单位生态环境信用评价管理办法（试行）》的通知 (Notice Of The Shanghai Municipal Bureau Of Ecology And Environment On Issuing The 'Trial Measures On The Management Of The Ecology And Environment Credit Assessments Of Municipal Public Enterprises And Institutions'), issued 1 August 2022.

platforms,[1022] conducting trustworthiness assessments,[1023] and engineering entire CBR applications including reward and disciplining recommendations.[1024]

APPLYING CREDIBILITY ASSESSMENTS BEYOND ADMINISTRATIVE DECISION-MAKING

Finally, according to the official plan, CBR activates non-state forces to help to create an entire environment around SCSP subjects in which compliance with law is inescapable. CBR calls non-state actors to use publicized credibility assessments for making decisions on whether and how to engage with others (clients, suppliers, partners, etc.), and specifically whom to enter contractual relations with.[1025] Here, CBR overlaps with the reputational SCSP mechanisms described in sections 3.2.1. and 3.2.2. In how far this succeeds hinges on whether non-state actors adopt credibility assessment criteria and embed them within the trustworthiness assessments they conduct. For instance, e-commerce platform companies conduct types of trustworthiness assessments on the merchants that operate through them already, as regular part of their for-profit operations. Credibility assessment standards are drafted in a way to make e-commerce

[1022] For instance, Yunnan's Highway Science and Technology Research Centre outsources the establishment of a PCI platform alongside the collection, assessing, updating and publication of PCI, see: 云南省公路科学技术研究院"云南省公路局普通国省道公路养护项目信用评价服务平台建设"项目成交结果公告 (Yunnan Provincial Highway Science And Technology Research Institute's 'Construction Of Credit Evaluation Service Platform For Yunnan Provincial Highway Bureau's Ordinary National And Provincial Highway Maintenance Project' Project Transaction Results Announcement), YNZC2024-C3-04366-YNZZ-0388, published 10 September 2024, https://www.ccgp.gov.cn/cggg/dfgg/cjgg/202409/t20240910_23119192.htm, archived at https://web.archive.org/web/20250611171645/https://www.ccgp.gov.cn/cggg/dfgg/cjgg/202409/t20240910_23119192.htm.

[1023] For instance, regulators overseeing boat traffic on the Yangtze River outsource "to form a 'green, blue, yellow, and red' four-color code management function with the 'three ships' as the main body; realize the collection and evaluation of credit information, credit incentives and penalties, and credit objections and repairs; share and link credit information with other systems" to Nanjing Huihai Transportation Technology Co. Ltd: 长江三峡通航管理局长江航运信用评价及应用信息系统建设项目（一期）中标公告 (Winning Bid Announcement (Phase One) for the Yangtze River Three Gorges Administration Over the Yangtze River Shipping Trustworthiness assessment and Information System Application Construction Project), 正天采字[2023]146号（招标文件编号：正天采字[2023]146号）, announced 20 October 2023, https://www.ccgp.gov.cn/cggg/zygg/zbgg/202310/t20231020_20913520.htm, archived at https://web.archive.org/web/20250611165926/https://www.ccgp.gov.cn/cggg/zygg/zbgg/202310/t20231020_20913520.htm.

[1024] E.g., the Beijing Culture and Tourism Bureau outsourced a CBR project to Yangguang Smart Culture and Tourism (Beijing) Co. Ltd, see: 文化和旅游市场信用监管体系建设项目成交公告 (Announcement Of The Winner Of The Project On The Construction Of The CBR System For The Culture And Tourism Market), 20230524891（招标文件编号：20230524891）, 6 June 2023, https://www.ccgp.gov.cn/cggg/dfgg/cjgg/202306/t20230606_20024353.htm, archived at https://web.archive.org/web/20250611175020/https://www.ccgp.gov.cn/cggg/dfgg/cjgg/202306/t20230606_20024353.htm; Huai'an City traffic and transportation authorities outsourced a three year CBR project to Huashe Design Group Co. Ltd: 淮安市"一体化+智慧执法+信用监管"执法新模式三年行动计划项目成交公告 (Huai'an City "Integration + Smart Law Enforcement + CBR" New Law Enforcement Model Three-Year Action Plan Project Transaction Announcement), 28 September 2022, https://www.ccgp.gov.cn/cggg/dfgg/cjgg/202209/t20220928_18733535.htm, archived at https://web.archive.org/web/20250611175610/https://www.ccgp.gov.cn/cggg/dfgg/cjgg/202209/t20220928_18733535.htm; HQ01 and SZ03.

[1025] *State Council Opinion on CBR*.

platforms and other relevant actors adapt their internal trustworthiness assessment production slightly to base them on credibility assessment standards.[1026]

The inclusion of private actors, industry associations and others in the drafting of credibility assessment standard may increase the likelihood that they apply the standards to conduct assessments within their respective spheres of influence.[1027] When co-drafting credibility assessment standards, platform companies bring their internal trustworthiness assessment criteria in, for instance merchants' ability of their technical infrastructure to handle large numbers of transactions smoothly.[1028] Regulators on the other hand insert criteria regarding legal compliance. As a result, through credibility assessments, regulatory goals are to be embedded within for-profit operations of the platform company.

3.2.4.3. Discussion

RATIONALIZING LAW ENFORCEMENT?

By its concept, CBR appears to strengthen administrative law's *enabling the public administration* function. To recall, the *enabling the public administration* function refers to laying down clear rules and enforcing them in a non-arbitrary manner. Regulatory laws in the PRC generally offer little detail as to how administrative agencies shall exercise their discretion. This is one breeding ground for local protectionism and arbitrary decision-making in local state agencies,[1029] "chaos in administrative investigations"[1030] or what the NDRC has termed "profit-seeking law enforcement"[1031]. Since 2015, reforms such as Random Inspection 随机抽查 and Categorized Regulation 分级分类监管 aimed at cutting regulatory arbitrariness.[1032] CBR, the above has shown, is embedded within these attempts to conduct law enforcement work in a more rational, or, "scientific"[1033]

[1026] See the preambles of the National Standards (GB) cited above.
[1027] Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243; Also, standardization officials and drafters BJ06; XM01; SZ06; SZ07 and corporate standard drafting representative MU01.
[1028] GB/T 36312-2018.
[1029] Xuexian Huang 黄学贤 (2015) 行政调查及其程序原则 (Administrative inspection and its procedural principles), 政治与法律 (Political Science and Law) 6/2015, pp. 15-28, p. 23; Jie Tan 谈婕 and Xiang Gao 高翔 (2020) 数字限权: 信息技术在纵向政府间治理中的作用机制研究———基于浙江省企业投资项目审批改革的研究 (Digital power constraining: Research on the role of information technology in vertical inter-governmental governance. A study based on the reform of enterprise investment project approval in Zhejiang Province), 治理研究 (Governance Studies) 6/2020, pp. 31-40, p. 35.
[1030] Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 48.
[1031] "逐利性执法": 国家发展改革委关于印发《全国统一大市场建设指引（试行）》的通知 (Notice Of The NDRC On Issuing The 'Trial Provisions On Building A National Unified Market'), issued 4 December 2024, https://www.gov.cn/zhengce/zhengceku/202501/content_6996676.htm.
[1032] Pan Hu 胡畔 (2015) "随机抽查让监管不再"任性" (Random inspections to make supervision no longer 'arbitrary')", Gov.cn, 24 July, https://www.gov.cn/xinwen/2015-07/24/content_2902258.htm, archived at https://web.archive.org/web/20250627135316/https://www.gov.cn/xinwen/2015-07/24/content_2902258.htm.
[1033] A term appearing widely in respective top-level policy on CBR, e.g.: "Clear standards, scientific classification": 市场监管总局关于推进企业信用风险分类管理进一步提升监管效能的意见 (Opinions Of The SAMR On Advancing Corporate Credit Risk Classification Management And Further Elevating The Effectiveness Of Regulation), issued 13 January 2022; Xuexian Huang 黄学贤 (2015) 行政调查及其程序原则 (Administrative inspection and its procedural principles), 政治与法律 (Political Science and Law) 6/2015, pp. 15-28, p. 24.

manner, and spur departments to cooperate among each other to this end.[1034] First studies have demonstrated that instances of CBR in fact standardized administrative procedures, such as approval procedures for enterprise investment projects in Zhejiang.[1035]

However, the narrowing down of spaces of administrative discretion through CBR comes with risks of going too far and thereby weakening the *enabling the public administration* function. Administrative discretion, in administrative law, serves to provide an entry point for considerations of justness and fairness where a decision according to legal procedures and rules would produce disproportionate or unjust outcomes.[1036] It is a crucial counterforce to overly formal, rational and uncritical decision-making. Where algorithmic systems are integrated in decision-making, spaces of administrative discretion might be diminished to a degree that officials cannot effectively oversee the single case anymore, or halt decisions that would produce inadequate outcomes.[1037] The result would be the exact opposite of what CBR came to achieve: a public administration that makes decisions which are opaque and not traceable, and therefore hardly challengeable.

Another risk emerges from CBR: While CBR reduces spaces for regulatory arbitrariness on the one hand, it simultaneously opens up new spaces of administrative discretion and therefore entry points for arbitrariness, namely in the spaces of credibility assessment production. This risk is well-exemplified in the field of bidding and tendering where CBR is comparatively common. As credibility assessments become important to government procurement decisions, they are being shaped by the self-interests of powerful local market actors and officials. In an explicit quest to counter local protectionism and market segmentation, the NDRC issued a notice in 2023 requiring departments to "objectively and impartially assess the credit status of enterprises".[1038] This translated into a nation-wide effort by local DRCs to end the abuse of credibility assessments in the lucrative bidding and tendering field. In 2023, Zhejiang's provincial DRC called for the public to report clues on local protectionist tendencies in credibility assessment production.[1039]

[1034] 国务院办公厅关于深入推进跨部门综合监管的指导意见 (Guiding Opinions Of The State Council On Deepening And Furthering Intra-Departmental Comprehensive Regulation), issued 17 February 2023. In Hualin Song's words: "The inspection and handling results should be promptly released to the public and integrated with the Social Credit System, ensuring that market entities are not disturbed by 'arbitrary enforcement' and operate legally without overstepping boundaries." Hualin Song 宋华琳 (2015) 加强事中事后监管推动市场监管体系的改革与创新 (Strengthening in-process and post-process supervision to promote the reform and innovation of the market supervision system), in 中国高管理研究 (China Business Administration) 11/2015, pp. 32-34, p. 34.

[1035] Jie Tan 谈婕 and Xiang Gao 高翔 (2020) 数字限权: 信息技术在纵向政府间治理中的作用机制研究——基于浙江省企业投资项目审批改革的研究 (Digital power constraining: research on the role of information technology in vertical inter-governmental governance. A study based on the reform of enterprise investment project approval in Zhejiang Province), 治理研究 (Governance Studies) 6/2020, pp. 31-40, p. 35.

[1036] For a discussion of administrative discretion's role in China, see for instance Haibo He (2016) 论行政行为"明显不当" (On 'obvious inappropriateness' in administrative acts), 法学研究 (Chinese Journal of Law) 3/2016, pp. 71-88, p. 74.

[1037] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 209.

[1038] 国家发展改革委办公厅关于规范招标投标领域信用评价应用的通知 (Notice Of The NDRC On Regulating The Application Of Credit Assessments In The Bidding And Tendering Field), issued 29 October 2023.

[1039] In particular, this includes setting up bidding and tendering barriers in the guise of credit assessments, as well as the inclusion of bonus items in credibility assessments that clearly favour local companies such

CUTTING LAW ENFORCEMENT COST?

Secondly, CBR may also further the *enabling the public administration* function of administrative law by lowering regulatory costs. Like the other SCSP mechanisms described previously, CBR is to optimize the use of regulatory resources.[1040] The State Council contextualizes CBR within efforts to streamline and decentralize regulation.[1041] Many state agencies used to require subjects to follow complex and lengthy procedures, including visits to several offices and respective paperwork, to just conclude one single task. CBR focuses on cutting red tape for the largest group of market actors and instead focusing resources on the smaller group that has already violated laws, forming a type of "de-regulation".[1042]

The cost-saving effect however only unfolds if the assumption holds that credibility assessments in fact correctly predict the future risk of non-compliance or likelihood of violating law in other areas and thus guide supervision work well. The first emerging question is: Are previous law violation records a reliable indicator that an entity violates the law again? The fact that the first related experiments by the SAIC, now the SAMR, began as early as 2006[1043] and have evolved into what is now CBR indicate that at least within a regulatory realm, past compliance records can predict future noncompliance.

Credibility assessments are further composed of compliance records from regulatory departments of other fields. Therefore, secondly, the question arises: Do an entity's law compliance records in one field indicate that the entity violates law in another? For instance, if an entity violates environmental protection laws, is it more likely to also evade taxes? Apart from officials, several legal scholars, too, assume that there is a link

as 'performance in specific administrative regions', 'establishment of local branches', 'local payment of taxes and social security'. 关于征集招标投标领域信用评价应用问题线索的公告 (Announcement On Soliciting Clues On Credit Evaluation Application Issues In The Bidding And Tendering Field), issued by the Zhejiang DRC on 16 November 2023, https://credit.zj.gov.cn/art/2023/11/18/art_1229636049_4194.html, archived at https://web.archive.org/web/20250626190646/https://credit.zj.gov.cn/art/2023/11/18/art_1229636049_4194.html.

[1040] See for instance, 中共中央办公厅国务院 办公厅印发《关于推进社会信用体系建设高质量发展促进形成新发展格局的意见》(The CPCCC General Office and the State Council General Office Issue the 'Opinions on Advancing High-Quality Development in the Building the Social Credit System for Promoting the Formation of a New Development Structure'), issued 29 March 2022.

[1041] 国务院关于加强和规范事中事后监管的指导意见 (Guiding Opinions Of The State Council On Strengthening And Standardizing Regulation Before And After The Event), issued 12 September 2019.

[1042] Jeremy Daum (2019) "Keeping track of social credit", China Law Translate, 24 September, https://www.chinalawtranslate.com/en/keeping-track-of-social-credit/.

[1043] 全国整顿和规范市场经济秩序领导小组办公室、国务院国有资产监督管理委员会行业协会联系办公室关于印发《行业信用评价试点工作实施办法》的通知 (Notice Of The Office Of The National Small Leading Group On Rectifying And Regulating The Market Economy Order And The Office Of The State-Owned Assets Supervision And Administration Commission Of The State Council On Issuing The 'Measures On Implementing Industry Credit Assessment Experimentation Work'), issued 24 April 2006.

between the two,[1044] but empirical evidence so far stems only from beyond China.[1045] Critics of combining multiple departmental compliance records for CBR raise that it requires more empirical research on issues as to what records really show correlations.[1046] According to officials, the most workable proportion to which they include external PCI and MCI in credibility assessments is still being explored.[1047]

The final question with regard to the ability of credibility assessments to predict law violations is: Do behavioural records sourced from market actor-sourced information that are included in credibility assessments indicate an entity's future compliance with the law? The usage of market-sourced behavioural records by regulators globally indicates so.[1048] In China, many credibility assessments only rely on PCI.[1049] However, the shift of credibility assessment indicator drafting to standardization fora and the increasing calls to integrate MCI and PCI both decrease the importance of compliance records in credibility assessments. With credibility assessments increasingly informing discretionary administrative decision-making, the proportion to which legal compliance is the basis for decision-making shrinks as that of other behavioural records grows. To be sure, law compliance records are still the fundamental pillar in all credibility assessment indicators reviewed, whether in the form of technical standards or administrative normative documents. But increasingly, technical standardization committees decide over the thresholds of 'credibility' and their members, diverse as they are, have interests other than building the ideal predictor of legal noncompliance. A closer look at the types of information that flow into credibility assessment according to the relevant technical standards revealed that indicators that are not on compliance still substantively relate to the goals of regulatory laws.[1050] They do not contravene and may support the goal to

[1044] E.g., "The cross-departmental nature of the circulation of PCI not only contributes to the effective implementation of various administrative law norms, but also provides information resources for strengthening the deterrence of illegal acts." Chuangyu Fu 伏创宇 (2025) 公共信用信息数字化的运行逻辑与法律限度 (The operation logic of public credit information digitization and its legal limits), 浙江工商大学学报 (Journal of Zhejiang Gongshang University), online first, pp. 1-12, https://www.cnki.net/KCMS/detail/detail.aspx?dbcode=CAPJ&dbname=CAPJLAST&filename=ZJZF20250427002&uniplatform=OVERSEA&v=NNkfRHV40moT0cAgBchBBJUpqvjLQLHYWi1KivxncjR-ZkzbRLfgXw0w8IsT8TSh, p. 3. Calling for empirical research into CBR: Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 54.

[1045] E.g., Sunhwa Choi, Steven Young and Xiu-Ye Zhang (2019) Noncompliance with non-accounting securities regulations and GAAP violations, *Journal of Business Finance & Accounting* 46(370), pp. 370-399, p. 393.

[1046] Chuangyu Fu 伏创宇 (2023) 信用惩戒适用行为人责任的法理及其限度 (Jurisprudence and limitation of the actor's responsibility in the application of credit disciplines), 法学研究 (Chinese Journal of Law) 6/2023, pp. 37-52, p. 44.

[1047] Implementing officials CQ04; WZ02.

[1048] For a discussion of several respective practices, see *Fourcade and Gordon: Learning like state*, p. 93.

[1049] E.g., 重庆市企业公共信用综合评价指标 (Chongqing Municipal Company Comprehensive Public Credit Assessment Indicators), issued by the 重庆市发展和改革委员会办公室 on 20 October 2023, https://www.cqfd.gov.cn/bm/fgw/zwgk_36090/fdzdgknr_36093/gggs/202310/t20231030_12491024.html, archived at https://web.archive.org/web/20250614112816/https://www.cqfd.gov.cn/bm/fgw/zwgk_36090/fdzdgknr_36093/gggs/202310/t20231030_12491024.html

[1050] Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243.

enhance legal compliance. In sum, it is yet unclear whether CBR's promise to save regulatory resources holds true.

MAKING LAW ENFORCEMENT MORE EFFICIENT?

Third, as a practice of algorithmic regulation, CBR may hold several related effects conducive to the *enabling the public administration* function. That algorithmic regulation generally strengthens administrative law enforcement is widely acknowledged. With the help of algorithmic systems, research shows, regulators enforce rules more consistently[1051] and quickly at a greater scale.[1052] This is achieved, for instance, through algorithmic systems' capability to recognize patterns in large datasets that are hardly visible to the human eye.[1053] Further, in many instances, decision-making informed by algorithmic systems is more traceable and transparent.[1054] Algorithmic regulation thereby cuts administrative arbitrariness,[1055] decreases corruption among administrative officials[1056] and saves regulatory resources.[1057] Politicians and scholars widely ascribe these features to CBR.[1058] However, respective empirical evidence is yet lacking. The high

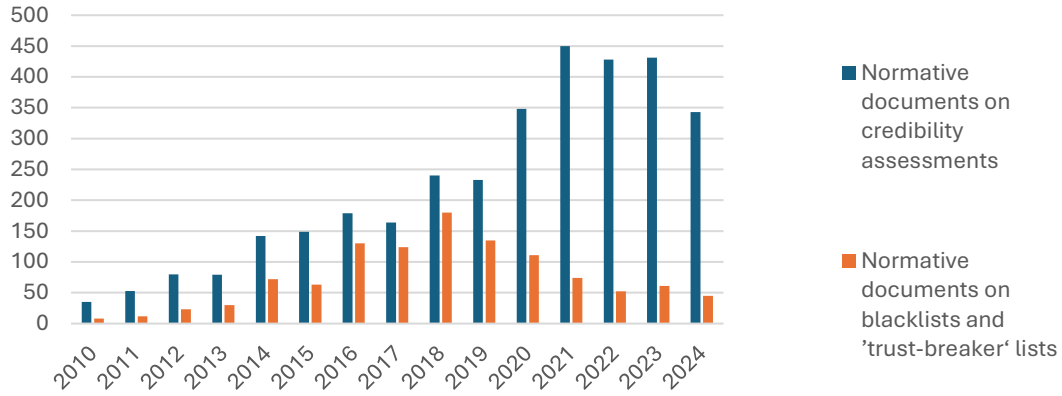
[1051] E.g., Justin B Bullock (2019) Artificial intelligence, discretion, and bureaucracy, *The American Review of Public Administration* 49(7), pp. 751-761; Resa Mohabbat Kar and Peter Parycek (2018) Berechnen, ermöglichen, verhindern: Algorithmen als Ordnungs- und Steuerungsinstrument in der digitalen Gesellschaft, in: Resa Mohabbat Kar, E.P. Basanta and Peter Parycek (eds.) (Un)Berechenbar? Algorithmen und Automatisierung in Staat und Gesellschaft, Report for the Kompetenzzentrum für öffentliche IT and the Fraunhofer-Institut für Offene Kommunikationssysteme, pp. 7-39; Christian Ernst (2017) Algorithmische Entscheidungsfindung und personenbezogene Daten, *Juristenzeitung* 21, pp. 1026-1036.
[1052] E.g., Fleur Johns (2021) Governance by data, *Annual Review of Law and Social Science* 17, pp. 53-71.
[1053] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 38.
[1054] E.g., Christophe Lazaro and Marco Rizzi (2023) Predictive analytics and governance: A new sociotechnical imaginary for uncertain futures, *International Journal of Law in Context* 9(1), pp. 70-90. The much-anticipated full transparency however is impeded by algorithmic black boxes.
[1055] E.g., Daria Gritsenko and Matthew Wood (2022) Algorithmic governance: A modes of governance approach, *Regulation & Governance* 16(1), pp. 45-62.
[1056] Nils Köbis, Christopher Starke and Iyad Rahwan (2022) The promise and perils of using artificial intelligence to fight corruption, *Nature Machine Intelligence* 4, pp. 418-424.
[1057] E.g., Charlotte van Ooijen, Barbara Ubaldi and Benjamin Welby (2019) A data-driven public sector: Enabling the strategic use of data for productive, inclusive and trustworthy governance, OECD Working Papers on Public Governance 33(6), https://dx.doi.org/10.1787/09ab162c-en; Matthias Leese (2022) Digital data and algorithms in law enforcement: Some pointers for responsible implementation and use, *European Law Enforcement Research Bulletin*, Special Conference Edition Nr. 6, pp. 23-30; Marion Oswald (2018) Algorithm-assisted decision-making in the public sector: framing the issues using administrative law rules governing discretionary power, *Philosophical Transactions of the Royal Society* 376 (2128), https://doi.org/10.1098/rsta.2017.0359.
[1058] "The argument that smartness will inevitably improve social governance in China is omnipresent in the Chinese literature." Straton Papagianneas (2021) Smart Governance in China's Political-Legal System, China Law and Society Review 6/2021, pp. 146-180, p. 170. Among others, see Pengju Lin 林鹏举 and Zhenming Peng 彭真明 (2025) 论海南自由贸易港企业信用监管机制的创新 (On the innovations of corporate CBR in the Hainan Free Trade Port), 南海法学 (South China Sea Law Journal) 2/2025, pp. 16-31, p.25; Zhili Wang 王志立 and Yue Liu 刘玥 (2025) 整体治理视角下的跨部门联合信用监管研究 (Research on trans-departmental joint CBR from the perspective of comprehensive governance), 征信 (Credit Reference) 1/2025, pp. 46-92, p. 47; Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54; *Shen Yan and Boyang Wang: Credit assessment*, p. 44; Xiangwen Kong 孔祥稳 (2022) 作为新型监管机制的信用监管：效能提升与合法性控制 (The new regulatory mechanism of credibility-based regulation: Raising efficiency and legal controls), 中共中央党校（国家行政学院）学报 (Journal of the Central Party School (State Administration Faculty) 1/2022, pp. 143-150; Hongdao Qian 钱弘道 and Bofeng Xu 徐博峰 (2017) 企业信用监管中行政处罚的法治化指标研究 (Research on the rule of law index for administrative punishments in corporate credibility-based regulation), 浙江大学学报（人文社会科学版） (Journal of Zhejiang University (Humanities and Social Sciences)) 4/2017, pp. 32-47, p. 39.

hopes that come when information technology is used in governance may be misleading,[1059] and scholars have widely cautioned against administrative agencies doing so "simply for the sake of harnessing the shiniest new technology."[1060]

To approximate an evaluation of whether the potentials of CBR strengthening the *enabling the public administration* function hold true, the following investigates how widely CBR is applied in China and what obstacles it faces on the ground.

Issuance of normative documents regarding credibility assessments and CBR has notably increased, indicating that CBR is fairly widely implemented. Issuance of documents on JAD on the other hand decreased (see figure 3). CBR appears in more recent speeches on solving law enforcement problems across several fields. [1061]

Figure 3: Normative documents issued by local state agencies[1062]



Within the field of market regulation, headed by the SAMR, CBR and predecessor programs are comparatively mature[1063] On CBR's use in other departments, anecdotal evidence from local officials yields inconsistent results: In a third-tier city in Zhejiang Province, a DRC official reports, 97.51% of all departmental decisions to conduct inspections were informed by credibility assessments in the year 2022.[1064] Notably, not

[1059] See, Christophe Lazaro and Marco Rizzi (2023) Predictive analytics and governance: a new sociotechnical imaginary for uncertain futures, *International Journal of Law in Context* 9(1), pp. 70-90.
[1060] Steven M. Appel and Cary Coglianese (2020) Algorithmic governance and administrative law, in Woodrow Barfield (ed.) *The law of algorithms*, Cambridge University Press, pp. 162-181, p. 180.
[1061] E.g., Xinhua (2023) "习近平在全国生态环境保护大会上强调 全面推进美丽中国建设 加快推进人与自然和谐共生的现代化 (Xi Jinping stressed at the National Ecological and Environmental Protection Conference that we should comprehensively promote the construction of a beautiful China and accelerate the modernization of harmonious coexistence between man and nature), 18 July 2023, https://mp.weixin.qq.com/s/eD9lzUR2NnD_vJQ8c30Nog, archived at https://web.archive.org/web/20250630134626/https://mp.weixin.qq.com/s/eD9lzUR2NnD_vJQ8c30Nog.
[1062] Data retrieved through a search in the PKU Law database, April 2025. The trends show the clear rise of CBR, with blacklist mechanisms increasingly taking the role of just one source of information for credibility assessments.
[1063] Fieldwork document 032, also indicated in the detailed setup of recent policies, see e.g. for small businesses specifically: 市场监管总局关于推进个体工商户信用风险分类管理的意见 (Opinions Of The SAMR On Furthering Management By Risk Classification Of Individual Industrial And Commercial Households) , issued 24 July 2024. Another indicator is the ubiquitous display of credibility assessment results from the SAMR's branch agencies, for instance, on digital billboards in farmers' markets in Hangzhou.
[1064] WZ03.

even all local departments that the interlocutor mentioned had published normative documents on credibility assessment creation and use. Two officials of a traffic and transportation regulator in another province on the other hand reported that even though their agency had issued normative documents on credibility assessments and colleagues are engaged in their production, they do not use them in their regulatory decision-making.[1065]

Credibility assessments enjoy authority in courts of law. In one case, a county-level tendering bureau banned Huanmei Electricity Ltd. from participating in a bidding procedure on the grounds that the company lacked most recent credibility assessment results. Huanmei sued the Bureau, arguing that the Bureau's inclusion of the credibility assessment result requirement exceeded the discretionary space the Bidding Law prescribed and must be abolished. The court upheld the Bureau's decision, citing a local SCSP administrative normative document and maintaining that "credibility assessment results are an important indicator that reflect the qualifications of construction market entities." [1066] In an interesting twist, private parties sue administrative agencies conducting CBR if they do not deduct points from the assessment of an entity as required by the rules. For instance, Yukang Hu, owner of a residential compound, requested the Shanghai Minhang District Housing Bureau to impose 6 social credit penalty points on the local property maintenance company Xiangmao Ltd. for not paying fees to the owner's maintenance account as required to do according to the Shanghai Facility Service Company and Project Management Credit Information Management Measures.[1067] The court of second instance finds that the Bureau had the duty to impose the social credit penalty (but nevertheless dismisses Hu's claim for other reasons).[1068]

In civil litigation, too, judges give weight to credibility assessments: Courts of all three instances cited claimant Daxie Ltd.'s negative social credit assessment when denying him the repayment of a bidding fee after Daxie's bid was cancelled by the defendant.[1069] Instead of directly pointing to the forging of bidding materials that gave rise to the negative assessment solely, the courts cite Daxie Ltd.'s social credit status' downgrade from B to D. Not the violation of law but the breaching of the principle of honesty and trust 诚实信用原则 was what "it must be held accountable" for.[1070]

[1065] YN01 and YN02.

[1066] Hangzhou Railway and Transportation Court 杭州铁路运输法院, 行政判决书（2018）浙8601行初151号 (Administrative judgment no. 151), decided 11 January 2019.

[1067] 上海市物业服务企业和项目经理信用信息管理办法 (Shanghai Municipal Measures For The Management Of Property Service Enterprises And Project Managers), issued by the Shanghai Municipal Housing Management Bureau on 19 January 2023.

[1068] Shanghai First Middle People's Court 上海市第一中级人民法院, 行政判决书 （2014）沪一中行终字第221号 (Administrative judgment no. 221).

[1069] Zhengzhou Municipal People's Court 河南省郑州市中级人民法院, （2015）郑民再终字第72号 (Civil judgment no. 72), decided 11 May 2015.

[1070] Similarly: A court cites the inclusion of a school in a blacklist for not submitting the annual inspection report as one reason to deny the plaintiff Feng Yao 姚峰, who was in charge of the school when the blacklisting occurred, the cancellation of a business transfer contract. Tongling City Tongguan District People's Court 安徽省铜陵市铜官区人民法院, 民事判决书 （2020）皖0705民初1760号 (Civil judgment no. 1760), decided 27 May 2020;
Guangzhou Railway and Transportation Middle People's Court 广州铁路运输中级法院, 行政判决书（2020）粤71行终2552号 (Administrative judgment no. 2552), decided 22 December 2020.

It is shown above that regulators and courts both generally afford credibility assessments an important role in their decision-making, supporting CBR's functioning. The third group that CBR seeks to leverage are private actors. CBR requires that private actors, for instance platform companies and local finance institutions, create and base their decisions upon credibility assessments.[1071] Local financial institutions began to draw on credibility assessments in their decision making.[1072] However, there exist no binding rules for private actors to produce or use credibility assessments. Credibility assessment standards likewise are not legally binding.[1073] Rather, the TC470 seeks to actively propagate the standards, especially given that currently, private credit information service institutions regularly violate laws and end up on blacklists themselves.[1074] In fact, the fact that the private sector entities they hope will apply the credibility assessment standards are involved as co-drafters of the standards raise the chances that they will eventually adopt the emerging standards in their own operations.[1075] Thus, how much credibility assessments will inform private actors' decisions hinges on how well the TC470 can convince them of adopting the credibility assessment standards they produce.[1076]

Given CBR finds widespread application, feasibility problems remain. Key facilitating technologies for CBR are the social credit identifier and the National Credit Information Sharing Platform, both discussed above. Especially the latter is key to the cross-departmental exchange of PCI for the calculation of credibility assessments. Operated by a sub-agency of the NDRC (which also runs Credit China), the platform is the central

[1071] E.g., Art. 16, 厦门市人民政府关于印发社会信用评价机制和分级分类管理办法的通知 (Notice Of The Xiamen Municipal Government In Issuing The Social Credit Assessment Mechanism And Classified Regulation Management Measures), issued 7 June 2023.
[1072] *Shen Yan and Boyang Wang: Credit assessment*, p. 43.
[1073] Some technical standards are legally binding, however, credibility assessment standards are without exception classified as recommendations (推荐性, in GB/T, recommended). Art. 11, 标准化法 (Standardization Law), passed by the NPC Standing Committee on 29 December 1988, amended 4 November 2017.
[1074] Xin Dai 戴昕 (2019) 理解社会信用体系建设的整体视角法治分散、德治集中与规制强化 (A comprehensive understanding of the social credit system's decentralized law, centralized morality, and empowered regulation), 中外法学 (Peking University Law Journal) 31(6), pp. 1469-1491, p. 1475; Feng Ding and Wei Han (2024) "Six Rating Firms Fined a Total of $4.8 Million for Malpractice", Caixin Global, 3 February 2024, https://www.caixinglobal.com/2024-02-03/six-rating-firms-fined-a-total-of-48-million-for-malpractice-102163312.html, archived at https://web.archive.org/web/20250901090049/https://www.caixinglobal.com/2024-02-03/six-rating-firms-fined-a-total-of-48-million-for-malpractice-102163312.html; See also a case brought by a company against credit rating institute Dagong International for reputational damage due to a faulty corporate credit rating, in which the defendant invokes its function as SCSP implementor: Xihu District People's Court 杭州市西湖区人民法院, 民事判决书（2015）杭西民初字第3178号 (Civil judgment no. 3178), decided 1 March 2016.
[1075] Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243; standardization officials and drafters BJ06; XM01; SZ07. Generally, an entity's participation in standardization enhances the likelihood of it adopting the resulting standards, as they are likely to accommodate the entity's needs: Irene Kamara (2017) Co-regulation in EU personal data protection: The case of technical standards and the privacy by design standardisation 'mandate', *European Journal of Law and Technology* 8(1), pp. 1-24, p. 4.
[1076] Platform companies in China have long held regulatory duties (e.g., by issuing warnings to users, deleting their accounts, blocking access to certain services, terminating transactions and others). Whether credibility assessment standardization can succeed in becoming another means of integrating regulatory aims in the daily operations of corporations is yet to be seen. Insiders voiced doubts, highlighting that standardization bodies are evaluated by the number of standards they produce, not by how widely they are adopted: BJ05.

hub where all regulators are to upload their PCI to.[1077] As Kendra Schaefer notes, "In a U.S. context, this would be roughly equivalent to the IRS, FBI, EPA, USDA, FDA, HHS, HUD, Department of Energy, Department of Education, and every courthouse, police station, and state agency sharing records across a single platform."[1078] I showed that in JAD, officials in practice often do not rely on the National Credit Information Sharing Platform as per central-level plan but circumvent it by sharing blacklists bilaterally with other agencies they have connections to. Data silos (or: information islands 信息孤岛) resulting from local officials' unwillingness and inability to share their data impede the functioning of the national information infrastructure for CBR, too.[1079] Like blacklists, datasets of PCI and credibility assessment results are traded with among regulatory agencies informally.[1080] However, in CBR, the complexity and breadth of datasets (remember: CBR covers all SCSP subjects, not just the notorious violators) renders such informal pragmatic approach to realize CBR difficult.[1081] In consequence, departmental assessment criteria that merely include their own PCI continue to emerge[1082] despite central guidance requiring otherwise.[1083] In theory, thus, Kendra Schaefer's observation that U.S. algorithmic regulation projects differ from their Chinese counterparts in that

[1077] In fact, for local DRCs, moving local agencies to upload their information to the platform constitutes most of their work in SCSP building: HQ01.
[1078] Kendra Schaefer (2020) China's Social Credit System: Context, competition, technology and geopolitics, Trivium China, 4 December 2020, available at https://www.uscc.gov/sites/default/files/2020-12/Chinas_Corporate_Social_Credit_System.pdf, p. 3.
[1079] In addition to studies cited in section 3.2.3., see e.g. Pengju Lin 林鹏举 and Zhenming Peng 彭真明 (2025) 论海南自由贸易港企业信用监管机制的创新 (On the innovations of corporate CBR in the Hainan Free Trade Port), 南海法学 (South China Sea Law Journal) 2/2025, pp. 16-31, p. 22; Xin Dai 戴昕 (2019) 理解社会信用体系建设的整体视角法治分散、德治集中与规制强化 (A comprehensive understanding of the social credit system's decentralized law, centralized morality, and empowered regulation), 中外法学 (Peking University Law Journal) 31(6), pp. 1469-1491, p. 1489; Jing Hao 郝静 (2020) 论行政法视域下正当程序对信用监管机制的规制 (On the regulation of credibility-based regulation by due process through the lens of administrative law), 河北青年管理干部学院学报 (Journal Of Hebei Youth Administrative Cadres College) 32(5), pp. 82-87, p. 85; Xiaoying Liu 刘晓瑛 and Yi Li 李奕 (2025) 农产品质量安全信用监管的范式初理与机制优化 (The optimization of the paradigm and mechanism of CBR for agricultural product quality and safety), 农产品质量与安全 (Quality And Safety of Agro-Products) 1/2025, pp. 107-112, p. 107; *Li et al.: Research on key technical standards*, p. 49. For a discussion of reasons for insufficient data sharing, see Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 89 ff.
[1080] Implementing officials CQ04; WZ02.
[1081] The old binary blacklist system was easier to implement than CBR because it did not require continuous exchange of accurate and comprehensive data among all agencies. As Emilie Szwajnoch points out, "the use of pre-existing punishments within the scope of the SCS does not dramatically alter agents' operations." Emilie Szwajnoch (2024) Regulatory capture of the Chinese social credit system: Bureaucratic self-interests in project implementation, *China Information* 38(3), pp. 309-330, p. 322
[1082] E.g., 深圳市生态环境局关于印发《深圳市排污单位环境信用评价指针》的通知 (Notice Of The Shenzhen Municipal Ecological And Environmental Bureau On Issuing The 'Shenzhen City Emission Entities Environmental Credibility Assessment Indicators'), issued 16 January 2024. The SAMR version of CBR works well because it largely relies on internal information, see also Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 150.
[1083] 国家发展改革委办公厅关于推送并应用市场主体公共信用综合评价结果的通知 (Notice Of The NDRC General Office NDRC On Delivering And Applying The Results Of Comprehensive Public Credibility Assessments Of Market Entities), issued 16 September 2019.

they have more data at their disposal,[1084] however, this ambitious design is far from reality at the time of writing.

The elevation of data to a factor of production,[1085] respective efforts to build a "safe and controllable national cloud platform" under the new National Data Bureau[1086] and the recent issuance of the Regulations on Government Data Sharing by the State Council[1087] underline the remaining difficulties to achieve inter-departmental data sharing as well as clarify the priority it has, beyond social credit.

Technical standards might offer a solution to one part of the problem: An empirical study suggests that through national technical standards, incompatible formats of credit information items from different departments could be unified and methods and interfaces for data transmission between different systems be laid down, solving the data exchange problems.[1088] This however would leave the underlying problem of officials unwillingness to forward their data for fear of repercussion if checked by others unresolved. One option under discussion is to commercialize social credit information, as done with other types of public data, thereby placing the currently informal intra-departmental social credit information trading space on legal footing.[1089] Most recently, Jiang Bixin 江必新, Vice Chairman of the Constitution and Law Committee pointed out that agencies "are reluctant to share data because they have invested a lot of money in

[1084] Kendra Schaefer (2020) China's Social Credit System: Context, competition, technology and geopolitics, Trivium China, 4 December 2020, available at https://www.uscc.gov/sites/default/files/2020-12/Chinas_Corporate_Social_Credit_System.pdf, p. 59.

[1085] 中共中央 国务院关于构建更加完善的要素市场化配置体制机制的意见 (Opinions Of The CPCCC And The State Council On Constructing A More Perfect Production Factor Marketization Allocation System Mechanism) issued on 30 March 2020.

[1086] Jinnang Expert 锦囊专家 (2023) "国家数据局成立相关解读和18家地方数据部门盘点 (Interpreting the establishment of the National Data Bureau and reviewing the 18 local data departments)", 10 March 2023, https://www.jnexpert.com/article/detail?id=4260, archived at https://web.archive.org/web/20230327183053/https://www.jnexpert.com/article/detail?id=4260. Accordingly, the hope is to solve the 九龙治水 problem: multiple departments in charge of the same issue resulting in none tackling single tasks.

[1087] 政务数据共享条例 (Government Data Sharing Regulations), issued by the State Council on 28 May 2025.

[1088] *Li et al.: Research on key technical standards*, p. 49; see also: Li Zhou 周莉, Yan Zhao 赵燕, Zhihong Li 李志红, Heng Zhang 张恒 and Cuizhu Meng 孟翠竹 (2025) 信用监管标准化现状、问题及对策研究 (Research on the current situation and problems in CBR and countermeasures), 征信 (Credit Reference) 1/2025, pp. 38-45, p. 44.

[1089] See for instance, Fengling Ding 丁凤玲 and Yuchu Zhang 张楚玉 (2024) 公共数据授权运营的治理革新: 多元数据中介 (The governance innovation of public data authorization operations: Multiple data intermediaries), 北京邮电大学学报(社会科学版) (Journal of Beijing University of Posts and Telecommunications(Social Sciences Edition)) 26(4), pp. 84-96. For one initiative in this spirit, see Zhejiang Province's 'big supermarket 大超市' for government departments. Upon a comprehensive inventory of information systems and applications deployed throughout the province's administrative agencies, the provincial Big Data Development and Management Bureau provides an interface where all tools and resources can be used by other officials: Gov.cn (2021) 浙江"一体化数字资源系统"建成政务数字资源"大超市" (Zhejiang's 'Integrated Digital Resource System' has been built into a 'supermarket' of government digital resources), Gov.cn, 27 September 2021, https://www.gov.cn/xinwen/2021-09/27/content_5639666.htm, archived at https://web.archive.org/web/20250630192102/https://www.gov.cn/xinwen/2021-09/27/content_5639666.htm. By virtue of its mention in a provincial draft on credit repair, it might include types of social credit information or credibility assessment calculation software, too. Art. 10, 浙江省失信行为纠正后的信用信息修复管理办法 (Measures On The Management Of Credit Information Repair Following The Rectification Of Trust-Breaking Acts), Draft discussed in summer 2024, on file with the author.

the field and are unwilling to provide it for free" and suggests that therefore only positive incentive mechanisms can spur more inter-departmental data sharing.[1090] However, the massive risk of data breaches that would emerge once profits are to be made from social credit information render this scenario unlikely.

3.2.5. Joint rewarding of trust-keeping

"For the construction of the social credit system, disciplines for trust-breaking and the incentives for keeping trust are 'the two wheels of a waggon and the two wings of a bird', neither can be neglected."

- Supreme People's Court[1091]

Throughout policy documents on reputational disciplining, JAD and CBR, language on rewarding 'trust-keeping' behaviour features prominently. As expressed in the quote of the SPC opening this section, these positive incentives are an indispensable part of the organic whole of the social credit mode of governance.[1092] Apart from providing department-internal rewards for 'trust-keeping', administrative agencies also team up with others as well as with companies and Party organizations to realize rewards for those SCSP subjects that others designated 'trust-keeping'. Because the rewards are positive incentives, they carry lesser risk of amounting to abuse of state power and are less scrutinized for legality.[1093] In consequence, they blossom without notable restrictions in many different forms and, to a greater extent than the other SCSP mechanisms, also address individuals. Whereas local outgrowths of other SCSP mechanisms were partly reigned in since 2019, a policy of 'the more, the diverse, the better' appears to guide joint rewarding of trust-keeping. At the same time, reward schemes received attention in SCSP scholarship and media reporting that is incommensurate with the relatively small impact they actually unfold in relation to the overall SCSP. Only about 10% of the SCSP governance tools found across local implementation plans are voluntary and reward systems, and more than 50% are compulsory or mixed (covering informational and tangible disciplinary measures discussed in previous sections).[1094]

[1090] Zhihang Du 杜知航 (2025) "《政务数据共享条例》8月将施行"数据孤岛"现象尤存 (The 'Government Data Sharing Regulations' will come into effect in August, but the phenomenon of 'data silos' still exists)", 2 July 2025, https://www.caixin.com/2025-07-02/102337349.html?originReferrer=caixinsearch_pc, archived at https://web.archive.org/web/20251112142246/https://www.caixin.com/2025-07-02/102337349.html?originReferrer=caixinsearch_pc.

[1091] 最高人民法院对十三届全国人大四次会议第 5927 号建议的答复 (SPC Reply to Suggestion No. 5927 of the Fourth Session of the 13th NPC), issued 5 July 2021.

[1092] Highlighted in earliest SC theory, too: Junyue Lin 林钧跃 and Jingmei Wu 吴晶妹 (2007) 城市信用体系设计 (The design of the city credit systems), 中国方正出版社 (China Fangzheng Press).

[1093] Pointing out that joint rewarding of trust-keeping possibly breaches the equality principle: Wei Wang 王伟 (2020) 法治轨道下守信激励机制的类型化规制 (Typological regulation of the trust-keeping incentive mechanism under the rule of law), contribution in: 我国诚信建设法治化核心命题笔谈 (Essays on the core issues of legalization of integrity construction in China), 求实 (Seeker) 5/2020, pp. 19-22, p. 21: "As a system with significant impact on the public interest and administrative counterparts, the standards for trustworthiness incentives should be legalized. This means clearly defining the credit entities and the exemplary, law-abiding, and contract-abiding behaviors that warrant trustworthiness incentives."

[1094] Yucen Liu 刘禹岑 (2020) 地方政府建设信用城市的政策工具研究——基于首批信用示范城市政策文本分析 (Policy instruments on credit city building: An analysis of policy texts from national model cities of SCS building), draft presented at the 全球命运共同体与国家治理能力现代化"第十四届珞珈国是论坛全, 30 October 2020, Wuhan, conference proceedings, pp. 76-95, p. 85.

The following sections present a rough overview of joint rewarding of trust-keeping schemes and examines in how far they strengthen and weaken the *enabling the public administration* function of administrative law.

3.2.5.1. Concept

As laid out above, initially, SCSP plans envisioned reputational and educational measures only. Just as a bad reputation harms 'trust-breakers', a good reputation entails opportunities. As SCSP building progressed, tangible disciplinary measures were devised. Alongside them, tangible rewards came into play, too. Central planning documents since 2014 rarely address JAD without also addressing joint rewarding of trust-keeping,[1095] and many of the MoU for joint agency disciplining contain provisions on rewards, too. NDRC deputy director Weiliang Lian 连维良 was widely cited saying "To strengthen the SCS, we must transform the intangible value of trust-keeping into tangible value, making trust-keeping useful, perceptible, and valuable"[1096], as he listed a range of joint rewarding of trust-keeping applications in a 2018 speech.

Conceptually, joint rewarding of trust-keeping departs from the logic of the law, which only sanctions transgressions but does not, with view to an ideal type, reward positive behaviour.[1097] Rewarding schemes for trust-keeping are best contextualized as nudges as conceptualized by Richard H. Thaler and Cass R. Sunstein. They define a nudge as "any aspect of the choice architecture that alters people's behaviour in a predictable way without forbidding any options or significantly changing their economic incentives."[1098] Social credit rewards as detailed below aim to shape SCSP subjects' choices in a way that it accords with the broad lofty ideal of sincerity and trustworthiness laid down in the Planning Outline and other SCSP signature policies and were also described as "attempts to cultivate or politically socialize citizens through distributing symbolic capital"[1099]. Specifically, they speak to the SCSP's pillar three: The quest for morally engineering citizens and other societal actors.[1100]

In Thaler and Sunstein's theoretical framework on nudging, then, the SCSP corresponds to the "choice architect", the institution responsible for organizing the context in which

[1095] E.g., outlining eight ways to reward trust-keepers: *State Council Opinions On Joint Rewards And Disciplining*.

[1096] 连维良在第二届中国城市信用建设高峰论坛的讲话 (Weiliang Lian Speaks at the Second China City Credit Building Summit Forum), 28 June 2018, https://www.shhk.gov.cn/xwzx/002008/002008026/002008026001/20180628/6453747d-584c-4141-940c-7e0d75e46786.html, archived at https://web.archive.org/web/20251014150325/https://www.shhk.gov.cn/xwzx/002008/002008026/002008026001/20180628/6453747d-584c-4141-940c-7e0d75e46786.html.

[1097] "A measure of trustworthiness is the lack of a criminal record, a fundamentally backward-looking assessment of one's trustworthiness. The law is an asymmetric, purely negative measure as it sanctions and records only bad behavior and does not reward good conduct." Chuncheng Liu and Akos Rona-Tas (2024) Trusting by numbers: An analysis of a Chinese social credit system governance infrastructure, *Critical Sociology* 51(6), pp. 1247-1265, p. 1250.

[1098] Richard H. Thaler and Cass R. Sunstein (2008) Nudge. Improving decisions about health, wealth, and happiness, Yale University Press, P. 5.

[1099] Rui Hou and Diana Fu (2024) Sorting citizens: Governing via China's social credit system, *Governance* 37(1), pp. 59-78, p. 63.

[1100] Section 2.1.3.

people make decisions.[1101] It does so, in good fragmented social credit manner, by fostering and drawing in a variety of different reward schemes, each of which unfolds impact within relatively overseeable fields. Even more than other SCSP mechanisms, schemes for rewarding trust-keeping are diverse, barely interconnected and do not necessarily draw on social credit information. Many joint rewarding of trust-keeping projects were only later designated as such and drawn under the SCSP umbrella.[1102]

One may reject a reading of the SCSP mechanism of rewarding trust-keeping (or any other) through 'nudging', a concept that originated in a liberal-democratic context of the U.S. and argue that such comparison brushes over the socialist super-structure of the PRC that sets its regulatory concepts apart. However, there lies a peculiar parallel in the concept of nudging and the moral engineering ambitions of the CPC. This becomes particularly clear in English contributions that criticize the 'nudging movement' for potentially being manipulative, non-transparent and overreaching. These, to some extent read like Chinese accounts criticizing the SCSP for blurring law and morality.[1103]

3.2.5.2. Implementation

Describing the mechanisms of publicity centred law-enforcement, reputational disciplining and CBR, I highlighted how negative social credit information is spread. All these mechanisms concurrently spread positive social credit information, too, with the same mission, namely, to infuse private and state decision-making. Because the operation modes, channels of distribution and related shortcomings of these mechanisms apply to reputational rewarding as well, they are here not further discussed. Also mentioned only on the side in this analysis is the broad landscape of joint rewarding of trust-keeping initiatives that blossomed in the private sector, simply because they less relate to administrative law.

The joint rewarding of trust-keeping mechanism supplements the reputational effects with tangible rewards for SCSP subjects with good social credit status. It arguably forms the rewarding counterpart to JAD, the mechanism revolving around tangible punitive measures. One of its many manifestations is the Credit+ (信易+, sometimes 信用+) scheme, consolidated and elevated to top priority by the CPCCC and the State Council in 2020.[1104] Literally translating to "credit easing …", Credit+ refers to using social credit records to unlock access to material privileges or favourable treatment by government departments and companies. To this end, both, government departments and companies are called to launch "products rewarding trust-keeping 守信激励产品"[1105].

[1101] Richard H. Thaler and Cass R. Sunstein (2008) *Nudge. Improving decisions about health, wealth, and happiness*, Yale University Press, p. 3.

[1102] Village leader in 2019, YQ02. As Brussee formulates, previous practices of designating and propagating model citizens, workers, and organizations were "rebranded" to fit the SCS: Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 91.

[1103] Sections 2.1.5.3. and 4.1.3.2. and Christopher McCrudden and Jeff King (2017) The dark side of nudging: The ethics, political economy, and law of libertarian paternalism, in: Alexandra Kemmerer, Christoph Möllers and Maximilian Steinbeis (eds.) *Choice architectures in democracies: Exploring the legitimacy of nudging*. Hart Publishing, pp. 69-136.

[1104] "信易+" first introduced at the central level with 中共中央、国务院关于新时代加快完善社会主义市场经济体制的意见 (Opinions Of The CPCC And State Council On Accelerating The Improvement Of The Socialist Market Economy System In The New Era), issued 11 May 2020.

[1105] Section 7, *State Council Opinions On Joint Rewards And Disciplining*.

Rewards can thus roughly be classified into those realized by administrative agencies of the state, and those realized by private actors.[1106]

As to the first category, rewards by administrative agencies are largely facilitated through a structure similar to JAD, centring on MoU. MoU on disciplinary measures often concurrently lay down rewards for 'trust-keeping', some MoU focus only on either rewards or disciplinary measures. In some realms, MoU set up red lists, the positive counterpart to blacklists. In others, favourable credibility assessments have taken the place of red lists.[1107] The MoU on the field of charitable donations for instance provides 26 types of rewards for trust-keeping SCSP subjects, including priority processing of several matters such as license applications, patent applications, admission to public nursing homes, and household registration, priority consideration in bidding and tendering procedures, and even priority consideration for families seeking to adopt an orphaned child.[1108] Each reward item also specifies the department that implements it. There exist MoU for joint rewarding of trust-keeping in the field of transportation and construction,[1109] production safety,[1110] and customs,[1111] among others. Just as in JAD, MoU emerge at the local levels, too,[1112] and signatories do not just include state organs

[1106] By Wei Wang 王伟 (2020) 法治轨道下守信激励机制的类型化规制 (Typological regulation of the trust-keeping incentive mechanism under the rule of law), contribution in: 我国诚信建设法治化核心命题笔谈 (Essays on the core issues of legalization of integrity construction in China), 求实 (Seeker) 5/2020, pp. 19-22.

[1107] E.g., targeting entities with "relatively high credibility assessments": Point 1, 印发《关于在电子认证服务行业实施守信联合激励和失信联合惩戒的合作备忘录》的通知, (Notice On Issuing The 'MoU On Carrying Out Joint Rewarding Of Trust-Keeping And Joint Disciplining Of Trust-Breaking In The Electronic Certification Service Industry'), issued by the NDRC and others on 4 May 2017, http://credit.tjhq.gov.cn/321/16583.html, archived at https://web.archive.org/web/20251215125738/http://credit.tjhq.gov.cn/321/16583.html.

[1108] 印发《关于对慈善捐赠领域相关主体实施守信联合激励和失信联合惩戒的合作备忘录》的通知 (Notice On Issuing The 'MoU On Carrying Out Joint Rewarding Of Trust-Keeping and Joint Disciplining Of Trust-Breaking In The Field Of Charitable Donations), issued by the NDRC and others, 11 February 2018, https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5435033.htm, archived https://web.archive.org/web/20251008140356/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5435033.htm.

[1109] 印发《关于对交通运输工程建设领域守信典型企业实施联合激励的合作备忘录》的通知 (Notice On Issuing The 'MoU On Carrying Out Joint Rewarding of Model Trust-Keeping Enterprises In The Field Of Transportation Construction Projects), issued by the NDRC and others on 28 February 2018, https://www.ndrc.gov.cn/xxgk/zcfb/tz/201803/t20180328_962697.html, archived at https://web.archive.org/web/20240619225654/https://www.gov.cn/zhengce/zhengceku/2018-12/31/5434671/files/7e5bd45cf059478abfc538dc360c7dd1.pdf.

[1110] 关于对安全生产领域守信生产经营单位及其有关人员开展联合激励的合作备忘录 (MoU On Launching Joint Rewarding Of Trustworthy Production and Business Units In The Field Of Production Safety And Their Related Personnel), issued 25 December 2017, https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5435297.htm, archived at https://web.archive.org/web/20251008141953/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5435297.htm.

[1111] 印发《关于对海关高级认证企业实施联合激励的合作备忘录》的通 (Notice On Issuing The MoU On Carrying Out Joint Rewarding Of Enterprises With High-grade Customs Certification), issued by the NDRC and others on 19 October 2016, https://credit.sxgp.gov.cn/news/content/777586057251127296, archived at https://web.archive.org/web/20251014072637/https://credit.sxgp.gov.cn/news/content/777586057251127296.

[1112] 青海省社会信用体系建设领导小组办公室关于印发《青海省对慈善捐赠领域相关主体实施守信联合激励和失信联合惩戒合作备忘录》的通知 (Notice By The Qinghai Province SCS Building Leading Small Group Office On Issuing The 'MoU On Carrying Out Joint Rewarding Of Trust-Keeping And Joint Disciplining Of Trust-Breaking In The Charitable Donation Sector In Qinghai Province'), issued on 4 April 2019,

but also CPC branches and private companies, too. Addressees are entities with particularly high credibility assessments, such as taxpayers with a credibility assessment of A.[1113] A study of Bavarian firms' faring under the SCSP revealed that 80% of Bavarian companies were on red lists – either that of the tax authority or that of the customs authority.[1114]

Second**,** non-state actors reward state-designated 'trust-keepers'. In fact, the earliest versions of Credit+ came in the form of Credit+loan 信易贷 for SMEs:[1115] In their Guiding Opinions on Promoting the Sound Development of SMEs, the CPCCC and the State Council in 2019 called departments to share PCI with commercial banks through social credit platforms to "alleviate information asymmetry between banks and enterprises and improve the credit scores and loan availability of SMEs with good credit standing."[1116] Respective efforts were mirrored on the local levels, the Jiangsu People's Government for instance ordered to increase credit information sharing with banks to support SME development.[1117]

PCI is not just pushed to commercial banks directly, but also increasingly integrated in the PBoC's public credit registry (which commercial banks, but also others, draw on),

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https://credit.xining.gov.cn/678/84174.html, archived at https://web.archive.org/web/20251014074256/https://credit.xining.gov.cn/678/84174.html.

[1113] 关于对纳税信用A级纳税人实施联合激励措施的合作备忘录 (MoU on Carrying Out Joint Rewarding Measures For Taxpayers With A-level Credit), issued by the NDRC and others on 8 July 2017, https://zfxxgk.ndrc.gov.cn/web/iteminfo.jsp?id=2523, archived at https://web.archive.org/web/20251008142838/https://zfxxgk.ndrc.gov.cn/web/iteminfo.jsp?id=2523.

[1114] Omar Ramon Serrano Oswald, Sandra Selmanovic, Benjamin Lee, Laua Arndt (2022) "Techno-regulation in China: How are Bavarian Firms Faring Under the Social Credit System?" Report by the Bavarian Research Institute for Digital Transformation (bidt), July 2022, DOI: 10.35067/xypq-kn21, https://www.bidt.digital/wp-content/uploads/sites/2/2022/08/08_bidt-Reihe-Analysen-Studien-Technoregulierung-in-China-Web_EN.pdf, pp. 15 and 16.

[1115] Premiered in *State Council Opinions On Joint Rewards And Disciplining*; later specified in 工业和信息化部、国家发展和改革委员会、财政部、国务院国有资产监督管理委员会关于印发《促进大中小企业融通发展三年行动计划》的通知 (Notice Of The MIIT, NDRC, Ministry Of Finance And Office Of The State-Owned Assets Supervision And Administration Commission Of The State Council On Issuing The 'Three-Year Action Plan For Promoting The Integrated Development Of Large, Medium And Small Enterprises'), issued 21 November 2018. Continuing early experiments from the 2000s: "[…] When granting loans to enterprises or individuals, the basic database of enterprise and individual credit information should be queried, and the enterprise's environmental compliance status should be one of the necessary conditions for loan approval." 国家环境保护总局、中国人民银行、中国银行业监督管理委员会关于落实环保政策法规防范信贷风险的意见 (Opinions Of The Environmental Protection Bureau, PBoC, And Banking Supervision Commission On Implementing Environmental Protection Policies And Regulations To Prevent Credit Risk), issued 18 July 2007.

[1116] Section 6(3), 中共中央办公厅 国务院办公厅印发 《关于促进中小企业健康发展的指导意见》 (CPCCC General Office And The State Council On Issuing The 'Guiding Opinion On Promoting The Sound Development Of Small And Medium Enterprises') , issued 7 April 2019; 国家发展改革委、银保监会联合印发关于深入开展 '信易贷' 支持中小微企业融资的通知 (Notice of the NDRC and China Banking and Insurance Regulatory Commission On Further Developing 'Xinyi Loan' To Support The Financing Of Micro, Small, And Medium-Sized Micro Enterprises), issued 21 September 2019.

[1117] 江苏省人民政府办公厅关于印发江苏省加强信用信息共享应用促进中小微企业融资若干措施的通知 (Notice Of The Jiangsu Provincial People's Government On Issuing Several Measures O Strengthen The Sharing And Application Of Credit Information To Promote Financing For Small And Medium-Sized Enterprises), issued 29 July 2022, https://xysy.shenyang.gov.cn/zdjs/sj/202207/t20220729_3604226.html, archived at https://web.archive.org/web/20251013064534/https://xysy.shenyang.gov.cn/zdjs/sj/202207/t20220729_3604226.html.

continuing early experiments from 2007.[1118] In 2014, regulators committed to forwarding their compliance records to the PBoC for inclusion in the financial credit registry so that one's social credit status is reflected in credit reports.[1119]

In addition to the early Credit+loan scheme for SMEs, government departments signed deals to realize prioritized handling by travel service agents 信易游[1120], favourable treatment in renting commercial spaces 信易租[1121], and prioritization in calling cabs on Didi 信易行[1122] for 'trust-keeping' SCSP subjects, among many others.[1123]

MUNICIPAL SINCERITY SCORES

Red lists and the MoU setup for the most part address organizations, with some exceptions.[1124] One key application scenario for joint rewarding of trust-keeping addressing individuals are municipal sincerity scoring schemes for residents.[1125] Cities have, since the very beginning, functioned as "laboratories for experimenting with different means of applying 'credit'"[1126] and have, upon the State Council issuing a

[1118] Section 2.1.1.2. Advocating for integrating blacklist information in the PBoC registry: "The administrative blacklist system needs to be organically integrated with the credit reporting system. By leveraging the credit records of creditors, administrative incentives can be given to creditworthy creditors, while penalties and restrictions can be imposed on creditors with poor credit records, thereby ensuring the maximum effectiveness of the administrative blacklist system." *Luping Zhang: Administrative blacklists*, p. 27.
[1119] Lin Jiang 姜琳 and Zheng Liu 刘铮 (2014) "最高法院：央行征信中心与最高法院等八机构互联互通信息 (SPC: The PBoC's Credit Reference Centre and eight other institutions will interconnect information) ", Website of the Xiangcheng City Middle People's Court, 11 December 2014, https://xcsfy.hncourt.gov.cn/public/detail.php?id=975, archived at https://web.archive.org/web/20251009164522/https://xcsfy.hncourt.gov.cn/public/detail.php?id=975.
[1120] 国家发展改革委关于印发《海南省建设国际旅游消费中心的实施方案》的通知 (Notice Of The NDRC On Issuing The 'Hainan Province International Tourism And Consumption Destination Building Implementation Plan'), issued 12 December 2018.
[1121] Alongside a series of other programs: 国家发展和改革委员会关于探索开展守信激励创新试点的通知 (Notice Of The NDRC On Exploring And Conducting Pilot Programs On Innovations In Rewarding Trust-Keeping), issued 24 April 2018.
[1122] Haifeng Chen 陈海峰 (2018) 国家发改委与滴滴签署信用信息共享协议 (The NDRC and Didi signed a credit information sharing agreement), 中国新闻网 (China News), 7 March 2018, https://www.chinanews.com/business/2018/03-07/8461965.shtml, archived at https://web.archive.org/web/20190422174828/https://www.chinanews.com/business/2018/03-07/8461965.shtml.
[1123] Recall, for instance, "credit + housekeeping" discussed in section 3.2.1.2.: Zhengyang Sui 岁正阳 (2024) ""信用+家政"，让找"好阿姨"不再难 ("Credit + housekeeping" makes finding a 'good auntie' no longer difficult)", 澎湃 (The Paper), 13 May 2024, https://www.thepaper.cn/newsDetail_forward_27359141, archived at https://web.archive.org/web/20250507152550/https://www.thepaper.cn/newsDetail_forward_27359141.
[1124] 关于印发《关于实施优秀青年志愿者守信联合激励 加快推进青年信用体系建设的行动计划》的通知 (Notice On Issuing The 'Action Plan On The Implementation Of Joint Creditworthiness Incentives For Outstanding Youth Volunteers To Accelerate The Construction Of A Youth Credit System'), issued by the NDRC and others on 19 September 2016, https://credit.shaanxi.gov.cn/316.news.detail.dhtml?news_id=3663188, archived at https://web.archive.org/web/20250418030714/https://credit.shaanxi.gov.cn/316.news.detail.dhtml?news_id=3663188.
[1125] For an equivalent in Europe, see Jürgen Kaube (2022) "Tugendpunkte in Bologna", Frankfurter Allgemeine, 21 April 2022, https://www.faz.net/aktuell/feuilleton/bologna-testet-punktesystem-fuer-soziales-wohlverhalten-17970037.html; David Boos (2022) Bologna introduces social credit app to promote 'virtuous behaviour', European Conservative, 27 April 2022, https://europeanconservative.com/articles/news/bologna-introduces-social-credit-app-to-promote-virtuous-behavior/.
[1126] Jeremy Daum (2024) "Social credit action in 2025", China Law Translate, 11 June 2024, https://www.chinalawtranslate.com/en/social-credit-action-in-2025/.

Guiding Opinion on Strengthening the Building of a Personal Sincerity System issued in 2016[1127], consolidated their experiments in local work plans.[1128] The NDRC-coordinated competition among cities for the title of 'SCS Building Model City' (described in section 2.1.4.) spurred the municipal projects. One criterium in the competition for the title is to put into place a sincerity score for residents.[1129]

The sincerity score is calculated based on PCI (including all legal compliance records retrieved through regulatory agencies across all realms and courts) as well as contract performance records retrieved from market actors and banks. Positively impacting the score are volunteering activities, blood donations, official rewards received, winning in sports or cultural contests, supporting the work of local social credit authorities, donating to charities, among others.[1130] Information that does not reflect an SCSP subject's behaviour but its social status are included, too: Socio-economic markers like one's education background, employment situation, salary, household registration and others inform the sincerity score in some localities.[1131] Scoring modes vary, from a basic score assigned at the beginning that can fall and rise, to schemes in which residents start with the top score and lose points for infractions.[1132]

[1127] 国务院办公厅关于加强个人诚信体系建设的指导意见 (Guiding Opinion Of The State Council General Office On Strengthening The Building Of A Personal Sincerity System), issued 23 December 2016, https://www.gov.cn/zhengce/zhengceku/2016-12/30/content_5154830.htm, archived at https://web.archive.org/web/20250414130722/https://www.gov.cn/zhengce/zhengceku/2016-12/30/content_5154830.htm.

[1128] E.g. 四川省人民政府办公厅关于印发加强个人诚信体系建设实施方案的通知 (Notice Of The Sichuan Provincial People's Government General Office On Issuing The 'Strengthening The Personal Sincerity System Building Implementation Plan'), 11 February 2018, translation at https://www.chinalawtranslate.com/en/sichuan-plan-for-strengthening-the-establishment-of-the-personal-creditworthiness-system/#gsc.tab=0; 杭州市人民政府办公厅关于印发杭州市加强个人诚信体系建设实施方案的通知 (Notice Of The Hangzhou Municipal People's Government General Office On Issuing The 'Hangzhou City Implementation Plan For Strengthening The Personal Sincerity System Building'), issued 1 November 2017, translation at https://www.chinalawtranslate.com/en/Hangzhou,-Zhejiang-Province,-Municipal-Implementation-Plan-for-Strengthening-the-Establishment-of-the-Personal-Creditworthiness-System/#gsc.tab=0; 青岛市社会信用体系建设工作领导小组关于印发青岛市加强个人诚信体系建设实施方案的通知 (Qingdao City SCS Building Small Leading Work Group On Issuing The Qingdao City Implementation Plan For Strengthening Personal Sincerity System Building),issued 15 January 2018, translation at https://www.chinalawtranslate.com/en/qingdao-municipal-implementation-plan-for-strengthening-the-establishment-of-the-personal-creditworthiness-system/#gsc.tab=0; On experimental SCS implementation: Adam Knight (2020) Technologies of risk and discipline in China's Social Credit System, in: Rogier Creemers and Susan Trevaskes (eds.) *Law and the Party in China*, Cambridge University Press, pp. 237-262, p. 249.

[1129] Marianne von Blomberg (2020) "How to build your municipal Social Credit System", European Chinese Law Research Hub, 26 October 2020, https://blog.uni-koeln.de/eclrhub/2020/10/26/how-to-build-your-municipal-social-credit-system/.

[1130] For an overview of 50 cities' scores, see Fan Liang and Yuchen Chen (2022) The making of 'good' citizens: China's Social Credit Systems and infrastructures of social quantification, *Policy and Internet* 14/2022, pp. 114-135, p. 122.

[1131] Fan Liang and Yuchen Chen (2022) The making of 'good' citizens: China's Social Credit Systems and infrastructures of social quantification, *Policy and Internet* 14/2022, pp. 114-135, p. 121; Chuncheng Liu and Akos Rona-Tas (2024) Trusting by numbers: An analysis of a Chinese social credit system governance infrastructure, *Critical Sociology* 51(6), pp. 1247-1265, p. 1255; Indicators for Hangzhou's Qianjiang Score can be found on its website: http://www.qianjiangfen.cn/, archived at https://web.archive.org/web/20250402072713/http://www.qianjiangfen.cn/.

[1132] Fan Liang and Yuchen Chen (2022) The making of 'good' citizens: China's Social Credit Systems and infrastructures of social quantification, *Policy and Internet* 14/2022, pp. 114-135, p. 120, 125.

A good sincerity score unlocks discounts on local products, shared rental bikes, public housing, tourist sights, downtown parking, among others. In addition, hospitals[1133], government service agencies and other cooperating institutions offer prioritized treatment of high-scorers.[1134] A strong sincerity score can also be of advantage in government-provided matchmaking services: Individuals signing up for the online service provided by the Hangzhou government get a "integrity verified" badge added to their profile, the aim being to "purify the online dating environment" and "effectively eliminating marriage agents and intermediaries" who have a reputation for not being reliable.[1135]

In light of the common misperceptions it shall be pointed out that municipal sincerity scores must not lead to disciplinary measures. Respective experiments, e.g. in Suining[1136] and Rongcheng[1137], have come to an end in the course of the legal reform of the SCSP that began in 2019. However, low scores can have a de facto punitive effect through shaming or, in localities where a majority of citizens use the scores, by excluding low scorers from benefits that all others enjoy and thereby denying them equal treatment.[1138]

[1133] E.g., through "舒心就医": Item 8, 杭州市医疗保障局对市十四届人大五次会议钱塘12号建议的答复 (Response of the Hangzhou Municipal Medical Insurance Bureau to the 12th Proposal of Qiantang on the Fifth Session of the 14th Municipal People's Congress), issued 24 September 2025, https://www.hangzhou.gov.cn/col/col1229505913/art/2025/art_e471d9ccc2ef41c58a85afab01f0df8c.html , archived at https://web.archive.org/web/20251015064854/https://www.hangzhou.gov.cn/col/col1229505913/art/2025/art_e471d9ccc2ef41c58a85afab01f0df8c.html.

[1134] E.g. Hangzhou's Qianjiang Points, launched in November 2018: http://www.qianjiangfen.cn/, archived at https://web.archive.org/web/20250402072713/http://www.qianjiangfen.cn/. Others include the Osmanthus Points 桂花分 in Suzhou, the Egret Points 白鹭分 in Xiamen, the Jasmine Points 茉莉分 in Fuzhou, the Afu Points 阿福分 in Wuxi, the Shell Points 海贝分 in Weihai, and others.

[1135] Daily Business Hangzhou 海日商报 (2024) ""钱江分"助力单身男女相亲 – 市民卡APP上线新板块把好诚信相亲第一关" ('Qianjiang Score' assists single men and women in dating – the Resident Card App launches new section to ensure honest dating"), 18 April 2024, https://hzdaily.hangzhou.com.cn/mrsb/2024/04/18/article_detail_3_20240418A043.html, archived at https://web.archive.org/web/20251013124409/https://hzdaily.hangzhou.com.cn/mrsb/2024/04/18/article_detail_3_20240418A043.html. A similar cooperation, although not directly involving state-made trustworthiness assessments, exists between Alibaba's Sesame Credit and the dating platform Baihe: Jiemian News 界面新闻 (2015) "百合网引入芝麻信用 相亲进入"信用婚恋"时代 (Baihe uses Sesame Credit, Blind Dating Enters the Era of "credibility-based dating"),", 20 May 2015, https://m.jiemian.com/article/285893_qq.html, archived at https://web.archive.org/web/20251014083911/https://m.jiemian.com/article/285893_qq.html.

[1136] Marianne von Blomberg (2019) The Social Credit System and China's rule of law, in: Oliver Everling (ed.) *Social Credit Rating*, Springer Gabler, pp. 111-137, p. 124.

[1137] On the Rongcheng system before: Adam Knight (2020) Technologies of risk and discipline in China's Social Credit System, in: Rogier Creemers and Susan Trevaskes (eds.) *Law and the Party in China*, Cambridge University Press, pp. 237-262, p. 252. It was reduced to rewards only: Hongkou Integrity Network 虹口诚信网 (2018) 连维良在第二届中国城市信用建设高峰论坛的讲话 (Weiliang Lian speaks at the second China City Credit Building Summit Forum), 28 June 2018, https://www.shhk.gov.cn/xwzx/002008/002008026/002008026001/20180628/6453747d-584c-4141-940c-7e0d75e46786.html, archived at https://web.archive.org/web/20251014150325/https://www.shhk.gov.cn/xwzx/002008/002008026/002008026001/20180628/6453747d-584c-4141-940c-7e0d75e46786.html.

[1138] The punitive effects of non-punishment sincerity scores become relevant if the proportion of residents making use of them is large and the prioritizing for high-scorers deny others their right to public services. This is not yet the case for most municipal sincerity scoring schemes. Nevertheless, it may in the future become a pressing issue to be discussed for instance under the lens of equal treatment by further research.

Some local sincerity score schemes are to interconnect with those of other cities. Tianjin's Haihe Points 海河分 scheme includes plans to "achieve mutual recognition of municipal sincerity scores and share credit-based public rewards with Hangzhou's Qianjiang Points and Xiamen's Egret Points" [1139]. However, precisely because the rewarding schemes are so manifold and shaped by local needs and the business and services landscape that realizes the technological infrastructure in between state and private sectors,[1140] the required information sharing and mutual recognition of sincerity scores is hard to achieve.[1141]

RURAL BANKS OF VIRTUE

Simultaneously, villages and towns devised low-tech sincerity scores fit to their respective circumstances. Many smaller-scale, rural projects are initiated by local leaders and hardly linked to policies set out by higher-level governments and the social credit information ecosystem established by state regulators. The following zooms in on one type of project, the 'Banks of Virtue 道德银行'.

Banks of Virtue are not financial institutions. In the accounts they administer, residents can accumulate "virtue points" through doing good. Its operators, usually local village leaders, strike up cooperations with local banks based on which residents' virtue points unlock access to low-interest and easy-access loans, alongside other benefits such as public transport discounts and reputational benefits.[1142] These "morality score-based lending arrangements between village or town committees and local banks"[1143] are to realize twofold goals: Supporting local banks in making sound investments in environments with largely unbanked populations, and morally engineering citizens.

Criteria for collecting virtue points vary locally, and most significantly by the level of economic development of a locality. In the village of Yangqiao, located in wealthy Zhejiang, helping out neighbours, maintaining gender equality in one's household, keeping the front yard clean, supporting the local Taiji team, and buying groceries for elderly all increases one's virtue points. In Kazuo county, a less affluent locality in Liaoning province, the scoring criteria embody the CPC's mission to dispose of the traditional subsistence ethic that remains strong in rural areas[1144] and in the Party's view

[1139] 天津市人民政府政务服务办公室对市十八届人大一次会议第0003号建议的落实答复 (Reply Of The Tianjin Municipal Government Service Office To The Implementation Of Suggestion No. 0003 From The First Session Of The 18th Tianjin Municipal People's Congress), 8 November 2023, https://www.tjrd.gov.cn/dbyd/system/2023/11/08/030029326.shtml, on file with the author.

[1140] Such technology providers are often partly state-owned local companies, in Hangzhou for instance these include Hangzhou Citizen Card Management Ltd. 杭州市民卡管理有限公司 which also operates the Hangzhou PCI platform since 2008, and Hangzhou Financial Investment Group 杭州市金融投资集团有限公司.

[1141] E.g. Ningjiang Wang 王宁江 (2018) "实现可"漫游"的城市信用分 (Realizing 'roaming' city credit scores)", 浙江经济 (Zhejiang Economy) 16/2018, p. 34.

[1142] Marianne von Blomberg and Wessel Reijers (2024) Who deserves credit? Banks for the virtuous in rural China, *Journal of Contemporary China* 33(150), pp. 955-970, p. 959.

[1143] Marianne von Blomberg and Wessel Reijers (2024) Who deserves credit? Banks for the virtuous in rural China, *Journal of Contemporary China* 33(150), pp. 955-970, p. 959.

[1144] James C. Scott (1978) *The moral economy of the peasant: Rebellion and subsistence in southeast Asia*, Yale University Press.

hinders socio-economic development.[1145] Here, the local Bank of Virtue "not only rewards compliance with traditional values such as filial piety, but also awards points for 'changing customs' and 'starting a business and prospering'.[1146]" Most significantly shaping the evaluation however are not the criteria written down and published on local bill boards. These are formulated in a broad manner (e.g., "showing kindness to children"), leaving much room for interpretation to the evaluators. The evaluation procedure is designed so that the evaluators' subjective impression of the evaluated is central. The evaluators are not anonymous but often well-acquainted with the evaluated, they may be their relative, in-law, former teacher, direct neighbour, friend or colleague. Thus, one's virtue points are, intentionally, shaped by one's personal relations.[1147] Further, the behaviour of persons living in one's household also impacts one's own virtue point account.[1148]

Other than municipal sincerity scores, a residents' virtue point account is not informed first and foremost by PCI. In the self-designed scoring criteria of Banks of Virtue, legal compliance can, but does not necessarily, feature. As agents for better law enforcement, therefore, they play an indirect role only.

3.2.5.3. Discussion

As with the other SCSP mechanisms, we can discuss the impact of joint rewarding of trust-keeping on law enforcement along two guiding questions: In how far does the mechanism pertain to legal rules? Second, is joint rewarding of trust-keeping implemented and effective?

'Trust-keeping' as operationalized in the many joint rewarding of trust-keeping schemes does not equal legal compliance. In how far, then does joint rewarding of trust-keeping impact law enforcement? To be sure, most red lists and other credibility assessments shared through MoU revolve around compliance with laws and regulations rather than other behaviours.[1149] Respective rewards thus do, at least in theory, nudge compliance with laws and regulations in those fields where respective MoU exist. Notably, MoU on joint rewarding of 'trust-keeping' have significantly less coverage than their counterparts for disciplining 'trust-breaking'.[1150]

[1145] E.g., 中共中央 国务院印发《乡村振兴战略规划 （2018－2022年）》 (The CPCCC And The State Council Issue The 'Rural Revitalization Strategic Plan (2018–2022)'), issued 26 September 2018.

[1146] Gongchandangyuan 共产党员 (2020) "道德银行"提振精气神 (Bank of Virtue boosts spirits)" 24/2020, p. 22.

[1147] Marianne von Blomberg and Wessel Reijers (2024) Who deserves credit? Banks for the virtuous in rural China, *Journal of Contemporary China* 33(150), pp. 955-970, p. 962.

[1148] Suggesting to further deepen this household-centred approach: Jie Li 李杰 (2016) 建立公民道德评价体系的实践与思考 (Practice of and thoughts on constructing a citizen morality assessment system), 新西部 (New West) 8/2016, pp. 56-57, p. 57. This speaks to old Chinese administrative order where "The basic unit of traditional Chinese society was not the individual, but the collectivity. Family, clan, village, gentry, and officials dominated the individual. Most basic of all was the family, whose rules of customary behavior emphasized the precedence and authority of older over younger generations." Stanley Lubman (1999) *Bird in a cage: Legal reform in China after Mao*, Stanford University Press, p. 17.

[1149] Severin Engelmann, Mo Chen, Lorenz Dang and Jens Grossklags (2021) Blacklists and redlists in the Chinese Social Credit System: Diversity, flexibility, and comprehensiveness, in: Proceedings of the 2021 AAAI/ACM Conference on AI, Ethics, and Society (AIES '21), 19–21 May 2021, New York, https://doi.org/10.1145/3461702.3462535, p. 83.

[1150] Section 3.2.3.

In municipal sincerity scores, compliance is not enough to obtain rewards for 'trust-keeping'. It is a necessary but not sufficient condition: One's PCI records matter, 'trust-breakers' are excluded from rewards, and compliant SCSP subjects are at an advantage. However, factors largely unrelated to compliance such as one's marital status, official awards received, engagement in volunteering and blood donations, depending on the city's respective criteria, also determine access to rewards.[1151] One law enforcement effect might nevertheless emerge from the situation that those who do not have high scores are at a de facto disadvantage. This disciplining-by-non-inclusion becomes more impactful the wider the coverage of a municipal sincerity scoring scheme is and the more one's fellow citizens actively ameliorate their scores.

The Banks of Virtue barely include compliance records of any kind at all. They are largely detached from the social credit files administered by social credit agencies under the DRCs and instead centre on subjective, informal evaluations that highlight the role of a person in its immediate living and working environment. Rather than law, adherence to a fluid range of social norms such as maintaining good relations with neighbours, cleaning up one's yard or helping out the elderly are enforced. That said, the joint rewarding of trust-keeping mechanism may strengthen law enforcement indirectly by manifesting categories of good and bad behaviour in the public consciousness,[1152] creating awareness of rule abidance generally, and suggesting that behaving well – even if complying with the law is only one part of it – is worthwhile.

Even if not directly nudging legal compliance at the large scale at which JAD disciplines legal noncompliance, joint rewarding of trust-keeping is also the other side of the trust-breaking/trust-keeping dichotomy and as such significant for the disciplinary side of the SCSP to function. Arguably, the moral rhetorical power that the SCSP establishes (recall section 3.2.2.) would not be as strong if it focused purely on disciplining. For instance, the language around 'trust-keeping', red lists, sincerity and honesty lends legitimacy to reputational disciplining, too. Recall that shaming can only unfold its effects if decision-makers receiving the information generally agree with the messaging. The praising 'trust-keeping' helps the rhetorical power of shaming 'trust-breaking' to not be perceived as excessive.[1153] Through its presence and spread of rhetoric, joint rewarding of trust-keeping thereby assists law enforcement.

However, even as a device to nudge moral behaviour, joint rewarding of trust-keeping in its current form has shortcomings. Specifically, municipal sincerity scores give much weight to records that are likely the result of the socio-economic situation a SCSP subject was born into: education history, employment situation, household registration and so on. In Fan Liang and Yuchen Chen's words, in municipal sincerity scoring schemes,

[1151] E.g., Chuncheng Liu and Akos Rona-Tas (2024) Trusting by numbers: An analysis of a Chinese social credit system governance infrastructure, *Critical Sociology* 51(6), pp. 1247-1265, p. 1253.
[1152] Using the image of the SCSP 'sorting' citizens, see Rui Hou and Diana Fu (2024) Sorting citizens: Governing via China's social credit system, *Governance* 37(1), pp. 59-78.
[1153] Section 3.2.2. Manifested for instance in that trust-breaking and trust-keeping records are published side by side on most social credit information platforms. E.g. on the NDRC's www.creditchina.gov.cn. Arguing that joint rewarding of trust-keeping serves to legitimize all disciplining action under the SCSP in the first place: E.g., Adam Knight (2020) Technologies of risk and discipline in China's Social Credit System, in: Rogier Creemers and Susan Trevaskes (eds.) *Law and the Party in China*, Cambridge University Press, pp. 237-262, p. 246.

"quantification practices tightly interweave with social contexts and existing power relations"[1154]. Rewards are thus given less based on legal compliance, or even moral behaviour, than based on class (in how far these three are separable is another issue). An individual with a low score has little room for improvement.[1155] This leads to outcomes contrary to the original intention of spurring 'trust-keeping' behaviour. For instance, some of the advantages in basic services – like allocation of cheap state-provided housing – are available to high scorers only.[1156] Arguably, those scoring highest due to strong incomes, transaction records and education backgrounds need such services least. Lower and middle-income families and recent graduates who typically most need affordable housing have a lower score just qua their background and are even more disadvantaged than if the score did not impact the allocation of housing. The current setup thus risks defeating its original ambition to morally engineer and instead exacerbates existing social inequalities.

In setups where the room to improve one's score by doing good is wider on the other hand, a different limitation comes to the fore: The nature of the score is that records are offset against another, allowing that deductions for non-compliant behaviour can be equalized by doing good. This realizes precisely the mission to motivate citizens to do good, it suggests that the score facilitates real social mobility (always assumed that the sincerity scoring scheme at hand gains significant coverage). However, it means that the score less deters bad behaviour. Chuncheng Liu and Akos Rona-Tas observe:

> "Through this decontextualized commensuration, one's positive and negative behavior [...] can cancel out each other. 'Faking evidence in academic research' is the same as 'Against family planning policy' or 'Flee after the company went bankrupt' in the eyes of MSCS as they are all worth minus 50 points. The person who abuses family members (–50) but volunteered for 300 hours (+50) is the same as someone who did nothing."[1157]

This configuration also may motivate gaming behaviour,[1158] rendering the educational effect to run empty. In other respects, joint rewarding of trust-keeping is just as prone to abuse as the other SCSP mechanisms, too. Licensors of 'trust-keeping' themselves regularly break trust: The market regulatory authority of Shanxi province fined overall 200 institutions which have handed out honorary awards for 'trust-keeping' such as 'Quality Integrity', 'Consumer Trust', 'AAA-Rated Reputation', 'Industry Excellence', 'Top Ten in

[1154] Fan Liang and Yuchen Chen (2022) The making of 'good' citizens: China's Social Credit Systems and infrastructures of social quantification, *Policy and Internet* 14/2022, pp. 114-135, p. 121.
[1155] Weiguo Li 李为国 and Ziguang Dong 董自光 (2022) 刍论城市信用分的创新实践与优化对策———基于钱江分的调查研究 (A preliminary discussion of innovative practices and optimization strategies of city credit scores – Based on a survey study of the Qianjiang score), 商讯 (Shangxun) 1/2022, pp. 1-4, p. 2.
[1156] Pointed out by Weiguo Li 李为国 and Ziguang Dong 董自光 (2022) 刍论城市信用分的创新实践与优化对策———基于钱江分的调查研究 (A preliminary discussion of innovative practices and optimization strategies of city credit scores – Based on a survey study of the Qianjiang score), 商讯 (Shangxun) 1/2022, pp. 1-4, p. 3.
[1157] Chuncheng Liu and Akos Rona-Tas (2024) Trusting by numbers: An analysis of a Chinese social credit system governance infrastructure, *Critical Sociology* 51(6), pp. 1247-1265, p. 1258.
[1158] Jonathan Bach (2020) The red and the black: China's social credit experiment as a total test environment, *British Journal of Sociology* 17, pp. 489-502, p. 498; *Anja Geller: Social Scoring*, p. 33.

the Industry', '3.15 Consumer Trust-keeping Enterprise' to ineligible firms. They purported to be government subsidiaries and were fined for false advertising. [1159]

The second question with regard to the impact of joint rewarding of trust-keeping on law enforcement pertains to its real impact. How wide are joint rewarding of trust-keeping projects spread, how high is their usage, and how effective are they?

The experimental character of many projects may deter SCSP subjects from paying attention to a positive social credit status not to mention alter their behaviour as they cannot be entirely sure that the promised rewards will materialize. On the other hand, generally speaking, nudges have shown to improve the efficiency of law enforcement.[1160] Similar to reputational regulation, it hinges on the general public's approval whether nudging works or not because the people have to actively endorse the nudging scheme in order for it to unfold effects.[1161] A global comparison of the public acceptance of nudging generally has revealed that China, alongside South Korea, shows "spectacularly high approval rates".[1162]

China's joint rewarding of trust-keeping mechanism however differs from most nudging schemes that have been reviewed in studies on nudging generally in that it places a major focus on jointness – nudges for compliance in one realm are levied by state agencies or companies from outside of that realm. Local governments report successes (as they tend to do), Chongqing for instance reports to have realized 500 000 joint rewards for trust-keeping by 2024.[1163] However, no comprehensive studies evidencing the efficiency of joint rewarding of trust-keeping are known to the author and the following approximates an estimation.

Knowledge and usage of joint rewarding of trust-keeping schemes is generally high for municipal sincerity scores in cities where they exist. Still, however, only around 40% of the residents unlocked their municipal sincerity score in Hangzhou (5,560,086 users as of October 2025).[1164] A survey confirms anecdotal evidence I gathered that about two

[1159] Xicheng District People's Court, Beijing 北京市西城区人民法院, 行政裁定书 （2019）京0102行初352号 (Administrative ruling no. 352), decided 19 September 2019; HK02 and BJ05 confirm that the practice of firms posing as state-affiliated entities with the authority to designate 'trust-keeping' titles are common.
[1160] E.g., Shlomo Benartzi, John Beshears, Katherine L. Milkman, Cass R. Sunstein, Richard H. Thaler, Maya Shankar, Will Tucker-Ray, William J. Congdon, and Steven Galing (2017) Should governments invest more in nudging? *Psychological Science* 28(8), pp. 1041-1055, p. 1052; Dennis Hummel and Alexander Maedche (2019) How effective is nudging? A quantitative review on the effect sizes and limits of empirical nudging studies, *Journal of Behavioral and Experimental Economics* 80/2019, pp. 47-58, p. 56.
[1161] "It would be simple to dismiss chengxin sloganeering as mere propaganda, but separating manufactured consent from 'real' independent opinion among ordinary citizens is increasingly difficult in contemporary China" Adam Knight (2020) Technologies of risk and discipline in China's Social Credit System, in: Rogier Creemers and Susan Trevaskes (eds.) *Law and the Party in China*, Cambridge University Press, pp. 237-262, p. 255.
[1162] Cass R. Sunstein, Lucia A. Reisch and Julius Rauber (2018) A worldwide consensus on nudging? Not quite, but almost, *Regulation & Governance* 12/2018, pp. 3-22, p. 15. The study also finds that approval hinges crucially on whether people perceive the aim underlying the nudge as legitimate (p. 12).
[1163] 重庆市发展和改革委员会关于2024年法治政府建设情况的报告 (Chongqing Municipal DRC 2024 Report On Building A Law-Based Government), issued 20 February 2025, http://fzggw.cq.gov.cn/zwgk/zfxxgkml/fzzfjsndbg/202502/t20250220_14323789_wap.html, archived at https://web.archive.org/web/20250611125212/https://fzggw.cq.gov.cn/zwgk/zfxxgkml/fzzfjsndbg/202502/t20250220_14323789_wap.html.
[1164] Website of the program at http://www.qianjiangfen.cn/, archived at https://web.archive.org/web/20250402072713/http://www.qianjiangfen.cn/; confirmed in a survey: Weiguo

thirds of residents who use the application are satisfied, with the remaining third either neutral or negative.[1165] Interaction on social media regarding the Qianjiang Score and the Egret Score (Xiamen) are diminishingly low, indicating little interest [1166] (or strong censorship of the topic).

Trustworthiness assessments in the form of scores generally spur behavioural change, if editable by action, and if their evaluation criteria are known. [1167] Municipal sincerity scores do not always leave much space for citizens to actively improve it, and while evaluation criteria broadly phrased are generally transparent, exact score calculation indicators often remain vague. The automation bias, people's tendency to overestimate the accuracy and rationality of outcomes of automated systems such as scoring systems,[1168] generally boost sincerity scores' authority. In terms of coverage, it remains to be noted that well-working municipal sincerity scoring schemes so far are in place in under ten cities, all of which are located in the economically developed Eastern part of China.

The Banks of Virtue all have some single success stories which are publicly promoted. Generally however, residents' views on the projects are mixed.[1169] Depending on whether a local leader accompanied me on field visits, locals highly praised or showed indifference towards the Banks of Virtue.[1170] One official survey of a Bank of Virtue in Zhejiang province indicates that the majority of respondents approve of the project, and 16,3% of the respondents were either indifferent or found the project unnecessary.[1171] Criticism highlights that virtue cannot be earned through points, and doing good is only

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Li 李为国 and Ziguang Dong 董自光 (2022) 刍论城市信用分的创新实践与优化对策———基于钱江分的调查研究 (A preliminary discussion of innovative practices and optimization strategies of city credit scores – Based on a survey study of the Qianjiang score), 商讯 (Shangxun) 1/2022, pp. 1-4, p. 2. The use of private sincerity scoring schemes such as Sesame Credit is higher: Frederico Caprotti, Ying Xu and Shiuh-Shen Chien (2024) Variegated platform urbanism: Social credit and the city, *Annals of the American Association of Geographers* 114(10), pp. 2222-2239.

[1165] Weiguo Li 李为国 and Ziguang Dong 董自光 (2022) 刍论城市信用分的创新实践与优化对策———基于钱江分的调查研究 (A preliminary discussion of innovative practices and optimization strategies of city credit scores – Based on a survey study of the Qianjiang score), 商讯 (Shangxun) 1/2022, pp. 1-4, p. 2. HZ16; KS01; KS02; KS06; VJU03; VJU05; VJU06; HZ11; ZX02; ZX03; ZX04; ZX06, among others.

[1166] Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 170.

[1167] Elena Esposito (2014) Algorithmische Kontingenz. Der Umgang mit Unsicherheit im Web, in: Alberto Cevolini (ed.) *Die Ordnung des Kontingenten. Beiträge zur zahlenmäßigen Selbstbeschreibung der modernen Gesellschaft*, Springer VS, pp. 233-249, p. 245; Marion Fourcade and Kieran Healy (2013) Classification situations: Life-chances in the neoliberal era, *Accounting, Organizations and Society* 38, pp. 559-572, p. 568.

[1168] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 176; Benjamin Fadavian (2018) Chancen und Grenzen der algorithmischen Verwaltung im demokratischen Verfassungsstaat, in: Resa Mohabbat Kar, Basanta E. P. Thapa, and Peter Parycek (eds.) *(Un)berechenbar? Algorithmen und Automatisierung in Staat und Gesellschaft,* Fraunhofer-Institut für Offene Kommunikationssysteme FOKUS, https://nbn-resolving.org/urn:nbn:de:0168-ssoar-57600-2, pp. 294-314, p. 303; Section 4.2.1.3.

[1169] Marianne von Blomberg and Wessel Reijers (2024) Who deserves credit? Banks for the virtuous in rural China, *Journal of Contemporary China* 33(150), pp. 955-970, p. 965.

[1170] As one resident explained upon asked what the BoV ranking placard on her front door is: "That's just a government thing. […] nothing to do with us." JH02.

[1171] Jie Li 李杰 (2016) 建立公民道德评价体系的实践与思考 (Practice of and thoughts on constructing a citizen morality assessment system), 新西部 (New West) 8/2016, pp. 56-57.

virtuous when it is intrinsically motivated.[1172] Evaluation processes are intentionally subjective in Banks of Virtue and residents remarked that they would not like to see the project scaled to such a size that assessments would be conducted by professional strangers who are not familiar with the residents.[1173]

3.2.6. Conclusion of section 3.2.

Section 3.2. evaluated to what extent the SCSP impacts the second element of administrative law's *enabling the public administration* function, that is the orderly and effective enforcement of laws and regulations (section 2.2.2.).[1174] To this end, I investigated the five law key mechanisms of the SCSP: publicity-centred law enforcement through the disclosure of social credit information, reputational disciplining, joint agency disciplining, credibility-based regulation, and joint rewarding.

To evaluate the impact of each mechanism on law enforcement, I asked two guiding questions: First, in how far does the mechanism pertain to legal rules? Second, is the mechanism implemented and effective? The table below summarizes the findings.

[1172] DP01; WZ06. See also Jianjun Cheng 程建军 and Fangxing Ye 叶方兴 (2009) '道德银行'的困境及其论理启示 (Predicaments and ethical implications of the 'Banks of virtue'), 南京师大学报（社会科学版）(Journal of Nanjing Normal University (Social Science)) 3 /2009, pp. 24–26. Generally, see *Honghai Bi: Old regulatory wine*, p. 326. Pointing out the inherent paradox in transformational citizenship that critical voices on the banks of virtue echo: "Like Confucianism itself, transformational citizenship is caught in a paradox. Transformational citizenship may be capable of presenting an ideal and aspirational imagery that contains elements of openness, justice, equality, harmony, peace, security and belonging that are desired by all humankind. However, its operating mechanism based upon 'combining politics, education and transformation into one' entails rigidness, conformity and hierarchy due to its mistrust and intolerance of opposing or conflicting moral doctrines. […] despite its promise of a positive idea, transformational citizenship is limited in tolerating, encouraging or cultivating diversity, creativity, innovation and empathy between an individual and other members of society." Delia Lin (2017) *Civilising citizens in post-Mao China: Understanding the rhetoric of suzhi*, Routledge, p. 61.

[1173] YY01; ZJ03.

[1174] More hinges on this question: Whether SCSP practices are effective in enforcing law also is crucial to whether they are lawful, as analysed in Chapter 4.

Figure 4: SCSP mechanisms and their impact on law enforcement

	Relevance of legal norms	**Level of implementation and effectiveness**
Publicity-centred law enforcement	Yes, alongside moral norms and contractual norms	Concept well-established, addresses all SCSP subjects; Empirical evidence indicates effectiveness; Impeded by data silos and information inaccuracy
Reputational disciplining	Yes, serious violations only	Concept somewhat established, addresses 'trust-breakers' only; Anecdotal empirical evidence indicates effectiveness, deterrent effect for non-targets; Impeded by potential public pushback....
Joint agency disciplining	Yes, serious violations only	Concept new, addresses 'trust-breakers' only; Wide implementation due to low-tech setup, mixed findings regarding effectiveness; Impeded by state agencies' reluctance to share records, legality concerns
Credibility-based regulation	Yes, alongside moral norms and contractual norms	Concept somewhat new, addresses 'trust-breakers' only; Implemented mainly in economically strong regions, attracts attention; little evidence of effectiveness; Impeded by data silos, lack of standardized credibility assessment production technology; lack of unified rules
Joint rewarding of trust-keeping	Relevant in some schemes	Concept well-established; Implemented nationwide in different variations, little evidence of effectiveness; Impeded by lack of citizens' interest

As to the first mechanism,[1175] a centrepiece of the SCSP and its earliest and most consistent mechanism is the disclosure of social credit information to the public, so that decisionmakers in the market and wider society make decision that put 'trust-breakers' at a disadvantage. To achieve such self-regulation, the SCSP created an ecosystem of social credit information platforms, each operated by one of its many implementing state agencies. Information published on the platforms include corporate records of administrative licenses, administrative punishment, social credit blacklists and red lists, credibility assessment results, compliance records of professionals such as lawyers, domestic workers, researchers, tourist guides, and lists of court judgment defaulters, among others. Apart from providing their own disclosure platforms, regulators and courts

[1175] Section 3.2.1.

push social credit records to private credit information service platforms, credit rating firms and other companies.

Of all SCSP mechanisms, publicity-centred law enforcement most clearly strengthens law enforcement. Awareness and use of social credit information, including compliance records, is relatively high, especially among companies. Most controversial are pieces of information that merge records from different fields into a score, because such comprehensive credibility assessments may not provide the precise information a decisionmaker needs. The major limitation of publicity-centred law enforcement lies in the yet rather poor accuracy of the records contained on the platform. They are often outdated and not systematically synchronized with other platforms. Data silos remain unresolved despite decades of top-level efforts, and impede the power of SCSP publicity-centred law enforcement.

The second SCSP mechanism likewise revolves around information disclosure but differs in that negative social credit information is morally framed and channelled directly to persons in the vicinity of the concerned SCSP subject. The explicit purpose is to achieve shaming effects. This constitutes a distinct SCSP mechanism I call reputational disciplining.[1176] The idea of shaming SCSP subjects into compliance is present across all key SCSP documents. It is realized through leveraging the SCSP's 'trust' rhetoric, designating violators of specific laws overall 'trust-breakers'. The shaming messages are then spread through the media, displayed on public billboards, and appear in ringtone announcements of targeted SCSP subjects, among others.

Like publicity-centred law enforcement, the success of reputational disciplining hinges fully on how and whether the public reacts to the informational measures. In reputational disciplining, in addition to the possibility that the messaging is ignored, there exists a risk that information recipients disapprove and potentially counteract. SCSP shaming messages are regarded an indicator at least reliable enough that information recipients would circumvent an SCSP-designated 'trust-breaker' when doing business. Shaming measures targeting individuals are overall less publicly supported (as well as less often employed), as a result they unfold less effect than those targeting organizations. Anecdotal evidence confirms that reputational discipling spurs compliance among the targeted SCSP subject, especially in the field of court judgment enforcement. However, other anecdotes also point to the contrary. A careful study of targeted subjects' real behaviour changes in response to shaming and the impact factors is yet to be conducted. Notably, the reputational disciplining mechanism has an effect even on those who are not targets of shaming: The mechanism is known to a part of the business community and thus deters those who are aware of its existence.

The third SCSP mechanism, JAD, refers to a state agency or other organization leveraging punishments and coercive measures from their repertoire against an SCSP subject that was by another agency found to have violated the law in a manner amounting to 'trust-breaking'.[1177] This collective disciplining is realized through deals laid down in MoU which the cooperating state and sometimes Party agencies, companies, and other

[1176] Section 3.2.2.
[1177] Section 3.2.3.

organizations sign. MoU exist addressing most regulatory realms and at the local as well as central levels. Targets of JAD are largely companies and other organizations, however, their respective legal representatives and key managers may also be subjected to the disciplinary measures if their respective organizations 'break trust'. As in reputational disciplining, the threshold for SCSP subjects to be labelled 'trust-breaker' and thus become targets of JAD is rather high.

Studies on the effectiveness of JAD in strengthening enforcement show mixed and partly contradictory results. Results in support of JAD are strongest for the field of court judgment enforcement, which is also where it was first applied. Notably, JAD does not rely on digital technologies as infrastructure to the degree that other SCSP mechanisms do. It is therefore less stifled by many of the feasibility problems (e.g., data silos) and is strong even in the regions where economic structures as well as state infrastructures are relatively weak.

In CBR, the fourth of the SCSP mechanisms, administrative agencies calculate credibility assessments from the social credit information at their disposal and use them or pass them on for others to use in discretionary administrative decision-making.[1178] Credibility assessments are calculated based not just on compliance records and other PCI, but MCI such as financial records and reputation in local media. CBR, consequently, enforces moral norms and contractual obligations apart from just regulatory law. However, the non-codified norms that it also enforces are largely substantively related to legal norms. CBR addresses all SCSP subjects rather than just 'trust-breakers', and credibility assessments are to inform discretionary regulatory decision-making in a wide range of realms, together making it a particularly ambitious and potentially far-reaching mechanism.

Against the background of relatively open discretionary spaces in PRC regulatory laws and regulations that had given rise to abuse, CBR, by concept, assists in regularizing, standardizing and ordering law enforcement work of administrative agencies. However, the insertion of automatically produced credibility assessments may defeat the very purpose of administrative discretion which is to provide spaces for the 'human factor' – considerations of justness in the single case. Even if the credibility assessments are only a recommendation, leaving space for discretion, in reality, officials are incentivized to not deviate from or critically scrutinize the outcomes of algorithmic systems. Further, new discretionary spaces open up, namely in the process of designing credibility assessment production which lies with coders of respective software. Power to form the rules shaping credibility assessments and CBR outcomes are thus transferred to the hands of the technology experts who work for technology corporations and embody their interests rather than those of the public administration.

Finally, CBR's promise to improve law enforcement by better deploying regulatory resources is not proven. It hinges on the yet unfounded assumption that law violation records and other negative social credit info regarding behaviour in one field are reliable indicators for future noncompliance. To date, few regulatory agencies have a well-established CBR application in place because the concept is rather new among the SCSP

[1178] Section 3.2.4.

mechanisms and highly reliant on digital technologies. Notably, credibility assessments, where available, feature in different disputes in courts of law and generally have a signalling impact, similar to the first and second of the SCSP mechanisms. However, given the persistent data silo situation, the lack of reliable and standardized credibility assessment production software and respective accountability questions unresolved, it remains to be seen whether CBR strengthens law enforcement.

SCSP mechanism five, joint rewarding of trust-keeping, is the positive counterpart to JAD and diverse in application scope and implementation forms across China.[1179] Agencies, companies and other organizations reward behaviour designated 'trust-keeping' by others. Among the three major manifestations of joint rewarding of trust-keeping that I scrutinized here, only the MoU-based, centrally orchestrated system is directly relevant to legal compliance. For obtaining rewards through municipal sincerity scores on the other hand, law compliance is a common but not in every city necessary requirement. In many schemes, it is not a sufficient one: Residents must also actively do good beyond complying with the law, and can in some cities make up for noncompliance-induced detraction in their scores by engaging in other behaviour considered 'trust-keeping' such as donating blood. Rural banks of virtue only reward maintenance of good relationships in a residents' vicinity and respective deeds of kindness. They are largely unconnected to PCI records including compliance information.

Even though municipal sincerity scores and rural virtue points are not direct enforcers of laws and regulations, they indirectly strengthen law enforcement by bringing to the public consciousness that compliance, in the slightly adapted forms of 'trust-breaking' and 'trust-keeping', comes with consequences. Thereby, the joint rewarding of trust-keeping mechanism even just by rhetorical force, lends legitimacy to reputational disciplining and JAD, ensuring that they are credible and therefore effective. Shortcomings of joint rewarding of trust-keeping lie in flawed sincerity scoring design that in some setups places much weight on class-shaping demographics, backgrounding behavioural records. Some municipal sincerity scoring schemes leave little room for low scorers to improve their scores, defeating the educational mission of joint rewarding of trust-keeping. Further, reputational rewards for 'trust-keeping' are prone to fraud. Generally, the MoU-based joint rewarding setup covers far fewer realms than its disciplining counterpart, JAD, does, only few cities have sincerity scoring schemes for residents and usage of municipal sincerity scores as well as interest in virtue points in rural joint rewarding of trust-keeping projects is far from extensive.

To sum up, are SCSP mechanisms the superpower to improve the enforcement of laws and judicial decisions that the government purports they are? On the face of it, SCSP mechanisms innovate law enforcement through providing the infrastructural power of information platforms,[1180] a set of powerful rhetoric to leverage societal actors for shaming law violators into compliance,[1181] an infrastructure for jointly punishing violators of law,[1182] a potentially predictive automated assessment of compliance to for

[1179] Section 3.2.5.
[1180] Section 3.2.1.
[1181] Section 3.2.2.
[1182] Section 3.2.3.

administrative decision-making to draw on, [1183] and finally a rewarding scheme incentivizing compliance with the law.[1184]

To some extent, the desired effects materialize – most notably, the insertion of social credit information into the market most likely successfully binds legal compliance to economic opportunity. Many mechanisms appear promising at the conceptual level, for instance, risk-based regulation as we find manifested in CBR as well as nudging as we find in joint rewarding of trust-keeping are backed up by established public regulation theory. However, beyond the conceptual level, effectiveness remains hard to measure and is dimmed by a range of factors including some fundamental ones that do not have a quick fix such as social credit information sharing problems dubbed 'lonely islands of data' (data silos).

Apart from such technical hurdles, aspects of the very design of the SCSP may constrain its capacity to strengthen law enforcement. SCSP mechanisms have goals beyond that of enforcement. Enhancing law enforcement is only one field of action towards achieving the greater mission of engineering 'trustworthiness' in China. Aspects of other fields of action, such as moral engineering and building a financial credit system, feature throughout the SCSP mechanisms for law enforcement, too. In some instances, they undermine the law enforcement goal. For instance, credibility assessments made publicly available blur detailed behavioural records of an entity into one grade or score, which leaves the recipient with a strong moral message but no option to herself form an opinion based on the records.

However, among the three big fields of action, law enforcement still appears to emerge as the winner in most conflicts of goals. Almost every moral norm enforced throughout all mechanisms, such as those laid down in technical standards on credibility assessment criteria that are at the basis of CBR, has a substantial connection to some provision in laws and regulations. Moral norm enforcement setups under the SCSP thus appear more like ESG regimes than the arbiters of authoritarian political ideology that is fundamentally at odds with rules of law (this does not mean that their mode of operation is lawful, as discussed in Chapter four). Likewise, the field of action of building a 'clean' financial credit system is currently to some extent compromised in order to allow for non-financial behavioural records such as compliance records to enter financial credit reports (a conflict most clearly manifesting between the NDRC and the PBoC, both formally guiding organs in SCSP building).

[1183] Section 3.2.4.
[1184] Section 3.2.5.

Chapter 4: The SCSP and *protecting legal rights and interests*

The second function of administrative law is to hold the state accountable for its actions.[1185] This chapter evaluates how the emerging SCSP strengthens, weakens, and transforms the *protecting legal rights and interests* function of administrative law. The first part of this chapter, section 4.1., addresses the legality of SCSP mechanisms. I trace where they violate principles of administrative law to the detriment of legal rights and interests of SCSP subjects and evaluate in how far such transgressions are systemic. In the second part of this chapter, section 4.2., I assess the pathways for SCSP subjects to obtain remedies for impacts on their legal rights and interests from SCSP implementing institutions.

The impact of the SCSP on the *protecting legal rights and interests* function of administrative law is most pronounced with regard to the SCSP's punitive mechanisms, namely, reputational disciplining, JAD, and CBR. To set the stage and clarify terminology used in the following chapters, recall how disciplinary measures for 'trust-breaking' operate. At the core of all disciplining lies a trustworthiness assessment, specifically, the designation of an entity as a 'trust-breaker'. This can occur in the form of entries into blacklists, or respective negative credibility assessments (scores, grades). These designations then lead to punitive measures through three SCSP mechanisms: First, in reputational disciplining, these trustworthiness assessments of all forms are published and channelled directly to private actors for a shaming effect. Second, in JAD, administrative agencies collaborate to impose punishments on entities blacklisted by partnering administrative agencies. Herein, credibility assessments play a smaller role than blacklist entries. Third, through CBR, blacklist entries, alongside compliance records from all realms and information sourced from the market are processed into credibility assessments and inform administrative discretionary decision-making.

4.1. SCSP practices and principles of administrative law

The previous chapter laid out a series of new mechanisms the SCSP introduces to regulatory governance in China, and hints that respective implications for administrative law's norms, principles and procedures are abundant. Especially, punitive SCSP practices impact the legal rights and interests of SCSP subjects. The following analyse this impact by using pertinent principles of administrative law as a lens. Each section addresses one principle.

The legal principles by which SCSP measures are analysed below are in the literature largely understood and sometimes explicitly framed as exclusive features of liberal democratic systems.[1186] However, as laid out in section 2.2., the existence of administrative law principes does not hinge on liberal-democratic state structures. They are found in different variations in other legal systems, in the case of the PRC these are

[1185] Elaborated in section 2.2.3.

[1186] E.g., Michèle Finck (2020) Automated decision-making and administrative law, chapter in Peter Cane, Herwig C. H. Hofmann, Eric C. Ip, Peter L. Lindseth (eds.) *The Oxford handbook of comparative administrative law*, pp. 656–676, Oxford University Press, p. 663.

framed on the basis of the core premises of a socialist legal system with the CPC at its top. The principles discussed below emerged from the socialist state structure, as well as historical and cultural contingencies. I begin each of the following chapters with an explanation of the respective principle in the PRC.

4.1.1. Legal basis

"For a long time, the legislation of social credit has lagged behind the construction of the SCS. Most of the credit means and credit innovations in various industries, fields and regions are in an embarrassing situation where there is no law as basis."

- NDRC in 2023[1187]

One fundamental principle of PRC administrative law is that of law-based administration 依法行政. Scholarly consensus indicates that it may be likened to the principle of the reservation of law in civil law jurisdictions: It requires that all actions undertaken by administrative agencies must not counter the law and have a legal basis where they touch upon legal rights and interests of persons.[1188] While the Constitution does not include such a general provision, the Legislation Law – which has the force of law above ordinary law – provides that only laws enacted by the NPC or its Standing Committee may provide a legal basis for acts by administrative agencies that involve the "deprivation of citizens' political rights as well as compulsory measures and punishments that restrict physical liberty" (Art. 11(5)), including expropriation of assets.[1189]

Questionable with regard to the principle of law-based administration are, first and foremost, the SCSP's disciplinary measures for 'trust-breaking'. Social credit disciplinary measures[1190] are diverse und each unfold impact of different intensity.[1191] Several measures may satisfy the definition of administrative punishment.[1192] However, disciplinary measures remain undefined in administrative law.[1193] The expert group tasked to review the Draft Social Credit Regulations of a second-tier city pointed out that

> "the nature of disciplinary measures for trust-breaking in administrative law is controversial. When the nature is not yet clear, the implementation of the supplementary

[1187] National PCI Centre 国家公共信用信息中心 (2023) 建设符合高水平社会主义市场经济体制的社会信用体系建设法 (Building an SCS Building Law that conforms with the high-standard socialist market economy), Website of the NDRC, 15 March, https://www.ndrc.gov.cn/wsdwhfz/202303/t20230315_1350980_ext.html, archived at https://web.archive.org/web/20250603090923/https://www.ndrc.gov.cn/wsdwhfz/202303/t20230315_1350980_ext.html.

[1188] Zhongjing Men 门中敬 (2015) 论宪法与行政法意义上的法律保留之区分 – 以我国行政保留理论的构建为去向 (On the distinction between the reservation of law in constitutional law and in administrative law – towards establishing a Chinese theory of administrative reservation), 法学杂志 (Law Studies Magazine) 12/2015, pp. 24-33; Youyong Zhou 周佑勇 (2019) 行政法基本原则研究 (Research on the fundamental principles of administrative law), 法律出版社 (Law Press China), p. 163; *Lü and He: An analysis of the path to legal regulation*.

[1189] 立法法 (Legislation Law), passed by the NPC on 15 March 2000, last amended 13 March 2023.

[1190] The terms disciplinary measures for trust-breaking 失信惩戒措施 and social credit disciplinary measures 社会信用惩戒措施 are used interchangeably.

[1191] *Yin Jia: Constitutionalizing*, p. 102.

[1192] As will be discussed below. Consensus has been reached that at least some of the measures satisfy the definition, see, most prominently: *Kui Shen: The rule of law approach*.

[1193] E.g. Chuangyu Fu 伏创宇 (2023) 信用惩戒适用行为人责任的法理及其限度 (Legal theory and limitations of the actor's responsibility in the application of credit disciplines), 法学研究 (Chinese Journal of Law) 6/2023, pp. 37-52, p. 38.

> list system for disciplinary measures for trust-breaking will easily lead to the disorderly expansion of the government's administrative power and damage the legitimate rights and interests of credit subjects.“[1194]

The general law that stipulates when and how state agencies may adopt punitive measures is the Administrative Punishment Law (APL). It applies to administrative punishments, defined as all

> “actions by administrative organs in accordance with law taken against citizens, legal persons, or other organizations that violate the order of administrative management, to penalize them by methods such as reducing their rights or increasing their obligations.”[1195]

It includes a non-exhaustive list of punishments that may be imposed by administrative agencies and require a legal basis in sectoral laws and regulations (Art. 9, APL).[1196]

The APL requires different types of legal bases for administrative punishments depending on their severity. Laws may provide the basis for all sort of administrative punishment, administrative regulations 行政法规 may only serve as legal basis for measures that do not restrict physical liberty (Art. 11), and local regulations 地方性法规 may only be the basis for measures that neither restrict physical liberty nor cancel business licenses (Art. 12). Importantly for the *protecting legal rights and interests* function of administrative law, the APL stipulates procedural and substantive limitations on administrative punishment measures, such as the duty for administrative agencies to inform a subject before it imposes the measure (Art. 44) as to leave room for them to exercise their right to make statements and defences (Art. 45; objection procedures, sections 4.1.5. and 4.2.5.) or apply for administrative reconsideration or raise administrative litigation (Art. 7; section 4.2.1.).

Which of the disciplinary measures for trust-breaking constitute administrative punishment? For many years it was entirely unclear whether and which of the social credit disciplinary measures that appear throughout implementing normative documents and MoU amount to administrative punishment. Scholars proposed a series of typologies.[1197] The latest round of SCSP reforms starting in 2020 sheds light on the matter and defines disciplinary measures for ‘trust-breaking’ as

> “activities of state organs and organizations authorized by laws and regulations to manage public affairs (hereafter: public management institutions) and other organizations to discipline the responsible parties for trust-breaking behaviour through judicial, administrative, market and other means in accordance with laws and regulations […]”

The document specifies:

[1194] Fieldwork document 011.

[1195] Art. 2, 行政处罚法 (APL), issued by the NPC Standing Committee on 17 March 1996, last amended on 22 January 2021.

[1196] The list in the APL is short and rather broad because in the process of its amendment, the approximately 120 punishment measures found across regulatory laws were not included as not to harm China’s international image: *Yin Jia: Constitutionalizing*, p. 101.

[1197] E.g., Zhongjing Men 门中敬 (2021) 失信联合惩戒措施的类型及行为属性 (The categories of disciplinary measures for trust-breaking and their behavioural attributes), 山东大学学报 （哲学社会科学版） (Shandong University Journal (Humanities and Social Sciences) 6/2021, pp. 76-85; *Shuo Li: On the legality*, p. 145; *Wang and Huang: On the legal constraints*.

> "The measures for disciplining trust-breaking listed here include three types and overall 14 measures: First, measures imposed by public management institutions in accordance with laws and regulations that reduce the rights or increase obligations for credit subjects [...], second, management measures public management institutions need to take in accordance with laws and regulations that do not reduce the rights or increase obligations for credit subjects [...], and third, measures taken by institutions that are not public management institutions [...]."[1198]

According to this definition, several of the measures amount to administrative punishment as defined in the APL: The document categorizes disciplinary measures for 'trust-breaking' under reference to the characteristic for administrative punishment in the APL, namely by whether they "reduce rights or increase obligations" [1199] of SCSP subjects.[1200] This categorization offers an official reading of measures, however, as it is not a legal authority but a policy document, the categorization may be best understood as a political imperative. Disciplinary measures categorized as not reducing rights or increasing obligations *ought to* not do so. The following examines, first, whether disciplinary measures for 'trust-breaking' that constitute administrative punishment have a legal basis, and second, whether those that are not categorized as administrative punishment nevertheless require a legal basis and whether such a basis exists.

4.1.1.1. Disciplinary measures for 'trust-breaking' that constitute administrative punishment

Disciplinary measures for 'trust-breaking' that constitute administrative punishment require a legal basis as per the APL. As elaborated in section 3.2., most disciplinary measures for 'trust-breaking' consist of previously existing administrative punishments and other practices that the SCSP reconfigures, rather than measures that are original SCSP inventions. They include, for instance, the revocation of administrative licenses, limiting practice in a field, and the suspension of business activities. Most measures have

[1198] Items 1 and 3, 全国失信惩戒措施基础清单（2025年版） (National List of Disciplinary Measures (2025 version)), 国家发展改革委 中国人民银行关于印发《全国公共信用信息基础目录（2025年版）》和《全国失信惩戒措施基础清单（2025年版）》的通知 (Notice Of The NDRC And The PBoC On Issuing The 'National Basic Catalogue Of PCI' And The 'National Basic List Of Disciplinary Measures For Trust-Breaking'), issued 14 March 2025, https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm, archived at web.archive.org/web/20250331232307/https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm.

[1199] The defining feature of "reducing rights or increasing obligations" lent from the APL is an established legal category in Chinese jurisprudence. See, e.g., Ye Guo 郭晔 (2018) 追寻和感悟中国法学的历史逻辑——"法学范畴与法理研究"学术研讨会述评 (Seeking and appreciating the historical logic of Chinese jurisprudence – A review of 'categories of jurisprudence and legal theory research'), 法制与社会发展 (Law and Social Development) 5/2018, pp. 207-224, p. 207.

[1200] Since 2021, the National List of Disciplinary Measures sorts measures into such that "reduce legal rights of credit subjects or increases obligations 减损信用主体权益或增加其义务的措施", adopting the wording of the APL, and such that do not (or are not supposed to) do so: 国家发展改革委 中国人民银行关于印发《全国公共信用信息基础目录（2025年版）》和《全国失信惩戒措施基础清单（2025年版）》的通知 (Notice Of The NDRC And The PBoC On Issuing The 'National Basic Catalogue Of PCI' And The 'National Basic List Of Disciplinary Measures For Trust-Breaking'), issued 14 March 2025, https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm, archived at web.archive.org/web/20250331232307/https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm. Maintaining that all measures defined as disciplinary measures for trust-breaking, including limits on obtaining subsidies and license denials that are not strictly administrative punishment but result of administrative decisions based on information in social credit files, de facto affect the target subject's legal rights and interests and thus are punishment (惩罚): *Haiyuan Zhou: Correcting the trend*, p. 71.

a long-standing basis in relevant departmental laws and regulations.[1201] The National List of Disciplinary Measures points out the respective legal basis for nearly all disciplinary measures for 'trust-breaking' that reduce rights or increase obligations. For instance, the General Administration of Customs disciplines 'trust-breaking' through banning custom declaration service companies which have bribed officials or been involved in smuggling from carrying out customs declarations. This measure satisfies the APL definition of administrative punishment: it falls under Art. 9(4), the "restriction on carrying out production and business activities, ordering those operations to be stopped, ordering closure, limiting practice in a field"[1202], and therefore requires a legal basis. The National List of Disciplinary Measures conveniently points us to the law that forms this basis, namely, Art. 89 and 90 of the Customs Law.[1203]

Likewise, other social credit measures listed in the National List of Disciplinary Measures that fall within the APL's list of measures (including, e.g., license revocations, fines, warnings), appear alongside their respective basis in a national law or State Council regulation.[1204] This accords with suggestions long made by law scholars that revocation of business licenses, qualification licenses and fines all touch upon property rights and must therefore adhere to due process and be subject to judicial review as provided for in the APL.[1205]

Some measures the National List of Disciplinary Measures categorizes as "reducing rights or increasing obligations" and which would therefore require a legal basis as of the APL however lack the required basis in laws, administrative regulations or local regulations as required by the APL (Art. 10-12). Bans on participating in land bidding[1206] and restrictions on participating in land transfer activities (土地出让活动)[1207] that are

[1201] E.g., stressing that MoU do not need to function as legal basis for punishment as the penalties stipulated therein are laid down elsewhere in higher level law already: Peixin Luo 罗培新 (2018) 社会信用法：原理、规则、案例 (Social credit law: Principles, rules, cases), 北京大学出版社 (Peking University Press), p. 100; *Honghai Bi: Old regulatory wine*, p. 320.

[1202] APL, translation by China Law Translate (2021) "Administrative Punishment Law of the PRC (2021 edition)", 22 January, https://www.chinalawtranslate.com/en/administrative-punishment-law-2021/.

[1203] 海关法, passed 22 January 1987 by the NPC Standing Committee, last amended 4 November 2017.

[1204] State Council regulations are law set by the executive, described well as "government 'legislative' decisions": Jamie Horsley (2024) "An overview of China's State Council major decision-making regulations", China Law Translate, 29 April, https://www.chinalawtranslate.com/en/an-overview-of-chinas-state-council-major-decision-making-regulations/.

[1205] E.g., Guodong Chen 陈国栋 (2021) 缔约资格排除类信用惩戒的法治化路径 (The legal path of trust disciplining for contract qualification exclusion), 现代法学 (Modern Law Science) 43(1), pp. 105-114; *Kui Shen: The rule of law approach*, p. 42. That the revocation of an administrative license constitutes administrative punishment was confirmed in 2020 by the SPC: 最高人民法院印发〈关于行政案件案由的暂行规定〉的通知 (SPC Notice On Issuing The 'Provisional Regulations On Causes Of Action In Administrative Cases'), issued 25 December 2020.

[1206] 国务院办公厅关于继续做好房地产市场调控工作的通知 (Notice Of The State Council General Office On Continuing To Regulate The Real Estate Market Well), issued 26 February 2013, https://www.gov.cn/gongbao/content/2013/content_2355017.htm, archived at https://web.archive.org/web/20250806091708/https://www.gov.cn/gongbao/content/2013/content_2355017.htm.

[1207] 国务院办公厅关于 促进房地产市场平稳 健康发展的通知 (Notice Of The State Council General Office On Promoting The Fair And Healthy Development Of The Real Estate Market), issued 7 January 2010, https://www.gov.cn/gongbao/content/2010/content_1511000.htm, archived at https://web.archive.org/web/20250806092335/https://www.gov.cn/gongbao/content/2010/content_1511000.htm.

implemented by the Ministry of Natural Resources and the Ministry for Housing and Urban-Rural Development lack a legal basis. The National List of Disciplinary Measures points to Notices 通知 of the State Council General Office as basis, which however are normative documents themselves in need of a legal basis.[1208] Such cases of measures without legal basis however are rare. Chun Peng 彭錞's analysis of 41 central-level MoU on joint disciplining of 'trust-breaking' finds that 91% (1560 of 1705) of the stipulated punishments have a basis in positive law. Rather than inventing new measures, MoU implement, reiterate, interpret, refine, clarify or fill existing positive law norms. Only 9% of the measures have no legal basis. He concludes that the provisions on punishments in MoU are just "sorting out and linking together within the legal frame" without 'creating' effect, likening them to a "user interface".[1209]

Accordingly, most but not all social credit measures that amount to the APL's definition of administrative punishment have the required basis in law. Further, the National List of Disciplinary Measures in its introductory paragraphs, following the preceding State Council Opinions,[1210] stipulates that disciplinary measures "reducing rights or increasing obligations" may be based on "administrative regulations and CPCCC-State Council joint policy documents 行政法规和中央、国务院政策文件". This provision appears to contradict the requirement for a legal basis: The legislative status of documents jointly issued by the State Council and the CPCCC is unclear.[1211] No law (or Party regulation) suggests that Party documents of any kind should be treated as formal law.[1212] On the other hand, the SPC has in 2009 indicated that courts may cite "other normative documents" when needed, which might include Party documents.[1213]

Another provision in the National List of Disciplinary Measures raises concerns with regard to the principle of law-based administration. It states that if provided in their local regulations 地方性法规, localities may create supplementary lists of disciplinary

[1208] Specifically, they constitute '其他规范性文件' (Art. 116, ALL).

[1209] *Chun Peng: Legal dilemmas*, p. 56.

[1210] 国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见 (Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-breaker Constraint System And Building A Long-term Mechanism For Credit Construction), issued 18 December 2020.

[1211] Xiaoxing Wang 王晓星 (2020) 试论党内法规与国家法律的衔接与协调 (Discussing the connecting and coordinating of internal Party rules and state laws), 法制博览 (Legality Vision) 10/2020, pp. 212-213; Bo Tan 谭波 (2019) 党内法规与国家法律的衔接和协调类型研究 – 基于部分党内法规与国家法律的分析 Research on connecting and coordinating internal Party rules and state laws – An analysis based on several Party rules and state laws), 江汉学术 (Jianghan Academic) 2/2019, pp. 52-57; Bingwan Xiong, Jiangqiu Ge, Li Chen (2023) Unpacking data: China's 'bundle of rights' approach to the commercialization of data, *International Data Privacy Law*, 13(2), pp. 93-106, p. 96.

[1212] Benjamin L. Liebman, Xiaohan Wu, Rachel E. Stern, Margaret E. Roberts (2025) Out from the shadows: Party documents in Chinese courts, SSRN, 5 August, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5379044, p. 8. In practice however, courts do cite party documents in their reasoning and a considerable wave of scholarly contributions argue that courts ought to recognize party documents as law: cf. p. 47, p. 66.

[1213] 最高人民法院关于裁判文书引用法律、法规等规范性法律文件的规定 (Provisions Of The SPC On Adjudication Documents Citing Laws, Regulations And Other Normative Legal Documents), issued 13 July 2009, and Benjamin L. Liebman, Xiaohan Wu, Rachel E. Stern, Margaret E. Roberts (2025) Out from the shadows: Party documents in Chinese courts, SSRN, 5 August, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5379044, p. 17. See also: Kui Shen 沈岿 (2023) 论失信惩戒的行政诉讼可诉性 (On the litigability of disciplining trust-breaking in administrative litigation), 中国应用法学 (China Journal of Applied Jurisprudence) 2/2023, pp. 73-88, p. 78.

measures for 'trust-breaking' under the guidance of not further specified "local departments in charge of SCS building 地方社会信用体系建设牵头单位". Typically, these are small leading groups under the local DRCs (here for the sake of simplicity called social credit agencies). This opens a backdoor for the continued creation of new disciplinary measures for 'trust-breaking' even after the 2020 reform reigned in such experimentation with disciplinary measures. To be sure, the National List of Disciplinary Measures and the related political push to further the law-based administration, or, as it is often called, "legalization 法治化" of the SCSP[1214] has led to the termination of many rightly criticized local disciplinary measures.[1215] However, the List's provisions allowing local departments to issue own catalogues of measures appears to contradict the requirements for legal bases in the APL[1216] and only a measure-by-measure analysis may reveal whether they restrict physical liberty or cancel business licenses and thus require a higher-level legal basis (APL, Art. 10-12).[1217] The risk that local norms take precedence over laws in violation of the Legislation Law's norm hierarchy remains.[1218] The only difference is that now, social credit agencies oversee the creation of measures, but whether that means an improvement with regard to respect for the legal basis requirement as opposed to the pre-2020 situation of locally blossoming, overreaching disciplinary measures, is yet to be seen.

Additionally, the National List of Disciplinary Measures includes measures addressing 'trust-breaking' judgment defaulters. As a basis, it indicates not laws but Opinions of the CPCCC General Office and the State Council General Office.[1219] Disciplinary measures

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[1214] E.g., Wei Wang 王伟 (2021) 社会信用建设法治化的新起点、新境界、新思维——解读《国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见》(New starting points, frontiers and thinking on legalizing social credit building – Interpreting the 'Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-Breaker Constraint System And Building A Long-Term Mechanism For Credit Construction), 中国经贸导刊 (China Economic and Trade Herald) 1/2021, pp. 15-16; *Lü and He: An analysis of the path to legal regulation*; Qingsong Yu 虞青松 (2020) 算法行政: 社会信用体系治理范式及其法治化 (Algorithmic governmentality: The governance paradigm of the Social Credit System and its legalization), 法学论坛 (Legal Forum) 35(188), pp. 36-49.

[1215] Many issues have been resolved that were raised by early critics such as: *Kui Shen: The rule of law approach*; Ruixue Wang 王瑞雪 (2017) 政府规制中的信用工具研究 (Research on credit tools in government regulation), 中国法学 (China Legal Science) 4/2017, pp. 158-173, hereafter: *Ruixue Wang: Credit Tools*; Haoxiang Lan 兰皓翔 (2017) 行政黑名单制度研究：一个权利保护的视角 (Research on the administrative blacklist system: A rights protection perspective), 山东行政法学学报 (Shandong Administrative Law Review) 1/2017, pp. 48-52.

[1216] One dissenting account points out how localities can adjust their measures to their respective local specialities. Nanjing, the former capital, imposes measures on those who slander martyrs, and Hangzhou, a tourist destination, for damaging scenic spots, see: Peixin Luo 罗培新 (2021) 法理明晰 切中肯綮 有力助推营商环境优化——解读《国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见》(Clear jurisprudence, hitting the right mark, and effectively promoting the optimization of the business environment – interpreting the Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-Breaker Constraint System And Building A Long-Term Mechanism For Credit Construction), 中国经贸导刊 (China Economic & Trade Herald) 2021/1, pp. 11-13.

[1217] One notable exception, including a list of possible disciplinary measures for trust-breaking in Art. 36, 重庆市社会信用条例 (Chongqing Municipal Social Credit Regulations), issued by the Chongqing City People's Congress Standing Committee on 27 May 2021.

[1218] *Lü and He: An analysis of the path to legal regulation*, p. 130.

[1219] 中共中央办公厅、国务院办公厅印发《关于加快推进失信被执行人信用监督、警示和惩戒机制建设的意见》(The CPCCC And The State Council Issue The Opinions On Accelerating The Construction Of Credit Supervision, Warning And The Disciplining Mechanism For Trust-Breaking Judgment Defaulters), issued 25 September 2016.

against judgment defaulters are not strictly speaking administrative punishment but coercive enforcement measures. They are regulated under the civil law enforcement framework rather than administrative law in the narrow sense.[1220] Still, the requirement of a legal basis as per the Legislation Law's definition applies as even though not punishment, they, too, involve the "deprivation of citizens' political rights as well as compulsory measures and punishments that restrict physical liberty" (Legislation Law, Art. 11(5)).[1221] However, such measures, including limitations on consumption (booking luxury hotels, buying plane tickets etc.), currently have a basis only in SPC rules.[1222] The draft of a Civil Compulsory Enforcement Law (Art. 57) that was under deliberation at the NPC since 2018 included a provision which would have provided a legal basis for the consumption restrictions (Art. 57).[1223] However, the draft was terminally shelved in June 2022.[1224]

Finally, and most crucially, while disciplinary measures alone mostly have a legal basis, this basis only authorizes their use for the particular law violations that the respective law stipulates. It is questionable whether state agencies including enforcement bureaus of courts may apply measures laid down in law A to entities that have not violated law A but law B. To recall, the imposition of disciplinary measures onto SCSP subjects from beyond an agency's own jurisdiction is part and parcel of joint disciplining for 'trust-breaking'.[1225] The requirement of a legal basis arguably entails that not just the measure, but the specific act for which it is imposed must be laid out together. It does not suffice for an imposing agency to point to any law that mentions the measure, it rather requires a law that substantively connects the measures and the specific deed for which it is imposed.[1226]

MoU construct this potentially problematic setup: They list disciplinary measures as to be applied to designated 'trust-breakers' indiscriminately without specifying the precise behaviour that brought about the inclusion in a 'trust-breaker' blacklist. One example is the MoU on work safety[1227] which provides for "market bans for principal persons in

[1220] Art. 235 to 269, 民事诉讼法 (Civil Procedure Law), issued by the NPC on 9 April 1991, last amended 1 September 2023. Policy documents regularly brush over this crucial difference, some legal literature highlights it, see Zhongjing Men 门中敬 (2021) 失信联合惩戒措施的类型及行为属性 (The categories of disciplinary measures for trust-breaking and their behavioural attributes), 山东大学学报 （哲学社会科学版）(Shandong University Journal (Humanities and Social Sciences) 6/2021, pp. 76-85, p. 77.

[1221] 立法法 (Legislation Law), passed by the NPC on 15 March 2000, last amended 13 March 2023.

[1222] 最高人民法院印发《关于依法制裁规避执行行为的若干意见》的通知 (SPC Notice On Issuing 'Several Opinions On Sanctioning Evasion Of Execution In Accordance With The Law'), issued 23 July 2018.

[1223] The draft law is available at https://www.hncourt.gov.cn/public/detail.php?id=191092, archived at https://web.archive.org/web/20250710090838/https://www.hncourt.gov.cn/public/detail.php?id=191092.

[1224] The NPC Constitution and Law Committee pointed out that legally vesting judgment enforcement powers with the courts contradicted another reform suggestion put forward at the CPC's 2014 Fourth Plenum, namely a more clear separation of adjudicatory powers and enforcement powers: Changhao Wei (2024) "In rare move, Chinese legislature shelves two bills", NPC Observer, 13 August, https://npcobserver.com/2024/08/china-npc-shelves-bill-compulsory-enforcement-rural-land-reform/.

[1226] For disciplinary measures for trust-breaking in administrative enforcement see *Chun Peng: Legal dilemmas*; for disciplinary measures for trust-breaking in civil enforcement see *Chunyan Ding: Judgment-defaulter blacklist system*, p. 433.

[1227] 印发《关于对安全生产领域守信生产经营单位及其有关人员开展联合激励的合作备忘录》的通知 (Notice On Issuing The 'MoU On Launching Joint Rewarding On Trust-Keeping Operating Production Units And Related Personnel In The Work Safety Field'), issued by the NDRC and others on 25 December 2017,

charge of a trust-breaking production and business entity" to be imposed on "principal persons-in-charge of production and business entities that suffered from two or more safety accidents of relative seriousness and higher within 12 months"[1228]. According to Article 91(3) of the Work Safety Law, only the principal persons-in-charge of a production or business entity that has suffered major production safety incidents should be punished by market bans. Effectively, joint disciplinary measures for trust-breaking here bypasse the threshold of "major incidents" stipulated in the Work Safety Law.[1229] This setup just offers a convenient way for agencies to expand punishments without expanding corresponding processes of identifying and assessing misconduct.[1230] It is yet unclear whether MoU suffice as legal basis for links between a measure and a new target group. No consensus has been reached as to their legal status. Literature classifies them as internal normative documents (they do not fall within rule-making processes prescribed in the Legislation Law),[1231] or public law agreements that cannot establish legal effects for private entities.[1232]

The same issue applies to social credit measures applied by courts against 'trust-breaking' judgment defaulters: For bans on occupations, MoU cite as legal bases laws which themselves do not provide for the measure to be applied to 'trust-breaking' judgment defaulters at large, and that include time limitations that the text of the MoU does not include.[1233] Chunyan Ding concludes that "this sanction imposed on discredited[1234] judgment defaulters is unlawful, excessive, and unfair according to Article 8 of the Legislation Law and Article 91 of the Work Safety Law."[1235]

4.1.1.2. Disciplinary measures for 'trust-breaking' that are not punishment and the grey area

The section above discussed the measures that are in the National List of Disciplinary Measures classified as reducing rights or increasing obligations and therefore require a

https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5435297.htm, archived at https://web.archive.org/web/20240910214822/https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5435297.htm.

[1228] Art. 6(2), 安全生产严重失信主体名单管理办法 (Measures On Managing The List For Seriously Trust-Breaking Entities In Production Safety), issued by the Ministry of Emergency Management on 8 August 2023.

[1229] *Chun Peng: Legal dilemmas*, p. 57.

[1230] *Shuo Li: On the legality*, p. 144.

[1231] *Yin Jia: Constitutionalizing*, p. 100; *Shuo Li: On the legality*, p. 150.

[1232] Arguing that the MoU is a reciprocal public law contract which only has a binding force on the signing subject, and does not have direct legal effect on citizens and legal persons: *Wu and Liu: MoU on joint disciplining and rewards*.

[1233] 关于印发对失信被执行人实施联合惩戒的合作备忘录的通知 (Notice On Issuing The Mou On Carrying Out Joint Disciplines For Trust-breaking Judgment Defaulters), issued by the NDRC, SPC, PBoC, CPCCC Organization Department and 40 others on 20 January 2016, http://www.csrc.gov.cn/csrc/c100205/c1003071/1003071/files/%E5%85%B3%E4%BA%8E%E5%8D%B0%E5%8F%91%E5%AF%B9%E5%A4%B1%E4%BF%A1%E8%A2%AB%E6%89%A7%E8%A1%8C%E4%BA%BA%E5%AE%9E%E6%96%BD%E8%81%94%E5%90%88%E6%83%A9%E6%88%92%E7%9A%84%E5%90%88%E4%BD%9C%E5%A4%87%E5%BF%98%E5%BD%95%E7%9A%84%E9%80%9A%E7%9F%A5.pdf, archived at https://web.archive.org/web/20250810150652/http://www.csrc.gov.cn/csrc/c100205/c1003071/1003071/files/%E5%85%B3%E4%BA%8E%E5%8D%B0%E5%8F%91%E5%AF%B9%E5%A4%B1%E4%BF%A1%E8%A2%AB%E6%89%A7%E8%A1%8C%E4%BA%BA%E5%AE%9E%E6%96%BD%E8%81%94%E5%90%88%E6%83%A9%E6%88%92%E7%9A%84%E5%90%88%E4%BD%9C%E5%A4%87%E5%BF%98%E5%BD%95%E7%9A%84%E9%80%9A%E7%9F%A5.pdf.

[1234] Refers to what I translate as "trust-breaking judgment defaulters".

[1235] *Chunyan Ding: Judgment-defaulter blacklist system*, p. 434.

legal basis as per Legislation Law. The second category of measures listed in the National List of Disciplinary Measures are therein characterized as *not* reducing rights or increasing obligations, but as management measures that are necessary for state agencies for fulfilling their duties (see definition above).[1236] This wording indicates that these measures are not, by SCSP authorities, regarded as administrative punishments pursuant to the APL's definition. However, the measures may impact SCSP subjects' rights nevertheless.

Most of these measures in fact are non-punitive practices related to increasing regulatory scrutiny and found first and foremost in the SCSP's regulatory practice of CBR.[1237] Like several of the punitive measures, many are not new but describe long-standing practices that were re-arranged around the categories of 'trust-keeping' and 'trust-breaking'.[1238] For instance, a transportation regulator in Jiangbei District of Chongqing stipulates that road freight business license applicants with seriously bad social credit records must be permitted for the "tolerating missing documents" application track.[1239] Increasing inspection frequency, recording of 'trust-breaking' conduct 失信记录 and warnings issued to advise 提醒告诫[1240] do not require a legal basis because they generally do not unfold direct external effects and hence do not reduce rights or increase obligations. They are internal measures in support of administrative discretion.[1241]

That said, some of the measures that the National List of Disciplinary Measures lists as "not reducing rights or increasing obligations" in fact do possibly reduce rights despite of the NDRC and PBoC document framing them otherwise.[1242] They may, as of the most recent amendment of the APL, also qualify as administrative punishment and require a legal basis.

[1236] "由公共管理机构根据履职需要实施的相关管理措施"

[1237] Note that credibility assessments themselves, too, can "reduce rights or increase obligations" depending on how they are put to use. See: *Shen Yan and Boyang Wang: Credit assessment*, p. 48; Ruixue Wang 王瑞雪 (2018) 论行政评级及其法律控制 (Administrative ratings and their legal controls), 法商研究 (Studies in Law & Business) 3/2018, pp. 27-37, p. 27.

[1238] *Kui Shen: The Prohibition of improper connection*, p. 15-16.

[1239] Item 232, 重庆市社会信用体系建设联席会议办公室关于印发《重庆市失信惩戒措施清单（2024 年版）》的通知 (Notice Of The Chongqing Municipal Social Credit System Building Joint Conference General Office On Issuing The 'Chongqing Municipal List Of Disciplinary Measures For Trust-Breaking (2024 Version)'), issued 30 November 2024, http://www.zhongxian.gov.cn/bm/zxfgw/gggsfzggw/202412/P020241203462116090465.pdf archived at https://web.archive.org/web/20250706145834/http://www.zhongxian.gov.cn/bm/zxfgw/gggsfzggw/202412/P020241203462116090465.pdf.

[1240] These serve to remind addressees of the rules, for instanced in the form of a "trustworthiness chat": Art. 14, 江苏省自然人失信惩戒办法（试行）(Jiangsu Province Measures For Disciplining Trust-breaking Natural Persons (Trial)), issued by the 江苏省人民政府办公厅 (General Office of the People's Government of Jiangsu Province) on 28 May 2013, https://www.jiangsu.gov.cn/art/2013/5/28/art_46723_2607308.html, archived at https://web.archive.org/web/20250824195829/https://www.jiangsu.gov.cn/art/2013/5/28/art_46723_2607308.html.

[1241] See also: *Kui Shen: The rule of law approach*, p. 42.

[1242] Arguing that in fact most disciplinary measures for trust-breaking, including shaming, are administrative punishment: Jianmiao Hu 胡建淼 (2017) "黑名单"管理制度——行政机关实施"黑名单"是一种行政处罚 (The blacklist management system – 'Blacklists' implemented by administrative organs are a type of administrative punishment), 人民法治 (People's Rule by Law) 5/2017, p. 83.

Notably, the last amendment to the APL extended the catalogue of punishment measures that require a legal basis by several items that feature strongly in disciplining for trust-breaking repertoire.[1243] Specifically, the item "ordering for suspension of production or business 责令停产停业" was supplemented by "restricting production, operations and employment."[1244] More importantly, apart from "warnings", the item "circulation of criticism 通报批评" was added. Even though "circulation of criticism" is a practice long existing across departmental regulations and not necessarily connected to social credit information, some argue that it covers reputational disciplinary measures for trust-breaking.[1245] In any case, the amendment also first includes an abstract definition of administrative punishment (as laid out above) and any measure that fulfils the definition may constitute administrative punishment regardless of whether they are listed in Art. 9's exemplary list of administrative punishments.[1246] Since the APL amendment, therefore, the quest for a legal basis of disciplinary measures for trust-breaking has become more pressing. Where such a basis is lacking, there exists a risk that credit disciplining "is used to impose administrative punishment in disguise"[1247]. In what follows, I evaluate whether the group of disciplinary measures for trust-breaking that is not indicated as "reducing rights or increasing obligations" in fact does not do so.

Bans on occupations listed in the National List of Disciplinary Measures as "not reducing rights or increasing obligations" may implicate the right to employment as laid down in Art. 42 of the Constitution.[1248] Art. 42 covers the freedom to choose an occupation[1249] as well as employment in public office[1250], both of which are implicated by social credit

[1243] See also, Jamie P. Horsley (2021) "China's revised Administrative Punishments Law: Strengthening due process and implications for social credit enforcement", Memo published by the Paul Tsai China Center, Yale University, December 2021, https://law.yale.edu/sites/default/files/area/center/china/horsley_apl_revision_memo.pdf, archived at https://web.archive.org/web/20250820135745/https://law.yale.edu/sites/default/files/area/center/china/horsley_apl_revision_memo.pdf, p. 8.

[1244] "限制开展生产经营活动、责令停产停业、责令关闭、限制从业"

[1245] *Binglin Tan: Disciplining trust-breaking*, p. 37; Haihua Huang 黄海华 (2020) 行政处罚的重新定义与分类配置 (The redefinition of administrative punishment and the allocation of its categories), 华东政法大学学报 (ECUPL Journal) 4/2020, pp. 33-37; Mang Zhu 朱芒 (2021) 作为行政处罚一般种类的"通报批评" ('Circulating criticism' as a general type of administrative punishment), 中国法学 (China Legal Science) 2/2021, pp. 148-165; suggesting "circulation of criticism" should cover reputational disciplining of trust-breaking: Lin Tian 田林 (2020) 行政处罚与失信惩戒的立法方案探讨 (Discussing legislation plans for administrative punishment and disciplines for trust-breaking), 中国法律评论 (China Law Review) 5/2020, pp. 10-17.

[1246] *Binglin Tan: Disciplining trust-breaking*, p. 36.

[1247] Kai Cui 崔凯 (2019) 上海社会信用立法：促进与路径 (Legislating social credit in Shanghai: Promotion and path), 地方立法研究 (Local Legislation Journal) 4(2), pp. 36-49, p. 47. Similarly, see Jeremy Daum (2018) "The redlists are coming! The blacklists are coming!" China Law Translate, 30 March 2018, https://www.chinalawtranslate.com/en/the-redlists-are-coming-the-blacklists-are-coming/#_edn2; *Binglin Tan: Disciplining trust-breaking*, p. 42.
For a compelling argument for not designating disciplinary measures for trust-breaking administrative punishments but instead a new type of administrative act that require its own framework of procedures, see Wenkai Liu 刘文凯 (2023) 信用行政惩戒不宜定性为行政处罚 (Improperness of regarding credit administrative disciplines as administrative punishment), 政法论坛 (Tribune of Political Science and Law) 3/2023, pp. 55-67.

[1248] Some such bans are listed in category one, too, and were therefore addressed above already.

[1249] *Shuo Li: On the legality*, p. 146.

[1250] *Yin Jia: Constitutionalizing*, p 105.

disciplinary measures such as lifelong bans on running a school and teaching.[1251] The indicated legal basis in the National List of Disciplinary Measures are two CPC and State Council joint documents, not a law. Tellingly, some types of occupation bans are in fact listed as "reducing rights or increasing obligations" in the National List of Disciplinary Measures and feature a respective legal basis. The "ban from taking positions as directors 董事, supervisors 监事, and senior managers of a company for a period of time" for instance, likewise touching upon the right to employment,[1252] is listed with its basis in laws or State Council Regulations.[1253] This makes the lack of a legal basis for similar measures even more questionable.

Further, consumption bans, also listed in both categories, as well as reputational measures which are not listed as "reducing rights or increasing obligations" at all may infringe upon property rights.[1254] The PRC Constitution in Art. 13 protects means of livelihood such as income and housing and since its amendment in 2004 also consumption goods and capital.[1255] Most crucially, the mere reputational effect that social credit disciplinary measures such as the disclosure of negative social credit information including shaming encompasses impacts property rights.[1256] Such measures have led to the termination of entire businesses, especially big construction companies relying on public contracting. The case of Tianheng Investment Construction Management Ltd. from Hangzhou exemplifies the harm: Its blacklisting resulted in a de facto end of contracting and, after three instances of unsuccessful administrative litigation, the bankruptcy of the firm.[1257] The Civil Code acknowledges that where

[1251] 国家发展改革委 中国人民银行关于印发《全国公共信用信息基础目录（2025年版）》和《全国失信惩戒措施基础清单（2025年版）》的通知 (Notice Of The NDRC And The PBoC On Issuing The 'National Basic Catalogue Of PCI' And The 'National Basic List Of Disciplinary Measures For Trust-Breaking'), issued 14 March 2025, https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm, archived at web.archive.org/web/20250331232307/https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm.

[1252] *Yin Jia: Constitutionalizing*, p. 105; *Shuo Li: On the legality*, p. 146.

[1253] E.g., Art 55, 非银行支付机构监督管理条例 (Regulation on the Supervision and Administration of Non-bank Payment Institutions), issued by the State Council on 24 November 2023; Art 20 and 54, 未成年人网络保护条例 (Regulations on the Protection of Minors in Cyberspace), issued by the State Council on 16 October 2023.

[1254] Respective arguments are forwarded by *Xing and Yu: On the application*, p. 103; *Shuo Li: On the legality*, p. 146; Property rights 财产权 in particular are in question: Yan Lin 林彦 (2020) 信用惩戒制度对行政法治秩序的结构性影响 (The institutional influence of the credit disciplining system on the order of administrative rule of law), 交大法学 (SJTU Law Review) 4/2020, pp. 86-96, p. 93; Xiaoying Zhang 张晓莹 (2019) 行政处罚视域下的失信惩戒规制 (The regulation of disciplining of 'trust-breaking' from the perspective of administrative punishment), 行政法学研究 (Administrative Law Review) 5/2019, pp. 130-144, p. 142; Guodong Chen 陈国栋 (2021) 缔约资格排除类信用惩戒的法治化路径 (The legal path of trust disciplining for contract qualification exclusion), 现代法学 (Modern Law Science) 43(1), pp. 105-114; *Ruixue Wang: Credit Tools*, p. 170; Junhai Liu 刘俊海 (2019) 信用责任: 正在生长中的第四大法律责任 (Credit liability: The fourth legal liability currently evolving), 法学论坛 (Legal Forum) 34(6), pp. 5-17, p. 16; *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 24.

[1255] On the amendment, see Zhaoguo Wang 王兆国 (2004) "关于《中华人民共和国宪法修正案(草案)》的说明 (Explanations of the draft amendments to the Constitution)", 中国人大 (The People's Congress of China), 25 March 2004.

[1256] Ruixue Wang 王瑞雪 (2018) 论行政评级及其法律控制 (Administrative ratings and their legal controls), 法商研究 (Studies in Law & Business) 3/2018, pp. 27-37; See also *Binglin Tan: Disciplining trust-breaking*, p. 37.

[1257] Zhejiang High People's Court 浙江省高级人民法院, 行政裁定书（2015）浙行申字第313号 (Administrative ruling no. 313), decided 26 August 2016.

individuals or organizations inflict reputational harm, they impact property rights.[1258] Where state agencies use adverse publicity, they, too arguably impact property rights. Administrative agencies may not just through blacklist publication impact property rights, but also by creating credibility assessments. "[...] their results can have a significant impact on the rights and obligations of the parties involved" and should therefore be based in statutory law.[1259]

The social credit measures of debarment from administrative contracting on the other hand, prevalent throughout the National List of Disciplinary Measures, local documents and MoU, does not impact the target subject's property rights. Public resources the subject did not own beforehand are not its property.[1260] Guodong Chen 陈国栋 maintains that this holds even if seen through the framework of the "new type of property rights 新型财产权", that is, the opportunity or legitimate interest in obtaining public resources from the state, often called second generation rights.[1261]

Reputational disciplining through the dissemination of blacklists may not just violate property rights but further reputational rights. A "right to reputation" may be derived from the personality rights 人格权 laid down in Art. 38 of the Constitution.[1262] Reputational social credit disciplinary measures taken by state agencies impact SCSP subjects' personality rights to different degrees.[1263] Some discussants extend this to include personal dignity,[1264] drawing parallels to older shaming practices like parading prostitutes and their clients in public squares.[1265] Harms to reputation are often irreversible.[1266] Despite of impacting SCSP subjects' legal rights and by scholars widely

[1258] Art. 1024, 民法典 (Civil Code), issued by the NPC on 28 May 2020.
[1259] Ruixue Wang 王瑞雪 (2018) 论行政评级及其法律控制 (Administrative ratings and their legal controls), 法商研究 (Studies in Law & Business) 3/2018, pp. 27-37; See also *Binglin Tan: Disciplining trust-breaking*, p. 34.
[1260] Guodong Chen 陈国栋 (2021) 缔约资格排除类信用惩戒的法治化路径 (The legal path of trust disciplining for contract qualification exclusion), 现代法学 (Modern Law Science) 43(1), pp. 105-114, p. 109.
[1261] Guodong Chen 陈国栋 (2021) 缔约资格排除类信用惩戒的法治化路径 (The legal path of trust disciplining for contract qualification exclusion), 现代法学 (Modern Law Science) 43(1), pp. 105-114, p. 110.
[1262] Arguing that from this there arises a right for citizens to state inaction: Yuanyuan Jia 贾媛媛 (2024) 统而分殊：大数据时代中国式信用权益保护新模式 (Unified and differentiated: A new model of Chinese style credit rights protection in the era of big data), 行政法学研究 (Administrative Law Review) 1/2024, pp. 40-51, p. 49. A right to reputation (名誉权) is also laid down in Art. 993, Civil Code. Art. 1029, Civil Code stipulates "credit rights".
[1263] *Yin Jia: Constitutionalizing*, p. 104-105; Xiaoying Zhang 张晓莹 (2019) 行政处罚视域下的失信惩戒规制 (The regulation of disciplining of 'trust-breaking' from the perspective of administrative punishment), 行政法学研究 (Administrative Law Review) 5/2019, pp. 130-144, p. 136; *Ruixue Wang: Credit Tools*, p. 170; Junhai Liu 刘俊海 (2019) 信用责任: 正在生长中的第四大法律责任 (Credit liability: The fourth legal liability currently evolving), 法学论坛 (Legal Forum) 34(6), pp. 5-17, p. 16. Arguing that therefore they should be considered in proportionality tests: *Zhongjing Men: Stigmatization*, p. 25.
[1264] *Yin Jia: Constitutionalizing*, p. 104-105; Comparing Europe and China, arguing that human dignity is implicated if state agencies disclose negative social scores: *Anja Geller: Social Scoring*, p. 62; see also: Ruixue Wang 王瑞雪 (2018) 论行政评级及其法律控制 (Administrative ratings and their legal controls), 法商研究 (Studies in Law & Business) 3/2018, pp. 27-37, p. 35.
[1265] Referring to pre-SCS practices of shaming prostitutes and clients in public squares: *Kui Shen: The rule of law approach*, p. 43.
[1266] *Ruixue Wang: The contemporary picture*, p. 447.

argued to constitute administrative punishment,[1267] reputational measures are in the National List of Disciplinary Measures treated as not reducing rights or increasing obligations.[1268] The legal bases cited for informational measures are largely merely Opinions of the State Council.

Another basis cited for reputational measures are the Open Government Information Regulations (OGIR).[1269] Given that their purpose is to further government transparency, it is questionable whether they can provide a proper basis for publicity of the purposefully punitive sort. Every act of disclosure of unlawful behaviour has two faces: informing the public about the administration's decision-making ('open information' in the OGIR spirit) and exerting influence on the target subject through leveraging public opinion (as in reputational disciplining, section 3.2.2.).[1270] Teleologically, the OGIR do not encompass the punitive element. They address the disclosure of certain types of administrative decisions, excluding the moral message that makes blacklists and other types of social credit information disclosure potent carriers of shaming.

A more tenable legal basis for shaming measures, also cited in the National List of Disciplinary Measures, are the State Council's Temporary Regulations on the Publication of Enterprise Information, which explicitly provide for the disclosure of social credit information and blacklists.[1271] That said, a growing number of laws integrate provisions on the publication of social credit records. For instance, as of its amendment in 2019, the Anti-Unfair Competition Law explicitly stipulates that businesses which were punished for engaging in unfair competition may have respective social credit records published.[1272] Similarly, the Anti-Telecommunication Fraud Law of 2022[1273] and the Wild Animal Conservation Law as amended in 2022,[1274] both include provisions on recording and publishing negative social credit information.[1275] Other laws that have recently undergone amendments however did not integrate a legal basis for credit information

[1267] Jianmiao Hu 胡建淼 (2017) "黑名单"管理制度——行政机关实施"黑名单"是一种行政处罚 (The blacklist management system – 'Blacklists' implemented by administrative organs are a type of administrative punishment), 人民法治 (People's Rule by Law) 5/2017, p. 83; Xiaoying Zhang 张晓莹 (2019) 行政处罚视域下的失信惩戒规制 (The regulation of disciplining of 'trust-breaking' from the perspective of administrative punishment), 行政法学研究 (Administrative Law Review) 5/2019, pp. 130-144, p. 139.

[1268] For dissenting opinions, arguing that reputational measures are not administrative punishment, see *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 20; *Wei Fan: The legal character*.

[1269] 政府信息公开条例 (Open Government Information Regulations), issued by the State Council 17 January 2007, amended 3 April 2019.

[1270] Chao Dai 戴超 and Lingyun Yu 余凌云 (2020) 论作为声誉罚的公布违法事实行为 (On disclosure of law violations that constitutes reputational punishment), 公安学刊———浙江警察学院学报 (Public Security Science Journal———Journal of Zhejiang Police College), 2/2020, pp. 70-77, p. 74; *Wei Fan: The legal character*, p. 100.

[1271] 企业信息公示暂行条例 (Regulations on Enterprise Information Disclosure), issued by the State Council on 7 August 2014, amended 10 March 2024.

[1272] Art. 33, 反不当竞争法 (Anti-Unfair Competition Law), issued by the NPC Standing Committee on 2 September 1993, last amended 27 June 2025.

[1273] Art. 31 (2), 反电信网络诈骗法 (Law On Countering Telecommunication And Network Fraud), issued by the NPC Standing Committee on 2 September 2022.

[1274] Art. 47, 野生动物保护法 (Wildlife Protection Law), issued by the NPC Standing Committee on 8 November 1988, last amended 30 December 2022.

[1275] Also, Art. 108, 旅游法 (Tourism Law), issued by the NPC Standing Committee on 25 April 2013, last amended 26 October 2018; Art. 71, 网络安全法 (Cybersecurity Law), issued by the NPC Standing Committee on 7 November 2016.

publication, [1276] even though reputational disciplining is practiced by relevant law enforcing agencies. Thereby, some reputational measures operational as evident from documents by local agencies remain without legal basis.

With regard to *protecting legal rights and interests*, this integration of legal bases for reputational measures however does not solve the question of whether they constitute administrative punishment and would therefore be bound by the procedural rules of the APL.[1277]

4.1.1.3. Conclusion

A nominal legal basis exists for most disciplinary measures for 'trust-breaking' that are designated as administrative punishments. Some of the measures, however, are only based in policy documents. Further, the National List of Disciplinary Measures makes several provisions which contravene the requirement for a legal basis of administrative punishments in the APL, including that disciplinary measures may be based on joint CPCCC-State Council documents and that local state agencies may continue to create their own disciplinary measures under the auspices of the NDRC. Finally, arguably, the principle of law-based administration is at risk from the application of punishments in one law for violations stipulated in another. These linkages created where state agencies jointly carry out disciplining of 'trust-breaking' risk undermining the principle of the law-based administration.

Secondly, I examined whether those measures that in SCSP policy are designated as not amounting to administrative punishment nevertheless do impact SCSP subjects' rights to an extent that they require a basis in the law. I find that many of the disciplinary measures do not amount to administrative punishment but constitute other, largely internal administrative acts. Several measures however, unfold evident detrimental impact on a range of SCSP subjects' rights. The greatest risk pose measures applied in the course of the SCSP mechanism of reputational disciplining. They are regularly treated as informational measures and based in government transparency laws, which gravely disregards their punitive power. Some recent amendments of laws included the recording and publication of negative social credit information, affording the measures the required legal basis.

In sum, most of the problems of SCSP practices with regard to the principle of law-based administration can easily be mended by respective amendments in the law and more resolute banning of certain disciplinary measures. However, the systemic innovation of joint agency action to discipline 'trust-breakers' can hardly be accommodated by such small fixes and would require a broader reform reaching into the Legislation Law, the APL and other principles of administrative law.

[1276] Some only declare that in the respective realm, a credit record system in accordance with the State Council policies will be built , e.g. Art. 66, 能源法 (Energy Law), issued by the NPC Standing Committee on 8 November 2024; Art. 60, 矿产资源法 (Mineral Resources Law), issued by the NPC Standing Committee on 8 November 2024.

[1277] See section 4.2.

4.1.2. The proportionality principle

"It is no secret that in recent years, due to the lack of national superior laws, some local governments have failed to properly understand and follow the principles of legality and proportionality when promoting social credit governance, have over-exerted themselves, and incited some critical voices."[1278]

- Peixin Luo 罗培新

The proportionality principle is a method more than a standard, to assess whether a measure taken by a state agency against a private entity is commensurate with its goal or excessive. The proportionality principle consists of four sequential tests: (1) whether the measure taken by an administrative agency pursues a legitimate aim, (2) whether it is suitable to achieve that aim (suitability 适当性); (3) whether there are any less restrictive measures for achieving the aim (necessity 必要性); and (4) whether the effects of the measure are proportionate to the aim pursued (balancing, or proportionality stricto sensu).[1279]

PRC law itself does not posit a general proportionality principle. However, the State Council in 2004 ordered that a general proportionality principle is applicable to all administrative acts.[1280] Further fostering the principle's authority, legal scholarship has developed the proportionality principle[1281] and courts widely apply it in their decisions.[1282] The SPC has endorsed court decisions in which judges applied the proportionality principle.[1283] PRC Courts in their adjudication reportedly altered the principle towards placing more emphasis on collective interests than individual rights which constrains its function in overseeing governmental power.[1284]

Most crucially for SCSP disciplinary measures, the APL requires in Art. 5(2) that

[1278] Peixin Luo 罗培新 (2021) 法理明晰 切中肯綮 有力助推营商环境优化——解读《国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见》(Clear jurisprudence, hitting the right mark, and effectively promoting the optimization of the business environment – interpreting the Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-Breaker Constraint System And Building A Long-Term Mechanism For Credit Construction), 中国经贸导刊 (China Economic & Trade Herald) 2021/1, pp. 11-13.

[1279] Following the general model outlined by Aharon Barak (2012) *Proportionality. Constitutional rights and their limitations*, Cambridge University Press, pp. 243-370.

[1280] Requiring measures adopted by the administration to be "necessary and appropriate": Art. 5 (2), 国务院关于印发全面推进依法行政实施纲要的通知 (Notification Of The State Council Concerning Issuing The Implementation Outline For Comprehensively Promoting Law-based Administration), issued 22 March 2004.

[1281] It is the most-cited principle in legal scholarship assessing the legality of SCSP measures. Describing it as "generally accepted by the theory of public law and judicial review practice in China": *Kui Shen: The rule of law approach*, p. 39.

[1282] Hannah Klöber: Dissertation draft, Cologne University East Asia Institute, 2025; Cheng-Yi Huang and David S. Law (2016) Proportionality review of administrative action in Japan, Korea, Taiwan, and China, in Francesca Bignami and David Zaring (eds.) *Research Handbook in Comparative Law and Regulation*, Cheltenham: Edward Elgar; Shiling Xiao (2023) State-centric proportionality analysis in Chinese administrative litigation, *International Journal of Constitutional Law* 21(2), pp. 461–487.

[1283] See "陈宁诉庄河市公安局行政赔偿纠纷案" (Chen Ning Sues the Zhuanghe Municipal Public Security Bureau for Compensation Case), 最高人民法院公报 (SPC Gazette), 2003/3.

[1284] Shiling Xiao (2023) State-centric proportionality analysis in Chinese administrative litigation, *International Journal of Constitutional Law* 21(2), pp. 461–487.

> "the decision and enforcement of administrative punishments must be based on fact and should be proportional to the facts, nature, situation and degree of social damage caused by the illegal act."

Recent local legislation on social credit incorporate the requirement of proportionality regarding social credit disciplinary measures,[1285] judges call for its application in SCSP practices,[1286] and courts have conducted partial proportionality tests when evaluating SCSP measures.[1287] In 2020, the State Council required that social credit disciplinary measures adhere to proportionality.[1288] The proportionality principle is the most-common mentioned legal principle that legal scholarship requires SCSP practices to adhere to, with some describing it as the "golden clause"[1289]. Although the SCS Building Draft Law does not explicitly include it, it is according to scholars who are close to the drafting process likely to surface in future legislation on the SCSP.[1290] Strictly speaking, as a principle of administrative law, it does not apply to civil compulsory enforcement, but the SPC has made clear that the people's courts are to adhere to the principle of proportionality, too, when taking measures to discipline 'trust-breaking' judgment defaulters.[1291]

Do practices emerging under the SCSP satisfy the requirements of the proportionality principle? The following tests the SCSP mechanisms described in section 3.2. with regard to their legitimate aim, suitability, necessity, and proportionality strictu sensu in turn.[1292] In the interest of space, I do not conduct a thorough proportionality test for each of the SCSP practices as their significant diversity would command. Instead, I highlight issues of particular measures and common traits that stand out as striking in each of the sub-tests based on court decisions, legal and policy documents, and the literature.

4.1.2.1. Legitimate aim: a broad hodgepodge

First, scholarly consensus and courts generally confirm that social credit disciplinary measures have a *legitimate aim*.[1293] That said, the aims identified differ widely. Under the broad 'raising levels of trust' imperative, multiple, to some extent contradictory aims

[1285] E.g., Art. 36, 重庆市社会信用条例 (Chongqing Municipal Social Credit Regulations), issued by the Chongqing City People's Congress Standing Committee on 27 May 2021; Art. 32, 上海市社会信用条例 (Shanghai Municipal Social Credit Regulations), issued by the Shanghai Municipal People's Congress Standing Committee on 13 June 2017, Art. 36, 广东省社会信用条例 (Guangdong Province Social Credit Regulations), passed by the Guangdong Provincial People's Congress Standing Committee on 18 March 2021.

[1286] *Lü and He: An analysis of the path to legal regulation*, p. 137.

[1287] See sections below.

[1288] 国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见 (Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-Breaker Constraint System And Building A Long-Term Mechanism For Credit Construction), issued 18 December 2020.

[1289] "金字条款": Peixin Luo 罗培新 (2021) 法理明晰 切中肯綮 有力助推营商环境优化——解读《国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见》(Clear jurisprudence, hitting the right mark, and effectively promoting the optimization of the business environment – interpreting the Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-Breaker Constraint System And Building A Long-Term Mechanism For Credit Construction), 中国经贸导刊 (China Economic & Trade Herald) 2021/1, pp. 11-13, p. 12.

[1290] HK02.

[1291] 最高人民法院对十三届全国人大四次会议第 5927 号建议的答复 (SPC Reply To Suggestion No. 5927 Of The Fourth Session Of The 13th NPC), issued 5 July 2021.

[1292] A measure by measure assessment is beyond the scope of this work.

[1293] Representing many, *Kui Shen: The rule of law approach*.

have been pointed to.[1294] For instance, the purpose of credibility assessments, a court held, is not to sanction unlawful behaviour as is the case for administrative punishment. Instead, it is to assess the "risk of trust-breaking" of entities, "thereby preventing them from further harming the public interest".[1295] With regard to shaming measures, courts identified "raising the levels of trustworthiness in the whole society" [1296] and implementing the Socialist Core Values[1297] as the legitimate aims.[1298] These purposes are so broad that they dissolve into different regulatory goals in practice and argue that therefore, the selection of the legitimate aim when assessing the proportionality of a measure needs to be judged case-by-case.[1299]

Scholars and courts have also argued that the legitimate aim of reputational SCSP measures is government transparency, invoking language of China's open government information regime.[1300] For instance, the Shandong High People's Court confirmed that reputational disciplinary measures against Huatai Rubber Ltd. fall within government transparency ambitions. Huatai had sued the local environmental protection agency to halt publication of its blacklisted status and pay compensation for the infliction of economic and mental harm 精神损失. Even though the agency's actions were based not in law but a local Party opinion document on building sincerity, the court rejected the claim, arguing that social credit information recording, blacklisting, and publication constitute transparency work mandated in Art. 54 of the Environmental Protection Law.[1301]

A legitimate aim that may in the future solidify and lends itself to SCSP practices, especially CBR, is government data sharing. The Government Data Sharing Regulations passed by the State Council in 2025 elevate intra-agency information exchange to a top priority and possibly a purpose in its own right.[1302] Especially credibility assessments may in the future be legitimized by reference to government data sharing.

[1294] Summing up: Chuangyu Fu 伏创宇 (2023) 信用惩戒适用行为人责任的法理及其限度 (Legal theory and limitations of the actor's responsibility in the application of credit disciplines), 法学研究 (Chinese Journal of Law) 6/2023, pp. 37-52: "it is difficult to clarify the purpose of credit punishment and the legitimacy of this purpose. Even in academic discussions, there are still many opinions and no conclusion is reached on whether credit punishment should focus on sanctions, risk prevention, or both."

[1295] Yubei District People's Court 重庆市渝北区人民法院, 行政裁定书（2024）渝0112行初3号 (Administrative ruling no. 3), decided 1 July 2024.

[1296] *Yin Jia: Constitutionalizing*, for a different opinion arguing that the MoU merely link to the formal legal basis, see *Honghai Bi: Old regulatory wine*.

[1297] Yajuan He 和亚娟 (2019) "黑名单"制度的属性、功能及其边界控制 (Attributes, functions and controlling the limits of the 'blacklist' system), 贵州警官职业学院 (Journal of Guizhou Police Officer Vocational College) 4/2019, pp. 27-35.

[1298] Similar: Feixi County People's Court 安徽省肥西县人民法院, 行政裁定书（2020）行政裁定书皖0123行初20号 (Administrative ruling no. 20), decided 21 December 2020; Fujian High People's Court 福建省高级人民法院, 行政裁定书（2017）行政裁定书闽行申509号 (Administrative ruling no. 509), decided 18 January 2017.

[1299] See also: *Yin Jia: Constitutionalizing*, p. 106.

[1300] See the discussion in section 4.1.1 of whether the OGIR can function as legal basis for reputational disciplinary measures.

[1301] Shandong High People's Court 山东省高级人民法院, 行政裁定书 （2017）鲁行申266号 (Administrative ruling no. 266), decided 20 September 2017.

[1302] 政政务数据共享条例 (Government Data Sharing Regulations), issued by the State Council on 28 May 2025.

4.1.2.2. Suitability: Not yet proven

Where a legitimate aim is given, the proportionality principle next requires an evaluation of whether measures are *suitable* to achieve the aim. As the discussion of the effectiveness of SCSP mechanisms in the respective discussion sections of section 3.2. shows, it is not yet proven whether SCSP measures such as spreading blacklists of 'trust-breakers' do further the goal of raising trust levels including to better enforce laws and judicial decisions. As Chun Peng 彭纯 writes:

> "When credit regulation[1303] reduces the violations of both the violating and non-violating regulated persons at a given level of resource input, it is effective, otherwise it is ineffective. The real substantive legitimacy challenge of credit regulation lies in its lack of effectiveness."[1304]

Regulatory shaming for instance generally unfolds a strong deterrent effect and impacts decision-making so that the target subject is effectively pushed to comply. However, it may just as well be ignored or even generate counter-publicity against the state agency instead.[1305] A comprehensive evaluation of the different shaming measures with regard to the factors that render them effective is yet to be conducted. The effectiveness of reputational measures in achieving the overarching goal of enhancing levels of societal trust likewise is far from well-evidenced and much harder to prove, as this goal remains abstract and hardly quantifiable.[1306] Broadly speaking, reputational social credit measures involve the public in enforcing laws, potentially "strengthening the people's solidarity with the law".[1307] On the other hand, information recipients can strategically twist measures and deliberately report market competitors, behaviour contrary to the SCSP's aim to raise levels of trust in society.[1308]

Consumption bans imposed on 'trust-breaking' judgment defaulters in particular are questionable with regard to their *suitability* to reach the aim of making defaulters fulfil court decisions. Usually, consumption bans are applied to enforce court decisions which order to pay debts. Courts blacklist those judgment defaulters who have assets but are not willing to pay.[1309] However, in several localities, judgment defaulters are indiscriminately blacklisted before an assessment of their assets has even been concluded,[1310] a problem that recent issuance of Typical Cases by the SPC attempts to counter.[1311] Consumption bans are then especially counter-productive. For independent

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[1303] 信用监管, here translated to credit regulation rather than CBR because Chun Peng refers to the entire set of SCSP mechanisms rather than just CBR in the narrow sense.

[1304] Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 53.

[1305] Section 3.2.2.

[1306] See also, *Kui Shen: The rule of law approach*, p. 40.

[1307] *Zhongjing Men: Stigmatization*, p. 23.

[1308] *Zhongjing Men: Stigmatization*, p. 23.

[1309] Art 1(1), 最高人民法院关于公布失信被执行人名单信息的若干规定 (Several Provisions Of The SPC On The Disclosure Of Trust-Breaking Judgment Defaulter List Information), issued 1 June 2013.

[1310] BJ03; Jianfei Xu 许建飞 and Yi Zhao 赵伊 (2022) 失信被执行人信用修复机制的优化路径——以扬州法院2016年至2020年失信惩戒与信用修复数据为例 (Towards optimizing the credit repair mechanism for trust-breaking judgment defaulters – data on credit repair and disciplining for trust-breaking from 2016 to 2020), 内蒙古农业大学学报（社会科学版） (Journal of Inner Mongolia Agricultural University (Social Science Edition)), 4/2022, pp. 71-76, p. 74.

[1311] WeChat Account of the SPC (2025) "最高人民法院发布严格区分失信、失能被执行人强化信用修复典型案例 (The SPC issued typical cases of credit repair, strictly differentiating between trust-breaking and

businesspeople and owners of micro, small and medium sized enterprises, mobility is essential for conducting business in many fields, and bans on fast means of travel slows or halts business. As a result, profits that debtors must make in order to pay off their debt cannot be generated, a phenomenon that businesspeople dubbed "killing the goose that lays the golden egg 杀鸡取卵"[1312].

The *suitability* of CBR practices is likewise not proven which is particularly notable given that high expectations accompany the application of assessment technologies and automated decision-making applications throughout CBR.[1313] Accounts evaluating the *suitability* of algorithmic scoring systems applied in governance beyond China called to question the general assumptions regarding such applications' neutrality, objectivity and efficiency, and demand a thorough evaluation of each single application within the context of their use.[1314] Building trustworthiness assessment systems that improve and not just accelerate administrative decision-making is arguably the most difficult technical challenge the SCSP poses.

4.1.2.3. Necessity: Overreach effects

The third requirement of the proportionality test, *necessity,* demands that among measures available to an administrative agency to achieve its goal, the least damaging is chosen.[1315] It is here where SCSP practices fail most often.

Social credit disciplinary measures are not the mildest possible method because the original set of sanctions that is imposed on violators of law, simple administrative punishment, may already achieve the purpose.[1316] On the other hand however, the imposition of additional measures per se is not in principle at odds with *necessity*. It may well be the case that the existing law enforcement measures, are inadequate and require social credit-fuelled support in order to even be suitable to reach the enforcement goals.[1317] Chances of SCSP practices to pass the *necessity* test are better the more nuanced and fine-grained trustworthiness assessment scales are. The NDRC's social credit information platform Credit China, since 2019, differentiates in its disclosure of administrative punishment decisions between "regular trust-breaking behaviour 一般失

unable judgment defaulters", 25 July 2025, https://mp.weixin.qq.com/s/E3Fa4qI0lXtj9hdGOroYRA, archived at https://web.archive.org/web/20250725080719/https://mp.weixin.qq.com/s/E3Fa4qI0lXtj9hdGOroYRA (original post on the SPC website geo-blocked); explained by Jeremy Daum (2025) "Inability vs. unwillingness to satisfy judgments: Example cases for the court judgment defaulter list", China Law Translate, 25 July 2025, https://www.chinalawtranslate.com/en/example-cases-on-the-court-judgment-defaulter-list/.

[1312] For personal accounts of business owners on this, see William Zhengdong Hu (2022) No way out? The fate of 'dishonest judgment debtors' in China's Social Credit System, PhD Thesis submitted to the University of Warwick, Department of Sociology in December 2022, https://wrap.warwick.ac.uk/id/eprint/179311/1/WRAP_Theses_Hu_2022.pdf, p. 220-222 and p. 271.

[1313] Section 3.2.4.

[1314] See also, *Anja Geller: Social Scoring*, p. 52-53.

[1315] E.g., Quan Liu 刘权 (2016) 论必要性原则的客观化 (On the objectivization of the principle of necessity), 中国法学 (China Legal Science) 5/2016, pp. 178-195.

[1316] *Zhongjing Men: Stigmatization*, p. 24.

[1317] Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 51.

信行为" and "serious trust-breaking behaviour 严重失信行为".[1318] Some regulatory agencies devised a three-tier list system consisting of black, grey or yellow and red lists according to the severity of the trust-breaking behaviour.[1319] SAMR distinguishes between entities that have "irregularities in operations", "trust-breakers" and "serious trust-breakers"[1320], and has more fine-grained assessments for CBR.[1321] Where such more or less fine gradation of disciplining exists, measures are less likely to be more damaging than required to fulfil their purpose.

However, regardless of their severity, disciplinary measures for 'trust-breaking' may fail the *necessity* test because they restrict the targeted subject in more than just the field of wrongdoing. [1322] Banning persons from entering professions because of traffic rule violations designated as 'trust-breaking' behaviour is one case in point.[1323] Further, the disciplinary measures often come with unpredictable and potentially devastating consequences for the target subject *and* its relatives. In Guangdong for instance, family members of persons refusing military service have financial benefits for military dependants cancelled.[1324] Given that families often live far apart, occupation bans and mobility restrictions may imply that children have to drop out of school,[1325] and caring for

[1318] 国家发展改革委办公厅关于进一步完善"信用中国"网站及地方信用门户网站行政处罚信息信用修复机制的通知 (NDRC General Office Notice On Further Improving The Administrative Punishment Information Credit Repair Mechanism On The 'Credit China' Website And Its Local Branch Websites), issued 30 April 2019, https://www.gov.cn/zhengce/zhengceku/2019-09/29/content_5434745.htm, archived at https://web.archive.org/web/20250911103344/https://www.gov.cn/zhengce/zhengceku/2019-09/29/content_5434745.htm.

[1319] Art. 9, 烟台市人力资源和社会保障局关于印发《烟台市人力资源服务机构信用等级评定暂行办法(试行)》的通知 (Notice Of The Yantai Municipal Human Resource And Social Security Bureau On Issuing The "Yantai City Human Resource Service Institutions Credit Grading Temporary Measures (Trial)"), issued 26 January 2025; Art. 23, 内蒙古自治区交通运输厅关于印发《内蒙古自治区公路养护作业单位资质管理实施细则(试行)》的通知 (Notice Of The Inner Mongolia Autonomous Region Traffic And Transportation Office On Issuing The "Inner Mongolia Autonomous Region Public Highway Maintenance Work Units Resource Management Detailed Rules (Trial)"), issued 31 December 2021.

[1320] https://www.gsxt.gov.cn/.

[1321] 市场监管总局关于推进企业信用风险分类管理进一步提升监管效能的意见 (Opinions Of The SAMR On Advancing Corporate Credit Risk Classification Management And Further Elevating the Effectiveness Of Regulation), issued 13 January 2022.

[1322] Yajuan He 和亚娟 (2019) "黑名单"制度的属性、功能及其边界控制 (Attributes, functions and controlling the limits of the 'blacklist' system), 贵州警官职业学院 (Journal of Guizhou Police Officer Vocational College) 4/2019, pp. 27-35, p. 33.

[1323] Co-drafter of Shanghai SCS regulations Kai Cui 崔凯 (2019) 上海社会信用立法：促进与路径 (Legislating social credit in Shanghai: Promotion and path), 地方立法研究 (Local Legislation Journal) 4(2), pp. 36-49, p. 47.

[1324] Regarding this as an undue punishment of not the "trust-breaker" but her/his family: *Kui Shen: The Prohibition of improper connection*, p. 11, citing Art. 8, 广东省人民政府 广东省军区印发广东省关于拒绝、逃避服义务兵役行为处罚办法（暂行）的通知 (Notice Of The Guangdong Provincial Government And The Guangdong Provincial Military District On Issuing The Measures On Punishing The Refusal And Dodging Of Military Service), issued 20 September 2018, https://www.gd.gov.cn/zwgk/wjk/qbwj/yfh/content/post_147323.html, archived at https://web.archive.org/web/20250807101511/https://www.gd.gov.cn/zwgk/wjk/qbwj/yfh/content/post_147323.html.

[1325] With regard to consumption bans: William Zhengdong Hu (2022) No way out? The fate of 'dishonest judgment debtors' in China's Social Credit System, PhD Thesis submitted to the University of Warwick, Department of Sociology in December 2022, https://wrap.warwick.ac.uk/id/eprint/179311/1/WRAP_Theses_Hu_2022.pdf, p. 263.

elder or ill relatives is further complicated.[1326] The impact of realm-transgressing disciplining is further discussed in the section on the prohibition of improper connection (4.1.3.).

Reputational measures are generally problematic with regard to *necessity* because the punitive force of publishing negative social credit information is not predictable and largely beyond the state agency's scope of control.[1327] Unlike fines or prison terms, reputational punishment cannot be effectively limited to a time period.[1328] Even when time periods for publication are defined, the information may have long been forwarded by other actors in the form of screenshots, media reports, entries in private credit scores, and so on. Whether and how the punitive effect unfolds depends on who receives the information and how they decide to act upon it. Both can only to a limited extent be actively designed by the agency's choices of distribution channels, and a nuanced grading of the severity of 'trust-breaking'. In sum, the agency employing the shaming measures simply cannot itself assess whether a measure ultimately was the mildest possible option,[1329] rendering the *necessity* test to run empty.

Most doubts about reputational measures' *necessity* arise when they address individuals rather than organizations. Where shaming addresses individuals, personality rights are impacted.[1330] Reputational measures targeting 'trust-breaking' individuals is applied little by administrative agencies for regulatory work, and first and foremost by courts as they compile and publish blacklists to enforce judicial decisions.[1331] Courts' application of blacklists, as mentioned before, is not regulated under administrative law but civil procedure law, the proportionality principle per se thus does not apply. Still, the now shelved Civil Compulsory Enforcement Law draft in Art. 66(2) required that courts adjust levels of blacklisting to the severity of 'trust-breaking' behaviour. The law was retracted, but the legal authority on the matter, SPC Provisions of 2017, stipulate that severe 'trust-breaking' persons are subject to longer publication periods than regular 'trust-breakers'.[1332] In practice, courts barely limit their exposure activities accordingly. Instead, photos, employers, and other private information of the target subjects are disclosed in

[1326] On consumption bans: Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 109.
[1327] *Ruixue Wang: The contemporary picture*; on the risks of using publicity-based enforcement measures in general, see: Ernest Gellhorn (1973) Adverse publicity by administrative agencies, *Harvard Law Review* 86(8), pp. 1380-1441; Philipp Florian Irmscher (2019) *Öffentlichkeit als Sanktion. Bankaufsicht zwischen Repression und Prävention - Eine Einordnung des »naming and shaming« in das Sanktionssystem des KWG*, Mohr Siebeck, p. 341; Clemens Latzel (2020) *Verhaltenssteuerung, Recht und Privatautonomie*, Springer, p. 592.
[1328] In Friedman's words: It does not "have a clear beginning, middle, and end like a prison term." Lawrence M. Friedman (1975) *The Legal System: A Social Science Perspective*, Russell Sage Foundation, p. 103.
[1329] Chao Dai 戴超 and Lingyun Yu 余凌云 (2020) 论作为声誉罚的公布违法事实行为 (On disclosure of law violations that constitutes reputational punishment), 公安学刊———浙江警察学院学报 (Public Security Science Journal———Journal of Zhejiang Police College), 2/2020, pp. 70-77, p. 73.
[1330] See section 4.1.1.2.
[1331] Top-level design indicates that administrative punishment decisions pertaining to individuals are not to be pro-actively published by state agencies: Art. 15, *Credit Repair Measures (trial)*.
[1332] Art. 2, 最高人民法院关于公布失信被执行人名单信息的若干规定 (Several Provisions Of The SPC On The Disclosure Of Trust-Breaking Judgment Defaulter List Information), issued 1 June 2013.

most cases, leading to infringements of the proportionality principle.[1333] Ringtone announcements informing callers that the person they call is a 'trust-breaker' in particular do not pass the *necessity* test.[1334] Because in practice, a differentiated treatment of judgment defaulters barely occurs, shaming measures violate the proportionality principle, as far as it applies to civil compulsory enforcement.[1335]

Both reputational and JAD measures may reduce rights or increase obligations of persons beyond those that engaged in the trust-breaking conduct, possibly failing of the *necessity* test. Children, spouses, other family members, colleagues, neighbours, contractually related companies, and entire business communities of a 'trust-breaker' are regularly impacted by social credit disciplinary measures. This is especially the case for reputational measures – for instance, the stigmatization of one member of the business community of Wenzhouers in Hangzhou may tarnish the entire community's reputation[1336] – but it also applies to bans on private schooling which de facto impact children of 'trust-breakers'.[1337] Private school bans may restrict the right to education,[1338] which encompasses the right to secondary technical and vocational education, higher education, as well as the freedom to choose education institutions.[1339] Some hold against this that the right to education is not impacted as long as public schools remain accessible.[1340] However, private schools in China are the only schools that children without a local household registration can visit. A ban disproportionately affects migrant families who see themselves forced to send their children back to their hometowns to live with other relatives and visit school there ('left-behind children 留守儿童').[1341] Further, as shown above, a SCSP subjects' credibility assessment used in CBR is shaped, among other criteria, by records of firms one has business relationships with, and a company's credibility assessment is impacted by the behaviours of their legal representatives in private capacity.[1342]

Such measures punishing more than just the person who is designated a 'trust-breaker' may alienate into *lianzuo*, the historical legal practice of punishing relatives of the perpetrator or others in his vicinity.[1343] Most recently, the Legislative Affairs Commission

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[1333] As well as on the "肖像权 right of portraiture": Xiaoyu Li 李晓瑜 (2018) "智慧法院"背景下的失信惩戒档案公开与隐私保护 (The disclosure of trust-breaking disciplining files and privacy protection against the background of 'smart courts'), 档案与社会 (Archives and Society) 2/2018, pp. 127-129, p. 128.
[1334] *Xing and Yu: On the application*, p. 105.
[1335] See also: *Chunyan Ding: Judgment-defaulter blacklist system*, p. 439 ff.
[1336] HZS02.
[1337] See also, Yihong Peng 彭益鸿 (2017) 论失信被执行人失权 (On the loss of rights of trust-breaking judgment defaulters), 中山大学法律评论 (Sun Yat-Sen University Law Review) 15(1), pp. 24-53; *Luping Zhang: Administrative blacklists*; p. 109.
[1338] *Yin Jia: Constitutionalizing*, p. 105.
[1339] *Shuo Li: On the legality*.
[1340] Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 110.
[1341] HZS04; Yiping Zhao 赵一平 and Yi Huang 黄毅 (2022) 试论失信被执行人子女权利保障问题 (On the protection of rights of children of the trust-breaking persons subject to enforcement), 征信 (Credit Reference) 1/2022, pp. 59–65.
[1342] *Shen Yan and Boyang Wang: Credit assessment*, p. 42.
[1343] Shenggao Li 李声高 (2019) 失信治理连带责任的法理质辩与规则适用 (Jurisprudential questions on joint liability in the governance of trust-breaking and rule application), 法学杂志 (Law Science) 2/2019, pp. 125-132; *Shuo Li: On the legality*, p. 160; *Chunyan Ding: Judgment-defaulter blacklist system*, p. 435.

of the NPC's Standing Committee explicitly countered such overreaching punishment in the case of telecom fraudsters. Local police had restricted the families of suspected telecom fraudsters from certain government healthcare subsidies, access to urban schools for their children and public-sector employment. The Commission, upon conducting a legality review of the respective rules decided that

> "After study, we believe that any legal responsibility for unlawful or criminal conduct must rest with the perpetrator him or herself, and must not be extended or attributed to others; such is one of the fundamental tenets of modern rule of law. By restricting multiple rights of the family members of those involved in crimes, the relevant circulars violated the principle of bearing responsibility solely for one's own crimes, were inconsistent with the principles and spirits of the provisions in Chapter II of the Constitution concerning "citizens' fundamental rights and obligations," and were inconsistent with the principles and spirits of national laws and regulations governing matters such as education, employment, and social insurance."[1344]

This decision on the case of telecom fraudsters is one careful indication that the Legislative Affairs Commission might strike down SCSP practices that affect relatives of the trust-breaking SCSP subject, too.[1345]

Finally, many JAD setups provide for disciplinary measures for the representatives of organizations when the organization is designated a 'trust-breaker'. Provincial-level SCSP legislation widely includes provisions of this sort:

> "Where [...] relevant departments and units designate a legal person, a non-incorporated organization or others a seriously trust-breaking entity, it shall according to the state's relevant provisions enter its legal representative, general responsible person and the de facto controlling person and other personnel holding responsibility into the trust-breaking record.
>
> Where [...] relevant departments add credit subjects to the list of serious trust-breaking, they shall also according to the state's relevant provisions share the list with other departments and units through the public credit information platform." [1346]

For instance, as Jinyu Ldt. was blacklisted, its legal representative Mr. Yin faced corresponding disciplinary measures. [1347] This 'piercing of the corporate veil' may unnecessarily put the company law construct of limited liability at risk, judges reported.[1348]

[1344] Translation and explanation by Changhao Wei (2023) "China's top legislation-review body halts local governments' collective punishment of telecom fraudsters' families", NPC Observer, 29 December, https://npcobserver.com/2023/12/29/china-recording-constitutional-review-collective-punishment-telecom-fraud/.

[1345] For a review of SCSP rules' formal legality see section 4.2.2.1.

[1346] Art. 33, 重庆市社会信用条例 (Chongqing City Social Credit Regulations), passed by the Standing Committee of the Chongqing Municipal People's Congress on 27 May 2021.

[1347] Longgang District People's Court, 广东省深圳市龙岗区人民法院, 民事判决书（2019）粤0307民初19798号 (Civil judgment no. 19798), decided on 4 December 2019, basis: Art. 31, 深圳经济特区商事登记若干规定第 (Shenzhen Special Economic Zone Several Regulations on Commercial Registration), passed by the Standing Committee of the Shenzhen Municipal People's Congress on 30 October 2012, last amended 29 October 2020; Art. 57, 广东省商事登记条例 (Guangdong Province Commercial Registration Regulations), passed by the Standing Committee of the Guangdong Province People's Congress on 3 March 2015, amended on 29 November 2019; Art. 28, 深圳市公共信用信息管理办法 (Shenzhen City Public Credit Information Management Measures), passed by the Standing Committee of Shenzhen Municipal People's Congress on 12 May 2017.

[1348] HK03; SZ04.

In sum, SCSP measures, at the latest when they impact the rights and interests of a third person, fail the *necessity* test and thus are not proportional. Measures that pass the *necessity* test must further pass the *balancing* test as laid out below in order to be found proportional.

4.1.2.4. Balancing: Impossibility and the shrinking of discretion space

The *balancing* test under the proportionality principle, or *proportionality strictu sensu*, requires that the measure must not impose a burden that is excessive in relation to the legitimate aim. In this regard most striking is how spaces for administrative agencies to make respective considerations in the single cases are absent in many SCSP mechanisms they apply. The following discusses two particular features that strike problematic, namely the impossibility to exercise discretion adequately when imposing reputational measures, and the shrinking of spaces of administrative discretion in CBR.

As to the first, the legitimate aim of reputational measures is regularly defined as furthering government transparency.[1349] Reputational measures are thereby cast under the same aim as information disclosure carried out in the spirit of the OGIR that seeks to give the public information on intra-agency decision-making so that they can object to potentially unlawful administrative acts.[1350] With government information transparency as legitimate aim, *suitability* can be asserted in most instances, but the detrimental effects reputational measures can have on the target subject hardly further the legitimate aim of furthering a transparent government, they fail the necessity test.

Another aim proposed for reputational measures as laid out above is enhancing enforcement. Shaming measures run risk of both, not being *suitable* (the information might not reach the right audience, the audience might not care, the target subject itself might not care,...) and not being *necessary* (the information might be spread further than desired, create long-lasting stigma, trigger an overreaction,...). Reputational measures, then, may hardly pass the *balancing* test. The fact that once publicized negative social credit information escapes the control of the administrative agency casts doubt over the current design of regulatory shaming under the SCSP. Currently, blacklisting is one administrative decision that entails tangible punitive measures as well as reputational ones. Administrative agencies do not consider the effects of shaming separately, rather, they widely consider adverse information disclosure not as punishment at all but as annex to tangible disciplinary measures.[1351] Further, the very same act of disclosure can have very different impacts depending on the specific private and business environment of the SCSP subject, necessitating a careful, context-sensitive case by case consideration. The current setup, in which the blacklisting decision is the only one involving space for administrative discretion and a series of disciplinary measures automatically following from it in a blanket manner, defeats the exercise of balancing and produces disproportional outcomes.

[1349] Section 4.1.2.1.
[1350] *Ruixue Wang: The contemporary picture*, p. 454.
[1351] See section 4.1.1.

The second feature of SCSP practices that appears problematic in light of *proportionality strictu sensu* is the shrinking of administrative discretion spaces. Where spaces of administrative discretion shrink, a risk arises that agencies can no longer balance the burden imposed against the objective sought. This may result in excessive measures. Administrative discretion is to counter overly rigid application of law that would result in unjust outcomes by leaving space for the case workers' implicit knowledge of society and moral considerations based on it to enter.[1352]

First, the designation of an SCSP subject as a 'trust-breaker' gives rise to a series of disciplinary measures, however, case workers do not usually carefully weigh each of the disciplinary measures. One official explained: "The consequences of blacklisting are in the rules. [...] There is no time to go through every case."[1353] Even if space and time permitted a balancing of all envisaged disciplinary measures, the case worker of one regulatory agency unfamiliar with the punitive repertoire of other regulators can hardly grasp the exact impact of many of the measures, not to mention the reputational impact of adverse publicity. The agency imposing the measure on the other hand likewise has limited or no space for weighing the measure it imposes against the original purpose of the 'trust-breaking' designation. In some constellations, no discretion space is provided for, measures are directly imposed based on another agency's designation of somebody as 'trust-breaker' without any evaluation of the conduct itself:

> "[o]nce an authority first labels a particular behavior as trust breaking and places the actor on a blacklist, other authorities that proceed to inflict punishments on the actor are not bound to follow the normal procedures of decision making. That is, because the SCS mandates mutual recognition of the results of credit evaluation, authorities acting as "punishers" are not required to independently investigate the facts concerning the behaviour or judge its nature and merits according to their own expertise or the laws they administer. Instead, they automatically adopt the evaluator's findings and defer to the SCS platform's blacklists. The punishers exercise discretion only in determining whether the "trust-breaking" label gives rise to punishment under the rules of the SCS".[1354]

The second instance of shrinking discretion spaces concerns the CBR mechanism. In many CBR setups, the case worker is afforded a degree of discretion, that is, she uses the trustworthiness assessment as one reference point in decision-making. In practice, however, the credibility assessment recommends a decision, and the case worker rarely deviates from it. Even where only recommendations for decision-making such as trustworthiness assessments are produced by algorithmic systems to guide discretionary decision-making, they strongly impact human decision making.[1355] Chinese literature has dubbed the phenomenon of officials following automatically generated recommendations "discretion laziness/inertia 裁量怠惰"[1356]. Where human case

[1352] See section 3.2.4.3.
[1353] QZ03.
[1354] *Cheung and Chen: From datafication to data state*, p. 1154.
[1355] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 179.
[1356] Jing Li 李晴 (2022) 自动化行政处罚何以公正 (How can automated administrative punishment be just), 学习与探索 (Study & Exploration) 2/2022, pp. 72-81, p. 80. Judges, too, may in their decision-making overly trust technologies and fall prey to "discretion laziness": Yang Yu 于洋 (2024) 自动化行政处罚的司法审查 (Judicial review of automated administrative punishment), 比较法研究 (Journal of Comparative Law) 4/2024, pp. 194-208, p. 207, hereafter: *Yang Yu: Judicial review*. Also: "status quo bias", e.g. Richard H.

workers do detect irregularities and seek to correct them, the systems often lack flexible channels to do so[1357] or requires officials to spend valuable time formulating reasons for deviating from the decision suggested by the system. [1358] As a result, the use of assessment technologies in administrative decision-making throughout the CBR mechanism shrinks discretion spaces. Where assessment-based decision making involves automated elements, measurable indicators replace the subjective consciousness of case workers in discretionary decision-making, streamlining administrative decision outcomes. An automated decision cannot be considered a discretionary one because the technological application, however well-informed, lacks precisely the implicit knowledge of society that a human living in its midst has.[1359]

Further impeding the exercise of conscious administrative discretion is the fragmentation of the disciplining process, where trustworthiness assessments produced by algorithmic systems are inserted into administrative decision-making, there is no longer only one case worker presiding over the entire decision-making process. Instead, the processes of gathering relevant information to assess the case, setting the decision parameters, and finally making the decision are formally separated and partly outsourced.[1360] The case worker usually only sees the decision suggestion and has no insight into its process of becoming (even where the issue of the technical black box is not prevalent).[1361] A distance grows between the case worker and the matter and subject of the decision, leading to potentially excessive punishment.[1362]

Thaler and Cass R. Sunstein (2008) *Nudge. Improving decisions about health, wealth, and happiness*, Yale University Press, p. 34.

[1357] See, e.g., Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 158.

[1358] QZ03; CQ04 and WZ01.

[1359] Including their own respective conceptions of justice: Reuben Binns (2022) Human judgment in algorithmic loops: Individual justice and automated decision-making, *Regulation and Governance* 16, pp. 197-211, p. 205; see also, Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 214; Wolfgang Schulz et al. (2018) Study on the human rights dimensions of automated data processing techniques (in particular algorithms) and possible regulatory implications, Council of Europe Report, March 2018, https://edoc.coe.int/en/internet/7589-algorithms-and-human-rights-study-on-the-human-rights-dimensions-of-automated-data-processing-techniques-and-possible-regulatory-implications.html, p. 7; Mireille Hildebrandt (2018) Algorithmic regulation and the rule of law, *Philosophical Transactions of the Royal Society A* 376, http://dx.doi.org/10.1098/rsta.2017.0355, p. 2. The inclusion of a "human in the loop" has become a cornerstone in legislation around algorithmic regulation, see for instance Art. 22, General Data Protection Regulations (Regulation (EU) 2016/679), adopted by the European Parliament and the Council on 27 April 2016, OJ L 119/1 (hereafter GDPR).

[1360] See also: Jennifer Cobbe, Michael Veale, and Jatinder Singh (2023) Understanding accountability in algorithmic supply chains, 2023 ACM Conference on Fairness, Accountability, and Transparency (FAccT '23), 7 April, https://ssrn.com/abstract=4430778; On the "many hands problem", see Dennis F. Thompson (2017) Designing responsibility: The problem of many hands in complex organizations, in Jeroen van den Hoven, Seumas Miller and Thomas Pogge (eds): *Designing in ethics*, Cambridge University Press.

[1361] As official HQ01 explained the item "Upholding the smartness [智慧智能] of disciplining trust-breaking" as it features in the 重庆市社会信用体系建设联席会议办公室关于印发《重庆市失信惩戒措施清单（2024年版）》的通知 (Notice Of The Chongqing Municipal Social Credit System Building Joint Conference General Office On Issuing The 'Chongqing Municipal List Of Disciplinary Measures For Trust-Breaking (2024 Version)'), issued 30 November 2024, http://www.zhongxian.gov.cn/bm/zxfgw/gggsfzggw/202412/P020241203462116090465.pdf archived at https://web.archive.org/web/20250706145834/http://www.zhongxian.gov.cn/bm/zxfgw/gggsfzggw/202412/P020241203462116090465.pdf.

[1362] E.g., the case of automated traffic rule violation fines: Wenqing Zhou 周文清 (2022) 过程论视野下自动化行政行为的司法审查 (Judicial review of automated administrative acts through the lens of process

In sum, even where well-intentioned and trained human remain in the decision-making loop, it is impossible for them to meaningfully balance the burden against the aim. The space of discretion that forms an important moment in administrative decision-making for the official to consider the overall situation of the target subject and recognize potential excessive harm, closes.[1363]

4.1.2.5. Conclusion

The proportionality principle requires SCSP practices to pursue a legitimate aim, be capable of achieving it, use the least intrusive means, and avoid imposing an excessive burden. The broad outlook of the SCSP ('trust building 信用建设') makes it difficult to identify a concrete 'aim' to use for the analysis of the proportionality of its measures. The second test concerns the suitability of SCSP measures. Only for the SCSP mechanism of publicity-centred regulation, sufficient evidence indicates that it can reach goals of trust-building and law enforcement. Evidence for the effectiveness of the other SCSP mechanisms is lacking. Reputational sanctions may be ignored or backfire, mobility restrictions can impede a debtor's ability to remedy 'trust-breaking' behaviour, and CBR may fall short of expectations that it will deliver faster, fairer, or more accurate decisions.

Whereas suitability can in the absence of evidence for the SCSP mechanisms' effectiveness at least be assumed, most SCSP practices fail the necessity requirement. Key issues are that some measures affect individuals other than the actual 'trust-breaker'. More fine-grained trustworthiness assessments – such as tiered blacklists reflecting varying degrees of 'trust-breaking' – can reduce excessiveness, but a structural problem persists: certain SCSP measures inherently bypass administrative evaluation of necessity. For example, agencies cannot control the severity of reputational impacts, and when multiple agencies impose sanctions, no single authority can assess the full chain from behaviour to disciplinary outcome.

At the balancing stage – whether the burden imposed is disproportionate to the aim – reputational measures again raise the greatest concerns. When the stated aim is to build an open government information regime, their punitive effects become disproportionate. As with the necessity test, some SCSP practices pre-empt meaningful balancing altogether. In CBR, for instance, when administrative decisions rely on credibility assessments, the space for discretion, and thus for proportionality review, is narrowed.

theory), 行政法学研究 (Administrative Law Review) 1/2022, pp. 111-118, p. 117, hereafter: *Wenqing Zhou: Judicial review*.

[1363] "[I]n the worst case, the elimination of discretion, and the subsequent erosion of responsibility, can be used to prevent internal criticism, and to prevent the deviation from a problematic (or problematically codified) rule, despite its adverse impact. This approach might reinforce and automatise, at scale, illiberal and authoritarian interpretations of the law, while stifling the opportunity for critical reflection and remedial action." Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 218.

4.1.3. The prohibition of improper connection

"Of course, we have not yet found a perfect combination of behavioural information in the social credit profiles. It's hard [...] we need to conduct more experiments. We don't need even more legal restrictions, or we will never make progress, and the [...] prohibition of improper connection principle, for what?"

- Official tasked with designing credibility assessments[1364]

As introduced in section 3.1., the prohibition of improper connection principle (禁止不当联结原则[1365]) developed alongside and in response to SCSP building and was first codified in local SCSP legislation.[1366] This complicates using it as a standard to assess SCSP practices, because clear definitions and applications have not yet crystallized. I define the prohibition of improper connection principle as the requirement that an administrative action must be substantively and reasonably connected with its purpose. Pursuant to the prohibition of improper connection principle, administrative agencies must not consider normative or factual elements that have no connection to the purpose when making administrative decisions.[1367]

The prohibition of improper connection principle is fundamentally implicated by several SCSP practices.[1368] I discussed in Chapter three how credibility assessments are designed to integrate a wide range of behavioural records from multiple fields and how administrative decisions are systemically based on such assessments and other behavioural records sourced from beyond the deciding agency's jurisdiction. In particular, four aspects strike as potentially breaching the prohibition of improper connection principle:

1. Social credit disciplinary measures imposed may not be substantively and reasonably related to the behaviours that incurred them
2. When basing administrative acts on credibility assessments that are not just composed of compliance records but also composed of other records of social and moral behaviour as well as contract performance, administrative agencies may improperly enforce such norms, overstepping their authorized powers

[1364] JS01.

[1365] Two other terms appear to refer to the same principle: 关联原则 and 理性关联原则. See: *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 25.

[1366] For instance: "[t]he adoption of disciplinary measures against trust-breakers shall be related to the trust-breaking act, and correspond to the character, circumstances, and degree of the social impact of the trust-breaking act", Art. 25(1), 辽宁省社会信用条例 (Liaoning Provincial Social Credit Regulations), passed by the Liaoning Provincial People's Congress Standing Committee on 26 November 2021.

[1367] *Kui Shen: The Prohibition of improper connection*; Youyong Zhou 周佑勇 and Qianqian Du 杜茜茜 (2024) 论行政法上禁止不当联结原则的理论基础与基本内容 (On the principle of prohibition improper connection in administrative law: Theoretical foundation and fundamental elements), 华东政法大学学报 (ECUPL Journal) 4/2024, pp. 111-123, p. 112.

[1368] The very lead phrase of the SCS, "break trust in one area and you face restrictions everywhere 一处失信，处处受限", has alarmed scholars over possible violations of the prohibition of improper connection principle: *Shuo Li: On the legality*, p. 151; *Yin Jia: Constitutionalizing*, p. 106; Kai Cui 崔凯 (2019) 上海社会信用立法：促进与路径 (Legislating social credit in Shanghai: Promotion and path), 地方立法研究 (Local Legislation Journal) 4(2), pp. 36-49, p. 48; *Wang and Huang: On the legal constraints*, p. 107; *Binglin Tan: Disciplining trust-breaking*, p. 43.

3. Social credit information aggregation entails the linking up of behavioural records from different fields (for instance in the production of credibility assessments)
4. Several of the behaviours that are being turned into social credit norms may not be substantively related to 'trust'.

The following sections examine the four aspects in turn.

4.1.3.1. Improper connections between disciplinary measures from one field and 'trust-breaking' behaviour conducted in another?

Several MoU, administrative regulations 行政法规 and local administrative normative documents 规范性文件 stipulate disciplinary measures to be imposed on SCSP subjects who 'break trust'. As long as such measures are undertaken by agencies in the same field in which the 'trust-breaking' conduct has occurred, prohibition of improper connection principle is not impacted.[1369] However, one key feature of the JAD mechanism is that disciplinary measures transgress the boundaries of regulatory realms. Yan Shen 闫申 and Boyang Wang 王博阳 summarize:

> "The effectiveness and importance of comprehensive public credit evaluations depend largely on their application. The more applications, the greater their significance and the stronger their regulatory capacity. However, government power is limited by law. Linking comprehensive public credit assessments to a plethora of applications, particularly disciplinary measures for trust-breaking, would violate numerous legal requirements, such as law-based administration and the prohibition of improper connection."[1370]

Early observers noted that disciplinary measures are

> "improperly used to ensure that the administrative counterparty fulfils legal obligations, [...] hoping to achieve regulatory goals through the smallest regulatory cost and the most convenient way, however, there is no reasonable relationship between the measure and the purpose".[1371]

Bans on entering college for those refusing military service,[1372] bans on registering an enterprise with the customs authority for having made false statements in marriage registration procedures,[1373] restrictions on obtaining industrial production licenses for overloading vehicles,[1374] and bans on stock issuance and company acquisition for plagiarism in science and bans on participating in auctions of non-commercial passenger car quotas for traffic violation records,[1375] and generally measures addressing children of 'trust-breaking' individuals[1376] all harvest the 'joint-ness' that the JAD design provides for more enforcement power at the cost of breaching the prohibition of improper connection principle.

[1369] See also, *Kui Shen: The Prohibition of improper connection*, p. 19.
[1370] *Shen Yan and Boyang Wang: Credit assessment*, p. 46.
[1371] *Ruixue Wang: Credit Tools*, p. 170.
[1372] *Kui Shen: The rule of law approach*, p. 39.
[1373] *Cheung and Chen: From datafication to data state*, p. 1156.
[1374] *Binglin Tan: Disciplining trust-breaking*, p. 43.
[1375] *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 26; Wei Wang 王伟 (2019) 失信惩戒的类型化规制研究———兼论社会信用法的规则设计 (Research on regulating the categorization of trust-breaker disciplines – Discussing the design of social credit law principles), 中州学刊 (Academic Journal of Zhengzhou) 5/2019, pp. 43-52, p. 51.
[1376] *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 26.

That said, it is crucial to differentiate between a behaviour that violates one law and then is punished in several fields as a result of JAD and a behaviour that violates several laws in the first place and is thus punished for these multiple violations respectively. To borrow an example provided by Chun Peng 彭錞, if a transport company violates the Regulations on Protecting Road Safety by overloading its vehicles, according to the MoU on Implementing Joint Disciplines on Subjects Responsible for Seriously Law-violating Trust-breaking by Overloading Transport Vehicles, it is banned from applying for stock market listing.[1377] This, even though the disciplinary measures is rooted in a realm different from where the violation occurred, is in line with the Securities Law. The Securities Law stipulates that a company may only publicly issue shares if it has not "seriously violated the law" in the past three years, the definition of which includes violations of laws and regulations of multiple fields including transportation (Art. 13(3)).[1378]

The crux lies in the ways in which disciplinary measures are connected to trustworthiness assessments. The diversity of formats in which these connections are formulated China-wide since 2012 is enormous, we can with Kui Shen 沈岿 summarize them in five categories and evaluate the degree of risk they pose to violate the prohibition of improper connection principle, respectively (see table below).[1379]

[1377] In conjunction with Art. 66, 公路安全保护条例 (Regulations on Protecting Road Safety), issued by the State Council on 7 March 2011.
[1378] *Chun Peng: Legal dilemmas*, p. 58.
[1379] Borrowing from *Kui Shen: The Prohibition of improper connection*, p. 8.

Figure 5: Connections between 'trust-breaking' behaviours and disciplinary measures[1380]

Type	Example	Risk of violation
Specified measure + several acts of 'trust-breaking'	Art. 7, People's Assessors Law:[1381] "Anyone in the following circumstances shall not serve as an assessor: [...] (4) is on the blacklist of trust-breaking judgment defaulters" → referring to the specific blacklist of the SPC	Low
Several specified measures + several specified acts of 'trust-breaking'	Art. 5, Management Measures for the National Cultural Market Blacklist[1382], lists trust-breaking behaviours. Art. 12-13 list disciplinary measures. Art. 2 to 10, Market Supervision List of Seriously Trust-breaking Law Violators Management Measures [1383] list 'trust-breaking 'behaviours. Art. 15-16 list disciplinary measures.	Low
Specified measure + unspecified act of trust-breaking	Art. 26, Civil Servants Law:[1384] "The following persons shall not be employed as civil servants: [...] (4) Those who have been listed as target of joint disciplining for trust-breaking according to law"	High
Unspecified measure + specified act or type of 'trust-breaking'	Art. 48(1), Regulations on Ensuring Wage Payment of Migrant Workers:[1385] "If an employer fails to pay wages to migrant workers and the circumstances are serious or cause serious adverse social impacts, the relevant departments shall include the employer and its legal representative or principal person in charge, directly responsible supervisor and other directly responsible persons in the list of joint disciplining for defaulting on migrant workers' wages, and restrict them in accordance with laws and regulations in terms of government funding support, government procurement, bidding, financing loans, market access, tax incentives, awards and honors, transportation, etc."	Very high

[1380] Based on the typology of connections between trustworthiness assessments and disciplinary measures by Kui Shen 沈岿: *Kui Shen: The Prohibition of improper connection*. I omit the last category Kui Shen provides: He argues that in provincial SCS Regulations, unspecified measures are connected to unspecified acts of 'trust-breaking' (e.g. "[...] and other measures provided for by the state", Art. 30, Shanghai Social Credit Regulations). I agree that open-ended lists are a gateway for improper connections, however, these provisions do not themselves already establish the practices. Further, while the local social credit regulations do not themselves clarify what constitutes 'trust-breaking', they lay down the catalogue system which is fleshed out in local AND and rules.

[1381] 人民陪审员法, issued by the NPC Standing Committee on 28 August 2004, last amended on 27 April 2018.

[1382] 全国文化市场黑名单管理办法 (Management Measures For The National Cultural Market Blacklist), issued by the Ministry for Culture and Tourism on 19 June 2018.

[1383] 市场监督管理严重违法失信名单管理办法 (Market Supervision List Of Seriously Trust-breaking Law Violators Management Measures), issued by the SAMR on 30 July 2021, https://www.gov.cn/zhengce/zhengceku/2021-08/04/content_5629301.htm, archived at https://web.archive.org/web/20250413175053/https://www.gov.cn/zhengce/zhengceku/2021-08/04/content_5629301.htm.

[1384] 公务员法, issued by the NPC Standing Committee on 27 April 2005, last amended on 29 December 2018.

[1385] 保障农民工工资支付条例, issued by the State Council on 30 December 2019.

The first type of connections we find in laws and regulations stipulate *a specified disciplinary measure* for *several specified acts of 'trust-breaking'*. This type of connections covers only single 'trust-breaking' acts, not credibility assessments calculated based on multiple acts. The People's Assessors Law for instance, regulating the ways in which citizens may take part in judicial trials similar to a jury, excludes individuals that are on the SPC's blacklist of 'trust-breaking' judicial defaulters from acting as assessors. The 'trust-breaking' behaviour here, the defying of court judgments, arguably demonstrates a lack of faith in the judicial system, which again may impact the individual's ability to act as a good assessor in trials. In this case, both the 'trust-breaking' behaviour as well as the measure – exclusion from acting as assessor – are clear and substantively related. Where a specified disciplinary measure is formulated in laws in connection with specific behaviours of 'trust-breaking', the substantial connection is often evident. The risk of breaching the prohibition of improper connections is low.

The second type of connections link *several specified disciplinary measures* to *several specified acts of 'trust-breaking'*. This type typically features in administrative measures regarding blacklists. For instance, the National Cultural Market Blacklist Management Measures[1386] in Art. 5 list law-violating behaviours that lead to blacklisting, and in Art. 12 and 13 list disciplinary measures to be taken against those blacklisted. This construct does not clearly link measures and behaviours one by one. Anne Cheung and Yongxi Chen argue that disconnecting motives behind conduct and the restrictions the conduct itself induces risks "eliminating the discretion and reflexive understanding that are crucial to the effective operation of the rule of law and a humane society"[1387]. The insertion of the blacklist as interface between behaviours and measures leads to a disregard of "differences in the nature and significance of various types of behaviors, overlooking the underlying reasons for their meritorious or blameworthy nature in their social settings."[1388] Where both, the specified disciplinary measure and the 'trust-breaking' behaviours stem from the same regulatory field, such connections between disciplinary measures and behaviours pose a rather low risk of violating the prohibition of improper connection principle.[1389] Where the disciplinary measure is imposed in a field different from where the 'trust-breaking' occurred, the risk of a breach of the prohibition of improper connection principle depends on the substantive relation between the 'trust-breaking' behaviour recorded and the purpose of the disciplinary measure imposed.[1390] Recall the Government Procurement Law's Art. 22(2).[1391] It stipulates that to participate in government procurement, companies must have a "good business reputation". Credibility assessments consisting of records from several different fields arguably are

[1386] 全国文化市场黑名单管理办法 (Management Measures For The National Cultural Market Blacklist), issued by the Ministry for Culture and Tourism on 19 June 2018.
[1387] *Cheung and Chen: From datafication to data state*, p. 1154.
[1388] *Cheung and Chen: From datafication to data state*, p. 1153.
[1389] Similar, *Kui Shen: The Prohibition of improper connection*, p. 18.
[1390] See also, Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 51.
[1391] Art. 22(2), 政府采购法 (Government Procurement Law), passed by the NPC Standing Committee on 29 June 2002, amended on 31 August 2014, discussed in section 3.2.4.

substantively connected to this provisions purpose. The connection in imposing bans on engaging in private investment activities for 'breaking trust' in marriage registration is less obvious.[1392]

Posing a greater risk to the prohibition of improper connection principle are provisions that connect *a specified disciplinary measure* to an *unspecified range of 'trust-breaking' acts*. Such provisions increasingly appear in laws and regulations across all fields. The Civil Servants Law for instance excludes "those who have been lawfully listed as targets of joint disciplining for trust-breaking" from becoming a civil servant (Art. 26(4)). This provision appears to apply in a blanket manner to all persons on blacklists or otherwise designated 'trust-breakers', regardless in which field or locality and by which state agency the designation was made. It elevates the status of being subject to disciplinary measures for 'trust-breaking' to a criterium alongside the other, more specific criteria the law lists such as "having received criminal penalties for having committed a crime" and "having been expelled from the CPC"[1393]. In this setup, the ban on becoming a civil servant is applicable to a range of persons without consideration for the behaviour that got them blacklisted and whether that behaviour is substantively related to working as a civil servant. It is therefore a "one size fits all approach"[1394] that breaches the prohibition of improper connection principle.[1395]

Typically, this type of connection occurs where disciplinary measures are stipulated for specific credibility assessment results, such as in CBR: The Beijing City Trial Measures on Credibility Assessments and Classified Regulation Work in the Traffic and Transportation Sector provide that for C-graded subjects, regulatory agencies are to "raise the administrative punishment range by 10-20%, within the scope of administrative discretion" (Art. 14(5)).[1396] As long as the credibility assessments, in this case a grading from A to C, are based on records sourced from within the field of transportation, a breach of prohibition of improper connection principle is not imminent. However, the NDRC pushes forward not sectoral but comprehensive credibility assessments, which include behavioural records from other fields. A disciplinary measure imposed by an agency in charge of field A based on credibility assessments including behavioural records from an agency of field B hardly are in line with the prohibition of improper connection principle.[1397]

The connections between 'trust-breaking' behaviours and disciplinary measures that most clearly breach the prohibition of improper connection principle are those that *do not specify the disciplinary measures*. The Regulations on Ensuring Wage Payment of

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[1392] *Kui Shen: The Prohibition of improper connection*, p. 17; Holding against this that who falsifies marriage documents might also be likely to falsify other registration information: Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 51.

[1393] Art. 26, 公务员法 (Civil Servants Law), issued by the NPC Standing Committee on 27 April 2005, last amended on 29 December 2018.

[1394] *Wang and Huang: On the legal constraints*, p. 107.

[1395] See also: *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 26; *Kui Shen: The Prohibition of improper connection*, p. 16.

[1396] *Beijing Trial Measures On CBR In Traffic And Transportation*.

[1397] See also: *Wang and Huang: On the legal constraints*, p. 107.

Migrant Workers for instance include provisions on disciplinary measures to be taken against employers who failed to pay migrant workers that are rather vague and end with "[...] and lawfully restrict in other areas 等方面依法依规予以限制". Where lists of measures come with an open end, the risk that local administrative agencies construct improper connections in designing JAD and CBR applications is very high. In some local regulations, not only the measure, but also the behaviour remains unspecified, forming a "disciplinary toolbox"[1398] that local regulators can tap at will.

4.1.3.2. Improper connections between administrative acts and credibility assessments?

Moral norms and other rules not codified in administrative laws become, as they are designated social credit information, de facto enforced through regulatory agencies, breaching the prohibition of improper connection principle. In Zhejiang Province, for instance, a company with a low credibility assessment resulting from violating environmental protection regulations can to some degree raise its score by engaging in philanthropy in any field.[1399] This establishes a direct link between behaviours of the SCSP subject that are not substantively related to one another, offering a path to circumvent unfavourable effects from 'trust-breaking' behaviour by acting up in an area unrelated to the realm where the offense happened. In his work on the SCSP's alignment with the prohibition of improper connection principle, Kui Shen 沈岿 points out:

> "Legal norms, discipline, contracts, moral norms, and professional ethical norms each have their own unique generation mechanisms and maintenance mechanisms. The main purpose of the state and its agents (state organs) is to formulate and maintain legal norms that represent the will of the state or the will of the people as a whole, and not to arbitrarily interfere with other norms."[1400]

As agencies base their decisions upon these assessments, they de facto enforce more than just violations of the law, but non-codified moral norms and private contracts. As laid out in section 3.1.1., credibility assessments and comprehensive credibility assessments in particular include information beyond compliance records, such as the reputation of an SCSP subject in local media, MCI gathered from credit rating agencies, and so on.[1401] A case in point is the common practice to include information on the payment of water and electricity bills in PCI records as social credit information for enforcement purposes is a violation of the prohibition of improper connection principle.[1402] Connections that enable that private law is enforced through public regulators, commentators assert, blur the boundary between private and public law, disrupting private autonomy.[1403]

[1398] This is most likely due to the early push to build legal bases for the measures, and while provincial legislation did help provide legal authority by using vague language on both acts of trust-breaking and measures, this also gave a carte blanche to improper connections. *Kui Shen: The Prohibition of improper connection*, p. 20.

[1399] Lauren Yu-Hsin Lin and Curtis Milhaupt (2021) China's corporate Social Credit System and the dawn of surveillance state capitalism, *The China Quarterly*, 256, pp. 835–853, p. 843.

[1400] *Kui Shen: The Prohibition of improper connection*, p. 12-13.

[1401] See also: Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243, p. 235.

[1402] *Ruixue Wang: Credit Tools*, p. 170.

[1403] *Chun Peng: Legal dilemmas*, p. 54; *Haiyuan Zhou: Correcting the trend*, p. 72.

4.1.3.3. Improper connections between compliance records from different fields?

Social credit files established under the NDRC's lead at the central and local levels combine regulatory records from several realms that have been designated as relevant to social credit in PCI catalogues.[1404] They further form the basis for producing comprehensive credibility assessments of SCSP subjects. This practice of gathering social credit information is widely considered an internal administrative process and therefore not on the radar of most investigations into SCSP legality. It might, however, breach the prohibition of improper connection principle.

It is unclear in how far the prohibition of improper connection principle applies to internal administrative action such as social credit information collection and processing. They are internal actions but inform administrative decision-making which itself unfolds external effects.[1405] As laid out in section 3.2.4., social credit information consolidated into credibility assessments are made to influence administrative decision-making, even if to date only a few successful pilot projects operate. Recall the Jiangsu case in which regulators profile subjects based on a series of attributes including performance ability, PCI, relationship to other market entities and others.[1406]

Scholarship that directly or indirectly invokes the prohibition of improper connection principle as applicable points out that especially when social credit information processing concerns individuals,"[...] the comprehensive quantification of different types of trust-breaking information requires sufficient justification."[1407] Notably, the minimum necessary principle 最小必要原则[1408] in personal information protection law rings similar: Pursuant to Art. 6(2) and Art. 34 of the PIPL,[1409] administrative agencies must not collect more personal information than needed for performing their legally-prescribed duties. Local SCSP legislation include and specify this principle to apply to social credit information of individuals.[1410] It is beyond the scope of this thesis to examine

[1404] Recall section 3.1.1.

[1405] Ruixue Wang 王瑞雪 (2018) 论行政评级及其法律控制 (Administrative ratings and their legal controls), 法商研究 (Studies in Law & Business) 3/2018, pp. 27-37, p. 27; Lin Tian 田林 (2020) 行政处罚与失信惩戒的立法方案探讨 (Discussing legislation plans for administrative punishment and disciplines for trust-breaking), 中国法律评论 (China Law Review) 5/2020, pp. 10-17, p. 17.

[1406] Tian Tan 谈天, Xin Li 李鑫 and Hexiang Zhong 钟鹤翔 (2022) 信息化视角下江苏省行业信用监管机制研究 (Research on the Jiangsu Province sectoral CBR mechanism from the perspective of informatization), 信息系统工程 (China CIO News) 11/2022. pp. 152-160, p. 155.

[1407] *Wang and Huang: On the legal constraints*, p. 107.

[1408] See, e.g. Mingmin Wang 王明敏 (2025) 行政机关利用个人信息进行自动化决策的合宪性检视 (Reviewing the constitutionality of administrative agencies' use of personal information for automated decision-making), 法学 (Law Science) 519(2), pp. 36-50, p. 47.

[1409] Art. 6(2), 个人信息保护法 (Personal Information Protection Law), passed by the NPC Standing Committee on 20 August 2021: "The collection of personal information shall be limited to the smallest scope for realizing the purpose of handling, and excessive personal information must not be collected." Art. 34: "State organs handling personal information in order to perform their legally-prescribed duties shall do so in accordance with the authority and procedures provided by laws and administrative regulations, and must not exceed the scope and limits necessary for performing their legally-prescribed duties." Translations by China Law Translate: https://www.chinalawtranslate.com/en/Personal-Information-Protection-Law/.

[1410] E.g., Art. 25, 广东省社会信用条例 (Guangdong Province Social Credit Regulations), passed by the Standing Committee of the Guangdong Provincial People's Congress on 18 March 2021: "The use of personal social credit information requires a reasonable aim, personal social credit information collection and gathering is restricted to the smallest scope necessary to realize that aim."

the SCSP's alignment with personal information protection law.[1411] The provisions regarding the minimal necessity principle from data protection law however indicate that the prohibition of improper connection principle, at least where personal social credit information is concerned, may well be extended to cover the internal actions of collecting and processing social credit information.

As a consequence, at least two SCSP practices breach the prohibition of improper connection principle. First, the local social credit agencies under the NDRC as well as their central counterpart, the National Public Credit and Geospatial Information Centre (国家公共信用和地理空间信息中心, formerly National PCI Centre 国家公共信用信息中心) collect social credit information in respective files on the National Credit Information Sharing Platform.[1412] SCSP implementation documents at all levels push social credit information collection as top work priority. It is one key indicator for the title of SCS Building Model City.[1413] However, no leading documents indicate a purpose for these social credit files that is more specific than the broad SCSP language on trust building and improving compliance. Whether or not the information collection is in line with the purpose thus cannot be assessed. In conclusion, at least where it concerns individuals, the collection of social credit information from multiple realms in central files thus breaches the prohibition of improper connection principle understood broadly in connection with the minimum necessary principle.

Second, administrative agencies across realms create credibility assessments, combining behavioural records from several fields. As these records are processed into assessments, they are quantified and thus decontextualized, whereby various behaviours become computed into one metric. Disentangling and reviewing credibility assessments is extremely difficult for an administrative agency as it usually only receives the final credibility assessment result and not the entire set of information sources and calculation steps necessary to trace the becoming of a result.[1414] Credibility assessments per concept thus risk breaching the prohibition of improper connection principle in principle. The fact that a clear purpose statement is missing for the production of credibility assessments, too, exacerbates the problem: Credibility assessments are described as decision making basis for regulators and private actors. However, it is not clear whether they are to predict the likelihood of the SCSP subject to

[1411] Personal information protection in the SCSP is discussed in: Hannah Klöber (2023) The regulation of personal data accuracy in China's public Social Credit System, *Hong Kong Law Journal* 53(1) pp. 375-402; Xin Zhang 张欣 (2021) 算法行政的架构原理、本质特征与法治化路径：兼论《个人信息保护法（草案）(The framework, features and legalizing path of algorithmic regulation: A discussion on the Personal Information Protection Law (Draft)), 经贸法律评论 (Business And Economic Law Review) 1/2021, pp. 21-31.

[1412] See section 3.2.3.2.

[1413] 社会信用体系建设示范城市评估指标细则（2019年参考版） (Detailed Indicators for SCS Building Model City Assessment (2019 version for reference), published attached to local SCS building plans, see for instance: 关于印发《关于迎接第二批社会信用体系建设示范城市评审验收工作方案》的通知 (Notice On Issuing The 'Work Plan For Welcoming The Review And Acceptance Of The Second Batch Of Demonstration Cities For SCS Construction'), issued by the Office of the Zhengzhou Municipal SCS Building Small Leading Work Group on 14 December 2018, https://credit.henan.gov.cn/res_root/upload/fileCenter/res_base/rjcms/application/2019/06/06/5cf87c078af8d1bb86b2f291.pdf, not digitally archivable, on file with the author.

[1414] *Wang and Huang: On the legal constraints*, p. 107; *Cheung and Chen: From datafication to data state*, p. 1453; *Honghai Bi: Old regulatory wine*, p. 318-319.

violate a law or the extent of harm an SCSP subject will cause to society, or the probability that it will 'break trust'.[1415] Similar criticism was raised with regard to practices of profiling and trustworthiness assessments in administrative agencies in Europe and the U.S.[1416] The production of credibility assessments is thus without clear, general purpose and likewise breaches the prohibition of improper connection principle understood broadly in connection with the minimum necessary principle.

4.1.3.4. Improper connections between certain behaviours and 'trust-building'?

The connection of some behaviours to the SCSP's main purpose of 'building trust' is potentially in violation of the prohibition of improper connection principle. The scope of social credit information collection, as detailed in PCI catalogues, may violate the prohibition of improper connection principle because it may contain behaviours that are hardly related to the substantive notion of "trust" or "trustworthiness". The SCSP sets the broad 'trust' normativity but nowhere clearly defines it. Thus, commentators apply their own definitions and connotations of trust, and reject the designation of certain behaviours as acts of trust-breaking. Judge Wenhan Yuan 袁文瀚 for instance holds that fare evasion on public transport, not paying property fees 物业费欠缴 without a respective court decision and civil compensation liability 承担民事赔偿责任do not demonstrate the breaking of trust/ showcase untrustworthiness and must therefore not be recorded as social credit information.[1417] Zhongjing Men 门中敬 argues that for acts to be deemed 'trust-breaking', they must be substantively related to social integrity:

> "Including law violations or even crimes that have nothing to do with moral integrity into the list of trust-breaking persons and making them public is obviously a violation of the principle of prohibition of improper connection."[1418]

Legal experts consulting local governments on SCSP legislation likewise point out that behaviours such as volunteering are unrelated to credit and shall not be collected in social credit information files as to not create improper connections.[1419]

[1415] See also: Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 53.

[1416] On risks of "data-driven legal personalization", see: Timothy Endicott and Karen Yeung (2021) The death of law? Computationally personalized norms and the rule of law, *University of Toronto Law Journal* 72(4), pp. 373-402, p. 373; Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 168; David Restrepo Amariles (2020) Algorithmic decision systems: Automation and machine learning in the public administration, in Woodrow Barfield (ed), *The Cambridge Handbook of the Law of Algorithms*, Cambridge University Press, p. 298.

[1417] *Wenhan Yuan: Administrative Law and credibility-based regulation*.

[1418] *Zhongjing Men: Stigmatization*, p. 25.

[1419] Fieldwork document 062. For similar criticism, see: *Ruixue Wang: Credit Tools*, p. 170; Honghong Hu 胡弘弘 and Yufei Liu 刘宇飞 (2020) "公共场所不戴口罩算失信？社会信用制度要防滥用 (Does not wearing a mask in public places count as trust-breaking? The social credit system must prevent abuse)", Xinhua, 22 March, https://www.sohu.com/a/382192694_267106, archived at https://web.archive.org/web/20250423164241/https://www.sohu.com/a/382192694_267106; Similar criticism, though without direct reference to the prohibition of improper connection principle, comes from the world of financial credit: "When the government mandates that behaviours like setting off fireworks, using private taxis, and not visiting parents be included in credit records, a question arises: Is there a real connection between these behaviours and the creditworthiness of individuals' economic activities? I believe not. For example, imagine a company performing very well, but it has a habit of setting off fireworks every Spring Festival to signal good fortune. This year, this behaviour resulted in an administrative penalty and was included on the credit reporting platform. Would this behaviour lower the creditworthiness of its

The arguments are in so far besides the point as that a self-defined notion of 'trust' as applied by the critics cannot be assumed for evaluating improper connections. The prohibition of improper connections requires that an administrative action is related to its purpose. An official definition of the purpose around trust building in the context of the SCSP is absent, but the 'trust building' purpose of the SCSP must be approximated based on official policy and legislation regarding the SCSP, rather than by its colloquial connotations. To be sure, criticism applying common notions of 'trust' or 'trust-building' from beyond the SCSP narratives, as laid out above, speaks to core legality problems of the SCSP. For instance, a creeping expansion of government power through the deliberate leaving broad of the 'trust' notion is imminent.[1420] However, such arguments cannot convince that the prohibition of improper connection is breached when SCSP mechanisms designate certain behaviours as trust-breaking and not others.

4.1.3.5. Conclusion

The analysis of SCSP disciplinary measures for 'trust-breaking' through the prism of the prohibition of improper connection principle reveals multiple breaches but depends on how broadly the principle is construed. In a narrow reading of the principle, disciplinary setups that link behaviours and sanctions from within the same regulatory domain, or links transgressing domains are explicitly defined in the law, pose a small risk of improper connections. By contrast, normative texts that tie general trust-assessment outcomes – such as blacklisting status or, increasingly, credibility grades or scores – to predetermined disciplinary measures entail a far higher risk of constituting improper connections. Breaching the prohibition of improper connection in any case are such setups that leave vague what types of measures may follow from particular, or even unspecified, acts of 'trust-breaking'.

Beyond disciplinary measures, the principle may also be breached through some CBR setups, the basing of administrative decision-making on credibility assessments, namely in those where credibility assessments include more than law compliance records. Credibility assessments increasingly incorporate compliance data from other regulators and reputational information, some of which originates from private actors. Administrative actions based on such aggregated records therefore enforce not only legal norms but also the heterogeneous normative expectations embedded in credibility assessments, breaching the prohibition of improper connection.

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counterparties? As for including individuals "illegally" using private taxis on the public information platform, this is even more absurd. While the government considers this behaviour to be disruptive to taxi operations, many see it as a commendable act that adds credit points: embracing the changes brought about by the internet, providing convenience to others, and increasing personal and family income." Weigang Fu 傅蔚冈 (2016) "征信"扩大化，或变身"道德档案"" (Expanding 'credit reporting' may turn it into 'moral archives'), 华夏时报 (China Times), 21 April 2016, https://www.chinatimes.net.cn/article/55512.html, archived at https://web.archive.org/web/20250506143201/https://www.chinatimes.net.cn/article/55512.html. Fu is the Executive Director of Shanghai Institute for Finance and Law (上海金融与法律研究院执行院长).

[1420] "In fact, it is exactly by invoking the ambiguous notion of xin that the authorities manage to conflate the notion of trust with its numerous synonyms, thus quietly extending the scope of its control from market behavior to social and civic conduct": Sheng Zou (2021) Disenchanting trust: instrumental reason, algorithmic governance, and China's emerging Social Credit System, *Media and Communication* 9(2), pp. 140-149, p. 142.

A broad interpretation of the prohibition of improper connection links it to the minimum necessary principle from personal information protection law, requiring that state agencies' collection and processing of personal data has a clearly defined purpose. From this perspective, the centralised collection of personal social credit information in social credit files already breaches the prohibition of improper connection, irrespective of its subsequent use in credibility assessment production and administrative decision-making.

Finally, the principle may be breached by the inclusion of certain behaviours that are unrelated to 'trust' in the scope of the social credit normativity – as PCI collected in files, as 'trust-breaking' acts or as acts of 'trust-keeping'. Public transit fare evasion, volunteering and other items are cases in point highlighted by discussants. Relevant arguments do pinpoint fundamental legality concerns with the SCSP at large but are not pertinent to the prohibition of improper connection as defined above. The principle requires assessing administrative actions against the SCSP's officially articulated purposes (even if not clearly defined), not against commentators' own normative understandings of 'trust'.

4.1.4. The prohibition of double sanctioning

"Social credit joint disciplining and rewarding, in layman's terms, is karma [...]."[1421]

- Peixin Luo 罗培新

The prohibition of double sanctioning (also *ne bis in idem* or 一事不再罚) originates in criminal law. It requires that a new trial against the same person over the same matter must not be opened once a final judgment has been issued.[1422] The Administrative Punishment Law (APL) contains a principle that rings similar: Art. 29 stipulates that

> "parties must not be fined twice or more for the same illegal conduct. Where the same conduct violates multiple laws or regulations that should be given fines, punishment is to be given in accordance with the highest fine."[1423]

When applying this narrow definition from the APL, disciplinary measures for 'trust-breaking' do not risk breaching the prohibition of double sanctioning as they do not include fines.[1424] However, the prohibition of double sanctioning principle was by courts and scholars, especially with regard to SCSP developments, cautiously further developed.[1425] Based on the provision in the APL and the existing literature, it is here

[1421] *Peixin Luo: On the basic categories*, p. 33.
[1422] Zhang Jun, Shan Changzong and Miao Youshui (2002) China's theory and practice on ne bis in idem, *Revue Internationale de Droit Pénal* 73(3), pp. 865-872, p. 865.
[1423] 行政处罚法 (APL), issued by the NPC Standing Committee on 17 March 1996, last amended on 22 January 2021.
[1424] Lin Tian 田林 (2020) 行政处罚与失信惩戒的立法方案探讨 (Discussing legislation plans for administrative punishment and disciplines for trust-breaking), 中国法律评论 (China Law Review) 5/2020, pp. 10-17, p. 16.
[1425] Wei Wang 王伟 (2019) 失信惩戒的类型化规制研究———兼论社会信用法的规则设计 (Research on regulating the categorization of trust-breaker disciplines – Discussing the design of social credit law principles), 中州学刊 (Academic Journal of Zhengzhou) 5/2019, pp. 43-52, p. 48.

defined as the requirement that for a law violating act for which a punishment has been determined, a secondary punishment may not be imposed.[1426]

4.1.4.1. Regular administrative punishment plus disciplinary measures for 'trust-breaking'

Social credit disciplinary measures are in most setups imposed only where administrative agencies identified violations of law and the circumstances are serious.[1427] As a consequence, a regular administrative punishment nearly always precedes a disciplinary measure for 'trust-breaking'. Unsurprisingly then, the prohibition of double sanctioning principle is the most frequently raised legal principle by implementing officials in interviews, demonstrating comparatively strong awareness.[1428] Legal reforms of SCSP practices in the past decade have further confirmed and entrenched this construction[1429] because it creates legal certainty and solves the above-discussed problem of the lack of legal bases for disciplinary measures, too: It rules out that behaviours that are not codified in law give rise to disciplinary measures by administrative agencies.

However, where disciplinary measures occur as an addition to regular punishment measures that administrative agencies carry out pursuant to laws and regulations, the prohibition of double sanctioning may be breached, at least where the disciplinary measure constitutes administrative punishment. The relevant threshold is whether the measure reduces rights or increases obligations.[1430] At least for the group of disciplinary measures categorized as 'reducing rights or increasing obligations' in the National List of Disciplinary Measures, then,[1431] unlawful double sanctioning occurs. Consequently, disciplinary measures that do not amount to administrative punishment – for instance,

[1426] SCSP commentators, however, have applied different definitions of the prohibition of double sanctioning: Wei Wang 王伟 (2019) 失信惩戒的类型化规制研究———兼论社会信用法的规则设计 (Research on regulating the categorization of trust-breaker disciplines – Discussing the design of social credit law principles), 中州学刊 (Academic Journal of Zhengzhou) 5/2019, pp. 43-52, p. 48.

[1427] See section 3.2.3. The links are blurry where measures are imposed based on credibility assessments as in CBR, see section 3.2.4.

[1428] BJ07; CQ05; HZ02 and QZ02. It was also raised by officials interviewed by Shazeda Ahmed: Shazeda Ahmed (2023) Strategies for state-firm co-production of China's Social Credit System, draft presented at the workshop "The Digital Reach of the Chinese State", Hannover Schloss Herrenhausen, June 2023.

[1429] E.g., 国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见 (Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-Breaker Constraint System And Building A Long-Term Mechanism For Credit Construction), issued 18 December 2020; 国家发展改革委 人民银行关于印发《全国失信惩戒措施基础清单(2021年版)》的通知 (Notice Of The NDRC And The Pboc On Issuing The 'National List Of Disciplinary Measures For Trust-Breaking (2021 Version)'), issued 16 December 2021, https://www.ndrc.gov.cn/xwdt/tzgg/202112/t20211231_1311145_ext.html, archived at https://web.archive.org/web/20250925082140/https://www.ndrc.gov.cn/xwdt/tzgg/202112/t20211231_1311145_ext.html.

[1430] Pursuant to Art. 2, APL, administrative punishments are "actions by administrative organs in accordance with law taken against citizens, legal persons, or other organizations that violate the order of administrative management, to penalize them by methods such as reducing their rights or increasing their obligations." 行政处罚法 (APL), issued by the NPC Standing Committee on 17 March 1996, last amended on 22 January 2021.

[1431] 全国失信惩戒措施基础清单（2024年版） (National List Of Disciplinary Measures (2024 Version)), issued by the NDRC and the PBoC on 8 February 2024, available from https://www.gov.cn/zhengce/zhengceku/202403/content_6935680.htm, archived at https://web.archive.org/web/20241211202924/https://www.gov.cn/zhengce/zhengceku/202403/content_6935680.htm.

increased on-spot inspections by regulatory officials – may not run risk of breaching the prohibition of double sanctioning.

Some voices in the literature reject reading disciplinary measures for 'trust-breaking' as possibly constituting secondary punishment overall. The influential law professor-turned-official Peixin Luo 罗培新 described the SCSP's disciplinary measures as "having nothing to do with the prohibition of double sanctioning in the APL". Disciplinary measures for 'trust-breaking', he maintains, are not administrative punishment but "karma"-like measures that are best understood as a form of the social sanctions that were omnipresent in the acquaintance society 熟人社会, updated for the society of strangers we live in today. He refers to historic tales on righteousness in which a trust-breaking person by virtue of the negative reputation her behaviour gave rise to faces restrictions in all walks of life.[1432]

Arguments such as that of Luo are hardly convincing because, first, even top-level SCSP policy such as the National List of Disciplinary Measures describe several disciplinary measures as administrative punishment. Second, even some of the measures that are not so described in the National List of Disciplinary Measures in fact do impact their target subjects' rights, especially shaming measures.[1433] Shaming measures, almost only imposed where a first administrative punishment was imposed, amount to a second sanction in the sense of the prohibition of double sanctioning. For instance, a fine imposed on an individual for holding on to another passenger's seat on a high-speed train combined with shaming the person publicly is argued to constitute unlawful double sanctioning.[1434]

Some argue that the prohibition of double sanctioning principle's purpose is to protect persons from re-evaluations of their conduct after one punishment decision has been made, thus inhibiting predictability. Pursuant to this definition, highlighting whether a re-evaluation occurs, certain types of joint agency disciplining setups are unproblematic: Where blacklist rules or MoU set clear thresholds for inclusion into blacklists as well as list the full range of punishments by other regulators in detail, the disciplinary measures follow automatically from the law violation that constitutes 'trust-breaking'. A discretionary space is then not included in the process, thus, a re-evaluation of the behaviour by officials in addition to the evaluation for the initial administrative punishment does not take place. Concurrent punishment by different regulators in charge may be imposed because they adopt the evaluation of the original designator of 'trust-breaking'. Disciplinary measures then are not "re-punishment 再罚" but rather

[1432] *Peixin Luo: On the basic categories*, p. 33; similar arguments in Peixin Luo 罗培新 (2021) 法理明晰 切中肯綮 有力助推营商环境优化——解读《国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见》(Clear and pertinent legal theory effectively promoting the optimization of the business environment – interpreting the *Guiding Opinions on further improving the restraint system for untrustworthy behavior and establishing long-term mechanisms for construction of trustworthiness*), 中国经贸导刊 (China Economic & Trade Herald) 2021/1, pp. 11-13, p. 13.

[1433] See section 4.1.1.2.

[1434] *Lü and He: An analysis of the path to legal regulation*; arguing that tangible disciplinary measures for trust-breaking combined with adverse publicity imposed on individuals who have been sentenced to a fixed-term prison sentence violate the prohibition of double sanctioning: *Wang and Huang: On the legal constraints*, p. 108.

instances of "multiple punishments 多罚"[1435]. The prohibition of double sanctioning is not breached. It is, consequently, breached in setups where regulators are afforded administrative discretion in deciding over whether to blacklist an entity, whether to publish its negative social credit records, or whether to impose other disciplinary measures. This definition of the prohibition of double sanctioning that stresses the 're-evaluation' element however is strikingly at odds with the other above-discussed principles: The lack of discretionary space when imposing disciplinary measures, a case-by-case consideration, is precisely the very characteristic of disciplining 'trust-breaking' that renders it problematic with regard to proportionality and the prohibition of improper connection. However, it is, in the reading of the prohibition of double sanctioning that stresses the 're-evaluation' element, the structure that makes it acceptable.

On the other hand, it was argued that precisely in those SCSP disciplining setups in which a re-evaluation occurs, the prohibition of double sanctioning is not breached because not the law violating act itself is re-evaluated, but the overall *status* of trustworthiness is evaluated. Disciplinary measures are imposed based on the status of being a 'trust-breaker' as manifested in trustworthiness assessments such as the inclusion in a blacklist or a negative credibility assessment. This status is reached based on a determination that a violation of the law is of particular seriousness, has been carried out repetitively, incurred social harm of a great degree, or other additional factors, depending on the realm and locality.[1436] The disciplinary measure is based on this second evaluation, or "post-event social evaluation 事后的社会评价"[1437], of the law violating behaviour. Therefore, disciplinary measures for 'trust-breaking' are not a secondary punishment of one act but a response to the *status* of being a 'trust-breaking' entity as manifested in a trustworthiness assessment.[1438] Disciplinary measures for 'trust-breaking', Wei Wang 王伟 argues,

> "are aimed at the credit status of the behaviour subject (that is, its status of legal and contractual compliance) rather than specific behaviours, and the credit status is the

[1435] Referring to the principle as discussed in German and Austrian jurisprudence: Wei Wang 王伟 (2019) 失信惩戒的类型化规制研究———兼论社会信用法的规则设计 (Research on regulating the categorization of trust-breaker disciplines – Discussing the design of social credit law principles), 中州学刊 (Academic Journal of Zhengzhou) 5/2019, pp. 43-52, p. 49; *Chun Peng: Legal dilemmas*; *Binglin Tan: Disciplining trust-breaking*, p. 43.

[1436] See for instance Art. 3(3), 江西省住房和城乡建设厅关于印发《江西省建筑市场主体"黑名单"管理暂行办法》的通知 (Notice Of The Jiangxi Province Housing And Urban And Rural Construction Office On Issuing The 'Jiangxi Province Temporary Measures For The Management Of The Construction Market Entity 'Blacklist''), issued 9 January 2025, https://www.jiangxi.gov.cn/jxsrmzf/2025nd3q/pc/content/content_18936971172786667 52.html, not web-archivable.

[1437] Wei Wang 王伟 (2019) 失信惩戒的类型化规制研究———兼论社会信用法的规则设计 (Research on regulating the categorization of trust-breaker disciplines – Discussing the design of social credit law principles), 中州学刊 (Academic Journal of Zhengzhou) 5/2019, pp. 43-52, p. 48.

[1438] *Yin Jia: Constitutionalizing*, p. 103; Wei Wang 王伟 (2019) 失信惩戒的类型化规制研究———兼论社会信用法的规则设计 (Research on regulating the categorization of trust-breaker disciplines – Discussing the design of social credit law principles), 中州学刊 (Academic Journal of Zhengzhou) 5/2019, pp. 43-52, p. 48.

> integration of information on many trust-keeping and trust-breaking behaviours, it is the result of culminating multiple behaviours and events."[1439]

Down this line of thought, SCSP disciplining setups that provide space for the exercise of discretion do not breach the prohibition of double sanctioning because the first punishment is based on the original law violation and the disciplinary measures is based on the accumulated behavioural records related to the SCSP's 'trust' normativity. Following this argument better aligns the outcome of the assessment of SCSP measures under the prohibition of double sanctioning with that of the other principles of administrative law analysed above: It emphasises the need for a discretionary space in between the original administrative punishment decision and the SCSP's disciplinary measures.

The recognition that disciplinary measures are imposed not based on a single violation of law but, in essence, an assessment, is valuable in the light of the recent rise of CBR. In CBR, not blacklists and binary determinations of 'trust-breaking' but credibility assessments with different grades of trustworthiness play the central role. However, from this, it cannot be concluded that the prohibition of double sanctioning is not breached. Rather, as Yin Jia writes, "the prohibition of double sanctioning has long ceased to be sharp in the face of the new realistic challenge of disciplining trust-breaking".[1440] She points out that joint disciplining of 'trust-breaking' in principle departs from the traditional approach of administrative law focusing on addressing one matter (一事) and instead restricts specific persons for a limited time period.[1441] Only a results-centred perspective can illuminate whether in fact double punishment happened. Through a results-centred perspective, the trustworthiness assessment is merely a medium – disciplinary measures imposed in response to trustworthiness assessments, whether in the form of blacklist inclusion or credibility assessments, still originate in one behaviour or a combination of single behaviours. The technical division of measures into those based on the original law violation and a 'status', denying double sanctioning, brushes over the actual outcome for the SCSP subject. Only because it is difficult to pinpoint the direct causal connection between the original 'trust-breaking' act and the disciplinary measures imposed based on an assessment, the causal connection does exist. Disciplinary measures for 'trust-breaking' imposed in addition to an original administrative punishment thus do constitute unlawful double sanctioning.[1442]

Finally, it is argued that the prohibition of double sanctioning requires that where several punishments apply, rather than imposing all of them, the agency must select the heaviest one,[1443] at least when the purposes of the punishments are the same.[1444] It is thus

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[1439] Wei Wang 王伟 (2019) 失信惩戒的类型化规制研究———兼论社会信用法的规则设计 (Research on regulating the categorization of trust-breaker disciplines – Discussing the design of social credit law principles), 中州学刊 (Academic Journal of Zhengzhou) 5/2019, pp. 43-52, p. 48.
[1440] *Yin Jia: Constitutionalizing*, p. 103.
[1441] *Yin Jia: Constitutionalizing*, p. 103.
[1442] *Ruixue Wang: Credit Tools*, p. 168.
[1443] *Binglin Tan: Disciplining trust-breaking*, p. 43.
[1444] Highlighting that when the punishments serve different purposes, they may be imposed concurrently: "Fines for instance serve economic punishment, public warnings seek to reputationally punish, a license revocation is intended to prevent harm. Because of the different purposes, these measures cannot

breached when more than one punishment is levied by one regulator against an entity for the same act. Some MoU for disciplining 'trust-breaking' include several measures to be imposed by the same regulator: For instance, an MoU for production entities 'breaking trust' in the environmental field stipulates restrictions on obtaining industrial product production licenses, restrictions on registering non-financial corporate debt financing instruments, and suspension of relevant fiscal funding support.[1445] In such setups, each disciplinary measure decision "may appear reasonable when viewed individually, when aggregated, the credit subject may face excessively severe negative consequences"[1446]. Unless the purposes of the different measures to be imposed by one regulator differ, which is difficult to ascertain in most cases, such setups breach the prohibition of double sanctioning.

4.1.4.2. Conclusion

Several SCSP disciplining setups breach the prohibition of double sanctioning. The design of the SCSP, where disciplinary measures normally follow an initial administrative punishment, creates a structural risk of constituting unlawful double sanctioning. Counterarguments denying this risk by characterizing disciplinary consequences as 'social' or 'karma-like' measures are not convincing, given that many of these measures are explicitly treated as administrative punishment and even others significantly impact SCSP subjects' rights. On the other hand, when regarding the occurring of a 're-evaluation' of the behaviour as central to whether a secondary punishment is imposed, the disciplinary setups that are automatically triggered by particular violations of the law and provide no additional discretionary space are unproblematic.

Where, however, disciplining setups include an additional discretionary space for deciding over disciplining for 'trust-breaking', which is required by other above-discussed principles of administrative law, they may breach the prohibition of double sanctioning. This is the case even if posited that disciplinary measures are, in essence, not imposed based on the original law violating behaviour that incurred the regular punishment, but based on the status of being a 'trust-breaker'. With regard to double sanctioning however, disciplinary measures ordinarily trace back to one or a number of concrete acts and thus produce cumulative punitive consequences for the same underlying behaviour, regardless of technical categorization. That said, recognizing the difference is crucial in the light of the assessment-centred CBR mechanism expanding and the older, blacklist-centred JAD mechanism losing traction. One way to ensure that no double sanctioning

completely substitute one another." *Chun Peng: Legal dilemmas*, p. 59. Arguing that "combined punishment" where it involves reputational punishment is compatible with the PRC's legal framework: Zhiyuan Zhang 章志远 and Yanjiao Bao 鲍燕娇 (2014) 作为声誉罚的行政违法事实公布 (The publication of administrative violation facts as a reputation penalty), 行政法学研究 (Administrative Law Research) 1/2014, pp. 48–54, p. 49.

[1445] 印发《关于对环境保护领域失信生产经营单位及其有关人员开展联合惩戒的合作备忘录》的通知 (Notice On Issuing The 'Mou On Joint Disciplining Trust-Breaking Production And Business Units And Related Personnel In The Field Of Environmental Protection'), issued by the NDRC, the PBoC and 29 others on 20 July 2016, https://www.ndrc.gov.cn/xxgk/zcfb/tz/201608/W020241217685389880833.pdf, archived at https://web.archive.org/web/20250813074129/https://www.ndrc.gov.cn/xxgk/zcfb/tz/201608/W020241217685389880833.pdf.

[1446] Casting this issue as violating the principle of proportionality: *Shen Yan and Boyang Wang: Credit assessment*, p. 46.

occurs while also guarding other principles of administrative law that mandate an extra discretion space for disciplinary measures is to install oversight over the entire punishment process, from the determination of the original law violation to the eventual imposition of disciplinary measures by other regulators.

4.1.5. Due process

"This seems to be a return to when the APL was enacted in 1996, when the situation was characterized by 'confusion over the power to set penalties', 'confusion over the subjects to be penalized', 'confusion over the penalty procedures', and 'a flood of red-headed documents on administrative penalties'. Arbitrariness of punishments is a 'handy tool' for regulatory authorities, but a 'terrifying monster' for the people. Therefore, whether the APL becomes a mere figurehead of disciplinary measures for trust-breaking, or whether this terrifying and arbitrary monster should be caged, and whether the disciplinary measures for trust-breaking of sanctioning character should be incorporated into the regulatory framework of the APL, will be the touchstone for whether the APL, after so many years, has 'remained true to its original intention'."

- Lin Tian 田林[1447]

SCSP practices may erode the due process principle 正当程序原则. While there is no explicit due process clause in the Constitution[1448] or a general clause in national legislation, several laws include due process rights. Most relevant to the SCSP, the APL in Art. 4 demands that "administrative organs shall implement the procedures prescribed by this law" and stipulates due process requirements for administrative agencies to follow when implementing administrative punishments (Art. 39-50). These include on the one hand, investigation procedures 调查程序 such as on ascertaining facts and collecting evidence (Art. 40, 46, 47, section 4.1.5.1.). Second, it includes decision-making procedures 决定程序, including the duty to notify the target subject in advance (Art. 44) and afford them the opportunity to defend themselves (Art. 45, section 4.1.5.2.). Courts and scholarship have further developed due process requirements even in the absence of relevant legislation.[1449] In fact, claims that due process was breached are

[1447] Lin Tian 田林 (2020) 行政处罚与失信惩戒的立法方案探讨 (Discussing legislation plans for administrative punishment and disciplines for trust-breaking), 中国法律评论 (China Law Review) 5/2020, pp. 10-17, p. 11.

[1448] Some derive the due process principle from the term "rule-of-law state", Art. 5(1), Constitution, and the right of the people to "administer state affairs", Art. 2(3), Constitution. See: Jiansheng Zhang 章剑生 (2005) 论行政程序正当性的宪法规范基础：依规范实证分析为视角 (The normative foundation of administrative due process in the Constitution: From the perspective of normative empirical analysis), 法学论坛 (Legal Forum) 4/2005, pp. 95-98, p. 98. Some identify the Constitutional basis for the due process principle in Art. 33(3), Constitution: "respecting and protecting human rights". See: Fanzhuang Meng 孟凡壮 (2014) 论正当程序原则在行政审判中的适用——基于75份运用正当程序原则的行政诉讼判决书的分析 (On the application of the due process principle in administrative trials - Based on an analysis of 75 administrative litigation decisions applying the due process principle), 行政法学研究 (Administrative Law Review) 4/2014, pp. 139-144, p. 142.

[1449] Haibo He (2008) The dawn of the due process principle in China, *Columbia Journal of Asian Law* 22, pp. 57-118; Fanzhuang Meng 孟凡壮 (2014) 论正当程序原则在行政审判中的适用——基于75份运用正当程序原则的行政诉讼判决书的分析 (On the application of the due process principle in administrative trials - Based on an analysis of 75 administrative litigation decisions applying the due process principle), 行政法学研究 (Administrative Law Review) 4/2014, pp. 139-144, p. 142; Youyong Zhou 周佑勇 (2019) 司法判决对正当程序员则的发展 (The development of the due process principle in court decisions), 中国法学 (China Legal Science) 3/2019, pp. 26-45, p. 28-29; Björn Ahl (2022) The development of the due process principle in post-2013 China, *Journal of Comparative Law* 17(2), pp. 254-276, p. 255.

most common among reasons that social credit disciplinary measures are brought to court, and the most common ground on which cases against social credit disciplinary measures are won.[1450]

Local legislation has in some places extended due process requirements from just administrative punishment to several other administrative acts. Local 'administrative procedure regulations', issued by local People's Governments across China starting 2008[1451] apply to all administrative decisions that are based on laws, administrative regulations or administrative rules and affect the rights and obligations of individuals, legal persons and other organizations.[1452] The State Council, too, has in several decisions emphasized due process as constitutive element of the law-based administration 依法行政[1453] and the law-based government.[1454]

The following analysis, instead of reviewing the entire spectrum of disciplinary measures for 'trust-breaking', focuses on reputational measures only. Among SCSP practices, reputational disciplinary measures are particularly challenging with regard to due process.[1455] As with many other disciplinary measures for 'trust-breaking', it is not clear whether or when reputational measures amount to administrative punishment in the sense of the APL[1456] and are thus subject to the APL's due process requirements.[1457] Nevertheless, in many applications, they satisfy the definition of administrative punishment.[1458]

[1450] Out of 137 administrative litigation decisions sourced by the author from Caipan Wenshu and through contact persons in courts, 16 led to the revocation of the disciplinary measure. Out of decisions, 14 cited the lack of adherence to due process requirements as reason.

[1451] 湖南省行政程序规定 (Administrative Procedure Rules Of Hunan Province), issued by the Hunan Province People's Government on 9 April 2008, last amended 8 October 2022; 山东省行政程序规定 (Administrative Procedure Rules Of Shandong Province), issued by the Shandong Province People's Government on 25 May 2011; others are at the municipal level: 汕头市行政程序规定 (Administrative Procedure Rules of Shantou City), issued by the Shantou Municipal People's Government on 1 April 2011, last amended 21 July 2021.

[1452] See also: Björn Ahl (2022) The development of the due process principle in post-2013 China, *Journal of Comparative Law* 17(2), pp. 254-276, p. 257.

[1453] Art. 5, item 3, 全面推行依法行政实施纲要 (Outline Of The Comprehensive Promotion Of Administration According To Law), issued by the State Council on 22 March 2004; Art. 8, 国务院关于加强市县政府依法行政的规定 (Decision Of The State Council On The Promotion Of Law-Based Administration Among Municipal And County Governments), issued 12 May 2008.

[1454] Art. 16, 国务院关于加强法治政府建设的意见 (State Council Opinion On Strengthening The Construction Of A Law-Based Government), issued 10 October 2010; Art. 21, 法治政府建设实施纲要 (2015-2020 年) (Implementation Outline For The Construction Of A Rule-Of-Law Government (2015-2010)), issued by the CPCCC and the State Council on 23 December 2015; Art. 10 No. 3, 法治政府建设与责任落实督察工作规定 (Regulations On The Construction Of A Rule-Of-Law Government And The Supervision Of The Implementation Of Responsibilities), issued by the CPCCC General Office and the State Council General Office on 15 April 2019; see also Björn Ahl (2022) The development of the due process principle in post-2013 China, *Journal of Comparative Law* 17(2), pp. 254-276.

[1455] E.g., *Ruixue Wang: The contemporary picture*, p. 461; *Zhongjing Men: Stigmatization*, p. 26.

[1456] Art. 2, 行政处罚法 (APL): "the actions by administrative organs in accordance with law taken against citizens, legal persons, or other organizations that violate the order of administrative management, to penalize them by methods such as reducing their rights or increasing their obligations."

[1457] Marianne von Blomberg and Haixu Yu (2023) Shaming the untrustworthy and paths to relief in China's Social Credit System, *Modern China* 49(6), pp. 744-781, p. 759.

[1458] Section 4.1.1. See also: Hong Zhu 朱红 (2019) 基于被公示人权利保护的失信名单公示制度改革 (Reform of the trust-breaker list publication system based on the protection of the rights of the person published), 黑龙江生态工程职业学院学报 (Journal of Heilongjiang Vocational Institute of Ecological Engineering) 32(5),

Given the significant expansion of the due process principle to administrative acts beyond just administrative punishment through local legislation, jurisprudence and adjudication,[1459] those reputational measures that do not qualify as administrative punishments, too, may be subject to due process. The SAMR, which plays a pioneering role in SCSP implementation, for its part explicitly laid down that in carrying out disciplinary measures for 'trust-breaking' taken against serious 'trust-breakers' in its realm, agencies must follow the APL's due process rules:

> "Procedures such as notification, hearing, service, and objection handling shall be implemented in conjunction with the administrative punishment procedure."[1460]

Following the scholarly consensus that views reputational measures as administrative punishment, I apply the APL's due process requirements as yardstick in the following analysis.

4.1.5.1. Procedures for investigation

Investigation procedures refer to the duty of the agency to obtain evidence and on that basis conduct an investigation of facts (Art. 40, APL).[1461] Two types of reputational disciplining must here be differentiated: First, an administrative agency may disclose negative social credit information that it obtained itself. Here, few problems arise with regard to due process requirements for investigation. The agency usually acts based on administrative rules that stipulate thresholds for what constitutes 'trust-breaking' in that particular realm. For instance, the Jiangxi Province Construction Market Entity 'Blacklist' Management Temporary Measures list in Art. 4 the behaviours that lead to blacklisting including using false materials when applying for qualifications or causing a major or high-level construction quality and safety accident.[1462] Evidence and facts on these behaviours are sourced from housing and urban-rural development agencies only (Art. 3), the same agency that is in charge of disclosing the blacklist. The processes of determining 'trust-breaking' and determining the terms of disclosure both occur within the same agency. Even when separated within the agency, investigation procedures can be followed.

The second type of reputational disciplining in the SCSP is more complex and poses significant challenges to the due process requirements in investigation procedures: The administrative organs in charge of SCSP building like the NDRC and its local branches disclose comprehensive credibility assessments. To this end, they carry together information from several departmental regulators, sometimes process them further into

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pp. 65–67; Zhiyuan Zhang 章志远 and Yanjiao Bao 鲍燕娇 (2014) 作为声誉罚的行政违法事实公布 (The publication of administrative violation facts as a reputation penalty), 行政法学研究 (Administrative Law Research) 1/2014, pp. 48–54.

[1459] Haibo He (2008) The dawn of the due process principle in China, *Columbia Journal of Asian Law* 22, pp. 57-118, p. 109.

[1460] Art. 13(1), 市场监督管理严重违法失信名单管理办法 (Market Supervision List Of Seriously Trust-Breaking Law Violators Management Measures), issued by the SAMR on 30 July 2021.

[1461] See also: *Binglin Tan: Disciplining trust-breaking*, p. 45: 查明事实 and 收集证据.

[1462] 江西省住房和城乡建设厅关于印发《江西省建筑市场主体"黑名单"管理暂行办法》的通知 (Notice Of The Jiangxi Province Housing And Urban And Rural Construction Office On Issuing The 'Jiangxi Province Temporary Measures For The Management Of The Construction Market Entity 'Blacklist''), issued 9 January 2025, https://www.jiangxi.gov.cn/jxsrmzf/2025nd3q/pc/content/content_1893697117278666752.html, not web-archivable.

scores, and disclose them on *Credit China* and other platforms.[1463] Here, the disclosing agency – often an organ under the NDRC tasked with leading SCS building in an entire locality rather than just one realm – is separate from the agencies that collect information and determine which law violations amount to 'trust-breaking'. Imposing shaming is a fragmented process: The original departmental regulator determines the 'trust-breaking', but another agency decides over (the degree of) reputational disciplining.[1464] Recall that other than the SCSP central plans foresees, the transmission of social credit information from front-line regulators to social credit information platforms of the NDRC is at best spotty. [1465] The NDRC's branch offices can therefore hardly conduct a thorough evaluation of the facts as required by due process.

Even if recent moves to improve the exchange of regulatory information [1466] were to resolve the data silo issue and the NDRC's offices would at some future point have access to complete and accurate social credit records, due process is at risk. Due process requires that upon imposing punishments, administrative agencies must assert the facts based on evidentiary material they gathered.[1467] The administrative agencies creating comprehensive credibility assessments under the NDRC only collect the PCI records from other agencies, that is, the administrative decision outcomes of other agencies. They do not collect the material the agency retrieved through (on-site) investigation and facts that lead to the decision (the designation of 'trust-breaking'). Building on the final administrative decision of another agency alone may not satisfy the requirement of assertion of the facts based on evidence. In addition, pursuant to Art. 57, APL, only the administrative agency investigating the facts makes an administrative punishment decision. It does not provide for an agency different than the one that gathered information to make an administrative punishment decision. The increasing automation of publication further eliminates the possibility for a case-by-case consideration and disconnects information investigation from the decision to publish adverse information.[1468]

4.1.5.2. Procedures for decision-making

Apart from investigation procedures, due process refers to procedures regarding decision-making. Pursuant to national laws, local regulations and scholarship on the due process principle, these include two: First, the duty to notify the addressee when an administrative decision is made that impacts their rights and interests and to give

[1463] Section 3.2.2.

[1464] See also, *Wang and Huang: On the legal constraints*, p. 103.

[1465] Section 3.2.1.

[1466] As evident from the 政务数据共享条例 (Government Data Sharing Regulations), issued by the State Council on 28 May 2025.

[1467] Art. 40, APL. See also *Binglin Tan: Disciplining trust-breaking*, p. 45.

[1468] See, also, *Binglin Tan: Disciplining trust-breaking*, p. 46; citing Yunfei Zha 查云飞 (2018) 人工智能时代全自动具体行政行为研究 (Research on fully automated specific administrative acts in the AI Era), 比较法研究 (Journal of Comparative Law) 5/2018, pp. 167-179, p. 168 and 170; Hans Krause Hansen and Richard Weiskopf (2021) From universalizing transparency to the interplay of transparency matrices: Critical insights from the emerging Social Credit System in China, *Organization Studies* 42(1), pp. 109-128, p. 122.

reasons for the decision,[1469] and second, to hear and consider the statements and defence of the addressee.[1470]

The first generation of policies regarding blacklists lacked clauses requiring administrative agencies to inform addressees in advance and offer opportunity for making defences.[1471] Exceptions were gradually made where targeted SCSP subjects were individuals.[1472] This gave rise to a wave of criticism from academia[1473] and several court decisions of the more "activist" like[1474] that even in the absence of such clauses required that the defendant should have notified the addressee in advance.[1475] Since then, many of the largely temporary rules have been revoked and re-issued. Most rules now include duties for blacklist-administering administrative agencies to inform the addressee prior to the publication of a blacklist. In fact, the more recent the issuance of rules on disclosing negative credit information, the more detailed the provisions on prior notification.[1476] The Management Measures on Publishing Information on Entities with Seriously Trust-Breaking Law Violations in Taxation for instance stipulate in Art. 8:

[1469] E.g. in Art. 44, APL; Art. 32(1), (2), (4), Art. 38(2), 行政许可法 (Administrative Licensing Law), issued by the NPC Standing Committee on 27 August 2003, last amended 23 April 2019.

[1470] E.g. in Art. 45, APL; Art. 7, 行政许可法 (Administrative Licensing Law), issued by the NPC Standing Committee on 27 August 2003, last amended 23 April 2019.

[1471] E.g., 山东省食品药品安全黑名单管理办法（试行） (Shandong Province Food And Drug Safety Blacklist Management Measures), issued by the Shandong Provincial Food And Drug Supervision And Management Bureau on 12 November 2015. Finding in 2019 that "Most regulations do not follow the procedural requirements of prior notification": *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 29.

[1472] Part 7, 国家发展改革委 人民银行关于加强和规范守信联合激励和失信联合惩戒对象名单管理工作的指导意见 (Guiding Opinions Of The NDRC And The PBoc On Strengthening And Regulating The Efforts On The Management Of Lists Of Persons Subject To Joint Rewarding For Trust-Keeping And Joint Disciplining For Trust-Breaking), issued 30 October 2017.

[1473] *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 28; Wei Wang 王伟 (2021) 社会信用建设法治化的新起点、新境界、新思维——解读《国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见》(New starting points, frontiers and thinking on legalizing social credit building – Interpreting the 'Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-Breaker Constraint System And Building A Long-Term Mechanism For Credit Construction), 中国经贸导刊 (China Economic and Trade Herald) 1/2021, pp. 15-16, p. 16; Dan Yang 杨丹 (2020) 失信惩戒对象的程序权利研究 (Research on procedural rights of subjects to disciplining for trust-breaking), 河南社会科学 (Henan Social Sciences) 28(3), pp. 21-29, p. 25; Shenggao Li 李声高 (2019) 失信治理连带责任的法理质辩与规则适用 (Jurisprudential questions on joint liability in the governance of trust-breaking and rule application), 法学杂志 (Law Science) 2/2019, pp. 125-132, p. 131.

[1474] Described in Björn Ahl (2022) The development of the due process principle in post-2013 China, *Journal of Comparative Law* 17(2), pp. 254-276, p. 274; and Haibo He (2008) The dawn of the due process principle in China, *Columbia Journal of Asian Law* 22, pp. 57-118, p. 59.

[1475] Jingyang District Court, 四川省德阳市旌阳区人民法院, 行政判决书（2020）川0603行初35号 (Administrative judgment no. 35), decided 27 July 2020; Wuhan Middle People's Court 湖北省武汉市中级人民法院，行政判决书（2017）鄂01 行终58号 (Administrative judgment no. 96), decided 24 November 2017.

[1476] For instance, the 国家税务总局关于发布《重大税收违法失信案件信息公布办法》的公告 (Announcement Of The State Tax Administration On Issuing The 'Measures On Publishing The Case Information Of Seriously Trust-Breaking Tax Violations'), issued 7 November 2018, did not yet include a duty to notify. It was replaced on 1 February 2022 by the 重大税收违法失信主体信息公布管理办法 (Measures On Publishing The Case Information Of Seriously Trust-Breaking Tax Violations), issued by the State Taxation Administration on 31 December 2021 which provides a notification duty in Art. 8; Likewise, Art. 6, 全国文化市场黑名单管理办法 (Management Measures For The National Cultural Market Blacklist), issued by the Ministry for Culture and Tourism on 19 June 2018; and Art. 6, 人力资源社会保障部关于印发《拖欠农民工工资"黑名单"管理暂行办法》的通知" (Notice Of The Ministry Of Human Resources And Social Security

> "A tax authority shall, before making a decision on determining a trust-breaking entity, deliver a notification document to the entity, notifying it of its rights to make statements and arguments."

The Measures further require that the notification document should include the name, social credit identifier, reasons for determining 'trust-breaking', the information that is to be disclosed to the public, a reminder that the tax authority will call upon JAD partner agencies to impose joint disciplinary measures, that its tax credibility assessment will be downgraded to D, and inform the entity of the remedial rights it enjoys.[1477]

Courts acknowledge when due process is not observed by administrative agencies as they engage in reputational disciplining. When Runcheng Renovation Ltd. sued the Xi'an Municipal HRSS Bureau and Shanxi Province HRSS Dep over entry in a blacklist for withholding wages from migrant workers, the court found a procedural violation in the fact that the agency did not inform Runcheng about the relief channels.[1478] In several instances of disputed negative social credit publication, courts elaborate at length on the procedures laid down in the respective administrative regulations on blacklisting.[1479]

Although many of the SCSP's due process ills have been healed, the administrative rules accompanying SCSP practices still neither reflect the additional risks that reputational disciplining poses as opposed to more conventional administrative penalties, nor those posed by automated decision-making elements. Because reputational disciplining is irreversible, the key of due process requirements is that the notification takes place well before the publication begins and sufficient time is awarded for the addressees to prepare and make statements and defences.[1480] The preparation of an objection might require the addressee to obtain information from other agencies, too, taking additional time.[1481] So far, I could not identify provisions that set requirements as to the time between notification and negative information publication. Some rules provide for a preliminary publication period during which addressees can submit objections. The Beijing traffic regulator for instance stipulates that addressees can submit an objection application online within 15 days of the announcement of the preliminary credibility assessments (Art. 16). Only after the 15 days have passed shall the final credibility assessment result be publicized and further disseminated to social credit platforms.[1482]

On Issuing The 'Interim Measures For The Administration Of The 'Blacklist' Of Those Who Withhold Migrant Workers Wages'), issued on 25 September 2017.

[1477] 重大税收违法失信主体信息公布管理办法 (Measures On Publishing The Case Information Of Seriously Trust-Breaking Tax Violations), issued by the State Taxation Administration on 31 December 2021.

[1478] Xi'an Railway Transportation Court, 西安铁路运输法院, 行政判决书（2020）陕7102行初2367号 (Administrative judgment no. 2367). The decision also states that the blacklisting is not an administrative act of its own. Although the court finds the decision of the agency unlawful (违法), it upholds it and highlights the high sum of wages that Runcheng owed to migrant workers.

[1479] E.g., Shiping County People's Court, 云南省石屏县人民法院 （2020） 行 政 判 决 书云2525行初1号, decided on 19 May 2020; Changsha Railway Court 长沙铁路运输法院 （2020）行政判决书湘8601行初905号 (Administrative judgment no. 905), decided 2 November 2020.

[1480] Among others, Jing Hao 郝静 (2020) 论行政法视域下正当程序对信用监管机制的规制 (On the regulation of credibility-based regulation by due process through the lens of administrative law), 河北青年管理干部学院学报 (Journal Of Hebei Youth Administrative Cadres College) 32(5), pp. 82-87, p. 86; *Binglin Tan: Disciplining trust-breaking*.

[1481] See, e.g., Jennifer Cobbe (2019) Administrative law and the machines of government: Judicial review of automated public-sector decision-making, *Legal Studies* 39(4), pp. 636-655, p. 641.

[1482] *Beijing Trial Measures On CBR In Traffic And Transportation*.

This arrangement however is only meaningful when other disseminating platforms and the non-state actors such as credit rating services themselves acknowledge the preliminary-ness of the results in their own processing and do not just treat them like regular credibility assessment results. Furthermore, this procedure appears to foreclose or at least complicate the possibility for the addressee to submit an objection after the 15 days have passed. This is in violation of statutory objection procedure time limits for administrative reconsideration.[1483]

Not just the particularities of shaming, but also the automation of the process of disciplining 'trust-breaking' that increasingly occurs poses significant new challenges to the due process principle. Here, SCSP practices find themselves in line with a wide range of automated decision making in public regulation worldwide.[1484] The above-described fragmentation of the reputational disciplining process impedes defence and statements procedures. Given that often at least two agencies are involved in reputational disciplining, and the acts of determining trust-breaking and initiating publication are carried out by two separate ones, addressees should be given the opportunity to forward statements and defences with all agencies involved. The different stages of reputational disciplining are currently treated as one administrative act only but must be disputable standing alone to comply with due process.[1485] Honghai Bi writes:

> "If only the first agency that proposes joint punishment affords the chance of a hearing to the subject, it is not enough to provide sufficient protection. There needs to be a more comprehensive specialized hearing agency to conduct relevant hearings."[1486]

This problem is common to disciplinary measures beyond shaming, too: Both, the blacklist-based JAD mechanism and the credibility assessment-based CBR mechanism impose a "package of uniform sanctions" [1487]. They undermine due process because single cases are treated not individually but by virtue of being included in a category.[1488] Other commentators counter that such technical fiddling apart of what is according to SCSP plans only one punitive action may "not only reduce administrative efficiency, but also may not be effective in actual rights protection." [1489] They instead point to non-confrontative procedures to mitigate harm, such as credit repair.[1490]

4.1.5.3. Technological Due Process?

The above indicates that where administrative agencies operate with the help of automation technologies, the due process principle requires new focal points

[1483] These amount to 60 days: Art. 20, 行政复议法 (Administrative Reconsideration Law), passed by the NPC Standing Committee on 29 April 1999, last amended 1 September 2023.
[1484] For a comprehensive account that spurred much further research, see: Danielle Keats Citron (2008) Technological due process, *Washington University Law Review* 85(6), pp. 1249-1314.
[1485] *Wei Fan: The legal character*, p. 102; for judgment defaulters: *Chunyan Ding: Judgment-defaulter blacklist system*, p. 440.
[1486] *Honghai Bi: Old regulatory wine*, p. 324.
[1487] *Chunyan Ding: Judgment-defaulter blacklist system*, p. 440.
[1488] Objection procedures are in detail addressed in section 4.2.5.
[1489] Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 49.
[1490] Addressed in section 4.2.3.

("technological due process"[1491], "技术性正当程序"[1492]). Specifically, the right to an explanation of automated decisions evolved in legislation in China and Europe.[1493] To ensure accountability of state agencies applying assessment and other digital technologies, literature extended the due process principle to require them to explain their decision-making procedures clearly and before the fact.[1494] The extent to which a duty for administrative agencies to explain their decisions reaches is under discussion and yet often limited to the duty to reply to requests about particular decisions. A duty to more broadly explain the entire system is advocated, and also required to facilitate judicial review of (semi) automated administrative decisions.[1495] SCSP commentators have, sometimes under the headline of due process, sometimes under the headline of the right to know, called for administrative agencies to pro-actively explain how they handle social credit files, what they include, and any changes undertaken in social credit information management ("公开释明").[1496]

4.1.5.4. Conclusion

The due process principle for administrative punishments encompasses that state agencies must follow stipulated procedures in investigating legal violations, and procedures in making the administrative punishment decision. The analysis of the compatibility of the SCSP's reputational measures with due process revealed that first, no breach of due process occurs where departmental regulators use credibility assessments internally (Sectoral credibility assessments as opposed to comprehensive credibility assessments). However, social credit agencies breach investigation procedures as they produce comprehensive credibility assessments. In the course of this, they carry together decision-making records from a variety of departmental regulators. They typically have no direct access to the detailed investigation records that lead to the decisions they gather, however, where the credibility assessment they produce is a decision with punitive impact, they violate the procedural rule that only the agency conducting the investigation shall issue a respective punishment.

Second, due process requirements regarding the decision-making procedure, such as prior notification duties for state agencies, have gradually been integrated in SCSP rules over the past years. Significantly, breaches of due process requirements regarding the decision-making procedure are frequently discussed in court decisions which generally

[1491] Coined by Danielle Keats Citron (2008) Technological due process, *Washington University Law Review* 85(6), pp. 1249-1314.

[1492] E.g., Yu Su 苏宇 (2023) 数字时代的技术性正当程序：理论检视与制度构建 (Technological due process in the digital age: Theoretical examination and system structure), 法学研究 (Chinese Journal of Law) 1/2023, pp. 91-107.

[1493] Art. 48, PIPL; Art. 86, Artificial Intelligence Act (Regulation (EU) 2024/1689), adopted by the European Parliament and the Council of 13 June 2024, OJ L 1689. Statutory duties for state processors of data in China are significantly weaker, see: Peng Zhao 赵鹏 and Shuo Zhang 张硕 (2024) 论自动化行政决定的说明义务 (On the duty to explain automated administrative decisions), 山西大学学报（哲学社会科学版） (Journal of Shanxi University (Philosophy & Social Science) 47(2), pp. 27-37, p. 33.

[1494] E.g., Danielle Keats Citron (2008) Technological due process, *Washington University Law Review* 85(6), pp. 1249-1314, p. 1299; Peng Zhao 赵鹏 and Shuo Zhang 张硕 (2024) 论自动化行政决定的说明义务 (On the duty to explain automated administrative decisions), 山西大学学报（哲学社会科学版） (Journal of Shanxi University (Philosophy & Social Science) 47(2), pp. 27-37, p. 31.

[1495] Section 4.2.1. and 4.2.2. See also: *Anja Geller: Social Scoring*, p. 58 (footnote); *Wenqing Zhou: Judicial review*, p. 116; *Yang Yu: Judicial review*, p. 197.

[1496] *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 28-29.

reinforce requirements such as the duty for agencies to inform the counterpart about remedial channels. However, most rules currently do not yet account for the additional specificities posed by reputational disciplinary measures. These include the provision for a time period in between notification of the disciplining decision and its execution. Given that adverse impact of shaming is irreversible, targeted subjects require several days in between learning of the imminent sanctioning and its begin to prepare their objections. Only few SCSP disciplining rules include such a time period. Further, automated elements of reputational disciplining regularly involve at least two actions – designating 'trust-breaking' and publication – conducted by at least two different agencies. However, current rules treat reputational disciplining, if at all, as one act, and do not afford for SCSP subjects to forward statements and defences with all agencies.

Finally, to account for the due process principles' shortcomings in the face of (semi-) automated administrative decisions, commentators expanded it to include the duty for agencies to pro-actively explain their decision-making before the fact. Only thereby can subjects be informed in time and realize their rights to object to a decision.

4.1.6. Conclusion of section 4.1.

This chapter evaluated SCSP practices with regard to their impact on the first element of administrative law's *protecting legal rights and interests* function, that is, the principles of administrative law.

4.1.6.1. Summary

LEGAL BASIS

Several disciplinary measures for 'trust-breaking' that constitute administrative punishment have the required legal basis in existing laws. The SCSP however also re-arranges existing measures of administrative punishment: the 'jointness' of the disciplining mechanism makes measures that are based in one law for certain behaviours stipulated in that law, applicable to penalize a person's violations of other laws. The legal basis requirement however demands that not only the measure standing alone and the behaviour standing alone need a legal basis, also the linkage requires a basis in the law. Further, current guiding policies on the SCSP allow for documents issued jointly by the State Council and the CPCCC to function as legal basis for measures despite such documents not enjoying the respective status as per the Legislation Law. The SCSP guiding policies are rightly commended for reigning in local 'floods of red-headed documents' and 'blacklists flying all over' in recent years. However, they also leave room for local inventions of new measures provided they are devised under DRC guidance. This risks a further mushrooming of disciplinary measures without legal bases.

Many of the measures are in the authoritative List of Disciplinary Measures described as explicitly not amounting to administrative punishment as they ostensibly do not reduce rights or increase obligations. For many of the measures I find that this characterization is adequate. However, several of the so-designated measures do impact rights: For instance, occupation bans impact the right to employment and shaming measures impact property rights as well as personality rights. Despite widely pointed out by scholarship, these measures are by the SCSP planners not regarded as necessitating a legal basis and often lack one. Reputational disciplinary measures are in SCSP central

policy documents, by courts, as well as some scholars legitimized on the basis of the Open Government Information Regulations. While these Regulations provide for the disclosure of certain types of government information, they do not account for the disciplining character that is inert to negative social credit information publication and are thus not an adequate legal basis for reputational disciplining. As regulatory laws undergo amendments, some incorporate negative social credit information disclosure explicitly and thus create the necessary legal basis.

PROPORTIONALITY

The proportionality principle requires SCSP practices to have a legitimate aim, be suitable to achieve this aim, be the mildest possible option to achieve the aim, and not impose a burden excessive in relation to the aim. As broad as the SCSP agenda is, are the aims that have been identified by courts and scholars assessing the proportionality of disciplinary measures for trust-breaking. This reflects the intentional breadth of the SCSP's core mission of 'trust building 信用建设': It translates to different concrete goals, depending on the realm of an SCSP application penetrate, mostly relating to achieving compliance.

Whether SCSP practices are suitable to achieve better compliance with the law may according to anecdotal evidence reasonably be expected but is not yet proven. Reputational measures may backfire or be ignored and mobility bans may undermine a debtor's ability to generate the money necessary for mending its trust-breaking behaviour. Finally, the actual capabilities of automated regulatory work based on trustworthiness assessments generally do not live up to the overblown expectations concerning such technologies to deliver fairer and more accurate decision-making faster (section 3.2.).

Most SCSP practices fail the necessity test. A main problem is that some measures impact the rights of persons other than the actual 'trust-breaker'. When children, spouses, colleagues and others in the vicinity of the 'trust-breaking' SCSP subject are penalized, the SCSP risks alienating into premodern practices of collective/kin punishment. Nuanced trustworthiness assessments, such as different shades of blacklists that account for different degrees of 'trust-breaking' better prevent excessive SCSP practices are. However, the fundamental problem remains that some SCSP measures qua setup shirk administrative agencies' evaluation of necessity: For instance, the severity of the impact of reputational measures is beyond the control of the agency, and where multiple administrative agencies engage in disciplining, one agency can hardly assess the entire chain from behaviour to the implementation of disciplinary measures.

Under the balancing test, that is, evaluating whether SCSP practices come with a burden to the addressee that is disproportionately high in view of the aim, reputational measures again are most the problematic of the SCSP practices. When reputational disciplining's legitimate aim is set as building an open government information regime, the punitive effects of the measures are disproportionate. Similar as in the necessity test, some SCSP practices defeat the chance for an agency to engage in proper balancing in the first place. Where, in CBR, administrative decisions build on credibility assessments for instance, the discretion space for conducting a proportionality evaluation is diminished, even when the process is not automated.

PROHIBITION OF IMPROPER CONNECTION PRINCIPLE

The analysis of SCSP practices through the lens of the prohibition of improper connection principle reveals multiple improper connections, depending on how wide the principle is cast. First and foremost, several linkages of trust-breaking behaviour to disciplinary measures for trust-breaking found across SCSP policies pose a high risk of breaching the prohibition of improper connection principle. Where both, the behaviour and the measure stem from the same field, or where both the measures and the behaviours are specified in regulatory texts, the risk is comparatively low. Running a high risk of forming connections in violation of the prohibition of improper connection principle are normative documents that link specified disciplinary measures to general trustworthiness assessment results, such as the abstract status of "being blacklisted" and, increasingly, credibility assessment result (grades or scores). Most problematic however are formulations in normative documents that leave blurry the types of disciplinary measures that may be taken against a certain or an unspecified act of trust-breaking. In this setup, the implementing agency has the discretion to establish itself a seemingly unlimited number of connections.

Beyond just disciplinary measures, a breach of the prohibition of improper connection principle may lie in the use of credibility assessments in administrative decision-making. Credibility assessments are increasingly not only composed of regulatory records from one regulatory realm. They also draw on compliance records from other regulators and additional reputational that is partly sourced from private actors. Administrative acts based on these records de facto do not only enforce law but also the other norms that are reflected in credibility assessments.

Thirdly, a wide reading of the prohibition of improper connection principle relates it to the minimization principle from personal information protection law. Pursuant to this, the centralized collection of PCI from different regulatory realms already may be problematic, even without considering it also informing decisions. At least as far as PCI of individuals is concerned, the large-scale collection of behavioural records of an SCSP subject in one file without a clearly stipulated purpose is problematic. It is, however, a cornerstone of SCSP design.

Finally, the prohibition of improper connection principle serves as a basis to criticize the SCSP designers' normative takeover of the notion of "trust" itself. Several behaviours that are throughout SCSP practices deemed "trust-breaking", "trust-keeping", "sincere" or else, commentators argue, in fact have no connection to what they regard as the essential concept of trust.

PROHIBITION OF DOUBLE SANCTIONING

Many setups of disciplining for 'trust-breaking' impose measures after an initial administrative penalty, creating a built-in risk of double sanctioning. Setups where disciplinary measures are automatically triggered and no re-evaluation of the action is conducted generally avoid this problem, but at the same time contravene other principles of administrative law.

Setups which grant regulators extra discretion to decide whether someone has engaged in ‘trust-breaking‘ are more problematic. Some frame disciplinary measures as not reaching the threshold of administrative punishment and therefore permissable. This neglects that many of the measures are explicitly framed as administrative punishment, and that many others unfold detrimental impact on rights of SCSP subjects even if not officially classified as administrative punishment. Others argue that disciplinary measures for ‘trust-breaking‘ are not imposed based on an original law violation but based on the status of being a ‘trust-breaker‘. Even if framed as punishment for such an evaluation of trustworthiness rather than for the original misconduct, these measures still stem from concrete acts and produce cumulative penalties for the targeted subjects. The prohibition of double sanctioning with ist focus on single actions thus runs somewhat empty in analysing punishments based on assessments, however, this does not permit the conclusion that unlawful double sanctioning does not in fact occur.

As the assessment-based CBR model expands and the older JAD blacklist model recedes, not single acts, but assessments of trustworthiness increasingly become the root of disciplinary measures for ‘trust-breaking’. To prevent double sanctioning while still respecting administrative law principles that require a discretionary space, a comprehensive oversight mechanism is needed. Such oversight would span the entire punitive chain.

DUE PROCESS

With regard to due process, I analyse the arguably most problematic of the SCSP practices, reputational disciplining, only. Due process requirements regarding investigation procedures are not significantly impacted by such reputational disciplining where the agency that carried out the investigation and imposed the original punishment is also the one that determines that ‘trust-breaking’ was constituted and that discloses the negative social credit information. Reputational measures leveraged by social credit agencies on the other hand combine sets of social credit information from different regulators. They are therefore unable to themselves investigate and verify the original behaviour, risking violations of due process requirements on investigation procedures.

Due process requirements regarding decision-making include duties for agencies to notify the addressee and hear her statements. Such provisions have in recent years increasingly found entry into administrative norms on reputational disciplining of ‘trust-breaking’. However, because of the irreversibility of reputational disciplining, additional specifications are in order to effectively protect due process: A time period in between the notification and the execution of the disclosure is necessary for a meaningful objection process yet largely absent. It is furthermore unclear which of multiple agencies involved in an act of reputational disciplining are responsible for hearing objections.

Due process has in recent decades adapted to the automation of the public administration, requiring specifically that administrative decision-making must be clearly explained when it is the outcome of an automated process. Despite scholarly advocacy for respective duties to be imposed regulators, they are not yet inscribed in the SCSP legal framework.

4.1.6.2. Discussion: Decontextualizing behaviour

Overall, SCSP practices are less problematic with regard to legality when carried out within one regulatory realm only. Risk of breaching principles of administrative law emerges especially with those practices that involve a decontextualization of behaviour, be it through the creation of credibility assessments with social credit information from different fields, or the application of disciplinary measures from one field for legal violations in another. A key issue with all SCSP practices remains the lack of proper legal definitions.[1497] For instance, the proportionality principle, the prohibition of improper connection principle, and due process are at risk of breach simply because no clear aim for SCSP measures or purposes for social credit information collection is stated. It is impossible to assess proportionality when a clear aim is not discernible, likewise is it impossible to assess whether an aim and measures are properly connected when there is no consensus over the aim. Most crucially, legal protections that accord with the particularities of reputational disciplining – irreversibility, leveraging societal actors as punishers etc. – are missing.

Legal reform is possible to a limited extent but significantly dampened by the fact that a core concept of the SCSP is the fructification of behavioural records in one realm for making decisions in other realms. This feature, best captured in the old lead phrase "breaking trust in one area leads to restrictions everywhere" [1498] is re-occurring throughout SCSP mechanisms, despite of the phrase itself having been taken out of most recent authoritative SCSP policy language.[1499] The ambitions of the CBR mechanism illustrates that the spirit remains. For administrative law, the building of trustworthiness assessments under the SCSP implies a shift from "behavioural responsibility" to "actor responsibility" [1500]. Not single behaviours are the central objects of administrative decision-making, but assessments of the trustworthiness of SCSP subjects. Bringing this actor responsibility concept into line with current principles of administrative law likely requires a return to the roots of the principles and a rethinking of their capacities of caging the power of administrative agencies to protect the rights of SCSP subjects. The crux in designing an assessment-based mode of regulation appears to lie in finding the right places for and amounts of administrative discretion. Whether 'trust-breaking' is designed as a lineal result of certain law violating acts, with no discretion afforded, or as the result of regulatory officials' discretionary decision separate from the original law violating acts, it gives rise to a series of punitive measures which currently is not overseen in its entirety by anyone and thus risks excessively impacting SCSP subjects' rights.

[1497] E.g., *Binglin Tan: Disciplining trust-breaking,* p. 39.

[1498] 一处失信，处处受限. Also common: "让失信着寸步难行，让守信着一路畅通", 李克强代表国务院在十二届全国人大二次会议上作《政府工作报告》 (Government Work Report of Li Keqiang representing the State Council delivered at the second session of the 21st NPC,), 5 March 2014, https://www.gov.cn/guowuyuan/2014-03/14/content_2638989.htm, archived at https://web.archive.org/web/20250430163353/https://www.gov.cn/guowuyuan/2014-03/14/content_2638989.htm.

[1499] As lauded by *Kui Shen: The Prohibition of improper connection*, p. 12.

[1500] *Yin Jia: Constitutionalizing*, p. 103; Chuangyu Fu 伏创宇 (2023) 信用惩戒适用行为人责任的法理及其限度 (Legal theory and limitations of the actor's responsibility in the application of credit disciplines), 法学研究 (Chinese Journal of Law) 6/2023, pp. 37-52, p. 49; Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 50.

4.2. Remedial channels for SCSP subjects

The following sections investigate relief channels for SCSP subjects with regard to their capacity of providing effective means of holding state agencies accountable. Administrative law provides for two formal means of seeking remedy, namely administrative litigation and administrative reconsideration, addressed in section 4.2.1. In the course of administrative litigation, plaintiffs can further request the court to review the legality of administrative normative documents related to the SCSP measure under dispute (section 4.2.2.). Not a remedial procedure in the narrow sense but a path that promises similar results for the SCSP subjects seeking remedy is the SCSP's own invention of credit repair 信用修复 (section 4.2.3.). Section 4.2.4. summarizes interim findings, pointing to the perils of ex-post remedial channels. Section 4.2.5. presents the remedial channel of objection procedures, which to some extent operates ex-ante.[1501]

4.2.1. Administrative litigation, administrative reconsideration

"People's courts are very political professional organs, as well as very professional political organs"

- Common phrase in official coverage of legal developments[1502]

The above has pointed out that social credit measures may implicate fundamental rights in violation of principles of administrative law. The PRC system provides two formal channels for citizens to object to state action that violates their legal rights and interests: administrative litigation and administrative reconsideration.

Before commencing the analysis, recall the 'Chinese characteristics' of remedial channels in PRC administrative law as introduced in section 2.2.3. Administrative litigation and administrative reconsideration are embedded in the socialist legal system under the lead of the CPC. Courts and administrative reconsideration institutions safeguard citizens' rights as a function of the overall goal of protecting the leadership of the Party. Courts' divisions for administrative litigation and administrative reconsideration institutions serve the centre by controlling its departmental and local administrative agents (the "peripheries"[1503], if you will). Scholarship has developed a series of concepts, from "thin rule of law"[1504], "pure legality"[1505], "embedded courts"[1506],

[1501] Under discussion, arguing for all three paths: *Shen Yan and Boyang Wang: Credit assessment*, p. 49; and for litigable blacklists: *Luping Zhang: Administrative blacklists*, p. 27.

[1502] "人民法院是政治性很强的业务机关，也是业务性很强的政治机关" For instance: Yu Zhu 朱玉 (2023) "处理好"五大关系"推动法院全面从严治党向纵深发展" (Handle the 'Five Major Relationships' well and promote the in-depth development of the courts' comprehensive and strict Party governance), 人民法院报 (People's Court Daily), 6 June, https://baijiahao.baidu.com/s?id=1768152928744164284&wfr=spider&for=pc, archived at https://web.archive.org/web/20250310133653/https://baijiahao.baidu.com/s?id=1768152928744164284&wfr=spider&for=pc.

[1503] Among many, see Patricia M. Thornton (2007) *Disciplining the State – virtue, violence, and state-making in modern China*, Harvard University Press, p. 15 and p. 204.

[1504] Randall Peerenboom (1999) Ruling the country in accordance with law. Reflections on the rule and role of law in contemporary China, *Cultural Dynamics* 11(3), pp. 315–351, p. 332.

[1505] Yiqin Fu, Yiqing Xu and Taisu Zhang (2023) Does legality produce political legitimacy? An experimental approach, Working Paper, Stanford King Center for Global Development, https://kingcenter.stanford.edu/sites/g/files/sbiybj16611/files/media/file/wp2008_0.pdf.

[1506] Kwai Hang Ng and Xin He (2017) *Embedded courts: Judicial decision-making in China*, Cambridge University Press.

"authoritarian legality"[1507], to law redefined by the Xi Jinping Thought[1508], to grasp this constellation. How do these 'Chinese characteristics' of remedial channels play out for SCSP subjects seeking remedy?

One consequence of the PRC's constitutional superstructure is that administrative litigation and administrative reconsideration work better for certain types of complaints than for others. Notably, the CPC regards channels for judicial and administrative legality review of the SCSP practices as conducive to the overall agenda of SCSP building (generally speaking, exceptions are addressed below). Ever since tangible measures by state agencies became part of SCSP building endeavour in the 2010s, relevant policy documents include calls for safeguarding rights of SCSP subjects and references to administrative litigation and administrative reconsideration procedures.[1509] In other words, the vanguard wants administrative litigation and administrative reconsideration to work for the SCSP.[1510] As Chun Peng 彭錞 points out, courts are not just the guardians of administrative actions' lawfulness but are also "vanguards of disciplinary measures for trust-breaking" in the larger mission of SCS building.[1511] Representatively, The SCS Building Law draft provides in Article 6:

> "[Protection of Rights and Interests] Building of the social credit system shall safeguard the lawful rights and interests of natural persons, legal persons, and unincorporated organizations, maintain credit information security, and strictly protect state secrets, commercial secrets, and personal privacy."

The empirical perspective mirrors this political plan to harness administrative litigation and administrative reconsideration procedures for improving the SCSP: Most of the social credit-related administrative reconsideration and administrative litigation cases I collected may with Yuxia Zhang and John Zhuang Liu be classified as "routine cases". As opposed to "hard cases" and "political cases", routine cases are most readily accepted by courts and political interference in adjudication to the detriment of the plaintiff is lowest.[1512] Routine cases include cases of low sensitivity such as those related to real estate ownership registration, labour rights, urban management, market supervision, marriage registration, traffic penalties, and so on.[1513] It is these very issues that most of

[1507] E.g., Weitseng Chen and Hualing Fu (2020) Authoritarian legality in Asia: Formation, development and transition, in: Weitseng Chen and Hualing Fu (eds.) *Authoritarian legality in Asia*, pp. i – ii, Cambridge University Press.
[1508] Zeming Liu and Benjamin Liebman (2025) Redefining law in China*, The American Journal of Comparative Law* 73(3), pp. 672–735.
[1509] E.g.,《社会信用体系建设规划纲要（2014-2020年）》任务分工 (Labour Division Plan For The SCS Construction Planning Outline (2014-2020), issued by the PBoC and NDRC on 16 December 2014.
[1510] Early 课题组 research tasked with evaluating the use of administrative punishments in the SCSP produced indicators for measuring the adherence of CBR to the rule of law, with a "unblocked administrative reconsideration and administrative litigation channels" as one major criterium: Hongdao Qian 钱弘道 and Bofeng Xu 徐博峰 (2017) 企业信用监管中行政处罚的法治化指标研究 (Research on legalization indicators of administrative punishment in corporate credit supervision), 浙江大学学报（人文社会科学版） (Journal of Zhejiang University (Humanities and Social Sciences)) 4/2017, pp. 32-47, p. 46.
[1511] *Chun Peng: The dilemma*, p. 185.
[1512] Yuxia Zhang and John Zhuang Liu (2025) The rise of the Chinese judiciary and its limits: Administrative litigation in the reform period, *The China Quarterly* 262, pp. 330-351, p. 333.
[1513] Yuxia Zhang and John Zhuang Liu (2025) The rise of the Chinese judiciary and its limits: Administrative litigation in the reform period, *The China Quarterly* 262, pp. 330-351, p. 333.

the SCSP-related cases address. Most SCSP cases may thus best be contextualized as routine cases.

An exception are complaints related to blacklists for petitioners which are becoming part of the SCSP's administrative blacklist universe.[1514] Matters related to petitioning, generally, are excluded from litigation pursuant to the SPC's Judicial Interpretation of the ALL.[1515] Strictly speaking however, the relevant provision only covers matters directly related to the act of petitioning, but not *blacklists* for petitioning, which arguably is a separate administrative action. Scattered cases related to blacklists for abnormal petitioning have surfaced.[1516]

Pursuant to Art. 2 of the ALL,

> "Citizens, legal persons or other organizations feeling that their lawful rights and interests have been infringed upon by an administrative act of an administrative organ or its personnel, have the right to bring a suit before a people's court in accordance with this Law."

The court then makes a decision regarding the administrative act in question. It may, first, reject the claim and uphold the administrative act (Art. 69, ALL). Second, it may revoke or revoke in part the administrative act (撤销, Art. 70, ALL), third, it may order the agency to renew the act in a correct manner (重新作出 Art. 70, ALL). Several grounds for the latter two decisions are listed and include insufficient evidence (Art. 17 no. 1, ALL), incorrect application of laws and regulations (Art. 70 no. 2, ALL), violation of legal procedures (Art. 70 no. 3, ALL), excessive use of powers of office (Art. 70 no. 4, ALL), abuse of authority (Art. 70 no. 5, ALL), and the "clear improperness" of the administrative act (Art. 70 no. 6, ALL).

A fourth type of decision a court can make is to not revoke the administrative act but confirm that it is illegal (确认违法 Art. 74, ALL). It will so decide if, for instance, the administrative act did not cause actual impact on the rights of the plaintiff (Art. 74 (1) no. 2, ALL). Fifth, the court may order the state agency to take a certain action within a fixed time period if it finds that the state agency has not performed a legally stipulated duty (履行 Art. 72, ALL).

Since the ALL's latest amendment in 2014, the court can review the legality of administrative normative documents on which the disputed administrative act is based upon request of the complainant (Art. 53, ALL). The potential of judicial review of SCSP-related administrative norms is addressed in section 4.2.2.

Generally, as described in section 2.2.3., the chances for plaintiffs to win lawsuits against state agencies are diminishingly low. Recent quantitative studies indicate that win rates

[1514] Discussed in section 3.1.3.1.

[1515] Art. 1 no. 9, 最高人民法院关于适用〈中华人民共和国行政诉讼法〉的解释 (SPC Interpretation On The Application Of The 'PRC Administrative Punishment Law'), issued 6 February 2018.

[1516] Licheng District People's Court, Fujian 福建省泉州市鲤城区人民法院, 行政裁定书 （2016）闽 0502行初 259号 (Administrative ruling), decided 19 December 2016; Beijing High People's Court. See also Kui Shen 沈岿 (2023) 论失信惩戒的行政诉讼可诉性 (On the litigability of disciplining trust-breaking in administrative litigation), 中国应用法学 (China Journal of Applied Jurisprudence) 2/2023, pp. 73-88, p. 84.

across all cases are on the rise,[1517] however, such studies draw only on those court decisions that were published. These represent an increasingly small and selected proportion of all cases.[1518]

More promising as strongly promoted in recent years is the administrative reconsideration channel. With the latest amendment of the Administrative Reconsideration Law (ARL) effective in January 2024, the legislators manifest the intention to make administrative reconsideration the primary and first contact point for administrative disputes.[1519]

First instance administrative litigation cases only slightly outnumber administrative reconsideration cases [1520] and the reported rate at which challenged government decisions are corrected through administrative reconsideration stands at 14.3%, [1521] much higher than the rate at which courts decide in favour of a complaint against an administrative agency. Citizens can file administrative reconsideration either with the very agency that is responsible for the administrative act in question (less often now), the next-higher agency, or separate administrative reconsideration bureaus with the relevant local government, depending on the locality and issue in question.[1522] Administrative reconsideration is increasingly shifted to designated bureaus apart from the regulatory agencies in an effort to build expertise, standardize decision outcomes, ensure independence from the defending agency, and optimize resource allocation.[1523] The move to ascertain better institutional independency of administrative reconsideration decision-making however is not to be equated with independence from CPC leadership. The recently amended ARL newly provides that "administrative reconsideration work adheres to the leadership of the Communist Party of China" [1524] . Administrative reconsideration has "filtering effects",[1525] dissuading claimants to proceed to litigation. The policy trend goes towards forcing all disputes into administrative reconsideration before they may file administrative litigation. That said, prospects for plaintiffs to win

[1517] Yuxia Zhang and John Zhuang Liu (2025) The rise of the Chinese judiciary and its limits: Administrative litigation in the reform period, *The China Quarterly* 262, pp. 330-351.
[1518] Lei Chen, Zhuang Liu and Yingmao Tang (2021) Judicial transparency as judicial centralization: Mass publicity of court decisions in China, *Journal of Contemporary China* 31(137), pp. 726-739.
[1519] Pursuant to Art. 1, ARL, it is the 'main channel' for administrative disputes; see also Jamie Horsley (2023) "Observations on the First Draft Revision of the Administrative Reconsideration Law", China Law Translate, 23 January 2023, https://www.chinalawtranslate.com/en/observations-on-the-first-draft-revision-of-the-administrative-reconsideration-law/.
[1520] Xin He (2014) *The judicial system of China,* Oxford University Press, p. 204.
[1521] 关于《中华人民共和国行政复议法（修订草案）》的说明 (Explanation Regarding The 'PRC Administrative Reconsideration Law (Amended Draft)'), issued by the NPC Standing Committee on 27 October 2022, http://www.npc.gov.cn/npc/c2/c30834/202309/t20230906_431581.html, not archivable.
[1522] See 行政复议法 (Administrative Reconsideration Law (hereafter ARL)), passed by the NPC Standing Committee on 29 April 1999, last amended 1 September 2023.
[1523] Huaide Ma 马坏德 (2022) 行政复议体制改革与《行政复议法》修改 (Reform of the administrative reconsideration system and the Administrative Reconsideration Law amendment), 中国司法 (Justice of China) 2/2022, pp. 61-64, p. 62.
[1524] ARL, Art. 3(1). The first version of 1999, its 2009 amendment and the 2017 amendment did not mention the Party at all.
[1525] Xin He (2014) *The judicial system of China,* Oxford University Press, p. 204.

administrative reconsideration, even though it is a process entirely within the state administration, are higher than to win administrative litigation.[1526]

Administrative litigation is similar to administrative reconsideration in key concepts, procedure, and remedies, both are therefore here treated side-by-side. According to Art. 2(1) of the ARL,

> "Where a citizen, legal person, or other organization believes that an administrative act of an administrative agency has infringed upon its lawful rights and interests and files an application for administrative reconsideration with an administrative reconsideration agency, the administrative reconsideration agency shall handle the cases by applying this Law."

Administrative acts that can by citizens, legal persons and other organizations be addressed in administrative reconsideration include several that are relevant to SCSP practices: administrative punishments (Art. 11 (1) no. 1, ARL), administrative compulsory measures or enforcement measures (Art. 11 (1) no. 2, ARL), denial of administrative licences (Art. 11 (1) no. 3, ARL), non-performance of its statutory duty of protecting personal rights, property rights, the right to receive education, and other lawful rights and interests of citizens (Art. 11 (1) no. 11, ARL), and an agency's infringing upon the citizen's rights in the work of government information disclosure (Art. 11 (1) no. 14, ARL). Finally, as a catch-all provision, administrative reconsideration can be raised over "other administrative acts by administrative agencies that citizens, legal persons or other organizations consider as infringing upon their lawful rights and interests" (Art. 11 (1) no. 15, ARL).

Crucially, an administrative reconsideration decision can subsequently be addressed in administrative litigation, with the administrative reconsideration institution being the defendant.[1527] Most social credit-related administrative litigation cases I collected in fact address an administrative reconsideration decision.

The administrative reconsideration institution can either *modify* the administrative act (变更, Art. 63, ARL), revoke or partly revoke the administrative act (撤销, Art. 64, ARL), confirm that an administrative act is unlawful but not revoke it (Art. 65, ARL), order the agency to carry out a legally prescribed administrative act (履行法定职务, Art. 66, ARL),

[1526] Huaide Ma 马坏德 (2022) 行政复议体制改革与《行政复议法》修改 (Reform of the administrative reconsideration system and the Administrative Reconsideration Law amendment), 中国司法 (Justice of China) 2/2022, pp. 61-64, p. 63. In 2024, the rate of plaintiffs achieving the revocation or modification of the administrative act concerned stood at 12.07%, see: Qi Qi 齐琪 (2025) "2024年全国新收行政复议案件74.96万件 (In 2024, the number of newly received administrative reconsideration cases nationwide was 749,600)", Xinhua, 28 February 2025, available at https://www.gov.cn/lianbo/bumen/202502/content_7008780.htm, archived at https://web.archive.org/web/20250311181511/https://www.gov.cn/lianbo/bumen/202502/content_7008780.htm; 关于《中华人民共和国行政复议法（修订草案）》的说明 (Explanation Regarding The 'PRC Administrative Reconsideration Law (Amended Draft)'), issued by the NPC Standing Committee on 27 October 2022, http://www.npc.gov.cn/npc/c2/c30834/202309/t20230906_431581.html, not archivable.

[1527] Since 2014. Before that, the administrative reconsideration institution became the defendant only if it decided to revise the administrative act. According to Xin He, this reform is the reason for the decrease in administrative reconsideration decisions that simply uphold the administrative act: Xin He (2014) *The judicial system of China,* Oxford University Press, p. 205.

declare the administrative act void (无效, Art. 67, ARL), or uphold the administrative act (维持, Art. 68, ARL).

The following sections break down the challenges that emerge for SCSP subjects when seeking remedy through administrative litigation and administrative reconsideration. These include identifying the defendant (section 4.2.1.1.), identifying the pertinent administrative act (section 4.2.1.2.), and demonstrating that it was unlawful (section 4.2.1.3.) and are examined below in turn.

4.2.1.1. Identifying the defendant

SCSP practices regularly involve multiple different administrative agencies as well as private companies carrying out public functions.[1528] In JAD for instance, agency A, upon finding that a company C has violated a regulatory law repetitively, designates C as 'trust-breaking' and enters it on its blacklist. Agency A shares the list with agency B in accordance with a joint disciplining arrangement laid down in a MoU. Agency B, carrying out the disciplinary measures agreed upon with agency A, denies company C an administrative license the company had applied for. Should C, where it sees its legal rights and interests impacted in violation of the law, address its claim to agency A, for the blacklisting, or to agency B, for the license denial resulting from the blacklisting?

No law or policy document clearly addresses this issue so far. Case records show that courts and administrative reconsideration institutions have been deciding on the matter inconsistently: Tinghu District People's Court in Jiangsu province for instance rejected a claim brought by a company against the Yancheng Economic and Technological Development Zone Management Committee which had blacklisted it for failing to pay migrant workers their wages and forwarded the decision to the Yancheng City Urban-Rural Construction Bureau. The Bureau then, carrying out the disciplinary measure for 'trust-breaking' adjacent to the blacklist, banned the company from participating in public bidding. Since the blacklisting decision was at the root of the ban, the company directed its claim against the Committee. However, the court decided that it should have directed its claim to the Yancheng Rural-Urban Construction Bureau because the Bureau had taken the disciplinary measure. It agreed with the defendant that the defendant had only "given recommendations to another agency"[1529] which does not unfold external effect. In a similar case however, Nanchong Middle People's Court in Sichuan province has taken the opposite stance: it decided that the decision of blacklisting itself has external effect and must be litigable. After a scaffolding of Anbilong Construction Supervision Ltd. collapsed killing six people, it was not only fined by the local work safety agency, but also publicly blacklisted by the responsible housing agency for a major work safety incident. Anbilong sued the housing agency and while the court of first instance

[1528] Section 3.2.

[1529] Tinghu District People's Court 江苏省盐城市亭湖区人民法院, 行政裁定书（2016）苏0902 行初1号 (Administrative ruling no. 0902), decided 30 June 2016.

rejected the claim,[1530] the court of appeal overturned the judgment and asserted that the information handling itself had external effect and is litigable.[1531]

Can our company C address agency A and agency B jointly? Both, the ALL (Art. 26(4)) and the ARL (Art. 19(2)) allow for claimants to address two or more administrative agencies where the administrative act was taken by multiple agencies. However, this requires that the act was also taken in the name of all the addressed agencies. The contribution of other administrative agencies in SCSP-related administrative acts is usually silent, without respective indications in the decision documents. Further, joint disciplining may rather be understood as consisting of several administrative acts, rather than just one, jointly taken act, as discussed in the following section 4.2.1.2.

Addressing the problem of allocating liability for jointly taken SCSP measures, some JAD-related administrative rules have in recent years invented principles such as the "who punishes, is who decides, is who is responsible principle 谁处罚、谁决定、谁负责原则". Such provisions require that the administrative agency that decides over whether law was violated, is considered the agency that imposes punishment, and the agency legally liable for the decision.[1532] These provisions however speak of 'punishment' only, indicating that disciplinary measures for 'trust-breaking' that do not amount to administrative punishment (see section 4.1.1.) are not included. A variation of the principle found in SCSP administrative rules in the tax field is the "who investigates is who is responsible principle 谁检查、谁负责的原则"[1533], which appears to cover the determination of 'trust-breaking' itself in addition to just the decision over disciplinary measures that amount to administrative punishment. These principles however yet lack further authoritative discussion and interpretation.

Comparatively clear is the language in SCSP rules where multiple administrative agencies but from the same regulatory realm are involved in SCSP practices. The SAMR in its rules on managing its List of Seriously Trust-breaking Law Violators, Art. 13(2), for instance provides that:

> "If a decision is made to include a person on the List of Seriously Trust-breaking Law Violators in accordance with the provisions of the preceding paragraph, the management of the List shall be the responsibility of the market supervision and administration department that issued the administrative penalty."[1534]

[1530] "The administrative punishment raised by the plaintiff does not exist": Gaoping District People's Court 四川省南充市高坪区人民法院, 行政裁定（2017）川1303行初62号 (Administrative ruling no. 62), decided 10 May 2018.

[1531] Nanchong City Middle People's Court 四川省南充市中级人民法院, 行政裁定 （2018）川13 行终132号 (Administrative ruling no. 132), decided 27 July 2018.

[1532] "按照"谁处罚、谁决定、谁负责"的原则" in the 安全生产严重失信主体名单管理办法 (Measures On Managing The List For Seriously Trust-Breaking Entities In Production Safety), issued by the Ministry of Emergency Management on 8 August 2023; "谁执法、谁认定、谁负责" in the 拖欠农民工工资失信联合惩戒对象名单管理暂行办法 (Interim Measures For The Management Of The List Of Joint Disciplining For Trust-Breaking For Subjects Who Withhold Migrant Workers Wages), issued by the Ministry for Human Resources and Social Security on 10 November 2021.

[1533] Art. 4, 国家税务总局关于发布《重大税收违法失信案件信息公布办法》的公告 (Announcement Of The State Tax Administration On Issuing The 'Measures On Publishing The Case Information Of Seriously Trust-Breaking Tax Violations'), issued 7 November 2018.

[1534] 市场监督管理严重违法失信名单管理办法 (Market Supervision List Of Seriously Trust-Breaking Law Violators Management Measures), issued by the SAMR on 30 July 2021.

The situation is even more complex when claims concern credibility assessment results rather than disciplinary measures, such as a social credit grading of D. In addition to the agency that produced that assessment, any one of the administrative agencies that contributed social credit information may be responsible (further discussed in section 4.2.1.3.). The following case illustrates the issue: Mr. Huang raised administrative reconsideration against the Hangzhou Traffic Police Bureau, requesting deletion of a negative entry in his social credit file relating to a traffic accident, which he accessed through the local PCI platform. The administrative reconsideration institution under the Hangzhou government he turned to however decided that he should instead address the Jiande City Public Security Bureau's Traffic Police Brigade, the agency that originally recorded the violation of law and forwarded the information to the social credit platform.[1535]

Identifying the defendant is most challenging when the acting organization is not an administrative agency. SCSP-related practices often are carried out not by administrative agencies, but by private or other actors that are not administrative agencies. Administrative litigation and administrative reconsideration however can only be addressed to administrative agencies as defendants, or to an administrative organ that was entrusted by an administrative agency to carry out the act ("委托的行政机关", Art. 19(3), ALL; Art. 26(5), ARL).[1536] Pursuant to this, the entire rank of non-state and semi-state actors that are involved in, for instance, disclosing negative social credit information, credibility assessment calculation, rejecting public bids from blacklisted SCSP subjects, cannot be held liable through administrative reconsideration or administrative litigation. Such actors include industry associations, credit information service companies, and state-owned enterprises participating in JAD, among others.[1537] The Beijing First Middle People's Court, for instance, rejected a claim arguing that the China Railway Corporation, which bars the entities on several blacklists from buying high-speed rail tickets, is not an administrative agency.[1538]

[1535] Hangzhou People's Government 杭州人民政府, 杭政复（2019）377号《行政复议决定书》 (Administrative reconsideration decision), 22 November 2019, described in Zhejiang Provincial Middle People's Court 浙江省杭州市中级人民法院, 行政判决书（2019）浙01行初729号 (Administrative judgment no. 729), decided 8 May 2020.

[1536] On the difficulty in establishing that SCSP measures are taken by so-delegated organs (委托原理), see: Kui Shen 沈岿 (2023) 论失信惩戒的行政诉讼可诉性 (On the litigability of disciplining trust-breaking in administrative litigation), 中国应用法学 (China Journal of Applied Jurisprudence) 2/2023, pp. 73-88, p. 76.

[1537] The 2025 National List of Disciplinary Measures discussed in section 4.1.1. of this thesis devotes the entire third category to such measures: "公共管理机构以外的组织自主开展失信惩戒的，不得违反相关法律、法规的规定。" 全国失信惩戒措施基础清单（2025年版） (National List Of Disciplinary Measures For Trust-breaking (2025 version)), issued by the NDRC and the PBoC on 14 March 2025, available from https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm, archived at web.archive.org/web/20250331232307/https://www.gov.cn/zhengce/zhengceku/202503/content_7016520.htm. Arguing that by inclusion in MoU on disciplining trust-breaking, industry associations such as the Salt Industry Association become administrative entities (specifically "信用监管的行政主体", here, 信用监管 does not refer to CBR specifically): *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 27.

[1538] Beijing First Middle People's Court 北京市第一中级人民法院, 行政裁定书（2019）京 01行终954号 (Administrative ruling no. 954), decided on 9 October 2019. For a discussion of this case, see Kui Shen 沈岿 (2023) 论失信惩戒的行政诉讼可诉性 (On the litigability of disciplining trust-breaking in administrative litigation), 中国应用法学 (China Journal of Applied Jurisprudence) 2/2023, pp. 73-88, p. 75.

That non-state actors carrying out SCSP tasks cannot be sued in that capacity is especially problematic in the light of the many incidents that such actors have caused. Private firms that realize SCSP goals and draw on PCI collected by state actors are regularly under fire for unlawful practices. In 2018, the Shaanxi Province Administration for Market Regulation fined 200 companies which allegedly provided credibility assessments services in a "non-scientific" manner.[1539] SCSP rules issued in Zhejiang province in 2025 directly address situations in which "PCI published by a third-party credit service agency is inconsistent with the provincial PCI service platform and infringes upon the legitimate rights and interests of the information subject".[1540] In June 2021, Dagong Global Credit Rating Co. Ltd. was fined twice by the China Securities Regulatory Commission for failing to scrutinize companies adequately.[1541] Two executives of the state-owned Golden Credit Rating International Co. Ltd. were detained in 2020 for issuing higher ratings to companies in exchange for bribes.[1542] In 2024, the PBoC fined six credit rating agencies for not operating independently and featuring inconsistencies in rating procedures, among others.[1543] Regulators and the police are cracking down on credit rating firms' unlawful practices, however SCSP subjects have no basis to address violations of rights themselves in courts or through administrative reconsideration.

Another issue comes to the fore where companies realize SCSP initiatives. The voluntary personal sincerity scoring scheme in Hangzhou, the Qiantang River Points 钱塘分 for instance is realized by the state-owned Hangzhou Huimin Credit Information Co., Ltd 杭州惠民征信有限公司. How is the liability of private firms carrying out tasks such as calculating credibility assessments for state agencies or spreading and processing social credit information allocated? The expansion of CBR practices is likely to render this issue more pressing in the future. As Shen Yan 闫申 and Boyang Wang 王博阳 formulate:

[1539] One of the addressees brought the decision to fine to court. It was found unlawful, a judgment that was upheld in second instance. Xicheng District People's Court, Beijing 北京市西城区人民法院, 行政裁定书（2019）京0102行初352号 (Administrative ruling no. 352), decided 19 September 2019.

[1540] Art. 15, 浙江省公共信用信息修复管理办法 (Zhejiang Province Public Credit Information Repair Management Measures), issued by the Zhejiang People's Government on 18 March 2025, https://www.gov.cn/zhengce/202504/content_7020595.htm, archived at https://web.archive.org/web/20250909164408/https://www.gov.cn/zhengce/202504/content_7020595.htm, hereafter: *Zhejiang Credit Repair Measures*.

[1541] Yuzhe Zhang and Ziyi Tang (2021) "Top China credit ratings agency sanctioned twice in one month", Caixin Global, 12 July 2021, https://www.caixinglobal.com/2021-07-12/top-china-credit-ratings-agency-sanctioned-twice-in-one-month-101739350.html, archived at https://web.archive.org/web/20250901084731/https://www.caixinglobal.com/2021-07-12/top-china-credit-ratings-agency-sanctioned-twice-in-one-month-101739350.html.

[1542] Timmy Shen (2020) "Update: Cash-for-ratings probe nets former executives at state-run credit ratings agency", Caixin Global, 14 December 2020, https://www.caixinglobal.com/2020-12-14/cash-for-ratings-probe-nets-former-executives-at-state-run-credit-ratings-agency-101639122.html, archived at https://web.archive.org/web/20250901085701/https://www.caixinglobal.com/2020-12-14/cash-for-ratings-probe-nets-former-executives-at-state-run-credit-ratings-agency-101639122.html.

[1543] Feng Ding and Wei Han (2024) "Six rating firms fined a total of $4.8 million for malpractice", Caixin Global, 3 February 2024, https://www.caixinglobal.com/2024-02-03/six-rating-firms-fined-a-total-of-48-million-for-malpractice-102163312.html, archived at https://web.archive.org/web/20250901090049/https://www.caixinglobal.com/2024-02-03/six-rating-firms-fined-a-total-of-48-million-for-malpractice-102163312.html.

> "[…] when a third party outside the government uses the public credit assessments and causes negative consequences, can the government be exempted from liability, should it bear responsibility, and what kind of responsibility should it bear?"[1544]

SCSP subjects can raise civil lawsuits against private actors and regularly do so.[1545] Civil litigation is more promising for several reasons. Civil law's protections of the right to reputation are considerably stronger and include compensation.[1546] Because the civil litigation procedure usually does not juxtapose the state and private actors, it is less sensitive and cases are more readily accepted. This led to the phenomenon that cases that are in essence administrative disputes are regularly taken to civil litigation.[1547] That said, civil lawsuits cannot perform judicial review of administrative action or order agencies to revoke, amend or annul administrative acts. They thus play a secondary, if any, role for holding state agencies accountable.

Private actors are, globally, involved in automated or semi-automated public regulation practices, making the question over their liability a key topic of discussion in legal scholarship.[1548] For instance, can an automatically made administrative decision be fully ascribed to the official in charge even in cases of bulk decision-making? Can private technology providers can be held liable to some degree? Companies involved in public agency decision-making regularly refuse to disclose detailed information on the decisions behind their products, invoking the protection of their commercial secrets.[1549] At the same time, the increasing reliance on private technology service providers produces a lock-in effect, making it nearly impossible for regulators to break with once

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[1544] *Shen Yan and Boyang Wang: Credit assessment*, p. 48.

[1545] E.g., Dagong Credit Data Ltd. & Dagong Intl. Credit Assessment Ltd, Xihu District People's Court 杭州市西湖区人民法院, 民事判决书（2015）杭西民初字第3178号 (Civil judgment no. 3178), decided 1 March 2016.

[1546] E.g., Articles 993 and 1029, Civil Code. On civil lawsuits brought against state agencies: see Maja Blumer (2016) Tort liability for infringements on the right of reputation under Chinese law—a review of selected court cases, Fajus Research Paper Series on Chinese and East Asian Law no. 1, October 2016, https://digitalcollection.zhaw.ch/bitstream/11475/1179/1/RP%201%20Digitalcollection.pdf.

[1547] Xin He (2014) *The judicial system of China,* Oxford University Press, p. 205.

[1548] Regulators outsource decision-making may constitute "escaping accountability" in UK law, they generally must still be held responsible for the outcome. See e.g.: Noon, River Manager, Conservators of the River Cam v. Matthews & Ors, England and Wales High Court, [2014] EWHC 4330 (Admin), decided 19 December 2014; Same in the U.S.: Steven M. Appel and Cary Coglianese (2020) Algorithmic governance and administrative law, in Woodrow Barfield (ed.) *The law of algorithms*, Cambridge University Press, pp. 162-181.

[1549] See for instance, the case of Wisconsin v. Loomis, discussed in: Steven M. Appel and Cary Coglianese (2020) Algorithmic governance and administrative law, in Woodrow Barfield (ed.) *The law of algorithms*, Cambridge University Press, pp. 162-181, p. 176: "In a case called Wisconsin v. Loomis, a criminal defendant challenged a state trial court's use of a (non-machine-learning) risk assessment algorithm to determine his sentence. He argued that his due process rights were violated because the 'proprietary nature' of the algorithm the trial court used prevented him from accessing information the trial court used at sentencing. The algorithm had been developed by a private company that refused to disclose how the risk scores are determined, claiming such information was 'a trade secret.' The Wisconsin Supreme Court rejected the defendant's arguments by affirming that the company had a right to protect its proprietary information and that it had, in any case, released sufficient additional information that satisfied due process requirements. The Wisconsin court's decision suggests that government agencies can lawfully use algorithms without divulging all their inner workings." See also: Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 196; Suggesting to therefore make all code used in public regulation open-source: Frank Pasquale (2015) *The black box society: The secret algorithms that control money and information*, Harvard University Press, p. 208.

adopted proprietary technologies.[1550] However, scholarly consensus, in China as elsewhere, is that public authorities should not be able to dodge liability by outsourcing tasks to private companies.[1551] Nathalie Smuha argues:

> "Accordingly, whenever the development (or, more rarely, deployment) of an algorithmic system has been outsourced to a private company, public authorities should not be able to escape the need to provide information about the algorithmic system by reference to intellectual property rights of the private company. Instead, they must ensure that, where such rights exist, these do not hinder the judge's review of how the challenged administrative act came into being."[1552]

4.2.1.2. Identifying the administrative act

Many SCSP-related administrative lawsuits and reconsideration quests fail due to not addressing the pertinent administrative act.[1553] Both, administrative litigation and administrative reconsideration procedures require the claimant to address an administrative act, defined as "administrative action made by organizations authorized under laws, regulations or rules". This definition is generally understood to include actions (1) by administrative agencies or by institutions lawfully delegated respective powers by administrative agencies that are (2) unilateral and performed in the exercise of lawfully delegated administrative power (excluding acts that require consent of the other party), (3) are specifically directed at a citizen, a legal person or other organization (excluding abstract administrative acts such as general rules), and (4) have external effects, that is establish rights or obligations for the addressee.[1554] Which of the many administrative actions involved in SCSP mechanisms amount to administrative acts and are thus actionable?

Disciplinary measures as administrative acts

Administrative punishments are types of administrative acts, hence all disciplinary measures for 'trust-breaking' that constitute administrative punishment[1555] are

[1550] Robert Brauneis and Ellen P. Goodman (2018) Algorithmic transparency for the smart city, *Yale Journal of Law and Technology* 20, pp. 103-176, p. 117.

[1551] See, e.g.: Lorna McGregor, Daragh Murray and Vivian Ng (2019) International human rights law as a framework for algorithmic accountability, *International & Comparative Law Quarterly* 68(2), pp. 309-349; Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 195; *Wenqing Zhou: Judicial review*, p. 111; Yanxin Ma 马颜昕 (2019) 自动化行政的分级与法律控制变革 (Automating administrative grading and reforming its legal control), 行政法学研究 (Administrative Law Review) 1/2019, pp. 80-92, p. 88.

[1552] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 195.

[1553] Kui Shen 沈岿 (2023) 论失信惩戒的行政诉讼可诉性 (On the litigability of disciplining trust-breaking in administrative litigation), 中国应用法学 (China Journal of Applied Jurisprudence) 2/2023, pp. 73-88, p. 88; Marianne von Blomberg and Haixu Yu (2023) Shaming the untrustworthy and paths to relief in China's Social Credit System, *Modern China* 49(6), pp. 744-781, p. 758.

[1554] In the absence of a clear definition, the SPC has described causes for administrative litigation: 最高人民法院印发《关于行政案件案由的暂行规定》的通知 (SPC Notice On Issuing The 'Interim Provisions On The Causes Of Administrative Litigation Cases'), issued 25 December 2020; Npc.gov. (2000) "什么是具体行政行为？" (What is a specific administrative act?), Website of the NPC, 17 December 2000, http://www.npc.gov.cn/zgrdw/npc/flsyywd/flwd/2000-12/17/content_13666.htm, not archivable. In the 1990s and early 2000s, this definition, close to the German concept of "Verwaltungsakt", was widespread, however, former SPC vice president Bixin Jiang 江必新 clarified that the term should be understood more broadly. Daniel Sprick therefore suggests 'administrative action' (Verwaltungshandeln) as translation. Daniel Sprick (2015) Rechtsstaatsentwicklung durch Gesetzgebung? Das neue Verwaltungsprozessgesetz der Volksrepublik China, *Zeitschrift für chinesisches Recht* 22(4), pp. 349-371, p. 359, 360.

[1555] Identified in section 4.1.1.

actionable.[1556] If the plaintiff can prove that a measure is administrative punishment, the series of rights-protective procedures prescribed in the APL are triggered.

Disciplinary measures for 'trust-breaking' that do not amount to administrative punishments are, too, widely understood as constituting administrative acts and are therefore accepted to administrative reconsideration, administrative litigation and so described in scholarship.[1557] Most of the disciplinary measures fall within the SPC's exemplary catalogue of 119 items that are litigable administrative acts.[1558] That said, some commentators as well as judges maintain that disciplinary measures for 'trust-breaking' of any kind are not litigable standing alone because they lack independence from the initial violation of law that triggered them. The main argument is that most disciplinary measures for 'trust-breaking' follow automatically from a the decision that a law was violated and thus are not imposed through a discretionary decision by the agency.[1559]

Specifically, reputational disciplinary measures, some argue, lack several defining features of administrative acts.[1560] Authoritative policy documents, scholarship and judges have argued that the disclosure of negative social credit information falls within administrative agencies' duty to disclose government information under the Open

[1556] See also: Zhiyuan Zhang 章志远 (2020) "作为行政处罚总则的《行政处罚法》 (The APL as the general principles of administrative punishment)", Website of the Institute of Rule of Law, CUPL, 18 October 2020, http://fzzfyjy.cupl.edu.cn/info/1035/12367.htm, archived at https://web.archive.org/web/20250820132455/https://fzzfyjy.cupl.edu.cn/info/1035/12367.htm.

[1557] *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 27; on market bans: Jianmiao Hu 胡建淼 (2017) "黑名单"管理制度——行政机关实施"黑名单"是一种行政处罚 (The blacklist management system – 'Blacklists' implemented by administrative organs are a type of administrative punishment), 人民法治 (People's Rule by Law) 5/2017, p. 83; Yiting He 贺译葶 (2020) 公布行政违法信息作为声誉罚：逻辑证成与制度构设计 (Publishing administrative violation information as administrative punishment: Logical justification and institutional design), 行政法学研究 (Administrative Law Review) 6/2020, pp. 78-89; on employment bans: Xiaoying Zhang 张晓莹 (2019) 行政处罚视域下的失信惩戒规制 (The regulation of disciplining of 'trust-breaking' from the perspective of administrative punishment), 行政法学研究 (Administrative Law Review) 5/2019, pp. 130-144; Gonglei Li 李洪雷 (2020) 论我国行政处罚制度的完善——兼评〈中华人民共和国行政处罚法（修订草案）〉 (On improving China's administrative punishment system – Comments on the PRC APL Draft Amendment), 法商研究 (Social Sciences Digest) 6/2020, pp. 70-72; Liu Cao 曹鎏 (2016) 论"基本法"定位下的我国〈行政处罚法〉修改——以 2016 年至 2019 年的行政处罚复议及应诉案件为视角 (On the amendment of China's APL as a 'basic law' – Through the lens of administrative punishment reconsideration and respective litigation cases from 2016 to 2019), 政治与法律 (Political Science and Law) 6/2020, pp. 28-40; Guodong Chen 陈国栋 (2021)〈行政处罚法〉中限制从业罚的解释与适用 (Interpretation and application of occupation bans under the APL), 南大法学 (Nanjing University Law Journal) 4/2021, pp. 98-115; on reputational measures: *Shen Yan and Boyang Wang: Credit assessment*, p. 53; Zhengzhou Middle People's Court 河南省郑州市中级人民法院, 行政判决书（2015）郑行终字第428号 (Administrative judgment no. 428), decided 28 December 2016.

[1558] 最高人民法院印发《关于行政案件案由的暂行规定》的通知 (SPC Notice On Issuing The 'Interim Provisions On The Causes Of Administrative Litigation Cases'), issued 25 December 2020.

[1559] *Chunyan Ding: Judgment-defaulter blacklist system*, p. 443; Zhongjing Men 门中敬 (2021) 失信联合惩戒措施的类型及行为属性 (The categories of disciplinary measures for trust-breaking and their behavioural attributes), 山东大学学报 （哲学社会科学版）(Shandong University Journal (Humanities and Social Sciences) 6/2021, pp. 76-85, p. 81.

[1560] *Ruixue Wang: The contemporary picture*, p. 457; See also: "As far as the interests of the subject are concerned, the publication of blacklists and joint punishment should be considered as an independent administrative measure, rather than as an outcome of previous administrative decisions." *Honghai Bi: Old regulatory wine*, p. 324.

Government Information Regulations.[1561] Down this line of thought, reputational measures are not only denied the status of administrative punishment, as argued above, but also generally that of a litigable administrative act. Disclosure of government information, even if it has a detrimental impact on the rights of the subjects concerned, is said to lack directedness that is required to establish that it is a specific administrative act. It rather constitutes "administrative factual behaviour 行政事实行为"[1562]. For instance, in a case brought by a construction firm against inclusion in a publicized blacklist, the Zhejiang Province High People's Court found, by way of obiter dicta, that the disclosure of negative social credit information was

> "merely a record and objective reflection of the respondent's law violating and irregular behavior by the plaintiff, and merely a disclosure of information regarding facts and behavior that have occurred. The sanctioning is not inherent in the bad behavior disclosure itself"[1563]

In some cases where reputational disciplines came in the format of targeted notices rather than just publication on an online platform however, courts have decided that publicizing negative social credit information does constitute an administrative act. For instance, the facility management firm Guanhaojia Property Ltd. convinced a court that a notice on its negative social credit record issued and spread by the Shanghai Hongkou Housing Bureau was a specific administrative act implemented in violation of due process. The Bureau had argued that the notice merely was an internal administrative guidance, but the court countered that the notice explicitly called upon house owners not to hire Guanjiahao for property management services, exerting significant negative impact on the company.[1564]

Similar to reputational measures, entries of negative social credit information into SCSP subjects' credit files, too, are by courts[1565] and scholars not regarded as administrative acts because they lack discernible external effects.[1566] Where CBR works smoothly, a negative entry in a social credit file triggers a series of unfavourable treatment by administrative agencies. In addition, for companies and other organizations whose files are generally made accessible through social credit information platforms, reputational

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[1561] Section 4.1.

[1562] Jie Yang 杨杰 (2021) 论行政信用评级的属性及其法律控制：基于行政过 程论视角的分析 (On the attribution of administrative credit ratings and their legal controls), 交大法学 (SJTU Law Review) 4/2021, pp. 123-138, p. 130; *Shen Yan and Boyang Wang: Credit assessment*, p. 43.

[1563] Zhejiang Province High People's Court 浙江省高级人民法院, 行政裁定书（2015）浙行申字第313号 (Administrative ruling no. 313), decided 26 August 2016.

[1564] Hongkou District People's Court 上海市虹口区人民法院, 行政判决书（2014）虹行初字第178号 (Administrative judgment no. 178), decided 24 December 2014.

[1565] Shanghai First Middle People's Court 上海市第一中级人民法院, 行政判决书（2014）沪一中行终字第221号 (Administrative judgment no. 221); Fengtai District People's Court 北京市丰台区人民法院, 行政判决书 （2019）京0106行初358号 (Administrative judgment no. 358), decided 18 December 2019; upheld in second instance: Beijing Second Middle People's Court 北京市第二中级人民法院, 行政判决书, （2020）京02行终423号 (Administrative judgment no. 423), decided 5 June 2020; Zhengzhou High-Tech Development Zone People's Court 郑州高新技术产业开发区人民法院, 行政判决书（2014）开行初字第156号 (Administrative ruling no. 156).

[1566] Arguing that 信用评估 *are* administrative acts: E.g., *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 27; *Luping Zhang: Objection mechanism*, p. 19.

damage unfolds. Despite of these impacts, entries of negative social credit information into files are generally considered internal administrative handling of information. Recall Mr. Huang's quest to have a negative credit file entry relating to traffic rule violations removed: The administrative reconsideration institution and subsequently, the court, both maintained that the recording of the information in a database itself is an administrative procedural act without external impact, and thus not an actionable administrative act.[1567] Nevertheless, exceptions exist: For instance, the Yubei District People's Court in Chongqing in 2024 decided that the decision of the municipal bidding bureau to deduct 12 points from the social credit score of an electric power company is an administrative behaviour within the scope of litigable actions as of the ALL. Notably however, in this case, the point deduction resulted in a one year ban on participating in bidding, which was the core of the plaintiff's concern.[1568] The court thus might have accepted the point deduction as litigable act just in order to address the disciplinary measure of the bidding ban.

Even if all disciplinary measures for 'trust-breaking' were considered independent administrative acts and actionable, identifying the pertinent administrative act to address remains a bottleneck. If all disciplinary measures were declared administrative acts, a claimant would have to file multiple lawsuits or administrative reconsideration applications addressing multiple agencies in order to target all the measures that ensue from the 'trust-breaker' designation separately. If the other administrative actions involved in the JAD mechanism were, too, declared litigable acts, the SCSP subject would have to choose: In JAD for instance, if she believes to be wrongfully subjected to the disciplinary measure of a ban on assuming a public office, she can address the original determination of a legal violation, the ensuing act of blacklisting, the transmission of the blacklist to other agencies for joint disciplining, the decision of the blacklist-receiving agency to impose the occupation ban or, if applicable, the publication of the blacklist for reputational disciplining. In CBR, identifying the administrative act to counter is even more complicated: As comprehensive credibility assessments are calculated from social credit information from several realms, technically, every act of information collection, the forwarding of the information to the credibility assessment-producing agency, the calculation of the assessment, its publication, and its invocation for administrative decision-making may all constitute an administrative act of their own. As one expert opinion on the drafting of a local SCS legislation advised, bringing the management of the entire life cycle of social credit information into the scope of administrative litigation is innovative, but unpractical[1569] and not necessarily conducive to rights protection.[1570]

[1567] Hangzhou People's Government 杭州人民政府, 杭政复（2019）377号《行政复议决定书》(Administrative reconsideration decision), 22 November 2019, described in Hangzhou Middle People's Court 杭州市中级人民法院, 行政判决书（2019）浙01行初729号 (administrative judgment no. 729), decided 8 May 2020.

[1568] Yubei District People's Court, 重庆市渝北区人民法院, 民事判决书（2024）渝0112行初3号 (civil judgment no. 3), decided 1 July 2024.

[1569] Fieldwork document 011.

[1570] "[…] However, breaking up a whole set of interconnected, sequential, information-based, and automated regulatory processes into several unfavourable administrative procedures will not only reduce

As a consequence, administrative litigation and administrative reconsideration can only reliably function as remedial channels for citizens who see their rights impacted by SCSP practices when the trustworthiness assessment itself is considered a litigable administrative act. Trustworthiness assessments in the SCSP currently come in the form of blacklists (in JAD) or credibility assessment results (in CBR). In how far can it be maintained that trustworthiness assessments are administrative acts?

Trustworthiness assessments as administrative acts

Trustworthiness assessments form the key link in most SCSP practices and mainly appear in the form of blacklists or credibility assessments. On the question of whether blacklisting or a negative credibility assessment itself, independent of the measures that it entails, is an administrative act, scholarly opinion deviates from court practice.

Courts to date have preserved a rather cautious approach. Decisions on credibility assessments are rare.[1571] Blacklisting for its part is widely not regarded an independent administrative act where it is not a discretionary decision or lacks specificness. [1572] Xuancheng Middle People's Court in Anhui Province for instance argued that entering a company into an administrative blacklist is not an administrative act, not to mention punishment, but rather an "administrative handling of the disciplining trust-breaking type 失信惩戒类的行政处理"[1573]. Several decisions of courts rejecting lawsuits brought against blacklisting decisions itself instruct claimants to address the original administrative punishment decision[1574] or the disciplinary measure imposed instead. In fact, SPC judge Baojian Geng 耿宝建 has indicated that administrative agencies, aware of the non-litigability of assessments, intentionally frame administrative acts as

administrative efficiency but may also have negative consequences for the actual protection of rights." Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 49.

[1571] Note that the EU's GDPR does not provide for the litigability of trustworthiness assessments, in this case personal scores, either. They are not considered 'decisions', only the acts that are based on them are. See Sachverständigenrat für Verbraucherfragen (2018) "Technische und rechtliche Betrachtungen algorithmischer Entscheidungsverfahren" Studien und Gutachten im Auftrag des Sachverständigenrats für Verbraucherfragen, Oktober 2018, p. 95; Mario Martini (2019) *Blackbox algorithmus. Grundfragen einer regulierung künstlicher intelligenz*, Springer, p. 173.

[1572] Xi'an Railway Transportation Court 西安铁路运输法院, 行政判决书（2020）陕7102行初2367号, 7 December 2020. See also: *Luping Zhang: Administrative blacklists*, p. 25 and 27. See Ningbo Middle People's Court 济宁市中级人民法院, 行政裁定书 (2016)鲁08行终227号 (Administrative ruling no. 227), discussed in *Lü and He: An analysis of the path to legal regulation*; The existence of an administrative act in civil law systems is not generally hinging on whether there is space for discretion, see for instance the German Verwaltungsverfahrensgesetz, Par. 35a: "Ein Verwaltungsakt kann vollständig durch automatische Einrichtungen erlassen werden, sofern dies durch Rechtsvorschrift zugelassen ist und weder ein Ermessen noch ein Beurteilungsspielraum besteht."

[1573] Xuancheng Middle People's Court 安徽省宣城市中级人民法院: 行政判决书（2019）皖18行终145号 (Administrative judgment no. 145), decided on 25 November 2019;
Zhejiang Province High People's Court 浙江省高级人民法院, 行政裁定书（2015）浙行申字第313号 (Administrative ruling no. 313), decided 26 August 2016.

[1574] Xi'an Railway Transportation Court 西安铁路运输法院, 行政判决书（2020）陕7102行初2367号 (Administrative judgment no. 2367), decided on 7 December 2020.

assessments in the normative documents they issue in order to dodge judicial review of their actions.[1575]

The court and administrative reconsideration practice be it as it were, literature argues that the trustworthiness assessment, namely a blacklist decision or a credibility assessment shall be actionable because it is at the source of all disciplinary measures for 'trust-breaking'.[1576] Judge Changcheng Lü 吕长城 and Yanyu He 贺妍玉 state that in order to avoid the confusion over whom to sue, the act of blacklisting that stands at the beginning of all disciplinary measures taken by different agencies should be the litigable act.[1577] Chuangyu Fu 伏创宇 argues that the designation of 'trust-breaking' embodies a separate assessment of an actor and her trustworthiness, rather than just the assessment of one law-violating behaviour. Therefore, he argues, designations of 'trust-breaking' are not classifiable under prevailing traditional administrative legal theory, but require the establishment of a new type of administrative behaviour.[1578] Similarly, Wenkai Liu 刘文凯maintains that disciplinary measures for 'trust-breaking' constitute a special type of administrative act, a "credit administrative discipline 信用行政惩戒", which due to being imposed on the basis of a trustworthiness assessment requires a new, procedural and legal framework of its own.[1579] Many respective arguments maintain that administrative process theory 行政过程论 shall be fructified to design an adequate judicial or administrative review mechanism for SCSP practices that involve multiple administrative behaviours. As opposed to classical administrative legal theory centred around the administrative act, administrative process theory can account for administrative behaviours of different types and help devise review mechanisms that focus on the most precarious element of each step.[1580]

[1575] SPC Judge Baojian Geng 耿宝建 (2016) "泛司法化"下的行政纠纷解决——兼谈《行政复议法》的修改路径 (Administrative dispute resolution under 'over-judicialization': Discussing the amendment path of the ARL) , 中国法律评论 (China Law Review) 3/2016, pp. 229-237, p. 231; drawing on this: Xin He (2014) *The judicial system of China,* Oxford University Press.

[1576] *Luping Zhang: Objection mechanism*, p. 20; *Wang and Huang: On the legal constraints*, p. 109; Information collection, credit assessment 信用评估, the act of evaluating, information disclosure and disciplines as well as rewards are administrative acts: *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 27.

[1577] *Lü and He: An analysis of the path to legal regulation*, p. 132.

[1578] Chuangyu Fu 伏创宇 (2023) 信用惩戒适用行为人责任的法理及其限度 (Legal theory and limitations of the actor's responsibility in the application of credit disciplines), 法学研究 (Chinese Journal of Law) 6/2023, pp. 37-52, p. 41.
Arguing that "comprehensive public credibility assessments can be seen as a new form of state power and social control": *Shen Yan and Boyang Wang: Credit assessment*, p. 43; see also Yuanyuan Jia 贾媛媛 (2024) 统而分殊：大数据时代中国式信用权益保护新模式 (Unified and differentiated: A new model of Chinese style credit rights protection in the era of big data), 行政法学研究 (Administrative Law Review) 1/2024, pp. 40-51.

[1579] Wenkai Liu 刘文凯 (2023) 信用行政惩戒不宜定性为行政处罚 (Improperness of regarding credit administrative disciplines as administrative punishment), 政法论坛 (Tribune of Political Science and Law) 3/2023, pp. 55-67, p. 63.

[1580] E.g., Muyao Zhang 张牧遥 (2022) 市场信用监管权设定问题探究 (Explorative research on regulatory power setting issues in market credit supervision), 征信 (Credit Reference) 7/2022, pp. 21-31, p. 26; *Shen Yan and Boyang Wang: Credit assessment*, p. 42; *Wei Fan: The legal character*; Xiaoying Zhang 张晓莹 (2019) 行政处罚视域下的失信惩戒规制 (The regulation of disciplining of 'trust-breaking' from the perspective of administrative punishment), 行政法学研究 (Administrative Law Review) 5/2019, pp. 130-144;

4.2.1.3. The feasibility of trustworthiness assessment review in administrative litigation and administrative reconsideration

The above first considered the subjects (the defendant) and in the next section, the objects (the administrative act) in the review of SCSP practices in administrative reconsideration and administrative litigation. This section turns to several practical questions that obstruct a review of trustworthiness assessment through administrative reconsideration and administrative litigation, even if the correct defendant and administrative action are identified.

The first issue pertains to CBR practices that integrate automated decision-making elements. Public regulatory mechanisms devised under the SCSP generally entail a loss of transparency for SCSP subjects as well as the reviewing judges or administrative reconsideration officials over the administrative action. This is especially the case in CBR: The more 'comprehensive' credibility assessments become, the more behavioural records they draw on and the more information sources are linked up, the more difficult it becomes for a claimant to trace back the process and the harder it becomes for a judge or administrative reconsideration official not acquainted with the respective assessment calculation technology to review its lawfulness. This issue of the "technical black box" is widely highlighted in literature on automated decision-making in the public administration in China and beyond.[1581] In as far as automated decision-making is involved in SCSP practices, the challenges technical black boxes pose to judicial and administrative review of administrative action apply.

First, for claimants, the involvement of assessment technologies lead to a limited availability of crucial material for preparing and evidencing their claims. The usual difficulties in obtaining government information in China apply.[1582] In addition however,

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Yinqi Jiang 蒋寅琦 (2019): 校外培训机构黑名单制度研究 (Research on the Off-campus Training Institution Blacklist System), 法制与社会 (Legal System and Society). 31/2019, pp. 210-212, p. 212. Applying administrative process theory for describing judicial review in off-site traffic law enforcement: *Wenqing Zhou: Judicial review*, p. 115; *Luping Zhang: Objection mechanism*, p. 20.

[1581] *Yang Yu: Judicial review*, p. 195; Mingmin Wang 王明敏 (2025) 行政机关利用个人信息进行自动化决策的合宪性检视 (Reviewing the constitutionality of administrative agencies' use of personal information for automated decision-making), 法学 (Law Science) 519(2), pp. 36-50, p. 43; Shaoyu Liu 刘绍宇 (2025) 论数字政府中人工智能的法律地位与规范体系—以人工智能立法为背景 (On the legal standing and norm system of AI in the digital government – Against the background of AI legislation), 行政法学研究 (Administrative Law Review) 1/2025, pp. 38-52, p. 45; Yunfei Zha 查云飞 (2023) 算法的行政法属性及其规范 (On the administrative legal status of algorithms and their standards), 法制与社会发展 (Law and Social Development) 6/2023, pp. 168-185, p. 177; Michèle Finck (2020) Automated decision-making and administrative law, in: Peter Cane, Herwig C. H. Hofmann, Eric C. Ip, Peter L. Lindseth (eds.) *The Oxford handbook of comparative administrative law*, pp. 656–676, Oxford University Press, p. 666; generally, see: Frank Pasquale (2015) *The black box society: The secret algorithms that control money and information*, Harvard University Press.

[1582] Open government information requests are increasing to the degree that the matter is discussed as the "abuse of the right to apply for disclosure of government information", see e.g.: Wenhao Yu 于文豪 and Fusheng Lü 吕富生 (2018) 何为滥用政府信息公开申请权—以既有裁判文书为对象的分析 (What is an abuse of the right of applying for government information disclosure? An analysis based on existing juridical documents), 行政法学研究 (Administrative Law Review) 5/2018, pp. 93-104.
While the rate at which courts ruled that a defending agency unlawfully withheld government information is high, only in few cases does the court explicitly require the agency to disclose the information: Manyun Zou 邹熳云 and Yasai Wang 王亚赛 (2019) "信息公开条例已生效11年，对你有用吗？ (The Open Information Regulations have been effective for 11 years now, were they useful to you?)" , 澎湃新闻 (The Paper), 4 April 2019, https://www.thepaper.cn/newsDetail_forward_3248133, archived at

information held by the regulators who apply CBR that may be useful as evidentiary materials is hard to access in all settings where computer system protocols and activity logs replaced physical documents.[1583] Obtaining such information is particularly difficult where (a part of) administrative decision-making is outsourced to private firms which typically claim proprietary rights over their software and data.[1584] Administrative rules or administrative decision documents that are disclosed do not necessarily reflect the number and kinds of actions involved. Notification, where fully moved to the digital sphere, shifts from a proactive reaching out to the addressee to a mere upload of records to a database, requiring the addressee to check themselves.[1585] Recall our plaintiff Mr. Huang seeking deletion of a social credit file entry regarding his car accident: Only after filing a respective request with the Hangzhou Traffic Police Bureau did he even learn about the steps behind the entry of this piece of social credit information into the database.[1586] Even where respective logs are disclosed upon request by administrative agencies or supporting technology firms, they are hardly comprehensible to an untrained eye.[1587]

Secondly, not just the claimants, judges and administrative reconsideration officials themselves regularly lack access to relevant case-related material. Automated elements in SCSP practices often present technical black boxes, opaque even to their creators, not to mention external observers including claimants, judges and administrative reconsideration officials.[1588] According to officials involved in credibility assessment production, administrative agencies barely duly document the processes of devising or outsourcing credibility assessments. The process is best described as ad hoc and strongly dependent on the technological applications that bidding firms or otherwise sought technology providers can deliver in a particular locality. Out of six credibility assessment-producing administrative agencies I asked about their internal documentation of the process for potential reviewability, four stated that they somewhat document the process. However, none of them confirmed that they did so with

https://web.archive.org/web/20250905084921/https://www.thepaper.cn/newsDetail_forward_3248133. The recent reforms to prevent the abuse of the Open Government Information Regime dampen chances even for legitimate requests: Zhongle Zhang 湛中乐 and Shuo Li 李烁 (2019) 公民滥用政府信息获取权的法律规制 ——兼评《政府信息公开条例》的修订 (Legal regulation of citizens' abuse of the right to obtain government information: Comments on the revision of the Regulations on Government Information Disclosure), 中国行政管理 (Chinese Public Administration) 4/2019 pp. 19-25.

[1583] Yunfei Zha 查云飞 (2018) 人工智能时代全自动具体行政行为研究 (Research on fully automated specific administrative acts in the AI Era), 比较法研究 (Journal of Comparative Law) 5/2018, pp. 167-179, p. 177; Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 162 and 195.

[1584] See for instance, the attempt to obtain information about the Belgian OASIS system documented: Elise Degrave (2020) The use of secret algorithms to combat social fraud in Belgium, *European Review of Digital Administration & Law* 1(1-2), pp. 167-177.

[1585] Yunfei Zha 查云飞 (2018) 人工智能时代全自动具体行政行为研究 (Research on fully automated specific administrative acts in the AI Era), 比较法研究 (Journal of Comparative Law) 5/2018, pp. 167-179, p. 172.

[1586] Section 4.2.1.1., Hangzhou People's Government 杭州人民政府, 杭政复（2019）377号《行政复议决定书》(Administrative reconsideration decision), 22 November 2019, described in Hangzhou Middle People's Court 杭州中级人民法院, 行政判决书（2019）浙01行初729号 (Administrative judgment no. 729), decided 8 May 2020; See also Jennifer Cobbe (2019) Administrative law and the machines of government: Judicial review of automated public-sector decision-making, *Legal Studies* 39(4), pp. 636-655, p. 654.

[1587] FJ01.

[1588] Sections 3.1.1.3. and 3.2.4.

reviewability in mind.[1589] Rather, as one official indicated, their documentation is geared towards reporting to their superiors the progress that has been made and the work targets that have been achieved.[1590] Such documentation in turn is of little use for the purposes of reviewing legality as its focus lies on demonstrating the maturity of the system rather than on explaining moral-laden or value-based decisions made in the course of coding.

Where the parameters and decisions made in building credibility assessment technology are well-documented, the problem of the complexity of such material remains. Judges and administrative reconsideration officials are generally not trained in deciphering software codes or contextualizing pieces of digital evidence.[1591] This lack of technical expertise has reportedly led to courts foregrounding procedural issues in order to circumvent a review of technological applications.[1592] Further, judges and administrative reconsideration officials tend to decide in favour of the defendant because they simply presume that a technological application operates rationally and reasonably.[1593] Human decision-makers with little expertise tend to trust in the objectivity of technology, a phenomenon described as "automation bias".[1594] This is fatal given that all technology is value-laden. Its operational logic is determined by decisions of developers that are rooted in their own respective values.[1595] The trust in technology's 'neutrality' is unwarranted.[1596] Taking for granted the objectivity of a technological application by design also effectively shifts the burden of proof, which per ALL and ARL both lies with

[1589] CQ05; CQ06; HZ02; HZ03; SH01; WZ01; WZ02.
[1590] SH01. The lack of documentation for potential judicial review is prevalent in European algorithmic regulation cases, too: Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 192.
[1591] *Wenqing Zhou: Judicial review*, p. 114; For Europe: Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 192; Discussing a case from the UK, Karen Yeung (2022) Keynote Address 'Constitutional Principles in a Networked Digital Society', IACL Roundtable, 31 January – 1 February 2022, Copenhagen, Denmark, https://ssrn.com/abstract=4049141, p. 8.
[1592] *Yang Yu: Judicial review*, p. 196 describing the case of the Liaoning Provincial People's Court 辽宁省沈阳市中级人民法院, 行政判决（2017）辽01行终1271号 (Administrative ruling no. 1271). For accounts of equivalent conduct in Europe, see Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 196; Judges also tend to focus on the data input and output of a system only, overlooking the "processing and computation" link: Han-Wei Liu, Ching-Fu Lin and Yu-Jie Chen (2019) Beyond State v Loomis: Artificial intelligence, government algorithmization and accountability, *International Journal of Law and Information Technology* 27, pp. 122-141, p. 134.
[1593] Respective cases discussed Judge *Wenqing Zhou: Judicial review*, p. 116; Karen Yeung (2022) Keynote Address 'Constitutional Principles in a Networked Digital Society', IACL Roundtable, 31 January – 1 February 2022, Copenhagen, Denmark, https://ssrn.com/abstract=4049141, p. 12; Claire Hall (2020) Challenging automated decision-making by public bodies: Selected case studies from other jurisdictions, *Judicial Review* 25(1), pp. 8-20, p. 16.
[1594] Tatiana Kazim and Joe Tomlinson (2023) Automation bias and the principles of judicial review, *Judicial Review* 28(1), pp. 9-16, p. 10; Harvard Law Review (2017) Criminal law — sentencing guidelines — Wisconsin Supreme Court requires warning before use of algorithmic risk assessments in sentencing. — "State v. Loomis", 881 N.W.2d 749 (Wis. 2016), *Harvard Law Review* 130(5), pp. 1530-1537, https://www.jstor.org/stable/44865547; Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 176; Benjamin Fadavian (2018) Chancen und Grenzen der algorithmischen Verwaltung im demokratischen Verfassungsstaat, in: Resa Mohabbat Kar, Basanta E. P. Thapa, and Peter Parycek (eds.) *(Un)berechenbar? Algorithmen und Automatisierung in Staat und Gesellschaft,* Fraunhofer-Institut für Offene Kommunikationssysteme FOKUS, https://nbn-resolving.org/urn:nbn:de:0168-ssoar-57600-2, pp. 294-314, p. 303.
[1595] E.g., Nicholas Diakopoulos (2015) Algorithmic accountability, *Digital Journalism* 3(3), pp. 398-415, p. 402; Brent Daniel Mittelstadt, Patrick Allo, Mariarosaria Taddeo, Sandra Wachter and Luciano Floridi (2016) The ethics of algorithms: Mapping the debate, *Big Data & Society* July-December 2016*,* https://doi.org/10.1177/2053951716679679*,* pp. 1-21, p. 2.
[1596] Speaking of a "mystical aura and apparent intractability" of automated decision-making machines in governance: *Fourcade and Gordon: Learning like state*, p. 84.

the defending state agency,[1597] to the claimant.[1598] The claimant or plaintiff in turn, even if technologically well-versed, faces the above-described difficulties in accessing the relevant software and finds herself often unable to prove errors or rule violations in the design of assessment technologies.

A crucial problem that emerges from the lack of expertise paired with the automation bias is that the review of automated decisions such as credibility assessments does not go far enough. Judicial review of assessment technologies applied in public governance typically ends with a review of whether the application operates according to the developers' intention.[1599] Judges and administrative reconsideration officials are content if the agency can describe that the application they use functions without technical error.[1600] Such a review however does not aim at detecting discrepancies between the operation of the system and the law, but at detecting discrepancies between the expected and the actual outcomes of the system. It assumes that the technological application *as designed* does not violate laws or legal principles. An evaluation of whether the application itself, working as it should, is problematic, is skirted, but inevitable for a meaningful review of the disputed administrative behaviour.[1601] Courts have in the past often struck down unlawful software used in the decision-making processes of public agencies.[1602] The risk that public regulation software qua design is in violation of the law may be particularly large in the PRC where the intense profit-seeking attitudes of technology service companies meet the extreme career competition within

[1597] Art. 44, ARL; Art. 70, ALL.

[1598] Shenyang High-tech Development Zone People's Court 辽宁省沈阳高新技术产业开发区人民法院, 行政判决书（2016）辽0192行初39号 (Administrative judgment no. 39), described in *Yang Yu: Judicial review*, p. 196. Much cited in this context by Chinese scholars is the 'hard look doctrine' from the US context, which requires agencies to record decision-making processes in not just rulemaking but also other administrative decisions, e.g. Zining Jin 金自宁 (2020) 科技专业性行政行为的司法审查——基于环境影响评价审批诉讼的考察 (Judicial review of technological specialized administrative action – Based on environmental impact examination litigation), 法商研究 (Social Sciences Digest) 3/2020 pp. 154-168, p. 156.

[1599] E.g., Han-Wei Liu, Ching-Fu Lin and Yu-Jie Chen (2019) Beyond State v Loomis: Artificial intelligence, government algorithmization and accountability, *International Journal of Law and Information Technology* 27, pp. 122-141.

[1600] Summarizing the adjudication practice: "An agency need not provide a detailed reason about the inner workings of a thermometer to justify imposing a penalty on a food manufacturer for failing to store perishable products at a cold temperature. Rather, the agency merely needs to show that the thermometer reads temperatures accurately." Steven M. Appel and Cary Coglianese (2020) Algorithmic governance and administrative law, in Woodrow Barfield (ed.) *The law of algorithms*, Cambridge University Press, pp. 162-181, p. 177; Representatively, merely ordering the agency to add the seal or signature of the handling police officer to a disputed administrative punishment decision that was made automatically but not essentially reviewing the application and in the end not supporting the addressee's claim: Shanghai First Middle People's Court 上海市第一中级人民法院, 行政裁定书（2018）沪01行初216号 (Administrative ruling No. 216), described in Shanghai High People's Court 上海市高级人民法院, 行政判决书（2019）沪行终204号 (Administrative judgment No. 204), decided on 21 May 2020.

[1601] E.g., Karen Yeung (2022) Keynote Address 'Constitutional Principles in a Networked Digital Society', IACL Roundtable, 31 January – 1 February 2022, Copenhagen, Denmark, https://ssrn.com/abstract=4049141, p. 9; Abe Chauhan (2020) Towards the systemic review of automated decision-making systems, *Judicial Review* 25(4), pp. 285-295, p. 285.

[1602] Recall the childcare benefits case in the Netherlands: David Hadwick and Shimeng Lan (2021) Lessons to be learned from the Dutch childcare allowance scandal: A comparative review of algorithmic governance by tax administrations in the Netherlands, France and Germany, *World Tax Journal* 13 (4), pp. 609-645. A series of practices highlighted in a 2020 report on automated governance were discontinued: Algorithm Watch and Bertelsmann Stiftung (2020) Automating Society Report 2020, October 2020, available at https://automatingsociety.algorithmwatch.org/wp-content/uploads/2020/12/Automating-Society-Report-2020.pdf.

the bureaucratic apparatus for better evaluations, measured by indicators such as the degree of digitalization of governance.

Apart from the sheer lack of expertise to evaluate the legality of an entire credibility assessment software, judges and administrative reconsideration officials face a considerable risk where they do so: should they find that the application per operating mode violates laws and legal principles, this would entail that all or many decisions the application had previously made, even if not disputed by the persons concerned, were also unlawful.[1603] Thereby, judges and administrative reconsideration officials are unwilling to review legality of automated decision-making, in addition to lacking the expertise to do so. Reviewing technological applications relied upon by administrative agencies for decision-making "[...] requires sufficient knowledge of the risks associated therewith and the openness to carry out a critical examination rather than a mere deference to public authorities."[1604] Anecdotal reports of judges in China confirm that many are wary of the risks of reviewing thoroughly the entire automated decision-making application of an agency.[1605] The phenomenon of "discretion laziness/inertia 裁量怠惰", which describes when administrative officials overly rely on an applications' recommendations,[1606] was ascribed to judges reviewing automated administrative decisions, too, as they rely on the lawful functioning of technologies.[1607] These findings, even though well-evidenced so far only for the rather mature case of traffic violation management, may apply to CBR instances of automated decision-making, too.[1608]

Consequently, to make SCSP practices involving automated decision-making reviewable under administrative reconsideration and administrative litigation, the technical expertise required must be brought to judges and administrative reconsideration officials. As Cobbe formulates,

> "In order for [automated decision-making] systems to be used in particularly consequential areas of public administration there will likely need to be some accessible means for providing reasons for decisions. Other developments which would benefit non-technical reviewers of automated systems include means for evaluating the accuracy of training data, means for identifying inferences and predictions to be assessed for accuracy and relevance, and means for assessing bias in machine learning systems."[1609]

How to bring the expertise required for a legality review of trustworthiness assessment into court rooms and administrative reconsideration spaces? The latest ARL amendment appears to address this problem by expanding the role of the administrative reconsideration Committees. These Committees, consisting of not just the relevant state

[1603] See also, Abe Chauhan (2020) Towards the systemic review of automated decision-making systems, *Judicial Review* 25(4), pp. 285-295.
[1604] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 192.
[1605] Judges reported that especially time constraints dampened the feasibility of reviewing automated decisions by administrative agencies: BJ08, BJ11, HK03.
[1606] Section 4.1.2.4.
[1607] *Yang Yu: Judicial review*, p. 207.
[1608] CBR is not yet mature enough to systematically bring about punishments outside of pilot projects, hence, few cases of judicial and administrative review of automated credibility assessment-based punishments have surfaced. However, the patterns show in other instances of automated decision-making, especially in the field of traffic law enforcement: *Wenqing Zhou: Judicial review*; *Yang Yu: Judicial review*; Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 87.
[1609] Jennifer Cobbe (2019) Administrative law and the machines of government: Judicial review of automated public-sector decision-making, *Legal Studies* 39(4), pp. 636-655, p. 654.

agencies, but also scholars and experts, shall be consulted by the administrative reconsideration offices in difficult cases as well as "highly professional and technical" cases (Art. 52 (2) No. 2, ARL). Administrative reconsideration offices are to use the advisory opinion of the administrative reconsideration Committee as important reference in making their decision (Art. 61, ARL). These changes help technical expertise enter the administrative reconsideration decision processes that pertain to credibility assessments and other SCSP practices facilitated through automated decision-making. In some administrative litigation processes, courts have invited technical experts to share advisory opinions on technological applications used in administrative decision-making.[1610] Recent legal reforms address how digital evidence is to be handled.[1611] However, structures for bringing in technical expertise have not yet solidified and currently only cater to administrative reconsideration officials and judges, but not claimants as they prepare their claims.

On a final note on the administrative litigation procedure more generally, administrative rulings of courts often are not enforced (ironically, given that law enforcement is one key issue the SCSP came to solve in the first place). The judiciary professionalized considerably over the past decades since in 1989, Susan Finder wrote that "many Chinese people believe administrative litigation is like throwing an egg against a stone"[1612]. However, the enforcement of judicial decisions against the public administration remains difficult in practice,[1613] even after considerable progress through steps like the passing of the Administrative Enforcement Law[1614], introduction of penalties where administrative agencies do not comply with court orders, and provisions allowing courts to issue judicial suggestions 司法建议 to the next higher-level department of the defendant agency to exert pressure on the defendant.[1615]

4.2.1.4. Conclusion

The ability of SCSP subjects to obtain remedy through administrative reconsideration and administrative litigation for undue damages from SCSP mechanisms remains structurally constrained. On the one hand, the Party-state formally encourages the use of legality-review mechanisms to 'improve' the operation of the SCSP. SCSP-related cases, contrary to common expectations, are not usually classified as sensitive and therefore rejected (unless they concern social credit blacklists relating to petitioning). However,

[1610] In an administrative enforcement dispute in Shanghai, the court invited the technical experts of the applied equipment to appear in court and explain its operating principles: Xingqing District People's Court 宁夏回族自治区银川市兴庆区人民法院, 行政判决书（2017）宁 0104 行初字第13号 (Administrative judgment no. 0104), described in: *Wenqing Zhou: Judicial review*.

[1611] Since its latest amendment in 2023, the ARL includes respective provisions: Art. 43 no. 4, ARL; Regulators have further issued detailed rules on handling electronic evidence, see e.g. 市场监管总局关于印发《市场监督管理行政执法电子数据取证暂行规定》的通知 (Notice Of The SAMR On Issuing The 'Interim Provisions On The Collection Of Electronic Data Evidence In Market Regulation Administrative Law Enforcement'), issued 7 April 2024.

[1612] Susan Finder (1989) Like throwing an egg against a stone – Administrative litigation in the People's Republic of China, *Journal of Chinese Law* 3(1), pp. 1-28, p. 28.

[1613] Björn Ahl (2015) *Justizreformen in China*, Band 4: Studien zu Recht und Rechtskultur Chinas, Nomos, p. 62.

[1614] 行政强制法 (Administrative Enforcement Law), issued by the NPC Standing Committee on 30 June 2011.

[1615] Art. 96 no. 4, ALL. Courts sometimes cooperate with local party organs to ensure enforcement: Xin He (2013) Judicial innovation and local politics: Judicialization of administrative governance in East China, *The China Journal* 69, pp. 20-42, p. 33.

success chances for claimants in administrative litigation have overall diminished in recent years.

Structural novelties of SCSP mechanisms impede a sound working of both remedial channels. Accessing administrative reconsideration and administrative litigation requires the SCSP subject to identify a specific administrative act and to direct the claim to the appropriate defendant. Both steps, though seemingly straightforward, prove highly complex in practice. First, mechanisms such as joint disciplining and the calculation of credibility assessments involve multiple actors. However, no clear rule on which of the many administrative agencies involved is the responsible agency to address one's claim to has crystallized. Questions of the liability of private actors involved in implementing SCSP mechanisms, remain unresolved. As difficult to pinpoint the adequate defendant is to identify the administrative act to be addressed. Even a single disciplinary measure imposed on an SCSP subject involves at least three administrative acts which unfold external effects standing alone: Designating an entity a 'trust-breaker', publishing the respective record or forwarding it to others, and imposing disciplinary measures on 'trust-breakers' so-designated in other realms all may be the appropriate act to address. Further, while disciplinary measures that qualify as administrative punishments under the APL are actionable, two of the most consequential SCSP practices – reputational penalties and entries in social credit files – are routinely deemed non-actionable by courts, reconsideration bodies, and some scholars.

The way forward is to build remedial channels around the core category of SCSP mechanisms, namely, the trustworthiness assessment, the very decision by an agency regarding an SCSP subjects' social credit status, whether expressed in a decision to blacklist or in a particular credibility assessment result. Legislation has not made trustworthiness assessments actionable, and courts remain cautious, while scholarship overwhelmingly advocates such a reform.

Finally, automated and semi-automated credibility assessment technologies pose profound difficulties to both plaintiffs and reviewers. The opacity of assessment algorithms, the absence of adequate documentation, the delegation of key tasks to private companies, and the 'automation bias' among officials and judges undermine the feasibility of administrative litigation and administrative reconsideration. Without access to technical expertise, courts and administrative reconsideration bodies tend to defer to the presumed rationality of technological systems rather than scrutinize their design, parameters, or embedded value choices. Although recent reforms promote the involvement of expert committees in administrative reconsideration, these mechanisms remain embryonic and do not yet empower claimants themselves.

Taken together, a structural mismatch exists between the SCSP's complex, multi-actor, multi-stage, data-driven regulatory architecture and the traditional remedial paths of administrative litigation and administrative reconsideration. Currently, they offer only narrow and often ineffective pathways for holding state agencies accountable for SCSP-related harms.

4.2.2. Legality review of SCSP legislation and norms

"The time pressure is enormous. We try to handle as many disputes as possible. If such a request [for incidental review of administrative normative documents attached to a claim] comes in that relates to the automated decision-making, it is difficult to find the time to gather all the experts required for making a decision."

- Judge GD02

Legislation on the SCSP, as clear from the above chapters, largely consists of local and departmental regulations, as well as normative documents issued by administrative agencies. As per the Constitution, the ex-post legality review of legal norms is first and foremost conducted by the NPC.[1616] The judiciary does not oversee the legislature or the executive organs of the state. It rather is part of the latter, and itself overseen by the NPC. This form of legality norm review by the legislature is addressed in the first part of this section (4.2.2.1.).

Since the 2014 amendment of the ALL, courts,[1617] and since 2024, administrative reconsideration offices[1618] can, upon request of the claimant, review administrative normative documents that are the basis of the administrative action under dispute.[1619] I examine the channel of judicial review of norms through administrative litigation in section 4.2.2.2. In how far are these two channels of legality review of SCSP legislation conducive to the legal protection of SCSP subjects?

Since Reform and Opening, regulatory agencies across the PRC struggle to control the detrimental outgrowths of the booming economy.[1620] To this end, they issued a large number of administrative normative documents (规范性文件, AND) and other local rules in a short time. As a consequence, internal contradictions between legislation emerged across all realms of law. The dynamic of excessive administrative agencies passing self-authorizing rules mirrors in SCSP developments. There is not just a rhetorical but a very substantive parallel between the much-cited sentence from a the 1990s, "Red-headed documents of administrative punishments flying all over 行政处罚的红头文件满天飞"[1621], that describes the uncontrolled flowering of punishment measures in local legislation, and the phrase "blacklists flying all over '黑名单'满天飞"[1622] describing the excessive

[1616] I only discuss the legality of post-promulgation control of norms. Since the 2023 amendment to the Legislation Law, the ex-ante constitutionality review undertaken by the NPC's Constitution and Law Committee is strengthened but yet less relevant to SCSP practices and therefore not further discussed. See Changhao Wei and Taige Hu (2023) "NPC 2023: Amendments to China's "Statutory Constitution" of lawmaking", NPC Observer, 28 February 2023, https://npcobserver.com/2023/02/28/china-npc-2023-legislation-law-amendments/; Keith Hand (2022) Constitutional supervision in China after the 2018 amendment of the Constitution: Refining the narrative of Constitutional supremacy in a socialist legal system, *Asian-Pacific Law & Policy Journal* 23(2), pp. 137-175, p. 148.

[1617] Art. 53, ALL.

[1618] Art. 13, ARL.

[1619] Adding a third channel of legality review of administrative normative documents in the PRC. For an overview, see Changhao Wei (2021) "Recording & Review: A Reintroduction", NPC Observer, updated 30 September, https://npcobserver.com/2020/08/18/recording-review-a-reintroduction/#_ftnref2.

[1620] Section 2.2.

[1621] Songnian Ying 应松年 (1996)〈行政处罚法〉与依法治国、依法行政 (The Administrative Punishment Law in relation to ruling the country by law and the law-based administration), 行政法学研究 (Administrative Law Review) 3/1996, pp. 1-6, p. 2.

[1622] Wei Wang 王伟 (2021) 社会信用建设法治化的新起点、新境界、新思维——解读《国务院办公厅关于进一步完善失信约束制度构建诚信建设长效机制的指导意见》(New starting points, frontiers and thinking

blossoming of SCSP blacklist schemes and respective rules. These local and departmental norms implement the broad central-level SCSP policy, while also embodying the interests of the local administrative agencies passing them. SCSP-related rules often carry suffixes such as 'temporary 暂行' or 'tentative 试行', indicating that the drafters intend to experiment with them and accept suggestions for changes by those affected and the bureaucracy. Perpetuating the breadth of the landscape of legal norms around the SCSP, is the 2015 amendment of the Legislation Law, which broadened the legislative authority of municipalities to increase the number of prefecture-level cities with legislative powers from 49 to all 284 cities.[1623] Matters that municipalities may per Legislation law pass legislation on include urban and rural construction and management, environmental protection, and historic and cultural protection, all core areas of SCSP activity.

4.2.2.1. Review through the legislature

In the PRC, the legislature is the highest state organ and the only one with the powers to oversee legislation.[1624] The judiciary, by socialist legal theory, does not check on even local and departmental rulemaking.[1625] Consequently, The PRC's channel for reviewing the legality of norms, the Filing and Reviewing 备案审查 mechanism, is in the hands of the NPC. It was created in 2000 with the promulgation of the Legislation Law to guard the hierarchy of norms that the Legislation Law establishes. Its mission is to achieve "legislative unity" which the CPC sees as key to maintain power.[1626] The system's name, Filing and Reviewing 备案审查, points to the two-step process it operates by: All legislation within the scope of review must, after promulgation, be filed with the NPCSC, the State Council, and/or local People's Congresses, depending on the type of legislation.[1627] At the central level, the NPCSC's Legislative Affairs Commission conducts review, at the local levels, the working bodies of local People's Congresses conduct review.

Legislation that must be filed for review is, first, all law passed by local People's Congresses and their standing committees (local regulations, 地方性法规).[1628] This

on legalizing social credit building – Interpreting the 'Guiding Opinions Of The State Council General Office On Further Perfecting The Trust-Breaker Constraint System And Building A Long-Term Mechanism For Credit Construction), 中国经贸导刊 (China Economic and Trade Herald) 1/2021, pp. 15-16, p. 16; *Xin Dai: Understanding the overall perspective*, p. 1485.

[1623] Cities divided into districts, Art. 80(2), 立法法 (Legislation Law), passed by the NPC on 15 March 2000, last amended 13 March 2023; see also Björn Ahl (2015) Zur Revision des Gesetzgebungsgesetzes der Volksrepublik China, Zeitschrift für chinesisches Recht (German Journal of Chinese Law) 22(3), pp. 241-251, p. 243.

[1624] Art. 2(2) and 3(3), PRC Constitution.

[1625] See, for instance, Hans Kelsen (1955) *The communist theory of law*, Frederick A. Praeger Inc., p. 13.

[1626] Art. 5 (2), Art. 5 (3), PRC Constitution; Xiaoyang Qiao 乔晓阳 (1998) 完善我国立法体制维护国家法制统一 (Perfect China's legislative system, guard national legal unity), 九届全国人大常委会法制讲座第四讲 (Fourth Speech at the 9th National People's Congress Standing Committee Session on the Legal System), 20 October, http://www.npc.gov.cn/zgrdw/npc/xinwen/1998-10/20/content_1459904.htm, not archivable, a republication of the article on the Yunnan Provincial People's Congress website is archived at: https://web.archive.org/web/20250909085632/https://www.ynrd.gov.cn/html/2006/fazhixuanchuan_0429/2287.html.

[1627] Art. 109, 立法法 (Legislation Law), passed by the NPC on 15 March 2000, last amended 13 March 2023.

[1628] Including those of autonomous prefectures 自治条例 and counties 单行条例 as well as those of Special Economic Zones 经济特区法规.

covers the social credit regulations 条例 that at the time of writing every province has passed at least one version of and that form the framework for all social credit-related rules and activity within the province.[1629] Further in the scope of review but less relevant to the SCSP regulatory framework are the State Council's administrative regulations 行政法规, the judicial interpretations of the SPC and the SPP 司法解释, and the Supervision Commission's supervisory regulations 监察法规.[1630]

Rules issued by central ministries and their local branches, including AND, are not within the scope of Filing and Review. However, it is especially AND that make up the most impactful proportion of SCSP-related rules.[1631] For instance, documents critical to the establishment of joint disciplining of trust-breaking such as blacklisting are issued by the environmental protection bureaus or the human resources and social security bureaus.[1632] Notably, a CPCCC Decision promulgated at the 2014 Plenum launched a wide range of reforms to bring all AND into the scope of Filing and Reviewing ("把所有规范性文件纳入备案审查范围")[1633], however this call has not (yet) found entry into the operative measures for Filing and Review.[1634]

Further excluded from the scope of review yet important in SCSP building are local people's governments' rules and normative documents,[1635] as well as CPC normative documents.[1636] Some of the cornerstone documents of the SCSP are issued jointly by Party and state organs and documents of local CPC organs surface in court decisions.[1637] Notably, the 2018 work report of the NPCSC's Filing and Reviewing group pointed to disciplining of 'trust-breaking' as one field in which problems in Filing and Reviewing are rooted in an insufficiently "precise understanding of the boundaries between law and policy."[1638]

[1629] For example the 广东省社会信用条例 (Guangdong Province Social Credit Regulations), passed by the Guangdong Provincial People's Congress on 18 March 2021.

[1630] Art. 2, 法规、司法解释备案审查工作办法 (Working Measures For Filing And Reviewing Of Regulations And Judicial Interpretations), issued by the NPC Standing Committee on 16 December 2019, hereafter: Filing and Reviewing Measures.

[1631] Matching ANDs under these categories is not always straightforward because titles of normative documents are various and do not correspond to the Legislation Law's categories.

[1632] For example, 包头市商务局关于印发《包头市商务领域信用"红黑名单"管理办法》的通知 (Notice Of The Baotou Municipal Commercial Bureau On Issuing The 'Baotou City Management Measures For The Credit 'Red And Blacklist''), issued on 8 October 2022; 全国文化市场黑名单管理办法 (Management Measures For The National Cultural Market Blacklist), issued by the Ministry for Culture and Tourism on 19 June 2018.

[1633] 中共中央关于全面推进依法治国若干重大问题的决定 (CCP Central Committee Decision Concerning Several Major Issues In Comprehensively Advancing Governance According To Law), 23 October 2014.

[1634] Instead, the Filing and Reviewing Measures may also be applicable, 'by reference' only, to State Council decisions 决定 and orders 命令, local People's Congresses' resolutions 决议 and decisions 决定, and SPC and SPP's normative documents: Art. 54, Filing and Reviewing Measures.

[1635] For example, 甘肃省消防安全信用信息管理规定 (Gansu Province Fire Safety Credit Information Management Provisions), issued by the Gansu Provincial People's Government on 9 January 2023.

[1636] For instance, a document by the Ju County Spiritual and Civilization Committee 莒县精神文明建设委员会, a local Party organization, mentioned in Shandong High People's Court 山东省高级人民法院, 行政裁定书 （2017）鲁行申266号 (Administrative ruling no. 266), decided 20 September 2017.

[1637] Section 4.1.1.

[1638] 全国人民代表大会常务委员会法制工作委员会关于2018年备案审查工作情况的报告 (Report of the NPC Standing Committee Legislative Affairs Commission On The 2018 Situation Of Filing And Reviewing Work),

Theoretically, review is conducted automatically upon filing. In addition, citizens can suggest the review of filed legislation through the NPC's Review Suggestion Handling Platform 审查建议受理平台[1639]. As of June 2025, it appears that all SCSP-related documents within the scope of Filing and Reviewing and were selectable through the search option. As Filing and Reviewing is the only channel for constitutional review in the PRC[1640], even though in practice rarely acting, scholars suggest to activate it for AND relating to social credit blacklists.[1641]

4.2.2.2. Review through the courts

Since the 2014 amendment of the ALL, litigants can attach to their claim a request for review of the document on the basis of which the administrative action that they address in court is based (Art. 53 and 64, ALL). Art. 53 of the ALL reads:

> "Citizens, legal persons or other organizations deeming that a normative document by a State Council department or local People's Government or its departments on which an administrative action was based is unlawful, they may request a review of the normative document when they raise a lawsuit over the administrative act.
>
> Normative documents as provided for in the preceding paragraph does not include rules."

This provision, inserted only after considerable effort,[1642] signifies a break with the socialist tradition of granting only People's Congresses the formal power to rescind legal rules.[1643] Courts cannot perform a review of constitutionality, that power is exclusively with the NPC, but they can review whether AND violate higher-level laws and regulations.

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delivered on 24 December 2018 at the seventh session of the 13th NPC Standing Committee), http://www.npc.gov.cn/npc/c2/c30834/202301/t20230113_423335.html, not archivable.
The intention for Filing and Reviewing to weave apart politics and law however is somewhat contradictory the fact that in Filing and Reviewing, the alignment of sub-statutory legislation with major CPC policies is also examined: Changhao Wei (2021) "Reigning in rougue legislation", Made in China Journal, 21 September, https://madeinchinajournal.com/2021/09/19/reining-in-rogue-legislation/.

[1639] Art. 22, Filing and Reviewing Measures. Online platform available at npc.gov.cn/fgba/fgba/bascPortalManager.do?method=gotoScjyIndex.

[1640] Art. 5(3), 62, 67, PRC Constitution; Art. 23, 27, 32, 36, 39, 41, 44, 64, 112, 立法法 (Legislation Law), passed by the NPC on 15 March 2000, last amended 13 March 2023. Only the NPC and the NPCSC may interpret the Constitution.

[1641] *Yin Jia: Constitutionalizing*, p. 107. Targeted clean-up campaigns revolving around particular subject matters are occasionally launched, the most comprehensive one was conducted from 2008 to 2010 at all levels: Xibing Zhao 赵惜兵 (2009) "开展法律清理工作 确保立法目标实现 – 全国人大常委会法工委研究室 (Launching the legal clean-up campaign, Ensuring legislative aims are realized – the NPC Standing Committee Legislative Affairs Commission Research Office ", Npc.gov, 27 August, http://www.npc.gov.cn/zgrdw/npc/xinwen/rdlt/fzjs/2009-08/27/content_1520226.htm, not archivable. Such campaigns might in the future target SCSP rules.

[1642] Jing Wang (2021) Judicial review of regulatory documents in administrative litigation in China, *University of Pennsylvania Asian Law Review* 16, pp. 328-373, p. 356 and 358. Arguments against incidental judicial review include that administrative litigation overall is a comparatively new mechanism and courts were not yet experienced enough to review abstract administrative acts as well as just specific ones: Xin Liu 刘莘 (2012) 关于行政诉讼法律适用制度修改的思考 (Thoughts on revising the administrative litigation legal application system), 苏州大学学报 (Journal of Soochow University) 1/2012, pp. 67-71, p. 70.

[1643] Even before the amendment of the ALL, courts sometimes struck down rules and orders of general application made by the administrative authorities. One such decision was published in the SPC Gazette in 1999, indicating that the SPC early on supported the judicial review of normative documents: Shiling Xiao and Yang Ling (2022) Judicial review of administrative rules in China: Incremental expansion of judicial power, *Journal of Comparative Law* 17(2), pp. 370 – 392, p. 376.

Before 2014, only specific administrative behaviours, not abstract rules, could be reviewed by courts.[1644]

Judicial review through administrative litigation is only possible as attached to a regular claim. It is always linked to disputes over specific administrative behaviours. This has its perks as it channels courts' limited resources to such AND that in fact exert detrimental impact on the rights and interests of SCSP subjects:

> "Only real disputes can test the legality and reasonableness of regulatory documents accurately and quickly. A plaintiff who brings forward a concrete infringement of rights or benefits will more effectively bring attention to problems in regulatory documents."[1645]

However, it also means that the considerable difficulties for SCSP subjects to have their administrative litigation claim accepted by courts (recall section 4.2.1.) concomitantly form a bottleneck for judicial review of underlying norms.[1646] For instance, if the correct defendant cannot be identified,[1647] neither the specific administrative behaviour nor the potentially unlawful AND underpinning it can be reviewed.[1648]

The court reviews the AND's legality, not its reasonableness or proportionality. Specifically, the court examines whether (1) the AND is outside of the statutory remit of the issuing authority, or beyond the authorization by the law, regulations, or rules; (2) contravening the provisions of any law, regulations, rules, or any other superordinate law; (3) without a basis in any law, regulations or rules, illegally increasing any obligation, or derogating from the lawful rights and interests, of any citizen, legal person, or any other organization; (4) failing to comply with the statutory approval procedure or the public issuance procedure, or seriously violating the development procedure; (5) otherwise violating the law, regulations, or rules.[1649]

Cases in which SCSP-related AND are accepted by the courts are rare. Where accepted, AND containing social credit-related rules are largely upheld upon judicial review.[1650] For

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[1644] In that structure, the review of an administrative norm occurred only indirectly as part of the review of an administrative act. Describing this as a Chinese characteristic: Qianfan Zhang (2006) From administrative rule of law to constitutionalism? *Asia Law Review* 3, pp. 47-75, p. 57.

[1645] Jing Wang (2021) Judicial review of regulatory documents in administrative litigation in China, *University of Pennsylvania Asian Law Review* 16, pp. 328-373, p. 355. The judicial review channel is a systemic support to the Filing and Reviewing procedure under the NPC discussed above. Keith J. Hand describes it as a "response to capacity problems" of Filing and Reviewing, "designed to help review organs prioritize their work by alerting them to legislative conflicts that are difficult to detect or are generating collective concern. [...] In addition, central filing and review organs lack the capacity to resolve many of the sensitive constitutional and political claims that citizens raise." Keith J. Hand (2013) Understanding China's system for addressing legislative conflicts: Capacity challenges and the search for legislative harmony, *Columbia Journal of Asian Law* 26(1), pp. 139-266, p. 150.

[1646] Suggesting that therefore courts should focus on whether blacklisting followed due process requirements: *Luping Zhang: Administrative blacklists*, p. 26.

[1647] Recall section 4.2.1.1.

[1648] Kui Shen 沈岿 (2023) 论失信惩戒的行政诉讼可诉性 (On the litigability of disciplining trust-breaking in administrative litigation), 中国应用法学 (China Journal of Applied Jurisprudence) 2/2023, pp. 73-88, p. 76.

[1649] Art. 148, 最高人民法院关于适用《中华人民共和国行政诉讼法》的解释 (Interpretation Of The SPC On Applying The 'PRC Administrative Litigation Law'), issued 13 November 2017. For application cases, see: 最高人民法院发布9起行政诉讼附带审查规范性文件典型案例 (SPC Published Nine Typical Administrative Litigation Cases With Incidental Review Of Regulatory Documents), Court.gov, 30 October 2018, http://www.court.gov.cn/zixun-xiangqing-125871.html, archived at http://perma.cc/GP24-3R28.

[1650] The Pengshan District People's Court in the city of Maoshan, Sichuan Province, reviewed and upheld 四川省公安厅、四川省民政厅、四川省人力资源和社会保障厅、四川省国土资源厅、四川省住房和城乡建设

instance, a district court in Chongqing evaluated the Temporary Measures on Credit Management issued by the General Office of the Chongqing Municipal People's Government. It found the authority of the drafting body sufficient, that drafting followed the relevant procedures, that the policy and legal basis is sufficient, the contents "reasonable, effectively excluding trust-breaking enterprises or other companies with illicit practices from participating in the city's construction project bidding activities", and finally that the Measures do not set administrative punishments.[1651]

This rather bleak picture reflects the general demise of incidental judicial review of AND. After peaking in 2019, numbers of judicial review cases of AND that were accepted as well as those eventually confirmed to be unlawful decreased.[1652] Courts reject requests of incidental judicial review of AND on the grounds that they lack an "appropriate ground 正当理由".[1653] Out of a sample of 258 cases of incidental judicial review that reached the SPC, only 23 passed the procedural requirements and continued to undergo substantial review. Only in one case the AND was found unlawful.[1654]

Scholarship, including by judges, widely suggests to use the judicial review mechanism to bring much-needed order to the landscape of SCSP-related AND China-wide.[1655] Specifically, AND regulating social credit blacklists, to speak with the metaphor of the flying blacklists cited earlier, should not fly under the radar of judicial review.[1656] Reviewers of norms, whether in courts or under the NPC, shall pay particular attention to

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厅、四川省农业厅、四川省卫生和计划生育委员会、四川省扶贫和移民工作局关于规范农村地区户籍登记管理工作的通知 (Notice Of The Sichuan Provincial Police Department, The Sichuan Provincial Civil Affairs Bureau [and six others] On Standardizing The Hoursehold Registration Management Work In Rural Areas), issued 30 September 2018: Pengshan District People's Court 四川省眉山市彭山区人民法院, 行政裁定书（2020）川1403行初31号 (Administrative ruling no. 31), decided 27 July 2020; The Changsha Railway and Transportation Court in Hunan reviewed and upheld the 湖南省国家税务局清税注销管理工作制度 (Hunan Province State Tax Administration Tax Clearance and Deregistration Management System) on 1 February 2017 (a document later revoked): Changsha Railway and Transportation Court 长沙铁路运输法院, 行政裁定书（2020）湘8601行初452号 (Administrative ruling no. 452), decided 29 May 2020; Yubei District People's Court, 重庆市渝北区人民法院（2024）渝0112行初3号 (Administrative ruling no. 3), decided 1 July 2024.

[1651] Yubei District People's Court, 重庆市渝北区人民法院, 行政判决书（2024）渝0112行初3号 (Administrative judgment no. 3), decided 1 July 2024.

[1652] Jing Wang (2021) Judicial review of regulatory documents in administrative litigation in China, *University of Pennsylvania Asian Law Review* 16, pp. 328-373, p. 372; Xueyan Zhao 赵雪雁 (2023) 论规范性文件附带审查级别管辖的改革因应 (On the reform's response to the levels of jurisdiction in incidental review of normative documents), 江苏社会科学 (Jiangsu Social Sciences) 1/2023, pp. 161-170, p. 163.

[1653] Zihua Shen 沈子华 and Yueyan Qin 秦月岩 (2023) 规范性文件附带审查制度的实践检视与优化进路—以最高人民法院258份行政裁判文书为样本 (The practice of inspection in the incidental normative document review system and paths to improvement – Based on a sample of 258 SPC administrative rulings), 行政与法 (Administration and Law) 11/2023, pp. 79-92, p. 86; Chunye Wang 王春业 (2021) 论规范性文件一并审查制度的实践偏离与校正——以907个案例为研究样本 (Deviation and corrections in the system of reviewing normative documents: A sample of 907 cases) , 浙江大学学报（人文社会科学版） (Journal of Zhejiang University (Humanities and Social Sciences)) 1/2021, pp. 81-94, p. 82.

[1654] Zihua Shen 沈子华 and Yueyan Qin 秦月岩 (2023) 规范性文件附带审查制度的实践检视与优化进路—以最高人民法院258份行政裁判文书为样本 (The practice of inspection in the incidental normative document review system and paths to improvement – Based on a sample of 258 SPC administrative rulings), 行政与法 (Administration and Law) 11/2023, pp. 79-92, p. 83.

[1655] *Yin Jia: Constitutionalizing*, p. 107.

[1656] *Lü and He: An analysis of the path to legal regulation*, p. 136.

possible breaches of the prohibition of improper connection principle in AND on social credit.[1657]

Finally, upon reviewing ANDs, courts cannot themselves annul or alter the document or even announce its unlawfulness. The court may merely issue a processing suggestion 处理建议 to the agency that issued the document, or a judicial suggestion 司法建议 with its respective opinion, to which the agency must respond within 60 days.[1658] The final decision of whether to repeal an unlawful AND however remains with the administrative agency. In some instances, courts successfully cooperated with local Party organs to exert pressure on the administrative agency.[1659] Another limitation is that what falls into the scope of reviewable AND remains blurry: it is not detailed in the Legislation Law. AND cover some documents titled "directions, "notices", and "instructions" but not others.[1660] For these reasons, Shiling Xiao and Yang Lin speak of the PRC's incidental judicial review mechanism as a "weak-form judicial review".[1661]

4.2.2.3. From reviewing norms to reviewing code: Potential

Despite the limitations of judicial review of SCSP-related AND in the PRC, there lies significant potential in the procedure to afford legal protection for SCSP subjects where automated elements of SCSP practices are concerned. Judges and administrative reconsideration officials regularly stop short of conducting a review of the technological application behind the disputed administrative decision, despite of such an examination being required to satisfactorily review the decision itself.[1662] The review of the translation process from law to code is crucial but regularly neglected as the technological application is assumed to operate in line with laws and legal principles. Reasons include reviewers' lack of technical expertise, their automation bias, and their wariness of a negative review's implications: Should the reviewed software code not pass the legality review, that would imply that other decisions the application had made, too, are at least questionable, and that the agency had operated in violation of the law ever since installing the application. However, the review of the entire application is required, otherwise, automated decision-making by administrative agencies, including in CBR, would be de facto immune to judicial review overall.[1663]

[1657] *Kui Shen: The Prohibition of improper connection*, p. 20 .

[1658] Art. 149, 最高人民法院关于适用《中华人民共和国行政诉讼法》的解释 (Interpretation Of The SPC On Applying The 'PRC Administrative Litigation Law'), issued 13 November 2017.

[1659] Xin He (2013) Judicial innovation and local politics: Judicialization of administrative governance in East China, *The China Journal* 69, pp. 20-42, p. 33.

[1660] See e.g., Jianfu Chen (2016) *Chinese law: Context and transformation*, Brill Niejhoff, p. 255.

[1661] Shiling Xiao and Yang Ling (2022) Judicial review of administrative rules in China: Incremental expansion of judicial power, *Journal of Comparative Law* 17(2), pp. 370 – 392, p. 371.

[1662] Section 4.2.1.3. Recall the requirements of 'technological due process': Danielle Keats Citron (2008) Technological due process, *Washington University Law Review* 85(6), pp. 1249-1314, p. 1299.

[1663] Consensus has formed that judicial review must consider the entire automated decision-making system's logic and operating principles to meaningfully assess one decision it made, recall: Karen Yeung (2022) Keynote Address 'Constitutional Principles in a Networked Digital Society', IACL Roundtable, 31 January – 1 February 2022, Copenhagen, Denmark, https://ssrn.com/abstract=4049141, p. 9; Abe Chauhan (2020) Towards the systemic review of automated decision-making systems, *Judicial Review* 25(4), pp. 285-295, p. 285; Tatiana Kazim and Joe Tomlinson (2023) Automation bias and the principles of judicial review, *Judicial Review* 28(1), pp. 9-16, p. 10; Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 176, among others.

Consequently, meaningful judicial review of automated or semi-automated specific administrative actions must always entail the review of the abstract administrative rules that underpin it. Judicial or legislative review of the legality of AND address the abstract norms underlying a decision. They thus form one mechanism through which assessment technology applied by administrative agencies implementing SCSP practices becomes reviewable for its legality.

To elaborate, at the core of administrative decisions assisted by digital technologies as prevalent in CBR practices lies a process of translating law into code. As in all translation processes, elements get lost and others are added, depending on the ends to which the specific technological application is used. Where non-discretionary processes are coded, this translation process is rather immediate. Regulatory laws and the departmental rules at the lowest level are typically highly specialized and structured in simple if-then phrases. This makes it easily codable (as opposed to general statutory law).[1664] However, where rules stipulate spaces of administrative discretion, the translation process from law to code requires the establishment of indicators. In reality, indicators that are easy to evaluate are chosen over complex ones,[1665] and the design and choice of indicators express the value judgments of the coders. "Translation errors" may occur where law was translated to code, such as deviations from the original purpose of norms of law, misalignments between the elements and discretionary factors in the system and in the law.[1666]

A substantive legality review of administrative action that is powered by automated decision-making requires a thorough examination of the principles and parameters by which the respective technological application operates. In Jennifer Cobbe's words,

> "The fact that individual automated decisions are heavily influenced by the processes and choices around the system (i.e. selection of training data, design and training of models, and testing of systems) means that in order to properly evaluate those individual decisions in a 'bureaucratic' review it may be necessary to also evaluate some of those broader processes and choices."[1667]

The judicial review of an administrative punishment that was made through an automated system, for instance, "is essentially a review of the algorithmic rules, the reasons of algorithmic decision-making and the automated decision-making process of the automated punishment system"[1668]. An examination of a software with regard to its proper operation-as-designed does not suffice because it assumes that the design itself is free of legality issues.

To fructify legislative and judicial review for automated systems, the operating principles of respective software – the coded law – must be brought into the scope of review. For instance, one could reconceptualize the operating principles of technological

[1664] Dag Wiese Schartum (2020) From Legal Sources to Programming Code, chapter in: Woodrow Barfield (ed.) *The Cambridge Handbook of the Law of Algorithms*, Cambridge University Press, pp. 301-335, p. 305.
[1665] Danielle Keats Citron (2008) Technological due process, *Washington University Law Review* 85(6), pp. 1249-1314, p. 1255.
[1666] *Yang Yu: Judicial review*, p. 206.
[1667] Jennifer Cobbe (2019) Administrative law and the machines of government: Judicial review of automated public-sector decision-making, *Legal Studies* 39(4), pp. 636-655, p. 641.
[1668] *Yang Yu: Judicial review*, p. 197.

applications involved in CBR, whether negotiated between administrative agencies and technology providers or otherwise laid down, as administrative normative rules like ANDs. Scholarly comments on local SCSP legislation drafts suggest that agencies disclose indicators and assessment models used in producing credibility assessments.[1669] As discussed above, often, technology providing companies which often carry out the production of credibility assessments are unwilling to disclose such models. Currently, no unified format exists for the ways the rules of CBR are laid down and transferred to the coders in charge of building the respective software. The extent to which the administrative agency can impact the software design the technology provider builds for it is often limited and depends on the capacities of local software providers.[1670]

Reviewability of CBR applications could be facilitated through drawing relevant technical standards into the scope of judicial review. To recall, technical standards 技术标准 issued by standardization institutions at the national and local level lay down credibility assessment criteria. While SCSP-related technical standards so far are voluntary guidelines. However, they form the link between the SCSP normativity and its technical implementation.[1671] They express criteria for credibility assessments in a manner understandable to potential reviewers while also specific enough to provide detailed guidance for coders of credibility assessment producing software. They could be brought within the scope of judicial review, or supplement the review of automated administrative actions or respective AND.[1672]

Another type of document linking law and code and lending itself to be included injudicial review more formally are administrative discretion benchmarks 行政裁量基准. Administrative discretion benchmarks comprise guidelines for specific discretionary decisions. They are being issued by some regulators to guide officials in their everyday practice.[1673] So far, only a limited number of agencies publicly disclose administrative discretion benchmarks and I could not find any pertaining to CBR-related decisions. However, these benchmarks, similar to credibility assessment standards, translate the discretionary spaces that the regulatory framework leaves into quantified indicators which lend themselves to coding. If administrative discretion benchmarks were made

[1669] Fieldwork document 011.
[1670] Section 3.2.4. Notably, regulatory agencies tend to work with local tech providers, even if that means that system capacities and software solutions are of lower standard. One official I conversed with over this confirmed that they hope to have a better leverage over the firms when they are within their own regulatory jurisdiction: HZ04.
[1671] Marianne von Blomberg (2023) Credibility standards: A new social credit mode of regulation? *China Information* 38(2), pp. 223-243, p. 229.
[1672] After all, standardization experts have described such technical standards as necessary to ensuring that regulatory actions in CBR are not "overstepping, misplaced or dysfunctional 不越位，不错位，不缺位": *Li et al.: Research on key technical standards*, p. 49.
[1673] E.g., 重庆市人力资源和社会保障局关于印发《重庆市人力社保领域行政裁量权基准》的通知 (Notice Of The Chongqing Municipal Human Resources And Social Security Bureau On Issuing The 'Chongqing Municipal Administrative Discretion Benchmarks For The Human Resource And Social Security Field'), issued 27 August 2025, http://www.cqlp.gov.cn/rlsbj/zwgk_28909/fdzdgknr_28911/zcwj_28913/sjdwgfxwj/202508/t20250827_14939175.html, archived at https://web.archive.org/web/20250904131703/http://www.cqlp.gov.cn/rlsbj/zwgk_28909/fdzdgknr_28911/zcwj_28913/sjdwgfxwj/202508/t20250827_14939175.html.

public and subject to judicial review, state agencies could better be held accountable for applying a software that was designed on the basis of and operates by these benchmarks.

4.2.2.4. Conclusion

The NPC's Filing and Reviewing mechanisms covers local regulations 地方性法规 and thereby the local social credit regulations that every province and larger city has passed and which structure the local SCSP building activities. It excludes, however, the bulk of local and departmental normative documents which make up for the most consequential part of the SCSP normativity.

A legality review of the administrative normative documents (AND) implementing SCSP mechanisms can be conducted by courts if claimants attach a respective request to a regular administrative litigation claim. Such incidental review of AND however applies a narrow legality standard, lacks the authority to annul unlawful documents and in practice rarely attests the unlawfulness of SCSP-related AND.

At the same time, the growing integration of automated decision-making technologies into SCSP mechanisms reveals the great potential of mechanisms for the legality review of norms. Because legality review focuses on abstract written norms, it provides a much-needed pathway to review the (semi-)automated systems used by regulators that produce consequential administrative decisions. As laid out above, the decisions themselves regularly skirt effective legality review as judges and administrative reconsideration officials are reluctant to review the entire software that gave rise to them. The introduction of systematic review channels for the coded norms would allow reviewers to evaluate whether automated systems comply with statutory law and respect legal principles.

4.2.3. Non-adversarial justice? Credit repair

"According to the ancient saying, 'a man without trust[worthiness] cannot stand,' a credit record is, in fact, a social expression of an individual's life in modern society. Once established, it should remain with the individual throughout their life and should not be interrupted."

- Yong Xie 谢勇[1674]

Administrative litigation and administrative reconsideration, as well as the objection procedures to be discussed below in section 4.2.5., afford legal protection to SCSP subjects when they convincingly argue that actions of administrative agencies and other SCSP rulemaking organs were wrongful.[1675] The mode is adversarial: The lawfulness of the agency's decisions is doubted. A new path for SCSP subjects to obtain relief from measures imposed while *not* implying that the administrative agency acted unlawfully emerges within the SCSP universe: credit repair 信用修复. Upon finding a negative social credit file entry or oneself to be target of a disciplinary measure for 'trust-breaking', an SCSP subject can apply for credit repair with a designated office. After the subject fulfils

[1674] Yong Xie 谢勇 (2020) 信用修复的社会内涵及其表达形 (The social connotation and expression of credit repair), contribution in 我国诚信建设法治化核心命题笔谈 (Discussion on the core issues of legalization of integrity construction in China), 求实 (Seeker), 3/2020, pp. 13-24, p. 18.

[1675] With the exception of the briefly discussed legality review of norms through the legislature: Section 4.2.2.1.

the relevant sectoral or local credit repair requirements, usually actions to demonstrate the subject's willingness to comply with the law in the future and compensate the done damage, the agency halts the measures and deletes or edits the entry in the social credit file.[1676]

Because in effect, SCSP subjects successfully completing credit repair obtain the same result as those successful in administrative litigation, administrative reconsideration, or objection procedures, scholars and policy documents often discuss all of them as "legal remedies".[1677] Theoretically, however, credit repair is based on an entirely different premise: In credit repair, the SCSP subject does not question the agency's actions, but admits an own wrongdoing. It accepts the reasons for the undertaken SCSP measures and actively carries out activities to rehabilitate itself and thereby fix its social credit status. In that way, credit repair is a part of the SCSP mode of governance, rather than a mechanism to protect SCSP subjects from undue impact. Tellingly, the recent Private Economy Promotion Law devotes one article to the perfection of the credit repair mechanism,[1678] indicating that credit repair is part of the larger SCSP mission to order and strengthen the socialist market economy rather than a means to reign in the SCSP. Credit repair appears in all SCSP-related central policies since 2016 and has become the most-discussed issue in the SCSP.[1679]

[1676] 国务院办公厅关于加快推进社会信用为基础的新型监管机制的指导意见 (Guiding Opinions Of The State Council General Office On Accelerating The Construction Of A Social Credit System And Building A New Credit-Based Supervisory Mechanism), issued 9 July 2019; E.g., Art. 15, 上海市生态环境局关于印发《上海市企事业单位生态环境信用修复管理规定（试行）》的通知 (Notice Of The Shanghai Municipal Ecological And Environmental Bureau On Issuing The 'Management Rules For Environmental Credit Repair Of Municipal Public Enterprises And Institutions'), issued 1 August 2022, https://sthj.sh.gov.cn/hbzhywpt5130/hbzhywpt5132/20220916/d9aa74461ebf4510a434cf428c70e442.html, archived at https://web.archive.org/web/20250912175404/https://sthj.sh.gov.cn/hbzhywpt5130/hbzhywpt5132/20220916/d9aa74461ebf4510a434cf428c70e442.html; Art. 98, *SCS Building Law draft*.

[1677] *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 31; *Shen Yan and Boyang Wang: Credit assessment*; *Binglin Tan: Disciplining trust-breaking*, p. 46; Chuncheng Liu and Akos Rona-Tas (2024) Trusting by numbers: An analysis of a Chinese social credit system governance infrastructure, *Critical Sociology* 51(6), pp. 1247-1265, p. 1255; Holding against this, arguing that "credit repair [...] is the natural extension of credit disciplining, not a 'remedy for the results of disciplining'": Yong Xie 谢勇 (2020) 信用修复的社会内涵及其表达形 (The social connotation and expression of credit repair), contribution in 我国诚信建设法治化核心命题笔谈 (Discussion on the core issues of legalization of integrity construction in China), 求实 (Seeker) 3/2020, pp. 13-24, p 18; Lanling Hu 胡兰玲 and Shumin Liu 刘淑敏 (2024) 个人信用信息异议权保护研究 (Research on the protection of the right to object to personal credit information), 征信 (Credit Reference) 9/2024, pp. 37-43, p. 39.

[1678] Disciplinary measures for trust-breaking are only mentioned on the sideline and other SCSP practices are not included at all: Art. 54, 民营经济促进法 (Private Economy Promotion Law), issued by the NPC Standing Committee on 30 April 2025.
See also: Zhaoqian Li 李兆前 (2024) "民营经济促进法进一步强化依法平等保护将为非公有制经济发展营造良好环境 (The Private Economy Promotion Law further strengthens equal protection under the law and will create a good environment for the development of the non-state economy)", MOJ Website, 10 October, https://www.moj.gov.cn/pub/sfbgw/zcjd/202410/t20241010_507344.html, archived at https://web.archive.org/web/20250912182200/https://www.moj.gov.cn/pub/sfbgw/zcjd/202410/t20241010_507344.html.

[1679] A major theme at the 2022中国信用4.16高峰论坛 (2022 Credit China 4.16 Summit Forum), https://credit.bjchp.gov.cn/dynamic/article?id=news_1abf3571-778a-4274-a894-fef342f89b99, not archivable; as well as the 7th Annual Conference 信用法治 韶山论坛 (Credit Rule of Law Shaoshan Forum) at Xiangtan University, November 2024, paper drafts and program on file with the author.

There exist about as many credit repair processes and respective rules as there are SCSP practices.[1680] The NDRC,[1681] the SAMR,[1682] and several departmental regulators[1683] have issued own procedures for their respective realms. The following exemplifies the process of credit repair under the NDRC, as it is the part of the SCSP where PCI from all regulatory realms flows together.[1684] The following section observes credit repair with regard to its function to provide remedies for SCSP subjects in comparison to traditional remedial channels of administrative law, administrative litigation and administrative reconsideration.

4.2.3.1. Mode of operation in comparison

Credit repair, as of the NDRC's Trial Measures on the Management of Credit Information Repair Following the Correction of Trust-breaking Behaviour (hereafter: NDRC Measures on Credit Repair), refers to

> "Credit subjects actively improving their credit status, after correcting trust-breaking behaviour and fulfilling relevant obligations, applying to the entity that designated the trust-breaking behaviour [...] or the operator of the credit platform website that aggregates information on trust-breaking [...], for both these entities to remove or terminate the public display of information on trust-breaking in accordance with relevant regulations."[1685]

This definition illustrates that credit repair applies to the restoration of social credit records.[1686] Only as a consequence of repaired social credit records, disciplinary measures end.[1687] Credit repair thus addresses the disciplinary measures for trust-breaking, that is, those SCSP practices that most impact rights of SCSP subjects, only indirectly. This appears as a shortcoming in comparison to administrative reconsideration and administrative litigation.

However, it also offers a way for remedy-seeking SCSP subjects to circumvent the many practical obstacles that the direct addressing of disciplinary measures for 'trust-breaking' face in practice. As above-discussed, SCSP subjects face difficulties in identifying the defendant to direct the claim to and the adequate administrative action to address, both

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[1680] The lack of a standardized format for credit repair is widely criticized: *Binglin Tan: Disciplining trust-breaking*, p. 46; *Luping Zhang: Administrative blacklists*, p. 24-25. It is called for in policy documents, e.g.: 上海市社会信用建设办公室印发《关于疫情防控期间进一步完善信用修复工作机制助力市场主体稳定发展的实施方案》的通知 (Notice Of The Shanghai Social Credit Building Office On Issuing The 'Implementation Plan For Further Improving The Credit Repair Mechanism To Assist The Stable Development Of Market Entities During The Pandemic Prevention And Control Period'), issued 3 April 2022.

[1681] Credit repair under the NDRC is regulated in the *Credit Repair Measures (trial)*. A good explainer is provided by Jeremy Daum (2023) "Take it down! Stopping the display of 'negative credit information'", China Law Translate, 24 January, https://www.chinalawtranslate.com/en/take-it-down-stopping-the-display-of-negative-credit-information/.

[1682] Under the SAMR, these are laid down in the 市场监管总局关于印发《市场监督管理信用修复管理办法》的通知 (Notice of the SAMR on Issuing the 'Management Measures on Market Supervision Credit Repair'), issued 30 July 2021.

[1683] E.g., 国家能源局关于印发《能源行业市场主体信用修复管理办法(试行)》的通知 (Notice of the National Energy Administration on issuing the 'Management Measures on Credit Repair of Market Entities in the Energy Sector'), issued 27 March 2019.

[1684] Art. 6, *Credit Repair Measures (trial)*. Locally, the DRCs are in charge (e.g. Art. 5, *Zhejiang Credit Repair Measures*).

[1685] Art. 3, *Credit Repair Measures (trial)*.

[1686] At the national level: Art. 2, *Credit Repair Measures (trial)*; at the local level e.g., Art. 2, *Zhejiang Credit Repair Measures*.

[1687] Art. 14, *Zhejiang Credit Repair Measures*.

results of the jointness of the measures and their batchwise occurrence. I argued above that therefore, a meaningful remedial procedure for SCSP practices must address the trustworthiness assessment made by an administrative agency, rather than other links of the practices. The trustworthiness assessment is the decision of an agency regarding an SCSP subjects' social credit status, the root of all ensuing measures that impact the SCSP subject's rights. It may come as a credibility assessment, the inclusion in a blacklist, on an entry into a social credit file. Courts and administrative reconsideration offices regularly deny that such trustworthiness assessment constitute an administrative action that may impact SCSP subjects' rights and interests and reject respective claims.[1688] Credit repair however tackles precisely the trustworthiness assessment. Credit repair is typically directed at a negative social credit information item, the root of disciplinary measures deriving from CBR (at least). The confusion as to what part of the disciplining process constitutes the relevant administrative action to be addressed, is thereby circumvented.[1689] The troublesome categorization of SCSP practices into categories of administrative law, such as the 'administrative act', are, other than in administrative reconsideration and administrative litigation, not blocking the way to remedies in the process of credit repair.

That the credit repair procedure tunes in well with the social credit mode of governance has another perk potentially conducive to the legal protection of SCSP subjects: Other than administrative reconsideration and administrative litigation, credit repair can be flexibly adjusted according to local political priorities. For instance, reacting to the COVID-19 pandemic, the Shanghai Municipal Social Credit Building Office laid down a plan for "expedited credit repair procedures"[1690] and Yinchuan city installed a credit repair hotline[1691]. This flexibility, notably, can also backfire and impact the chances for remedy for SCSP subjects negatively if political priorities so shift, as demonstrated with the other SCSP mechanisms in section 3.2.

As of the NDRC Measures on Credit Repair, all PCI is within the scope of credit repair, including information on "serious trust-breaking".[1692] However, the Measures also state that

[1688] Section 4.2.1.

[1689] See also, Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 49.

[1690] 上海市社会信用建设办公室印发《关于疫情防控期间进一步完善信用修复工作机制助力市场主体稳定发展的实施方案》的通知 (Notice Of The Shanghai Social Credit Building Office On Issuing The 'Implementation Plan For Further Improving The Credit Repair Mechanism To Assist The Stable Development Of Market Entities During The Pandemic Prevention And Control Period'), issued 3 April 2022.

[1691] 银川市社会信用体系建设领导小组办公室关于做好新型冠状病毒肺炎疫情防控期间信用管理和服务的通知 (Notice Of The Yinchuan City Small Leading Group For SCS Building Office On Doing Well In Credit Management And Services During The COVID-19 Prevention And Control Period), issued 19 February 2020, https://www.yinchuan.gov.cn/xxgk/bmxxgkml/sfgw/xxgkml_1867/bmqtwj_1875/202003/t20200303_1978002.html, archived at https://web.archive.org/web/20250913095942/https://www.yinchuan.gov.cn/xxgk/bmxxgkml/sfgw/xxgkml_1867/bmqtwj_1875/202003/t20200303_1978002.html.

[1692] Art. 12, *Credit Repair Measures (trial)*.

> "Where laws, regulations, departmental rules, or documents of the Central Committee of the Communist Party of China or the State Council have separate provisions regarding the disclosure and restoration of credit information, such provisions shall prevail."[1693]

Departmental rules in turn often exclude "serious trust-breaking" from credit repair.[1694] This factually excludes those SCSP subjects subject to most severe disciplinary measures from the credit repair process.[1695] For administrative reconsideration and administrative litigation procedures, arguably, the opposite holds: The more severe the impact of SCSP practices, the more likely they are to pass the threshold of external effects required for an administrative action to be accepted by courts and administrative reconsideration offices.

The SCSP subject submits the application and relevant material demonstrating that the requirements are fulfilled, like payment receipts and repair completion reports to the original PCI provider online or offline.[1696] In Zhejiang, within 10 days, the agency shall either (1) grant repair and forward the decision to the provincial PCI agency under the DRC; or (2) deny repair and explain the reasons in writing to the applicant; or (3) if it finds that the application is not within the scope of the providers' responsibilities, inform the applicant thereof.[1697]

Documents required in most setups include a credit commitment letter 信用承诺书, in which the SCSP subject pledges to comply with legal requirements, and agrees to more severe penalties should they break the commitment.[1698] Beyond credit repair, administrative agencies use such letters to grant simplified procedures and late submission of certain documents in licensing processes, and commentators attest the credit commitment mechanism much potential in administrative licensing.[1699] However, the credit commitment mechanism is yet poorly implemented and regulated.[1700] One scholarly commentator to a second-tier city's social credit regulations suggested to

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[1693] Art. 5(3), *Credit Repair Measures (trial)*.

[1694] E.g. Art. 6(2), 国家能源局关于印发《能源行业市场主体信用修复管理办法(试行)》的通知 (Notice Of The National Energy Administration On Issuing The 'Management Measures On Credit Repair Of Market Entities In The Energy Sector'), issued 27 March 2019.

[1695] As criticized in the literature: *Binglin Tan: Disciplining trust-breaking*, p. 47.

[1696] No. 3, *State Council Credit Repair Plan*; as well as via phone during the pandemic in some areas: 银川市社会信用体系建设领导小组办公室关于做好新型冠状病毒肺炎疫情防控期间信用管理和服务的通知 (Notice of the Yinchuan City Small Leading Group for SCS Building Office on Doing Well in Credit Management and Services During the COVID-19 Prevention and Control Period), issued 19 February 2020, https://www.yinchuan.gov.cn/xxgk/bmxxgkml/sfgw/xxgkml_1867/bmqtwj_1875/202003/t20200303_1978002.html, archived at https://web.archive.org/web/20250913095942/https://www.yinchuan.gov.cn/xxgk/bmxxgkml/sfgw/xxgkml_1867/bmqtwj_1875/202003/t20200303_1978002.html.

[1697] Exemplarily see Art. 9, *Zhejiang Credit Repair Measures*.

[1698] Art. 8, 9 and 19(2), *Credit Repair Measures (trial)*; No. 4, *State Council Credit Repair Plan*; part 4 (12), 国家发展改革委办公厅关于印发《2024—2025年社会信用体系建设行动计划》的通知 (Notice of the NDRC General Office on Issuing the '2024-2025 Social Credit System Building Action Plan'), issued on 20 May 2024.

[1699] Chun Peng 彭錞 (2024) 论信用监管的制度逻辑及其合法性与有效性 (On the legality and effectiveness of credibility-based regulation and its logic), 华东政法大学学报 (ECUPL Journal) 3/2024, pp. 39-54, p. 48.

[1700] *Xin Dai: Understanding the overall perspective*, p. 1475; citing Qingli Tang 唐清利 (2012) 社会信用体系建设中的自律异化与合作治理 (Alienation of self-disciplining and cooperative governance in the Social Credit System), 中国法学 (China Legal Science) 5/2012, pp. 38-45, p. 39; *Luping Zhang: Administrative blacklists*, p. 26.

delete the credit commitment as a requirement for credit repair overall: She argues that the credit commitment system is yet poorly explained and unified.[1701] Still, compared to compiling evidencing material for an administrative reconsideration or administrative litigation claim, given all the difficulties discussed in section 4.2.1.3., submitting a credit commitment letter alongside the credit repair application is much easier. Legal counsel is generally not required.

Requirements for repairing credit often include the completion of so-called 'credit repair trainings'. Credit repair trainings are offered mainly by private third-party institutions[1702] and consist of online or in-person classes about laws and regulations pertaining to a specific regulatory realm as well as the SCSP more broadly.[1703] Currently offered credit repair trainings are criticized for lack of substantial educational or restorative value. According to one credit repair training company's spokesperson, during the final exam, "you can Baidu anything".[1704] Companies described credit repair training as "spending money to delete negative information in the media and commercial websites."[1705] Peixin Luo 罗培新 argued that it is difficult to see the connection between the trainings and the eventual repairing of credit.[1706] Credit repair, as an extension of the disciplining for 'trust-breaking' mechanism, should centre around substantial behavioural change rather than just superficial procedures to fix an information record to avoid it becoming a mere "whitewashing" tool, Yong Xie 谢勇 writes.

> "Thus, while credit repair requires specific actions, it cannot be accomplished by a single action, nor can it be achieved through a simple combination of several individual actions. It is inherently an ongoing process, a social interaction process in which the trust-breaking individual and other social actors rebuild trust."[1707]

In addition, the risks laid out above concerning the inclusion of private parties in public regulation work apply for third party credit repair training providers, too. Firms in the that line of business are frequently under fire for corruption and unethical practices.[1708] Central-level rules on repair so far only require that the National PCI Centre does not

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[1701] Fieldwork document 011.
[1702] So-encouraged in policy documents (国家发展改革委办公厅关于进一步完善"信用中国"网站及地方信用门户网站行政处罚信息信用修复机制的通知 (NDRC General Office Notice On Further Improving The Administrative Punishment Information Credit Repair Mechanism On The 'Credit China' Website And Its Local Branch Websites), issued 30 April 2019, https://www.gov.cn/zhengce/zhengceku/2019-09/29/content_5434745.htm, archived at https://web.archive.org/web/20250911103344/https://www.gov.cn/zhengce/zhengceku/2019-09/29/content_5434745.htm) and provincial SCSP legislation: e.g. Art. 66(4), *Jiangsu SCS Regulations*.
[1703] *Tailai Zhou et al.: Credit Repair*.
[1704] *Tailai Zhou et al.: Credit Repair*.
[1705] *Tailai Zhou et al.: Credit Repair*.
[1706] Peixin Luo 罗培新 (2019) "上了失信名单，参加专题培训就能修复信用？信用修复务必与信用惩戒的法律依据相衔接 (When on a blacklist, can one repair credit by participating in a special training? Credit repair must be connected with the legal basis of credit disciplining)", 中国市场监管报 (China Market Regulation News), 10 December, http://www.cmrnn.com.cn/content/2019-12/10/content_122493.html, archived at https://web.archive.org/web/20250910133907/http://www.cmrnn.com.cn/content/2019-12/10/content_122493.html.
[1707] Yong Xie 谢勇 (2020) 信用修复的社会内涵及其表达形 (The social connotation and expression of credit repair), contribution in 我国诚信建设法治化核心命题笔谈 (Discussion on the core issues of legalization of integrity construction in China), 求实 (Seeker) 3/2020, pp. 13-24, p. 17.
[1708] *Tailai Zhou et al.: Credit Repair*.

charge fees and makes no such stipulation for the private institutions that provide credit repair trainings.[1709] One improvement are Zhejiang province's recently issued Measures on credit repair, which forbid not just administrative agencies involved in credit repair, but all others who "undertake credit repair work" to charge fees.[1710]

Upon successful completion of the credit repair process, negative social credit information is not completely deleted. In most setups, credit repair leads to the end of the public display of negative social credit information. Only parts of the contents in social credit files are disclosed to the public.[1711] According to the NDRC rules, successful credit repair leads to the "removal or termination of activities of disclosing information on trust-breaking 移除或终止公示失信信息的活动".[1712] The comparatively progressive rules on credit repair in Zhejiang province specify that information that is successfully repaired is deleted 删除, however, the focus of the rules lies on the publication of information and what 'deletion' means is not further specified.[1713] Increasingly, instead of the removal from the platforms, only an additional 'repaired' note is added to the original negative record.[1714] That the record of the 'trust-breaking' behaviour is kept in the social credit file in principle fits well within the restorative logic of credit repair – since the SCSP subject accepts the administrative agency's determination of 'trust-breaking', it may as well remain in the file. The entire record is to reflect a (legal) person's social credit, including the restorative actions, the "return of the lost 浪子回头".[1715] The aspiration of meaningful legal protection however would be to re-establish the status to that before the administrative agency acted. Only a full deletion of the record would afford the SCSP subject the return to this state.

Most significantly, the removal of negative social credit records from public databases does not de facto remove them from public view. The detrimental impact of shaming can only be partly mitigated but not terminated by removing them from state-administered

[1709] Art. 28, *Credit Repair Measures (trial)*.
[1710] Art. 17, *Zhejiang Credit Repair Measures*.
[1711] Not all social credit information contained in a file is disclosed through platforms. This is not explicitly stated, but indicated: A Notice of the Hunan provincial branch of the Securities Regulatory Commission orders local branches to not use the public platforms only but go through the internal system: 关于严格履行诚信档案查询义务的通知 (Notice On Strictly Carrying Out Duties To Inquire Sincerity Files), issued by the Hunan Securities Regulatory Bureau on 29 October 2024, http://www.csrc.gov.cn/hunan/c104476/c7515171/content.shtml, not archivable, on file.
[1712] Art. 3, *Credit Repair Measures (trial)*. This was criticized as it, to some extent, disenables the government procurement processes' requirement of not giving bids to trust-breakers that is laid down in the Government Procurement Law: *Tailai Zhou et al.: Credit Repair*.
[1713] Art. 11, *Zhejiang Credit Repair Measures*; For a sectoral equivalent, see Art. 11, 上海市生态环境局关于印发《上海市企事业单位生态环境信用修复管理规定（试行）》的通知 (Notice Of The Shanghai Municipal Ecological And Environmental Bureau On Issuing The 'Management Rules For Environmental Credit Repair Of Municipal Public Enterprises And Institutions'), issued 1 August 2022.
[1714] 国家能源局关于印发《能源行业市场主体信用修复管理办法(试行)》的通知 (Notice Of The National Energy Administration On Issuing The 'Management Measures On Credit Repair Of Market Entities In The Energy Sector') issued 27 March 2019; early on suggested by Xin Dai 戴昕 (2021) 声誉如何修复 (How to repair reputation), 中国法律评论 (China Law Review) 1/2021, pp. 125-140; endorsed by *Binglin Tan: Disciplining trust-breaking*, p. 48.
[1715] Yong Xie 谢勇 (2020) 信用修复的社会内涵及其表达形 (The social connotation and expression of credit repair), contribution in 我国诚信建设法治化核心命题笔谈 (Discussion on the core issues of legalization of integrity construction in China), 求实 (Seeker) 3/2020, pp. 13-24, p. 18-19.

social credit platforms.[1716] Relevant information begins to spread through networks beyond the administrative agency's control as soon as it is published. Even if the widely called for[1717] but yet poorly functional synchronization of credit repair decisions across state-administered social credit platforms would work, private platforms, and especially credit rating firms such as Qichacha and Tianyancha, might (unknowingly) continue to publish "outdated" records.[1718] The NDRC ordered the National PCI Centre to supervise that third party institutions update their records regularly,[1719] and to "suspend or cancel information sharing with agencies that fail to promptly update repair information"[1720]. The threat rings hollow to some extent because most of the PCI is publicly available. Another effort, by the State Council, (ironically) calls for social credit-like shaming of third party institutions: "Credit reporting establishments that do not promptly update are to be announced to the public through the 'Credit China' website."[1721] In any case, when it comes to remedying impacts from shaming, credit repair feature similar limitations as the conventional remedial procedures of administrative reconsideration and administrative litigation.[1722]

4.2.3.2. Conclusion

Admittedly, the above attempt to compare traditional administrative remedial channels of administrative reconsideration and administrative litigation to the restorative procedure of credit repair is an odd exercise of comparing apples to oranges. However, in practice, for SCSP subjects that are negatively impacted by an SCSP measure they believe to be unlawful, credit repair appears as a viable *alternative* to administrative reconsideration and administrative litigation. There are many reasons for SCSP subjects to choose credit repair over 'real' remedial channels, even if this means for them to (at least on the face of it) accept that the original decision was lawful when they really consider it to be in violation of laws and regulations. Chances to successfully complete credit repair procedures and have negative social credit entries removed and disciplinary measures repealed are good (assuming the official numbers are somewhat representative).[1723] To adopt a law and economics perspective, a rational SCSP subject

[1716] Section 4.2.1.

[1717] "[...] sharing of repair results across all platforms": E.g. in Art. 4, *Zhejiang Credit Repair Measures*; 上海市社会信用建设办公室印发《关于疫情防控期间进一步完善信用修复工作机制助力市场主体稳定发展的实施方案》的通知 (Notice Of The Shanghai Social Credit Building Office On Issuing The 'Implementation Plan For Further Improving The Credit Repair Mechanism To Assist The Stable Development Of Market Entities During The Pandemic Prevention And Control Period'), issued 3 April 2022.

[1718] Discussed by *Binglin Tan: Disciplining trust-breaking*, p. 48.

[1719] Art. 26(1), *Credit Repair Measures (trial)*.

[1720] Art. 26(2), *Credit Repair Measures (trial)*.

[1721] *State Council Credit Repair Plan*.

[1722] See also, *Binglin Tan: Disciplining trust-breaking*, p. 48.

[1723] Success rates are more transparent than those of administrative reconsideration and administrative litigation: only in May 2019, in 18,188 cases applicants successfully had their credit repaired by way of rectifying behaviour, in 848 cases applicants successfully had their credit repaired by way of making credit commitments on the Credit China platform and others, and in 693 cases applicants had their credit repaired by way of participating in credit repair training, mostly in Chongqing. 失信治理月度分析报告 (Monthly Analytical Report On Governing Trust-Breaking For May 2019), issued by the National PCI Centre 国家公共信用信息中心, http://credit.wuzhi.gov.cn/news/content/1560409375004, not archivable, on file with the author. Chongqing authorities reported that in 2024, 18,000 credit repairs were completed and more than 800,000 credit pledges 信用承诺 were made: 重庆市发展和改革委员会关于2024年法治政府建设情况的报告 (Chongqing City DRC 2024 Report On Building A Law-based Government), issued 2025, on file with the author.

would likely prioritize credit repair for the higher probability of success over the diminishing probability of winning administrative reconsideration or administrative litigation. From a results-oriented perspective, it is irrelevant that credit repair cannot confirm that the SCSP subject was in the right and the agency in the wrong.

Credit repair falls squarely into what is termed 'restorative justice'. The term originates in the criminal justice system and describes the coming together of afflicted parties with the perpetrator to reconcile and devise ways to forms of reparations, often as alternative to prison sentences and other retributive punishments.[1724] In public regulation, it refers to the regulatory subjects' acknowledgement of fault combined with the taking of measures to mitigate harm caused and minimize the risk of future harm.[1725]

Functionally speaking, credit repair then serves both, regulatory purposes as in achieving behavioural change towards more compliance, and justice purposes, as a channel to obtain relief from rights-impacting state action. Credit repair thereby transcends the classic juxtaposition of the regulatory state on the one hand and the legal protections against it on the other. In the context of the SCSP in China, this special institutional role renders it to enjoy the considerable political prioritizing that all elements of the social credit mode of governance receive. Other than administrative litigation and administrative reconsideration, which are regarded as important for the functioning of, but not original parts of the social credit mode of governance,[1726] credit repair is being rolled out with much political tailwind. This renders it powerful for SCSP subjects seeking relief. Official indicators for evaluating the successes of officials in SCSP implementation include, among others, the "number of signed credit repair commitments" and the "number of completed credit repair trainings" in their respective jurisdiction.[1727] Every successful completion of credit repair procedures counts as achievement for SCSP building, a successful complaint through administrative reconsideration or administrative litigation against an SCSP measure on the other hand indicates a wrongly

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Anecdotal evidence I retrieved through interviews with corporate representatives confirm this trend: Out of 12 interlocutors that reported to have applied for credit repair before, 8 said that their application had success. 2 replied that they have not heard back, and 4 did not respond to the question: BJ04, CQ03, CQ07, HZ12, HZ13, HZ14, HZ15, SH02, ZJ05, ZJ07, ZJ10, SZ08.

[1724] John Braithwaite (2002) *Restorative Justice and Responsive Regulation*, Oxford University Press, p. 10; John Braithwaite (2014) Restorative justice and responsive regulation: the question of Evidence, RegNet Research Paper No. 51/2014, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2514127, p. 8; Pietro Sullo (2016) Restorative justice, Max Planck Encyclopedias of International Law, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e2120?p=emailAEEk.WBWWSohg&d=/10.1093/law:epil/9780199231690/law-9780199231690-e2120&print.

[1725] E.g., John Braithwaite (2012) Restorative justice and corporate regulation, in Elmar G. M. Weitekamp, Hans-Jürgen Kerner (eds.) *Restorative justice in context*, Willan, pp. 161-172, p. 162.

[1726] Section 4.2.1.

[1727] 社会信用体系建设示范城市评估指标细则（2019年参考版） (Detailed Indicators for SCS Building Model City Assessment (2019 version for reference), published attached to local SCS building plans, see for instance: Notice on Welcoming the Second Batch SCS Building Model City Evaluator Inspection Work Plan 关于印发《关于迎接第二批社会信用体系建设示范城市评审验收工作方案》的通知, issued by the 郑州市社会信用体系建设工作领导小组办公室 (Office of the Zhengzhou Municipal SCS Building Small Leading Work Group) on 14 December 2018, 郑信用办(2018)21号, https://credit.henan.gov.cn/res_root/upload/fileCenter/res_base/rjcms/application/2019/06/06/5cf87c078af8d1bb86b2f291.pdf, not archivable, on file with the author.

implemented SCSP mechanism, if anything.[1728] As a result, credit repair in practice works better to realize the remedy interests of SCSP subjects.

The prospect that credit repair might move from a supplementary remedial path to a substitute for administrative reconsideration and administrative litigation is troubling for the *protecting legal rights and interests* function of administrative law. While convenient and more promising for SCSP subjects seeking relief from SCSP practices, it threatens to undermine genuine channels for holding administrative agencies accountable for wrongdoings. In the long-term, a reform of practices to afford better legal protections for subjects however can only be achieved when excessive practices are pointed to, and adversarial remedial paths are a crucial element to that end.

That said, credit repair is yet porous and plagued by several fundamental issues, as is reflected in the 2025 Implementation Plan for Further Improving the Credit Repair System by the State Council.[1729] The problems in synchronizing social credit records across all sectoral, local and privately-run platforms, forming data silos, apply to credit repair records, too.[1730] The issue of "multiple repairs 多头修复" persists, that is, the uncoordinated blossoming of different credit repair schemes for one rcord simultaneously.[1731] There exist no unified standards on what types of information can be repaired through which actions. Credit repair procedures are not yet available across the board.[1732] The infrastructure for administrative reconsideration and administrative litigation, on the other hand, is well established.

On a final note, credit repair decisions themselves are subject to administrative reconsideration and administrative litigation as they fulfil all criteria for actionable administrative behaviour under the ALL and the ARL. However, credit repair rules barely explicitly state so.[1733] The NDRC's relevant guiding documents do not mention remedial

[1728] "Losing any claim in an administrative lawsuit is considered a loss and leads to a reduction in the [officials' performance evaluations 法治政府评分] assessment score." Yuxia Zhang and John Zhuang Liu (2025) The rise of the Chinese judiciary and its limits: Administrative litigation in the reform period, *The China Quarterly* 262, pp. 330-351, p. 337.
[1729] *State Council Credit Repair Plan*.
[1730] E.g., simultaneous updating of credit repair outcomes on the Credit China website is a pressing issue: *State Council Credit Repair Plan*. See also: Hong Zhu 朱红 (2019) 基于被公示人权利保护的失信名单公示制度改革 (Reform of the trust-breaker list publication system based on the protection of the rights of the person published), 黑龙江生态工程职业学院学报 (Journal of Heilongjiang Vocational Institute of Ecological Engineering) 32(5), pp. 65–67.
[1731] 国家发展改革委办公厅 市场监管总局办公厅关于进一步做好信用修复协同联动工作的通知 (Notice Of The General Office Of The NDRC And The General Office Of The SAMR On Further Improving Coordination And Joint Efforts On Credit Repair), issued 18 January 2024, https://www.gov.cn/zhengce/zhengceku/202402/content_6929402.htm, archived at https://web.archive.org/web/20250911140146/https://www.gov.cn/favicon.ico.
[1732] In Kunshan for example, only about half of the administrative agencies that engage in blacklisting have set up credit repair: Zhenyu Xiao 肖振宇, Houru Weng 翁后茹, and Yang Sun 孙阳 (2020) "县域城市信用体系建设的实战的实战与思考——以江苏省昆山市为例" (Practice and thought on credit system construction in county-level cities—taking Kunshan in Jiangsu as an example), 征信 (Credit Reference) 3/2020, p. 58-63.
[1733] *Luping Zhang: Administrative blacklists*, p. 27.

channels for credit repair decisions.[1734] Merely some departmental and local rules on credit repair do include relevant provisions.[1735]

4.2.4. Interim findings: The limitations of ex-post remedial channels

Administrative reconsideration, administrative litigation and credit repair are ex-post remedial channels: They can alleviate negative impacts on SCSP subjects' rights and interests after such impact has already unfolded. However, many types of detrimental impact cannot effectively be rolled back once imposed, regardless of the intentions of the acting administrative agency. This is especially the case for disciplinary measures that have a reputational effect.[1736] Once a name is publicized on a list for 'trust-breaking', for instance, the information may spread far beyond the reach of the administrative agency that published it and unfold impact regardless of whether the agency decides to terminate the publication. Reputational measures in public regulation have thus been dubbed "clumsy instruments"[1737] and their inherent challenges to legal protection have been discussed since the 1970s.[1738]

Beyond shaming measures, the effects of other disciplinary measures imposed through CBR such as increased on-spot inspections, too, escape the control of the agency that made the initial trustworthiness assessment. Despite efforts to enhance the control over social credit information flows,[1739] the current system suffers from insufficient real-time data synchronization and incompatibility of state-administered social credit platforms. Outdated social credit records are ubiquitous in the systems of multiple departmental regulators. As they are drawn on in discretionary decision-making, they potentially impact the SCSP subjects' legal rights and interests.[1740]

In consequence, ex-post remedial channels are generally insufficient to afford SCSP subjects legal protection.[1741] Ex-post judicial review of administrative action is widely documented as inadequate to protect the rights of regulatory subjects in the age of automated decision-making and algorithmic regulation.[1742] The case of the SCSP adds empirical support to this proposition.[1743] Ex-ante paths to remedy become all the more

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[1734] *Credit Repair Measures (trial)*; *State Council Credit Repair Plan*.
[1735] E.g., Art. 16, 市场监管总局关于印发《市场监督管理信用修复管理办法》的通知 (Notice Of The SAMR On Issuing The Management Measures For 'Market Supervision Credit Repair'), issued 30 July 2021.
[1736] Section 4.1.2.
[1737] Kishanthi Parella (2018) Reputational regulation, *Duke Law Journal* 67(5), pp. 907-979, p. 930.
[1738] Ernest Gellhorn (1973) Adverse publicity by administrative agencies, *Harvard Law Review* 86(8), pp. 1380-1441.
[1739] Evident not just from policy but also legislation: "If a legally binding document affecting a credit subject's credit status is revoked, altered, or declared invalid in accordance with the law, the original credit information provider shall notify the PCI agency within five business days of the date the legal document revoked, altered, or invalidated takes effect. The PCI agency shall then revoke or alter the credit information within two business days." Art. 65, *Jiangsu SCS Regulations*.
[1740] Describing the risks of relying on ex-post remedial channels in algorithmic regulation: "[…] by the time a problematic decision is taken, whether directly or based on an algorithmic recommendation, it may already be too late to counter potential adverse effects that may ensue therefrom […]" Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 219.
[1741] See also, *Honghai Bi: Old regulatory wine*, p. 325.
[1742] E.g., Joe Tomlinson, Kate Sheridan and Adam Harkens (2020) Judicial review evidence in the era of the digital state, SSRN, 25 June, https://ssrn.com/abstract=3615312; Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 219, p. 198.
[1743] *Shen Yan and Boyang Wang: Credit assessment*, p. 49.

important. Objection procedures, examined in the following section, to some extent provide ex-ante legal protections.

4.2.5. Objection procedures

"The process was very simple. I submitted the objection [to the wrong credit record], got a notification on my phone that it is corrected, a week after. I checked on the website, it is corrected. […] I am still worried that others saw the information already. But there's nothing to do about that."

- Lawyer from Jiangsu province[1744]

"They have to reply within ten days, that is very clear in the Regulations. They even write it on their website. But they did not reply, until today. I went [to the administrative agency] three times."

- Restaurant owner from Hunan province[1745]

Objection procedures are means to counter actions of administrative agencies directly with the agency. Chronologically, they usually precede administrative reconsideration and administrative litigation. They are mandated by the due process principle: It requires that addressees of administrative actions are informed of incoming administrative actions that may impact their legal rights and interests and are given the opportunity to object (see section 4.1.5.). No general law in the PRC requires administrative agencies to provide for objection procedures for all administrative acts. However, where administrative agencies impose punishments, according to the APL, they must inform the addressee beforehand (Art. 44, and Art. 62, APL), afford them the opportunity to object ("right to make statements, right to make defences 陈述权, 申辩权", Art. 7, APL) and take into consideration such objections in their decision-making process (Art. 45(1), APL). The punishment must not be more severe because an addressee objected (Art. 45(2), APL). SCSP disciplinary measures that amount to administrative punishment thus require the imposing administrative agency to provide for ex-ante objection procedures.

However, the process of disciplining 'trust-breaking' has multiple stages and several actors involved. The challenges that this poses to administrative litigation and administrative reconsideration processes arise for objection procedures as well. One negative trustworthiness assessment, be it blacklisting or a negative credibility assessment, entails a series of disciplinary measures from different agencies with potential impact on SCSP subjects' rights and interests. It is unclear which agency and act to object to in order to get hold of the entire series of measures. Even if for every measure there were respective objection procedures, it is hardly feasible for an SCSP subject to object to every measure separately with separate agencies. To address the measures all combined, the trustworthiness assessment at the root of the measures must be addressed, the more or less discretionary decision on a subject's trustworthiness in the form of blacklisting or negative credibility assessments. Neither blacklisting nor negative credibility assessments however are formally administrative punishment. Hence, the requirement to provide for objection procedures stipulated in the APL does not apply.

[1744] SU01.
[1745] HN03.

National law is yet silent on the matter. Promisingly, the SCS Building Law Draft provides for objection procedures for disciplinary measures for 'trust-breaking' (Art. 99)[1746] as well as for social credit information files (Art. 95)[1747]. Apart from the draft SCS Building Law which is yet to be passed, so far, objection procedures addressing blacklisting and credibility assessments specifically are found in SCSP legislation passed by the provincial People's Congresses and their Standing Committees, as well as other sub-statutory legislation and ANDs. Terms used throughout these documents are not unified and include 申诉, 投诉, and 异议.

I illustrate the setup for objection procedures by reference to the Jiangsu Province Social Credit Regulations (hereafter, Jiangsu SCS Regulations) as example. The Jiangsu SCS Regulations were most recently updated and thus best reflect the current state of official thought on legislating the SCSP.[1748]

Pursuant to the Jiangsu SCS Regulations, all agencies as well as private third-party institutions (!) implementing SCSP mechanisms are to accept and handle objections (Art. 60, Jiangsu SCS Regulations).[1749] The Regulations provide for objection procedures against both types of trustworthiness assessments separately, blacklisting in Art. 31, and social credit information records in Art. 64. The following discusses both in turn.

4.2.5.1. Objections to blacklisting

The objection procedures against administrative agencies' blacklisting decisions[1750] are laid out in Art. 31 of the Jiangsu SCS Regulations:

> "Before making a decision to add a credit subject to the list of seriously trust-breaking entities, the sectoral credit management departments shall inform the parties of the reasons and basis for the decision, remind them of the disciplinary measures for trust-breaking, and of the parties' legal rights. If the parties raise objections, it shall be verified and a response provided within the prescribed time limit."

[1746] "Where state organs employ disciplinary measures for trust-breaking against credit information subjects, the credit information subjects have the right to submit complaints [投诉] against the unit carrying out the disciplining, and may also apply for an administrative reconsideration or initiate AL." *SCS Building Law draft*.

[1747] "Article 95: [Credit information subjects' right to make objections] Where credit information subjects feel that any of the following situations exists, they may submit an objection to the credit information handlers:
(1) There were situations such as errors or omissions in the collection, processing,
provision, or storage of credit information;
(2) commercial secrets of the credit information subjects were violated;
(3) Personal privacy and other lawful rights and interests of individuals were violated." *SCS Building Law draft*, translation by chinalawtranslate.com.

[1748] *Jiangsu SCS Regulations*. Fundamental principles and rules in these Regulations appear similarly in the current *SCS Building Law draft*. Other province-level SCS regulations are very similar, and since People's Congresses at the provincial level began legislating on 'social credit' explicitly, they have been modelling previously issued regulations of other provinces.

[1749] Previously, non-state actors only had to provide objection procedures if they were part of the only credit reporting industry (征信业管理条例 (Credit Reporting Industry Management Regulations), issued by the State Council 26 December 2012). The *Jiangsu SCS Regulations* extend the requirement to provide objection procedures to local non-state institutions that handle social credit information, including PCI and MCI.

[1750] First stipulating that a social credit information objection system is required: *State Council Opinion on CBR*. The SPC's provisions on objecting to being included in the blacklists of trust-breaking judgment defaulters are very similar, see *Chunyan Ding: Judgment-defaulter blacklist system*, p. 404-405.

Pursuant to this provision, SCSP subjects[1751] can file objections with the management department in charge of social credit of the respective sector in which the blacklisting decision was made. This typically is an office within the regulatory agency that made the decision. No consensus over how to name these offices has been reached even within jurisdictions.[1752]

Sectoral rules on blacklisting issued by the relevant agency stipulate details, including time limits within which objections may be raised. The General Administration of Sport for instance affords SCSP subjects 10 days to object upon being informed of the blacklisting decision.[1753] The Housing and Urban and Rural Construction Bureaus of Hangzhou and Suzhou both only leave three days for blacklisted construction market entities to object after they are notified.[1754]

Departmental rules further require administrative agencies to respond to objections within usually around 15 working days,[1755] and are usually silent on the exact standards for the review of objections.

4.2.5.2. Objections to social credit information records and credibility assessments

According to the Jiangsu SCS Regulations, an SCSP subject can object to its PCI record (Art. 64(1)) and to its credibility assessments, both the comprehensive one and the departmental ones (Art. 64(2)). The Regulations even require market actors handling any kind of social credit information to accept and process objections (Art. 64(3)).

SCSP subjects can address their objections first, to the departmental administrative agencies responsible for the respective social credit information directly. Objections to social credit information records are comparatively simple to process as the underlying decision is not doubted.[1756] The agencies merely verify whether the administrative decision at the basis of the information item was in fact made, or whether the record on

[1751] Objection rules for individuals differ slightly and are regulated under the larger data protection regime. See: Hannah Klöber (2023) The regulation of personal data accuracy in China's public Social Credit System, *Hong Kong Law Journal* 53(1) pp. 375-402; Lanling Hu 胡兰玲 and Shumin Liu 刘淑敏 (2024) 个人信用信息异议权保护研究 (Research on the protection of the right to object to personal credit information), 征信 (Credit Reference) 9/2024, pp. 37-43.

[1752] Fieldwork document 011. Not to be confused with the social credit agencies, for which likewise there is no unified term, see sections 2.1.4.; 2.1.1.1.; 3.1.1.1. etc.

[1753] Art. 13(2), 体育总局关于印发《体育市场黑名单管理办法》的通知 (General Administration Of Sport On Issuing The Management Measures For The Sports Market Blacklist), issued 9 August 2018; Other departmental rules that do not set a time limit: 人力资源社会保障部关于印发《拖欠农民工工资"黑名单"管理暂行办法》的通知" (Notice Of The Ministry Of Human Resources And Social Security On Issuing The 'Interim Measures For The Administration Of The 'Blacklist' Of Those Who Withhold Migrant Workers Wages'), issued on 25 September 2017.

[1754] Art. 8(2), 苏州市住房和城乡建设局关于印发《苏州市建筑市场"黑名单"管理办法(试行)》的通知 (Notice Of The Suzhou Municipal Housing And Urban And Rural Construction Bureau On Issuing The 'Suzhou Municipal Management Measures For The Construction Market 'Blacklist' (Trial)'), issued 13 September, 2017; Art. 8(2), 杭州市城乡建设委员会关于印发《杭州市建筑市场"黑名单"管理暂行办法》的通知 (Notice Of The Hangzhou Urban And Rural Construction Committee On Issuing The 'Interim Management Measures For The Hangzhou Construction Market Blacklist'), issued 11 March 2017. Arguing that the shorter the period, the better the protection of SCSP subjects, because the time limits for initiating administrative reconsideration and administrative litigation begin to run with the moment of notification: *Luping Zhang: Objection mechanism*, p. 16.

[1755] Art. 14(1), 体育总局关于印发《体育市场黑名单管理办法》的通知 (General Administration Of Sport On Issuing The Management Measures For The Sports Market Blacklist), issued 9 August 2018.

[1756] *Luping Zhang: Objection mechanism*, p. 12.

a social credit platform is consistent with the original record of the social credit information provider.

Second, SCSP subjects can address their objections to the local social credit agency.[1757] This typically happens for comprehensive credibility assessments or PCI records displayed by platforms of social credit agencies.[1758] As social credit agencies are the nod combining and processing the social credit information from multiple regulators, their objection procedures are more complex.

Take for instance objections to comprehensive credibility assessments. To recall, comprehensive credibility assessments are those that combine the social credit records from regulatory agencies across all realms, as well as from market actors.[1759] In Shanghai, for instance, an SCSP subject can submit an objection to the social credit agency in charge on the grounds that either the PCI is erroneous or incomplete (Art. 28(1) no. 1, Shanghai Municipal PCI Gathering and Application Management Measures, hereafter: Shanghai PCI Measures),[1760] infringes on the subject's commercial secrets or privacy (Art. 28(1) no. 2, Shanghai PCI Measures), or was not taken down after the publication period expired (Art. 28(1) no. 3, Shanghai PCI Measures).[1761] Once submitted, the social credit agency first compares the disputed piece of social credit information with its own record. If the records are consistent, the social credit agency forwards the objection to the original information provider to check whether an inconsistency exists there (Art. 29(1), Shanghai PCI Measures). Within five days, the information provider shall conduct verification and inform the social credit agency of the results, which again informs the SCSP subject of the outcome of the objection (Art. 29(2), Shanghai PCI Measures).[1762] During the objection process, the social credit agency marks the disputed information as undergoing objection so that inquirers are aware (Art. 30(1), Shanghai PCI Measures).

This process crucially hinges on the good cooperation between the social credit agency and the agencies and third-party institutions that provided the original social credit records. Empirical investigations show that such cooperation is hardly implemented. Departmental regulators are reluctant to take on tasks ordered by local DRCs.[1763] Therefore, the objection procedure addressing comprehensive credibility assessments,

[1757] No. 8, *State Council Credit Repair Plan*.
[1758] No uniform terminology has evolved 'social credit agencies', either (see: section 4.1.1.). Art. 40, 贵州省社会信用条例 (Guizhou Provincial Social Credit Regulations) for instance stipulate that objections be submitted directly to the NDRC, whereas Art. 30, 浙江省公共信用信息管理条例 (Zhejiang Provincial Public Credit Information Management Regulations) stipulate that "Provincial Public Credit Work Institutions 省公共信用工作机构" are in charge, which are a branch of the NDRC. The lack of terminological unity for objection institutions is detrimental to the authority of CBR overall: *Luping Zhang: Objection mechanism*, p. 15.
[1759] Section 3.2.4.
[1760] Art. 28(1) no. 1, 上海市公共信用信息归集和使用管理办法 (Shanghai Municipal PCI Gathering And Application Management Measures), issued by the Shanghai People's Government on 30 December 2015, amended on 4 January 2018, hereafter: *Shanghai PCI Measures*. The social credit agency in charge in Shanghai is the Municipal PCI Service Centre.
[1761] This trinity of objection grounds also reflects in the *SCS Building Law draft*, Art. 95, however, there exist several different provisions across local and sectoral rules, attesting a general "vagueness of objection matters": *Luping Zhang: Objection mechanism*, p. 15.
[1762] *Shanghai PCI Measures*.
[1763] A re-occurring theme throughout section 3.2.

even though partly resolving the multiple-actor problem, is vulnerable to bureaucratic self-interests.

The outcome, like in credit repair, is the removal of the social credit information item from sight. This is not equal to the deletion of the social credit information item from the credit record, or the deletion of the credibility assessment result. In our Shanghai example, for instance, if the objection is granted, the Municipal Social Credit shall merely "suspend providing public inquiry services for that information" (Art. 31(2), Shanghai PCI Measures) or "delete the information from the inquiry interface" (Art. 27, Shanghai PCI Measures).[1764] The SCS Building Law draft speaks of "deletion 删除"[1765] but does not further clarify. The mere removal of the social credit information item from sight accords with the restorative logic of credit repair. Credit repair is not geared towards confirming the inaccuracy of the information, but to end detrimental reputational impact from that information as a reward for making up for the 'bad behaviour'. That it remains in the file is consistent with the idea of social credit files reflecting accurately the social credit status of the SCSP subject. Objection procedures, on the other hand, serve to check the very accuracy of the information. If found inaccurate, the path to an accurate and SCSP subject reflecting file would be to fully delete it from the system so that it leaves no trace. That does not happen in many current objection setups like the one in Shanghai, despite scholarship asserting that SCSP subjects have a "right to deletion 消除权"[1766], a right to informational self-determination 信息自决权"[1767] and a "right to be forgotten 被遗忘权"[1768].

If the SCSP subject is not satisfied with the objection decision, it may file administrative reconsideration or administrative litigation. Objection decisions firmly fall within the definitions of actionable administrative decisions under the ALL and ARL. The SCS Building Law draft confirms that SCSP subjects can file administrative reconsideration or administrative litigation if unsatisfied with the outcome of an objection decision.[1769] Scholarship has criticized that administrative reconsideration and administrative litigation paths are not or only partially laid down in many local and sectoral rules.[1770] That would enhance clarity, however, whether the objection decision is in principle actionable under administrative reconsideration and administrative litigation does not hinge on such provisions in local and departmental rules because it is clearly stipulated in statutory law.

4.2.5.3. Conclusion

Like credit repair and unlike administrative litigation and administrative reconsideration, objection procedures can address the trustworthiness assessment which is at the root

[1764] *Shanghai PCI Measures*.
[1765] Art. 96, *SCS Building Law draft*.
[1766] *Peixin Luo: Social credit legislation*, p. 179-180.
[1767] *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 24.
[1768] *Guodong Chen: Credit disciplining*, p. 37. On the right to be forgotten, see also Jannice Käll (2017) A posthuman data subject? The right to be forgotten and beyond, *German Law Journal* 18(5), pp. 1145–1162. All these rights are by scholarship derived from different statutory law such as the PIPL and the Civil Code. Since the PIPL only applies to social credit information of natural persons, however, and would require a separate discussion on SCSP practices only relating to natural persons, it is here not further examined.
[1769] Art. 97, *SCS Building Law draft*.
[1770] Among many, *Luping Zhang: Objection mechanism*, p. 17.

of all possibly rights-impacting SCSP disciplinary measures. Thereby, objection procedures help effectively protect the rights and legal interests of SCSP subjects without necessitating the difficult translation of SCSP practices into categories of administrative law, such as the administrative act.

Further, objections are arguably procedurally most simple and thus feasible: They usually take place within one agency or provide clear rules for when review is delegated to another (the social credit information providing agency). The outcome is generally implemented by the very agency that conducted the review itself, skipping lengthy intra-institutional passing of orders (recall for instance the 'judicial suggestions' a court can make to administrative agencies upon finding an AND unlawful after review[1771]). These short bureaucratic routes render objection procedures comparatively efficient.[1772]

In so far as objection procedures against blacklisting decisions are concerned, their ex-ante character solves the problem of irreversible disciplinary measures, especially shaming measures. The agency has to notify the SCSP subject of its plans to impose a measure and leave a time frame, even if sometimes diminishingly small with only a few days, for the SCSP subject to object. Thereby, an undue publication of a blacklist and potentially irreversible reputational harm can be prevented.

However, the rules for prior notification and a time frame for objections are not generally available for trustworthiness assessments other than blacklist decisions, namely social credit file entries and credibility assessments. Provisions requiring agencies to inform SCSP subjects of negative credibility assessments beforehand are rare. Even less common are provisions that afford them a few days of time to file an objection ex-ante. Objection procedures for social credit entries and credibility assessments are overall available ex-post only. Only after a negative social credit entry was made in the system and began to unfold potentially rights-impacting effects for the SCSP subject, can the SCSP subject object to it.

Somewhat alleviating this problem is that in most local setups, only a blacklisting decision leads to a credibility assessment so low that seriously rights-impacting consequences await the SCSP subject. By inference, as long as blacklisting decisions are afforded ex-ante objection procedures, the worst impacts can be evaded, even if negative credibility assessments themselves are not informed of and given ex-ante objection space. In such setups, the SCSP subject had a chance to object to the blacklisting decision preceding the negative credibility assessment. The question then arises: How many of the overall negative credibility assessments that currently unfold impact in China are directly caused by a blacklisting decision, and how many are not? The current trend of the assessment-centred CBR mechanism not only supplementing but replacing the blacklist-based JAD mechanism[1773] indicates that the proportion of negative credibility assessments unfolding negative impact but not rooted in a blacklist decision, and therefore currently unobjectionable, increases.

[1771] Section 4.2.2.2.
[1772] See also, *Luping Zhang: Objection mechanism*, p. 13.
[1773] Section 3.2.4.

The lack of comprehensive objection procedures issue is, once again, particularly pertinent in the light of shaming measures. On the one hand, the perils of shaming are much better accounted for in recent years. Other than earlier provincial SCSP legislation,[1774] the Jiangsu Province Social Credit Regulations allow for objections against all forms of public display of social credit information. [1775] However, objection to publication of social credit information is not ex-ante. As argued in section 4.2.4., it is only with ex-ante procedures that administrative agencies can somewhat control their shaming measures. The great advantage that the agency-internal objection procedures have over ex-post procedures, that information publication can be *prevented* rather than just *stopped* later on, is not realized.

Another advantage of agency-internal objection procedures over administrative reconsideration and administrative litigation lies in its potential to better address (semi-)automated elements of the CBR mechanism. The lack of technical expertise on the part of both, claimants and judges/ administrative reconsideration officials impede legal protections.[1776] The agencies that produce credibility assessments are often in an advantageous position because they preside over the software codes underpinning credibility assessment results and the technical expertise to decipher it. Technical expertise required to oversee automated credibility assessment production and review its outcomes already lies within the agency and can in handling objection procedures be tapped.

However, the issue that such technologies often present technical black boxes remains: Even the designers and operators of the technological applications used in algorithmic regulation such as CBR can not fully deconstruct and understand its reasoning. Further, as shown in section 3.2.4., credibility assessment production is often outsourced to private actors, hence the technical expertise might not be available within the agency at all.

On the flipside of having the technical expertise right where the SCSP subject raises its claim, there also lies a disadvantage. If objection procedures are not structurally separated from the agency that made the disputed trustworthiness assessment, the impartiality of the review is compromised.[1777] Embedding the objection procedure within the same agency that made the disputed trustworthiness assessment likely does not impact those objections that merely bring to the agency's awareness a mistake in social credit information files. These are likely granted since the agency has a self-interest in information accuracy. The structural dependence poses a problem first and foremost to those disputes which have a wrong administrative decision, not simply an unintended error, at their core. The lack of impartiality is exacerbated by the automation bias on the part of the officials: Officials who handle objections are more likely to side with the

[1774] For instance, not explicitly listing "credibility assessments" as within the scope of items that SCSP subjects can file objections over: 河南省社会信用条例 (Henan Provincial Social Credit Regulations), issued by the Henan Provincial People's Congress Standing Committee on 29 November 2019; 上海市社会信用条例 (Shanghai Municipal Social Credit Regulations), issued by the Shanghai Municipal People's Congress Standing Committee on 13 June 2017.
[1775] Art. 64, *Jiangsu SCS Regulations*.
[1776] Section 4.2.1.3.
[1777] See also, *Luping Zhang: Objection mechanism*, p. 13.

system. Trust in the own system is arguably particularly pronounced among officials of the very agency that chose, co-designed, and applies the respective technological application in their daily operations.[1778]

Finally, as agency objection procedures tailored to address blacklisting, social credit files and credibility assessments are still in the making, they suffer from the same shortcomings that have been pointed to for credit repair and other SCSP mechanisms. Despite of what the rules provide for, in reality, objections are regularly not replied to, not carefully checked, and delayed.[1779] Where objections to social credit records are upheld and information is corrected, updates do not easily travel through the network of social credit information systems and platforms, not to mention the non-state social credit platforms and agencies.[1780] For instance, disputed information often remains as it was on social credit platforms despite of relevant rules stipulating that during an objection process, disputed information shall be marked as under dispute.[1781] To mend these issues, scholarship has suggested that local social credit agencies build accountability mechanisms and monitor the carrying out of objection procedures,[1782] strengthen external controls through the judiciary, SCSP subjects' feedback and, interestingly, social media.[1783]

Reforms are likely because objection procedures, at least in so far as they concern inaccurate social credit information, enjoy political backup. The SCSP requires accurate social credit information for all its functions. SCSP implementing agencies and SCSP subjects both have an interest in accurate social credit files. Administrative agencies can leverage objection procedures as one valuable means to achieve data accuracy.[1784] The social credit agencies are constantly struggling to convince the departmental regulators to forward accurate social credit records[1785] and benefit from SCSP subjects' scrutiny. With every objection raised, SCSP subjects further the goal of achieving "security, timeliness, and accuracy of information", ensuring the quality of social credit information, that is set out for agencies by law and policy.[1786] Thus, similar to credit repair, objection procedures, at least where they address mistakes in social credit information handling, are of use to SCSP builders and enjoy the respective political support and resource flows in development.

[1778] This is not China-specific but rather applies to algorithmic regulation globally: Danielle Keats Citron (2008) Technological due process, *Washington University Law Review* 85(6), pp. 1249-1314, p. 1254.
[1779] *Luping Zhang: Objection mechanism*, p. 20; WZ01, YN01, YN02, ZJ02.
[1780] See section 4.2.3.; see also *Honghai Bi: Old regulatory wine*, p. 324.
[1781] *Binglin Tan: Disciplining trust-breaking*, p. 48.
[1782] *Wenhan Yuan: Administrative Law and credibility-based regulation*, p. 30; *Luping Zhang: Objection mechanism*, p. 20.
[1783] *Luping Zhang: Objection mechanism*, p. 20.
[1784] Marianne von Blomberg and Hannah Klöber (2022) Sozialkreditdossiers in der Tradition staatlicher Personenakten in China: zunehmende Transparenz durch rechtliche Einbettung? *Tagungsband der Jahreskonferenz des Forum Privatheit*, 18-19 November 2022, Wiesbaden, pp. 177-208; Hannah Klöber (2023) The regulation of personal data accuracy in China's public Social Credit System, *Hong Kong Law Journal* 53(1) pp. 375-402.
[1785] Evidenced in section 3.2. The recent issuance of legislation on this matter underlines the urgence: 政务数据共享条例 (Government Data Sharing Regulations), issued by the State Council on 28 May 2025.
[1786] *Shen Yan and Boyang Wang: Credit assessment*, p. 49.

4.2.6. Conclusion of section 4.2.

4.2.6.1. Summary

The table below summarizes main advantages and shortcomings of the remedial channels under scrutiny. Notably, the procedures discussed have unique, partly overlapping scopes of authority. SCSP subjects, depending on the particular issue they face or the remedy they seek are limited to certain channels to choose from. The table below therefore is not a comparison. It rather serves here only to highlight the abstract characteristics that render the remedial channels fit or unfit for SCSP subjects seeking legal protection.

Figure 6: Advantages and disadvantages of remedial channels for SCSP subjects

	Advantages	**Shortcomings**
Administrative litigation, administrative reconsideration	Well-established institutions Mature review standards The more detrimental the impact, the more accessible Institutional independence from acting agency	Requires an 'administrative act' but most SCSP practices are not formal administrative acts (social credit information files, credibility assessments, blacklisting,…) Weak on reputational disciplinary measures Courts/ administrative reconsideration offices lack technical expertise, impeding review of automated SCSP elements Automation bias Low success rate Not available to address third-party institutions' action
Legality review of norms	Relatively well-established Mature review standards Can declare unlawful entire setups for disciplinary measures rather than just one specific administrative act Suitable for reviewing automated elements in CBR: Takes into account the entire law-turned-code behind a credibility assessment Outcomes inform future application of automated systems	Only possible as attached to an administrative litigation claim over a specific administrative act → stage of substantive review hard to reach Cannot directly revoke the norms but only pass respective orders to the norm-issuing agency Automation bias Low success rate
Credit repair	Addresses published social credit information → focus on reputational measures Relatively low-maintenance, efficient Enjoys political tailwinds, in the interest of SCSP builders Relatively high success rate	Restorative, not remedial → does not hold agencies accountable Not standardized, not well-implemented Reliance on private actors, prone to fraud
Objection procedures	Can address disciplinary measures, blacklisting, social credit records and credibility assessments Ex-ante relief (only) for blacklisting Mandated for non-state SCSP implementing institutions, too Agency has a self-interest in making objection channels work (for cases of wrong social credit records) to achieve social credit information accuracy For automated SCSP elements: technical expertise already in the agency (where not outsourced) Relatively low-maintenance, efficient	No detailed review standards, no established normative framework for deciding Not institutionally independent: prone to bureaucratic self-interest bias, not impartial Procedure not unified, differs by locality and sector Automation bias Success rate unknown

Administrative litigation and administrative reconsideration

Administrative reconsideration and administrative litigation in China generally is not equally available to disputes on all subject matters, however, SCSP-related cases by subject matters concerned largely fall within 'routine cases'. SCSP central design, likewise, regards administrative reconsideration and administrative litigation as tools to help SCSP building by checking on local practices' alignment with central plans.

The admission to both, administrative reconsideration and administrative litigation, requires that the SCSP subject identifies an 'administrative act' and directs its claim to the correct defendant. Both steps, seemingly simple, pose significant challenges. With disciplinary measures for 'trust-breaking' being composed of a series of administrative behaviours and carried out by a range of different administrative agencies, it is unclear which agency the SCSP subject shall address over which administrative action. The correct agency to address could be the one that found the original violation of the law, the one determining that the violation amounts to 'trust-breaking', or the one eventually imposing the disciplinary measure. In the CBR mechanism, even more agencies may be involved, as comprehensive credibility assessments are fuelled by several agencies' social credit records. Finally, administrative reconsideration and administrative litigation cannot be addressed to non-state actors. However, non-state actors often carry out disciplinary measures as part of respective MoU deals or conduct credibility assessments as delegated by administrative agencies.

Which administrative action to address likewise is unclear. Disciplinary measures that amount to administrative punishment under the APL are actionable. However, with reputational disciplining and social credit file entries, two of the most impactful administrative decisions made under the SCSP are negated actionability in administrative reconsideration and administrative litigation by courts and administrative reconsideration offices. Besides the disciplinary measures, trustworthiness assessments and the collection, transmission and processing of social credit information, among other administrative actions, are likewise not actionable.

Even if all relevant administrative behaviours under the SCSP, designed to "restrict every step"[1787] of an SCSP subject, were to be formally made actionable, legal protections would face significant practical obstacles because a claimant would have to bring multiple actions to get hold of all the measures. The single administrative action igniting all measures is the trustworthiness assessment, that is, either a blacklisting decision, a credibility assessment or a negative social credit file entry. Legislation has not provided for the actionability of trustworthiness assessments, and courts maintain a conservative approach. However, scholarship promotes making trustworthiness assessments actionable. That the draft SCS Building Law does not render trustworthiness assessments actionable is attributed to the current lack of a proper understanding of the

[1787] As the early SCSP motto goes: "Break trust in one area, and you face hardship at every step 一处失信，寸步难行". It has since nearly disappeared from guiding documents but remains true to the core idea. *State Council 2007 SCS Opinions*.

centrality and meaning of trustworthiness assessments.[1788] Reform might focus on the ARL, because administrative reconsideration decisions themselves are litigable in any case and matters revolving around trustworthiness assessments can thereby enter courts indirectly. The 2023 amendment of the ARL indicates a modest expansion of the scope of acts actionable in administrative reconsideration: "acts that do not produce concrete impact on the rights and obligations of citizens, legal persons or other organizations" are no longer on the list of matters excluded from administrative reconsideration.[1789]

Finally, at least three practical factors rooted in the automation involved in CBR impede the feasibility of administrative reconsideration and administrative litigation. Administrative agencies and/or the software firms they delegate are at a decisive informational advantage vis-à-vis the claimants and judges/ administrative reconsideration officials. The production process of a credibility assessment is not transparent to the SCSP subject, complicating the compiling of material for a claim addressing a credibility assessment. Likewise, judges and administrative reconsideration officials reviewing a credibility assessment or another SCSP practice involving automated decision-making face have limited access to the technological application behind a credibility assessment. Where they can access the relevant software, they lack the necessary technical expertise to understand the code well enough to effectively review it for legality. In addition, the automation bias leads reviewers to presume that technology is neutral when it really is inevitably shaped by coders' values. In addition, reviewers are wary that where their review reveals legality issues with the application, this may lead to the consequential conclusion that many or all decisions made by an agency using that application were unlawful. As a result, reviewers regularly stop short of conducting a review of the lawful operation of an application *as designed*, including its operating principles and logic. Initiatives bringing technical expertise into administrative reconsideration commissions solidify.

Legality review of SCSP legislation and norms

Section 4.2.2. discusses the PRC's mechanisms for legality review of legislative norms with regard to its applicability to the SCSP rule framework. Through the NPCSC's Filing and Reviewing mechanism, the legislature may review legislation including rules by the executive. Within its scope are, among others, local regulations 地方性法规, one of which in each province and province-level city forms the framework for local SCSP activity. However, beyond the scope of Filing and Reviewing is the wide range of AND which shape the operations of SCSP mechanisms and which have long been criticized for containing excessive disciplinary measures.

Since 2014, courts can review the legality of AND incidentally if so-requested by a litigant addressing a specific administrative act based on the AND. Relatively clear standards for

[1788] Yuanyuan Jia 贾媛媛 (2024) 统而分殊：大数据时代中国式信用权益保护新模式 (Unified and differentiated: A new model of Chinese style credit rights protection in the era of big data), 行政法学研究 (Administrative Law Review) 1/2024, pp. 40-51, p. 49.

[1789] Art. 11, ARL; See also, Jamie Horsley (2023) "Further observations on the second revision draft of the Administrative Reconsideration Law", China Law Translate, 10 August, https://www.chinalawtranslate.com/en/further-observations-on-the-second-revision-draft-of-the-administrative-reconsideration-law/.

such judicial review have developed over the last ten years and courts regularly review SCSP-related AND. However, because the review of AND only occurs attached to a regular claim, the difficulties for SCSP subjects to file administrative litigation over SCSP practices elaborated above form a bottleneck for the admission of judicial review, too. Few cases are accepted, and even fewer of the attached requests for judicial review make it past the procedural to the substantive review stage. Finally, courts do not have the power to directly annul or alter the AND reviewed, they can merely issue respective suggestions to the agency.

That said, legislative and judicial review of AND both hold structural potential for *protecting legal rights and interests* for elements of SCSP practices that are automated. Effective judicial review of administrative action that involves automated decision-making requires a review of the system that produced the decision, including its operating principles, fundamental parameters and values inscribed. Courts regularly dodge such review out of lack of expertise, automation bias, and the unwillingness to take associated risks, as described above. The channels for legislative or judicial review of norms lend themselves to the review of trustworthiness assessment technology: They address the abstract norms produced by regulatory agencies implementing the SCSP. Documents linking software codes and law such as technical standards, or administrative discretion benchmarks could be brought into the scope of review.

Credit repair

Section 4.2.3. discusses a non-adversarial path to remedies for SCSP subjects: Credit repair is not a remedial channel in the sense that it questions the rightfulness of the administrative agency's decision. Instead, it is restorative: The SCSP subject admits wrongful behaviour, corrects it, fulfils other requirements as stipulated in the respective local or departmental credit repair rules and is then rehabilitated. Disciplinary measures are lifted and adverse publication of social credit information ended. The outcome of credit repair for SCSP subjects' legal rights and interests is thus comparable to that of traditional remedial channels.

Other than administrative reconsideration and administrative litigation, credit repair addresses specifically the trustworthiness assessment, the administrative action that gives rise to all detrimental impact on SCSP subjects' legal rights and interests. The credit repair process does not require the complicated translation of SCSP measures into categories of administrative law and the search for the correct administrative act and defending agency. Credit repair is part of the SCSP rather than an independent institution to challenge its practices. This structural bedding gives the development of credit repair significant political drive. It is in the interest of SCSP implementing agencies to spur 'trust-breaking' entities to repair their credit, and their SCSP building efforts are evaluated on that basis. As a consequence, credit repair success rates are high.

That said, it is detrimental to the remedial power of credit repair that social credit information records are not yet synchronized across all platforms. Despite considerable political efforts to achieve the intra-agency sharing of social credit information, a systemic solution has not yet emerged. As long as repair records are not equally available as the original social credit records, decision makers in the market and the

administration will likely continue to treat SCSP subjects unfavourably even after they completed credit repair.

Furthermore, credit repair commonly requires SCSP subjects to submit credit commitment letters and complete credit repair trainings. Both elements are yet to be standardized and turned from the formalities they are now to meaningful paths for SCSP subjects to 'self-correct'. Most importantly, the private providers of credit repair trainings, as other private actors involved in SCSP building, engage in fraudulent practices as they prioritize financial profits to the detriment of meaningful trainings.

Interim findings

Administrative reconsideration, administrative litigation and credit repair are ex-post remedial channels, that is, they can be activated only after the act. Given the defects in social credit information synchronization across sectors and localities and the irreversibility of reputational measures, ex-post remedial channels are generally ill-suited to provide SCSP subjects with legal protection and hold the state accountable. The interim findings in section 4.2.4. highlight the growing importance of ex-ante remedies.

Objection procedures

Section 4.2.5. then addresses a remedial channel which, to some extent, offers ex-ante relief: Objection procedures of local regulatory agencies and local social credit agencies to address both blacklisting decisions and social credit records including credibility assessments. For blacklisting decisions, objection procedures provide the crucial ex-ante channel for relief: Pursuant to local rules, an SCSP subject should be notified before the decision is finalized and given several days of time to file an objection if it believes the decision to be wrong. This ex-ante channel however is available for blacklisting decisions only, not for making entries into social credit files or credibility assessments and disseminating them.

Where objections are raised with social credit agencies, the agencies must, if the problem lies with the source record, coordinate with the original social credit information providing agency. Clear rules and time frames for such interaction are heralded especially by the NDRC and its local social credit agencies, but in practice, the coordination is often difficult. In addition, where social credit information items are successfully disputed, it is unclear whether it will be fully deleted from the system, or just from public sight.

That objection procedures are located within the agency responsible for the disputed action has advantages: short bureaucratic routes, often remaining within one agency, ensure the implementation of the outcome, such as the altering or deleting of the record. In addition, other than judges and administrative reconsideration officials, officials handling objections within administrative agencies generally have the necessary technical expertise to review a decision made by their agency-internal automated decision-making systems. On the other hand, agency-internal reviewers of objections are not impartial: In addition to being impacted by the general automation bias, they are also less critical of the technological application their employer chose to trust in making administrative decisions.

Finally, objection procedures are stronger where the essential matter of a dispute is the correction of social credit files, because the agency has a self-interest in accurate information. Where the matter disputed consists of undue blacklisting or the imposition of disciplinary measures however, agencies arguably are less incentivized to grant objection applications.

4.2.6.2. Is transparency the Achilles heel?

All remedial channels[1790] require the SCSP subject to actively file the respective motion, the precondition for this in turn is that they are aware of impacts on its legal rights and interests. Where SCSP subjects do not know about detrimental impacts, the remedial channels run empty. The assumption undergirding legal protection logic for centuries was that where rights are harmed, subjects know, and where a subject is not aware of a violation, the impact is not sufficiently detrimental to warrant remedy. This assumption no longer holds in the information age. Data protection breaches are a prime example: The adverse impact from unlawful data collection is often only felt by subjects long after it occurred and unfolds indirectly.[1791]

With all remedial channels currently available to SCSP subject hinging on the subjects' taking action and pinpointing an administrative behaviour, the Achilles heel of the entire remedial setup around the SCSP appears to be the transparency of SCSP action. More than ever, the basic precondition for subjects to hold state agents accountable through any means is transparency of state action, also described as the "hallmark of administrative law"[1792] and an "an overarching concept of administrative law systems, which is closely related to a number of other core principles"[1793]. It is often specified that transparency requirements are important for liberal countries only. [1794] However, literature on law in autocracies demonstrated that transparency is commanded not by the liberal-democratic structure of a state, but the commitment of a state to (pure) legality,[1795] regardless of its ideological bedding.

Are SCSP practices sufficiently transparent to render the remedial channels discussed above effective? Top-level SCSP design dictates a general transparency of both the abstract rules and criteria undergirding SCSP practices, as well as the accessibility of social credit files to the subjects they concern.[1796] This policy design reflects in a Right to Know 知情权 for SCSP subjects present across the entire legislative framework of the SCSP. However, the above sections indicated that even through there is an intent to

[1790] Except for the legislature's review of norms touched upon in section 4.2.2.1.
[1791] E.g. Abe Chauhan (2020) Towards the systemic review of automated decision-making systems, *Judicial Review* 25(4), pp. 285-295; Gianclaudio Malgieri and Frank Pasquale (2022) From transparency to justification: Toward ex ante accountability for AI, Brooklyn Law School, Legal Studies Paper No. 712, SSRN, 23 May, https://ssrn.com/abstract=4099657.
[1792] Steven M. Appel and Cary Coglianese (2020) Algorithmic governance and administrative law, in Woodrow Barfield (ed.) *The Law of Algorithms*, Cambridge University Press, pp. 162-181, p. 176.
[1793] Michèle Finck (2020) Automated decision-making and administrative law, in Peter Cane, Herwig C. H. Hofmann, Eric C. Ip, Peter L. Lindseth (eds.) *The Oxford handbook of comparative administrative law*, pp. 656–676, Oxford University Press, p. 664.
[1794] E.g. Michèle Finck (2020) Automated decision-making and administrative law, in Peter Cane, Herwig C. H. Hofmann, Eric C. Ip, Peter L. Lindseth (eds.) *The Oxford handbook of comparative administrative law*, pp. 656–676, Oxford University Press, p. 663.
[1795] Recall sections 2.2.2 and 2.2.3.
[1796] Recall section 3.1.3.1.

design SCSP operations in a transparent manner, even if just to ensure data accuracy for the system, remedial channels are blocked for a lack of transparency in several respects.

First, what information is collected and sanctioned in the SCSP is far from clear.[1797] Ambiguity in social credit norms has been reduced since the 2020 reforms introduced the National Basic Catalogue of PCI, the National List of Disciplinary Measures for 'trust-breaking' and so on. However, new sources of ambiguity evolve not only as unintended consequences of reforms, but from SCSP innovations put forward by the central government, too. Where credibility assessments are produced, it will hinge crucially on the return to strict 'catalogued management 目录管理' whether transparency of SCS norms will remain possible. Disciplinary measures are now officially delimited to those laid out in the National List of Disciplinary Measures, however, which measure in what form is applied for what type of trust-breaking is only found in local and departmental rules.[1798] In addition, how SCSP practices are classified under administrative law, the precondition for addressing them in at least administrative reconsideration and administrative litigation, is yet to be clarified. The current SCS Building Law draft provides little new insight in this respect.

Second, SCSP subjects are not currently pro-actively informed of changes in their social credit files or in production of credibility assessments concerning them. Notification duties only exist for blacklisting decisions. The requirements for obtaining consent before processing personal information laid down in the PIPL and, specifically for social credit information, in provincial SCS regulations generally apply to market-sourced social credit information, not to PCI and therefore not to administrative agencies. While pro-active notification generally does not occur, SCSP subjects who are aware of their social credit files' and assessments' existence and the potential impact they exert can consult them via the relevant social credit information platforms.[1799] Whether such passive provision of information rather than the active informing of concerned subjects about processing activities satisfies the Right to Know is questionable.[1800] Citizens are generally unaware that information which administrative agencies hold about them are being stored in social credit files alongside information from other agencies and sometimes market actors, processed into credibility assessments of different kinds and used by administrative agencies in their decision-making. Furthermore, the social credit information platforms where one's file can be inquired are various, scattered, and channels to inquire do not function smoothly everywhere.[1801]

Third, automated elements of the SCSP pose additional obstacles to transparency that resonate with those long-discussed in global literature on algorithmic regulation. Digital

[1797] Section 3.1.1.

[1798] There are attempts within departmental realms to order and better control the variety of disciplinary measures taken. See for instance Art. 26, *Beijing Trial Measures On CBR In Traffic And Transportation*.

[1799] Art. 63, *Jiangsu SCS Regulations*, for instance, specifies that the Right to Know means the provision of inquiry channels for social credit information platforms.

[1800] Arguing that the Right to Know also requires administrative organs to inform subjects beforehand whenever they perform credibility assessments about the criteria and information used, and the relief channels: *Ruixue Wang: Credit Tools*.

[1801] Marianne von Blomberg and Hannah Klöber (2022) Sozialkreditdossiers in der Tradition staatlicher Personenakten in China: zunehmende Transparenz durch rechtliche Einbettung? *Tagungsband der Jahreskonferenz des Forum Privatheit*, 18-19 November 2022, Wiesbaden, pp. 177-208.

technologies can present technical black boxes, a tracing back of their outcomes to initial design decisions is hardly possible and further inhibited by the general and unwarranted assumption that machines operate reliably.[1802] This, among other things discussed above, renders the collection of evidence for remedy-seeking subjects nearly impossible. Further, SCSP implementing agencies regularly outsource technological applications to private companies which in turn are reluctant to provide the software codes which they view as proprietary.

In sum, these challenges create an information asymmetry with the SCSP subjects on the weaker side. Therefore, remedial channels that require the initiative of SCSP subjects hardly provide adequate legal protections or means to hold the state accountable.[1803]

The lack of transparency mends with another challenge: SCSP practices with automated elements unfold a type of detrimental impact on the so-called 'new generation rights', rights that evolve from the impact of emerging digital technologies such as the Right to Know.[1804] Impacts on such rights shirk actionability in the single case simply because taken alone, a breach of law regularly unfolds too little impact to be brought to court.[1805] This notwithstanding, practices that impact such rights do so at a large scale, in sum, detrimental impact can be massive. Nathalie Smuha argues that harm from algorithmic regulation, of which the CBR mechanism is a case, is threefold: individual, collective and societal. To protect subjects from the individual, collective as well as societal harm that algorithmic regulation poses, she suggests that there is a need for "more structural remedies, so as to ensure that ex post review does not hinge on the shoulders of individual citizens who may or may not bring a case to court. Systemic problems, after all, require systemic solutions."[1806] It is necessary, she contends, that

> "Besides ensuring remedies for individuals who can be adversely impacted thereby, the fact that the rule of law's erosion leads to societal harm means that citizens and public interest groups should be able to counter this harm also without necessarily demonstrating individual harm, as it concerns them all. More generally, stronger checks and balances are also needed to ensure that the legislative and judicial branches of power, along with civil society and the public at large, can hold the executive accountable for its actions [...]"[1807]

[1802] *Fourcade and Gordon: Learning like state*, p. 84.
[1803] See also: *Anja Geller: Social Scoring*, p. 95.
[1804] See e.g., Dennis Redeker, Lex Gill and Urs Gasser (2018) Towards digital constitutionalism? Mapping attempts to craft an internet bill of rights, *International Communication Gazette* 80(4), pp. 302-319.
[1805] On the difficulties to prove individual harm arising from automated decision-making in public regulation: Abe Chauhan (2020) Towards the systemic review of automated decision-making systems, *Judicial Review* 25(4), pp. 285-295, p. 289; Nathalie Smuha (2021) Beyond the Individual: Governing AI's societal harm, *Internet Policy Review* 10(3), https://doi.org/10.14763/2021.3.1574. Bart van der Sloot and Sascha van Schendel (2021) Procedural law for the data-driven society, *Information & Communications Technology Law* 30(3), pp. 302-332.
[1806] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 198; building on Jennifer Cobbe, Michael Veale, and Jatinder Singh (2023) Understanding Accountability in Algorithmic Supply Chains, 2023 ACM Conference on Fairness, Accountability, and Transparency (FAccT '23), 7 April, https://ssrn.com/abstract=4430778.
[1807] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 228.

From this, it is clear that collective means of contestation that lay bare the total impact are better suitable to realize legal protection and protecting legal rights and interest. Procedural law, therefore, "needs to be de-individualized".[1808]

The rise of public interest litigation, for instance in personal data protection law, responds to this running empty of the old, classic single-case justice.[1809] Smuha points to civil society actors such as NGOs and interest groups which have in fact been playing a growing role in ensuring legal protections of undue impact from algorithmic regulation.[1810] In China however, all types of civil society groups are heavily regulated by the state (including through SCSP mechanisms[1811]). The state's control structures to prevent social unrest that could threaten the CPC's rule render civil society organizations rather weak as independent agents for ensuring legal compliance of state agencies. For instance, non-government organizations in principle may not file public interest litigation against administrative agencies (Art. 25, ALL). Cause lawyering in general is in the PRC permitted only over relatively non-sensitive issues.[1812]

In this landscape, one rather unlikely actor emerged in recent years as a potential guardian of SCSP subjects' rights: The procuratorates.

4.2.6.3. The potential of the procuratorates

Procuratorates in the PRC have additional functions compared to their counterparts in most liberal-democratic countries, the public prosecutors. Specifically, they exercise supervision over the entire judicial process.[1813] In recent years, procuratorates have increasingly fleshed out their supervisory role into what has been termed "legal supervision activism 积极主义法律监督"[1814] and "procuratorial activism"[1815]. One of these developments, the procuratorates' filing of administrative public interest litigation, potentially helps SCSP subjects in protecting legal rights and interests for SCSP practices. Before 2017, the people's procuratorates were in charge mainly of criminal matters and had little to do with administrative governance.[1816] With the 2017 amendment to the ALL, a provision was included that grants procuratorates the power to file public interest litigation against administrative agencies 行政公益诉讼.[1817] Pursuant to Art. 25 (5), ALL,

> "Where the people's procuratorate finds throughout carrying out its functions that an administrative agency assuming supervision and administration functions in such fields

[1808] Bart van der Sloot and Sascha van Schendel (2021) Procedural law for the data-driven society, *Information & Communications Technology Law* 30(3), pp. 302-332, p. 305.
[1809] Bart van der Sloot and Sascha van Schendel (2021) Procedural law for the data-driven society, *Information & Communications Technology Law* 30(3), pp. 302-332.
[1810] On the shortcomings, see Bart van der Sloot and Sascha van Schendel (2021) Procedural law for the data-driven society, *Information & Communications Technology Law* 30(3), pp. 302-332, p. 316.
[1811] E.g., 社会组织信用信息管理办法 (Measures for the Management of Credit Information of Social Organizations), issued by the Ministry of Civil Affairs on 24 January 2018.
[1812] See, e.g., Han Zhu and Lu Jun (2021) The Crackdown on Rights-advocacy NGOs in Xi's China: Politicizing the Law and Legalizing the Repression, *Journal of Contemporary China* 31(136), pp. 518-538.
[1813] Art. 134, PRC Constitution.
[1814] Ming Hu 胡铭 (2023): 论数字时代的积极主义法律监督观 (On Legal Supervision Activism in the Digital Age), 中国法学 (China Legal Science) 1/2023, pp. 107-123.
[1815] Chunyan Ding (2022) Mandarins v. Mandarins: Procuratorate-initiated Administrative Public Interest Litigation in China, *Journal of Comparative Law* 17(2), pp. 286-312, p. 300, hereafter: *Chunyan Ding: Mandarins v. Mandarins*.
[1816] *Chunyan Ding: Mandarins v. Mandarins*, p. 288.
[1817] Preceded by local experiments. Began with the 18th CPCCC congress, fourth plenary session 2014.

> as the protection of the ecological environment and resources, food and drug safety, protection of state-owned property, and the assignment of the right to use state-owned land exercises functions in violation of any law or conducts nonfeasance, which infringes upon national interest or public interest, it shall offer procuratorial recommendations to the administrative agency, and urge it to perform functions in accordance with the law. If the administrative agency fails to perform functions in accordance with the law, the people's procuratorate shall file a lawsuit with the people's court in accordance with the law."

Accordingly, a procuratorate, upon identifying wrongdoing of an agency, issues recommendations 检察建议 to the agency to take measures to solve the issue.[1818] In the vast majority of cases, administrative agencies, with a lawsuit looming in the background, follow the suggestion.[1819] If the procuratorate finds that the recommendations have not been followed, and it has wide discretion in determining this, it files a public interest litigation lawsuit with the local court.

The success rates for procuratorates in administrative public interest litigation lie at around 99%, possibly because they can choose cases to take on and have little incentive to take on a case they are not sure they will win.[1820] In fact, their political embeddedness has proven a factor rendering the process successful,[1821] defying the general consensus that political embeddedness is ever only detrimental to any form of challenging state action.[1822]

To what extent can procuratorate-initiated administrative public interest litigation present SCSP subjects with better legal protection? No case in which a procuratorate took on an administrative agency for SCSP-related practices per se is known to the author. However, issues related to data protection have been addressed, with the SPP issuing a list of eleven typical cases of procuratorate-initiated administrative public interest litigation on the matter. [1823] One case in which the Beijing Municipal People's Procuratorate took on the municipal branch of the Cyberspace Administration of China[1824] reportedly directly spurred the CAC to issue the Provisions on the Management

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[1818] Art. 75 and 76, 最高检公布《人民检察院公益诉讼办案规则》 (The Supreme People's Procuratorate issues the 'Rules for Handling People's Procuratorate-initiated Public Interest Litigation Cases'), issued 29 June 2021, https://www.spp.gov.cn/spp/xwfbh/wsfbh/202107/t20210714_523809.shtml, archived at https://web.archive.org/web/20250922112217/https://www.spp.gov.cn/spp/xwfbh/wsfbh/202107/t20210714_523809.shtml.

[1819] ""Our suggestions were followed about 98 percent of the time, meaning government agencies corrected mistakes before we sued them," Tong said. "We then initiated 35,000 lawsuits against those who failed to rectify the issues. The courts ruled against those we sued in 99.7 percent of these cases."": SPC website (English) (2021) "Prosecuting authorities vow to improve public-interest litigation", SPC website (English), 20 October 2021, https://english.court.gov.cn/2022-10/20/c_824513.htm, archived at https://web.archive.org/web/20250922161037/https://english.court.gov.cn/2022-10/20/c_824513.htm. Also, *Yueduan Wang: Embedded supervision*, p. 5.

[1820] *Yueduan Wang: Embedded supervision*, p. 3 and 6.

[1821] *Yueduan Wang: Embedded supervision*, p. 2.

[1822] Kwai Hang Ng and Xin He (2017) *Embedded courts: Judicial decision-making in China*, Cambridge University Press, p. 83.

[1823] 最高人民检察院发布11件检察机关个人信息保护公益诉讼典型案例 (The SPP Publishes 11 Typical Cases of Procuratorate-initiated PIL on Personal Information Protection), 30 March 2023, https://www.spp.gov.cn/xwfbh/dxal/202303/t20230330_609820.shtml, archived at https://web.archive.org/web/20250922133519/https://www.spp.gov.cn/xwfbh/dxal/202303/t20230330_609820.shtml.

[1824] Guiding case of the SPP no. 141. 北京市人民检察院督促保护儿童个人信息权益行政公益诉讼案 (Administrative PIL Case of Beijing Municipal People's Procuratorate Urging the Protection of Personal

of Algorithmic Recommendations in Internet Information Services.[1825] Importantly, "the procuratorates are greatly interested in exploring landmark [administrative public interest litigation] cases in the emerging areas for public interest protection [...]"[1826]. This indicates that SCSP practices of administrative agencies and non-state actors alike may in the future be taken on by procuratorates. The design of the procuratorate-initiated administrative public interest litigation defeats many of the shortcomings of existing remedial channels as laid out above.

First, procuratorates gained independence from the administration in 2015, when the management and allocation of personnel, budget and other resources were moved from the same-level governments to the above-level, provincial procuratorates (similar to the court reform).[1827] This puts them in a stronger position to take on administrative agencies in public interest litigation. Procuratorates' investigation powers into administrative agencies for public interest litigation are limited compared to their investigation powers into criminal cases.[1828] However, their chances to gather useful evidence are still better than those of non-state litigants.[1829]

Secondly, procuratorates are incentivised to regularly examine and systematically look for possible grounds for public interest litigation. Apart from unlawful administrative behaviour 违法行政行为, they may take on cases of administrative nonfeasance 行政不作为 if they serve the purpose of safeguarding the national and public interest.[1830] The latter lends itself to cases where harm has not yet occurred but is likely to. One main area of "procuratorial activism"[1831] is the prevention of harm, often in cases related to safety. Therein lies potential to curb the risk of potentially irreversible harm that several SCSP practices pose (see section 4.1.) and for which the ex-post remedial channels are unfit (see section 4.2.4.).

Information Legal Rights and Interests of Children), http://www.luzhounx.jcy.gov.cn/yasf/202207/t20220714_3751560.shtml, archived at https://web.archive.org/web/20250922161811/http://www.luzhounx.jcy.gov.cn/yasf/202207/t20220714_3751560.shtml.

[1825] *Chunyan Ding: Mandarins v. Mandarins*, p. 304; 互联网信息服务算法推荐管理规定 (Provisions on the Management of Algorithmic Recommendations in Internet Information Services), issued by the 国家互联网信息办公室, 中华人民共和国工业和信息化部, 中华人民共和国公安部, 国家市场监督管理总局 on 31 December 2021, https://www.cac.gov.cn/2022-01/04/c_1642894606364259.htm, archived at https://web.archive.org/web/20250630085559/https://www.cac.gov.cn/2022-01/04/c_1642894606364259.htm.

[1826] *Chunyan Ding: Mandarins v. Mandarins*, p. 303.

[1827] People's Procuratorates are arguably more central-level led than courts, see *Yueduan Wang: Embedded supervision*, p. 6.

[1828] *Yueduan Wang: Embedded supervision*, p. 6.

[1829] *Chunyan Ding: Mandarins v. Mandarins*, p. 297. See Art 35, 最高检公布《人民检察院公益诉讼办案规则》 (The Supreme People's Procuratorate issues the 'Rules for Handling People's Procuratorate-initiated Public Interest Litigation Cases'), issued 29 June 2021, https://www.spp.gov.cn/spp/xwfbh/wsfbh/202107/t20210714_523809.shtml, archived at https://web.archive.org/web/20250922112217/https://www.spp.gov.cn/spp/xwfbh/wsfbh/202107/t20210714_523809.shtml.

[1830] Art. 67, 最高检公布《人民检察院公益诉讼办案规则》 (The Supreme People's Procuratorate issues the 'Rules for Handling People's Procuratorate-initiated Public Interest Litigation Cases'), issued 29 June 2021, https://www.spp.gov.cn/spp/xwfbh/wsfbh/202107/t20210714_523809.shtml, archived at https://web.archive.org/web/20250922112217/https://www.spp.gov.cn/spp/xwfbh/wsfbh/202107/t20210714_523809.shtml. The list is non-exhaustive.

[1831] *Chunyan Ding: Mandarins v. Mandarins*, p. 300.

Third, procuratorates can also file *civil* public interest litigation [1832] and address the non-state actors that contribute to implementing the SCSP. Procuratorate-initiated civil public interest litigation is more mature and subject to the civil law framework, which provides much stronger protections for several relevant rights, such as personal information protection and reputational rights. [1833] In fact, many disputes that are in essence administrative disputes "have flooded the courts under the guise of civil disputes" simply because the chances of winning are not as diminishingly low. [1834]

Their potential notwithstanding, procuratorates search for simple cases to take on in administrative public interest litigation in order to fulfil their quotas. [1835] Reviewing entire digital technology applications used by administrative agencies, such as for producing credibility assessments, is complicated and time-consuming. Because procuratorate-initiated administrative public interest litigation pitches state actors against one another, its future development and usefulness for holding state agencies accountable will highly depend on political agenda setting.

[1832] Art. 58(2), 民事诉讼法 (Civil Procedure Law), issued by the NPC Standing Committee on 28 October 2007, last amended on 1 September 2023.
[1833] See e.g.: Maja Blumer (2016) Tort liability for infringements on the right of reputation under Chinese law—a review of selected court cases, Fajus Research Paper Series on Chinese and East Asian Law no. 1, October 2016, https://digitalcollection.zhaw.ch/bitstream/11475/1179/1/RP%201%20Digitalcollection.pdf.
[1834] Xin He (2014) *The judicial system of China,* Oxford University Press, p. 205.
[1835] *Yueduan Wang: Embedded supervision*, p. 12.

Chapter 5: Conclusion

China's SCSP is hardly the breakthrough scoring tool for Digital Age authoritarian governance as it is most widely known. Yet it decisively challenges and impacts administrative law in China. This study of a paradigmatic case of a government's active engagement with trustworthiness assessment techniques provides a first exploration of changes that legalities may incur from the rise of trustworthiness assessments, in China and beyond. Through addressing the relationship between functions of administrative law and the SCSP, this investigation illuminates what happens when a legal system (with Chinese characteristics) meets a trustworthiness assessment-driven mode of governance.

The SCSP's core innovation is not a particularly sophisticated scoring technology, an elaborate surveillance infrastructure, or the imposition of a state-sanctioned set of moral norms emanating from the CPC leadership. Rather, it is the technique of leveraging trustworthiness assessments for public regulation. Amid a global rise of trustworthiness assessments, whether in the shape of driver ratings, financial credit scores or food safety risk profiles of restaurants, the PRC government casts trustworthiness assessments as a central governance paradigm, creating a new mode of governance.[1836] It thereby assumes a path-defining role in the worldwide transformation towards basing decision-making on assessments of trustworthiness. This embrace of trustworthiness assessment-centred statecraft has far-reaching implications for traditional legal structures, and thereby, the relationship between state and non-state actors in China.

This investigation set out to grasp how the introduction of the SCSP as an assessment-centred mode of regulation strengthens, weakens, and transforms law in China. Chapter three addressed the *enabling of the public administration* function of administrative law, that is, the standardisation and carrying out of executive action by clear and transparent rules. Its first section evaluates how the SCSP strengthens, weakens and transforms state agencies' setting of clear rules by which they exert their powers. The second section of Chapter three scrutinises how far the enforcement mechanisms that the SCSP developed strengthen, weaken and transform law enforcement. Chapter four turned to the *protecting legal rights and interests* function of administrative law, which refers to first, legal principles for evaluating the legality of state action and second, remedial channels for subjects to seek relief for state actions that unduly impact their rights and interests. The first section of Chapter four evaluates the legality of SCSP practices against the threshold of administrative law principles. It thereby tests how far the principles are useful or even developing when applied to SCSP practices, in consequence of which the SCSP would have a strengthening effect on this element of administrative law; or in how far the principles are insufficient for pinpointing legality problems with SCSP practices and thereby undermined by SCSP practices. Second, Chapter four investigates administrative law's channels for citizens to seek remedy for undue impact from social credit-related state action and how far they are strengthened, weakened or transformed as a result.

[1836] Section 2.1.5.

This thesis demonstrates that the SCSP creates its own trustworthiness-centred normativity with its own assessment-driven enforcement techniques within existing administrative law structures rather than a parallel mode of behavioural regulation. The SCSP is firmly (to be) anchored within formal legality. Yet it not only strengthens the law. The prevalence of the SCSP's normativity, centred around 'trustworthiness' and its enforcement mechanisms, centred around assessments in the apparatus of public regulation, also weakens and transforms law.

Figure 7: Functions of administrative law strengthened, weakened and transformed by SCSP elements

Type of impact / Functions of administrative law	**Strengthening**	**Weakening**	**Transforming**
Enabling the public administration **Making clear rules**	Spurs development of a general personal information protection law Inspires but falls short of realising legalisation reforms of the extra-legal Dang'an personnel dossier system and secret blacklists of petitioners	State-sanctioned social credit norms blur in credibility assessment production State-sanctioned social credit norms blur due to the integration of an undefined scope of market-sourced social credit information Loss of transparency of state-sanctioned social credit norms as the publication of local social credit information catalogues decreases	SCSP trustworthiness assessments inserted into public regulation lead to blurring of the lawful/unlawful binary, redefining requirements to achieve clarity of rules
Enabling the public administration **Rule enforcement**	Publicity-centred regulation and reputational disciplining enhance law enforcement JAD and CBR potentially enhance law enforcement Joint rewarding of trust-keeping nudges legal compliance in some SCSP schemes Limitations remain: Data silos, reliance on unpredictable market forces, no evidence for the assumption that market-sourced behavioural records can predict an SCSP subject's legal compliance	Shortcomings in and excessive application of reputational disciplining weaken the credibility of state agencies, increasing the risk that it backfires SCSP building in economically less developed regions clashes with local political aims to strengthen local firms Some rewarding of trust-keeping schemes de facto reward class rather than spur behavioural change, creating a risk of SCSP subjects gaming the system	SCSP mechanisms enforce moral norms that are not codified in law, too, blurring morality and law SCSP mechanisms introduce social pressure as a formal instrument of public regulation SCSP mechanisms institutionalise campaigns in regulatory enforcement
Protecting legal rights and interests **Legal principles**	The prohibition of the improper connection principle develops in legislation and scholarship	SCSP disciplines violations of one law by linking them to disciplinary measures in others, undermining the law-based administration principle Uncontrollable shaming measures and shrinking spaces for administrative discretion	Conceptual novelties of SCSP practices render legal principles unsuitable for determining risks to legal rights, and means to assess risk independent of

		undermine the proportionality principle Prohibited improper connections exist between 'trust-breaking' behaviours and disciplinary measures, and systematically emerge through the decontextualization of behaviour in credibility assessments Systemic double sanctioning occurs in making trustworthiness assessments as state agencies re-evaluate legal violations Due process is violated by disciplinary measures where fact-finding and making the punishment decision are separated, and where no time period lies in between notifying the subject of the upcoming shaming and its execution	rights violations necessary The prohibition of the improper connection principle potentially brings personal information processing of state agencies into the scope of regulation
Protecting legal rights and interests **Remedial channels**	Demonstrates the potential in procedures to review the legality of norms Demonstrates the potential in procuratorate-initiated administrative public interest litigation	It is unclear which of the many actions that compose an SCSP measure and which of the collaborating agencies to address Some administrative acts behind SCSP practices, e.g. shaming and credibility assessments, are not actionable Courts and administrative reconsideration institutions lack expertise and face risks when reviewing SCSP practices that involve automated decision-making Most procedures are ex-post, useless for types of SCSP measures that incur an irreversible impact	Slow shift from ex-post towards ex-ante remedial channels The non-adversarial channel of credit repair presents a convenient alternative to formal remedial channels Strengthening objection channels selectively where they are conducive to SCSP building

The table above and the following sections summarise the main findings and contextualise them within, first, the larger debate about the character of PRC law, and in section 5.4., the debate around the socio-legal impact of data-driven regulatory practices globally.

5.1. The SCSP strengthens the law

The SCSP is declaredly built to and, in fact, in some respects, strengthens administrative law. It enhances law enforcement and government transparency, as intended. It further strengthens administrative law in unintended ways, such as by developing personal data

protection law and igniting discussion over reforming previously extra-legal governance tools.

5.1.1. *Enabling the public administration*

The SCSP, to a limited degree, strengthens the *enabling the public administration* function's element of making clear the rules by which the state governs. First, in a broader reading of administrative law's function to make clear the rules by which the state acts, it encompasses the setting of rules for previously unregulated fields of law. The SCSP spurred legal development in the relatively young field of personal data protection law. Personal data protection law in China made its most significant leaps in response to the emerging financial credit reporting industry, as well as early state-run social credit pilot projects. Cornerstone principles of the Personal Information Protection Law, which was passed in 2021, first surfaced in local rules and regulations pertaining to personal social credit files.[1837]

Second, the SCSP inspires but falls short of realising a transparency reform of extra-legal regulatory practices. The 'rule of law-ization 法治化' of the SCSP is high on political and therefore also research agendas: It is to operate within a transparent framework, in accordance with the law. Commentators have taken the opportunity of the SCSP's legalisation drive to call for transparency reforms of similar but yet extra-legal governance tools. Specifically, they advocate that the Dang'an 档案 system from the Mao Era, with its personal dossiers that follow citizens like shadows and are only accessible to the police and their employers, shall be subjected to the transparency and correction rules that govern social credit files. Respective arguments have not influenced politics, and an SCSP-inspired reform of the Dang'an is unlikely to materialise: SCSP operators likely want to maintain their reform-spirited, well-curated reputation and keep away remnants from the planned economy.[1838]

Third, another extra-legal governance tool which the SCSP development has drawn into the legality debate is the net of secret administrative blacklists for 'abnormal petitioning'. Such blacklists are used by local courts, police offices and other departments to immobilise petitioners regarded as 'overly active'. They impact citizens' lives, but their respective rules are not disclosed. Some local legislators have leveraged the comparatively transparent and formal social credit blacklist regime to publish rules on petitioner blacklists. However, it is not clear to what extent these new rules in fact make transparent previously secret ones, and to what extent they just form new blacklist regimes in addition to the existing secret ones.[1839] In sum, the SCSP brings extant extra-legal governance tools of the Dang'an and secret blacklists back to the legality table. However, respective debates have not evidently contributed to making these extra-legal rules more transparent. They have potential, but do not currently strengthen administrative law's *enabling the public administration* function.

[1837] Section 3.1.2.1.
[1838] Section 3.1.3.1.
[1839] Section 3.1.3.2.

The SCSP strengthens the second element of administrative law's *enabling the public administration* function, law enforcement, to some extent. First, the oldest of the SCSP's mechanisms, publicity-centred regulation by means of publicising social credit information through online platforms, evidently impacts decision-making in the market so that law-violating 'trust-breakers' are disadvantaged in transactions. Market actors are generally aware of the platforms, consult them, and attend to their own social credit status published thereon. The law enforcement effects of the second SCSP mechanism, reputational disciplining, that is, the disclosure of social credit information in a manner amounting to shaming, are only evidenced anecdotally. Nonetheless, the prospect of reputational harm incurred from the strategic framing of law-violating records as 'trust-breaking' and their dissemination to the target subjects' professional and private surroundings deters law-violating behaviour.[1840]

The SCSP mechanism of joint agency disciplining (JAD), throughout which state agencies, including courts, collectively impose disciplinary measures on entities that any of the participating agencies has designated a 'trust-breaker', strengthens especially the enforcement of judicial decisions. Its effectiveness in administrative regulatory enforcement, on the other hand, is not yet well-evidenced. That said, of all SCSP mechanisms, JAD found the widest application, especially in western regions of China. This is likely due to its low-tech setup: It requires neither digital platforms nor assessment technologies and, in practice, often relies on informal trading of blacklists in PDF format among the jointly disciplining agencies.[1841]

Credibility-based regulation (CBR) introduces a risk-based and algorithmic mode of regulation, the core of which is assessments of regulatory subjects' credibility based on social credit information. In CBR, administrative agencies adjust all decision-making, for instance, increasing or relaxing scrutiny in license approvals, to the credibility assessments of the entity in question. It thus addresses not just the 'trust-breakers', as the above-mentioned SCSP mechanisms of reputational disciplining and JAD do, but all regulatory subjects of an administrative agency that applies it.[1842] CBR evidently rationalises law enforcement and contributes to cutting arbitrariness. However, whether its promise to cut costs and better allocate regulatory resources holds is not proven. Significantly, CBR relies on properly calibrated credibility assessment producing technologies and a reliable exchange of accurate social credit information, both of which are yet hardly available. Nevertheless, credibility assessments also become a medium for citizens to demand their rights: Citizens sue administrative agencies for not deducting points from companies as relevant local rules require them to. They further use credibility assessments as evidence in cases against facility management companies for non-performance of service contracts.[1843]

Several rewarding trust-keeping schemes incorporate legal compliance as an element of 'trust-keeping', thereby nudging legal compliance. Legal compliance is a key criterion for accessing rewards in Credit+ arrangements, red list schemes and municipal sincerity

[1840] Sections 3.2.1. and 3.2.2.
[1841] Section 3.2.3.3.
[1842] Sections 3.2.4.1. and 3.2.4.2.
[1843] Section 3.2.4.3.

scores. However, the effect is limited given that many joint rewarding of trust-keeping schemes allow SCSP subjects to make up for noncompliance with other behaviour, and several rural reward schemes do not include law compliance as a criterion at all. That said, joint rewarding of trust-keeping plays an important part in strengthening the entire law enforcement setup of the SCSP by forming the other side of the disciplining 'trust-breaking' rhetoric: It affords the social credit normativity the crucial positive side, which lends legitimacy and credibility to disciplining 'trust-breaking', especially, the shaming measures.[1844]

The SCSP mechanisms' powers, nonetheless, the achievements of the SCSP mechanisms in strengthening law enforcement should not be overstated. The analysis brought to light several yet unexplored limitations of the SCSP's law enforcement mechanisms. At the implementation level, social credit information synchronisation problems (data silos) hinder publicity-centred law enforcement efforts, JAD, as well as the SCSP's heavily technology-reliant CBR mechanism. The state agencies' expectations that automating elements of regulatory decision-making make it less arbitrary and more efficient, in other words, their "techno-optimism"[1845], is hardly warranted.[1846]

Further, SCSP mechanisms, with the exception of JAD, rely heavily on the private sector. Companies provide much of the technical infrastructure,[1847] are the intended information recipients who are to use social credit information to decide whom to transact with,[1848] and realise disciplinary measures such as consumption bans.[1849] SCSP mechanisms' reliance on private firms comes with significant risks but also significantly empowers them. In China specifically, the relatively close ties between the state and businesses have already given rise to an entire industry surrounding SCSP building, and the controlled information environment, too, may work in favour of the SCSP's capacity to strengthen law enforcement. That said, corruption and bribery among non-state implementors of the SCSP are ripe, endangering the reputation of the reputation system and, by that way, its law enforcement powers.[1850]

Many of the shortcomings of the SCSP mechanisms with regard to enhancing law enforcement may be traced back to the fact that the SCSP's mission is first and foremost to 'build trust'. The enhancement of law enforcement only follows as one part of that mission. This order of priorities, in some ways, limits the SCSP's ability to strengthen administrative law. For instance, comprehensive credibility assessments, a key link in the SCSP mechanisms of publicity-centred regulation, reputational disciplining and CBR, include social credit information gathered from the market, such as financial transaction records and customer reviews, among others. The presumption underpinning these SCSP mechanisms is that this market-sourced social credit information helps indicate

[1844] Section 3.2.5.3; The introduction of credit repair likewise may foster support for reputational disciplining: Section 3.2.2.3.
[1845] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 208.
[1846] Sections 3.2.4.3. and 4.2.1.3.
[1847] Mostly, in publicity-centred regulation, reputational disciplining and CBR: Sections 3.2.1.2.; 3.2.2.2. and 3.2.4.2.
[1848] In publicity-centred regulation and reputational disciplining: Sections 3.2.1 and 3.2.2.
[1849] In JAD: Section 3.2.3.
[1850] Sections 4.2.1.1. and 4.2.3.1.

future risk of noncompliance. 'Trust-breaking', as expressed in negative credibility assessments, is assumed to be correlated with 'law-breaking'. 'Trust-keeping', as expressed in positive credibility assessments, is assumed to be correlated with legal compliance. Evidence for this correlation, however, is yet lacking.[1851]

The latter two observations indicate that the strengthening moments of the SCSP for administrative law pertain especially to what younger legal scholarship has described as "active administrative law".[1852] It refers to the form and functions of administrative law that emerge in response to the rise of public-private collaboration in public regulation that enforces not just law but what is termed 'soft law 软法'. I discuss this phenomenon further in section 5.3.

5.1.2. *Protecting legal rights and interests*

With regard to strengthening the *protecting legal rights and interests* function, the SCSP unintentionally makes a significant contribution: Its rise fosters the development of the prohibition of improper connection principle. This principle requires that an administrative action must be substantively and reasonably connected with its purpose. Several SCSP mechanisms derive their power from administrative agencies joining forces, be it through collectively imposing disciplinary measures or exchanging compliance records for assessing credibility. These practices raise challenges to the protection of SCSP subjects' legal rights and interests, which extant administrative laws and principles cannot account for. In response, local legislation began incorporating the prohibition of the improper connection principle, for instance, to limit disciplining and social credit information collection. Scholarship discusses the SCSP as the prime application case, but developed it to apply beyond SCSP matters.[1853]

A not yet realised potential of the SCSP to strengthen *protecting legal rights and interests* lies in channels for the legality review of norms. Semi-automated and automated decision-making, as occurring in CBR, can only be meaningfully reviewed for legality if the entire software's operating principles are scrutinised. A comprehensive examination of the software, however, is not feasible for courts and other legality review institutions for reasons of time constraints, a lack of expertise and outcomes with potentially detrimental impact for judges or administrative reconsideration officials.[1854] The review of (semi-)automated decision-making, however, could be systematised in extant

[1851] Section 3.2.4.3. The connection appears so convincing that the US government is advised to adopt similar practices: "Build and pass a federal-level legal framework for data privacy that enables the productive sharing of data in the context of democratic values. If Beijing's model of government data aggregation does indeed prove to boost China's predictive capacity and bureaucratic efficiency, the temptation to follow in Beijing's footsteps may be too strong for governments of developing nations to ignore. International adoption of Chinese-led government data collection models cannot be challenged without a stronger, more innovative, and at least comparably efficient model for supporting algorithmic regulation." Kendra Schaefer (2020) China's Social Credit System: Context, competition, technology and geopolitics, Trivium China, 4 December 2020, available at https://www.uscc.gov/sites/default/files/2020-12/Chinas_Corporate_Social_Credit_System.pdf, p. 65.
[1852] Sections 2.2.2. and 2.2.3.
[1853] Section 3.1.2.2.
[1854] Section 4.2.1.3.

procedures for the review of norms, be it the Filing and Reviewing procedure of the legislature, or incidental review of legal norms by courts pursuant to Art. 53, ALL.[1855]

Potential for making (semi-)automated decision-making further lies in procuratorate-initiated administrative public interest litigation. Procuratorates in China have, in recent years, nearly always successfully taken on administrative agencies for acting in violation of the law or not carrying out their duties. Procuratorate-initiated administrative public interest litigation could systematically take on SCSP setups that impact SCSP subjects' rights in violation of the law. SCSP practices exert impacts on rights and interests of subjects of a type that single SCSP subjects often cannot address. They may, for instance, only become aware of the detrimental impact long after the initiating act was made or have no access to the records of administrative decision-making required to evidence their case. Issues that the SCSP is prominently concerned with are congruent with the issues that fall within the subject matters procuratorates may take on pursuant to the ALL (Art. 25(5)).[1856]

5.2. The SCSP weakens the law

SCSP aspects weakening administrative law fall into two categories: The first are technical flaws that can be fixed while leaving the overall SCSP logic intact. These include, for instance, data silos and the unattractiveness of rewards for 'trust-keeping'. Other aspects can hardly be reformed without undermining the SCSP's core idea, for instance, the systematic decontextualization of behavioural records.

5.2.1. *Enabling the public administration*

The *enabling the public administration* function of administrative law refers to first that the state organises executive action by making clear rules.[1857]

First, a moment of weakening this function in the early years of SCSP building lay in its creation of sub-statutory rules in the form of social credit norms, norms that state agencies enforce through SCSP mechanisms. Social credit norms previously were nowhere centrally stipulated and clearly delimited. Critics described the SCSP as a "basket"[1858] or a "master key"[1859] that combines records in the social credit files of its subjects arbitrarily.[1860] A legality reform launched in late 2020, however, resulted in the annual issuance of central-level catalogues for social credit information.[1861] Since then, administrative agencies must not collect in social credit files any behavioural records of subjects beyond the information items listed in the central-level catalogue. The reform also made clear that most of the social credit norms are congruent with norms of law;

[1855] Sections 4.2.2.1. and 4.2.2.2.
[1856] Section 4.2.6.3.
[1857] Section 2.2.2.
[1858] *Wang and Pan: Not going back home often*; see also Adam Knight (2023) Basket Case: Reform and China's Social Credit Law, *China Law and Society Review* 6, pp. 181-210; Vincent Brussee (2023) *Social credit: The warring states of China's emerging data empire*, Palgrave Macmillan, p. 44.
[1859] Honghong Hu 胡弘弘 and Yufei Liu 刘宇飞 (2020) "公共场所不戴口罩算失信？社会信用制度要防滥用 (Does not wearing a mask in public places count as trust-breaking? The social credit system must prevent abuse)", Xinhua, 22 March 2020, https://www.sohu.com/a/382192694_267106, archived at https://web.archive.org/web/20250423164241/https://www.sohu.com/a/382192694_267106.
[1860] Section 3.1.1.2.
[1861] The *National PCI Catalogue*, section 3.1.1.

hence, most social credit file contents consist of compliance records, rather than records of non-codified behaviour such as financial transactions or social demeanour.[1862] As a result of the reform, even as SCSP mechanisms are applied in enforcement campaigns, for instance, to ban private non-profit tutoring in 2021 and control the spread of COVID-19, only behaviours that were previously codified as unlawful were entered into one's social credit file.[1863] Various loopholes remain. However, the 2020 legality reform overall dodged the risk of opaque state-sanctioned social credit norms.

At the same time, this very reform also has effects detrimental to the *enabling the public administration* function of administrative law. The authoritative central-level catalogue in practice sparks concerns among local officials over potential repercussions in the case that their local social credit information catalogues deviate. For this and other reasons, the publication of sufficiently detailed local catalogues decreased across China.[1864] Further, a key innovation of the SCSP, the credibility assessments, risks undermining the clarity of social credit norms. Credibility assessments, a key element in the advancing SCSP mechanism of CBR, incorporate market-sourced social credit information (MCI) more than just state agency-sourced information (PCI), which is disclosed in the catalogues.[1865] MCI can encompass credit ratings, user reviews on e-commerce platforms, and local media reports about the subject, among others. Political authorities neither mandate the disclosure of MCI catalogues nor that of credibility assessment methods and criteria.

The second element of the *enabling the public administration* function refers to the enforcement of rules and norms set by the state. I listed above how SCSP mechanisms contribute to a more regularised and potentially more efficient enforcement of laws and regulations, and that at the same time, crucial limitations at the practical and the conceptual level persist. Some elements of the mechanisms may even weaken law enforcement: Specifically, regulatory shaming through blacklist dissemination, digital maps showing the whereabouts of 'trust-breakers' and ringtone announcements that warn callers that the person they are trying to reach is not trustworthy may be perceived as excessive and lead to counteraction of the information recipients. However, it is unlikely that in the PRC, where the government tightly controls the information environment and punishes public protest, discontent with shaming practices of state agencies will lead to public counteraction as it has outside of China.[1866]

The SCSP further weakens law enforcement indirectly in the western regions of China. SCSP mechanisms are notably less developed in China's economically weak west. Here, they clash with another governance aim, namely, to foster the local economy, within the very same responsible state agency, the Development and Reform Commission. The SCSP sets compliance standards and renders performance of companies comparable to these standards to regularise enforcement and counter local protectionism.[1867] However,

[1862] Section 3.1.1.1.
[1863] Section 3.1.1.2.
[1864] Section 3.1.1.1.
[1865] Sections 3.1.1.1.; 3.2.2.2.; 3.2.6.; 4.1.3.2. and others.
[1866] Section 3.2.2.3.
[1867] Sections 2.1.2. and 3.2.4.3.

tying the economic success of a firm to its legal compliance [1868] also puts those companies at a disadvantage that have less resources to invest in compliance, typically local firms. As a result, local Development and Reform Commissions in western regions engage in 'window dressing'-style SCSP implementation: Work plans and other required policy documents are published but hardly implemented.

Existing economic discrepancies and inequalities also underpin the ways the rewarding of trust-keeping mechanism weakens the enforcement element of the *enabling the public administration* function. Specifically, municipal sincerity scores for residents are calculated based not only on behavioural records, but also on socio-demographics unrelated to immediate behaviour, such as educational background, marital status and household registration. This structure rewards class rather than incentivising compliant behaviour.[1869] In addition, the technique of the score found throughout several SCSP initiatives allows that points deducted for breaking the law can be regained by engaging in good deeds such as donating blood or supporting charities. Not only do the compliance-enhancing effects of rewarding 'trust-keeping' run empty. This setup also spurs gaming behaviour, undermining the deterrent effects of non-compliance with the law.[1870]

5.2.2. *Protecting legal rights and interests*

Principles of administrative law play the part of normative guardrails in evaluating the legality of the exercise of administrative power and thereby constitute an important element of the *protecting legal rights and interests* function. SCSP practices, posing systemic novelties, to some extent undermine the functioning of the principles in assessing the lawfulness of state action.

Firstly, the principle of law-based administration requires that all state-imposed measures that 'reduce rights or increase obligations' have a legal basis. Many SCSP measures that have a detrimental impact on the rights and interests of SCSP subjects require a legal basis but lack one. This includes, for instance, consumption bans and reputational punishment. [1871] While such transgressions can be mended through legislation, SCSP mechanisms also shed wider doubts over the usefulness of the principle: The principle of law-based administration arguably also requires that the legal basis explicitly links the stipulated law-violating behaviour with the resulting punishment directly. The SCSP's joint disciplining for trust-breaking mechanism, however, prescribes "restrictions at every turn"[1872]: Many disciplinary measures for 'trust-breaking' standing alone have a basis in one law, but they are imposed for behaviours listed as unlawful in other laws. The policy documents of MoU that establish this connection do not themselves constitute a legal basis.[1873]

[1868] Section 3.2.6.
[1869] Section 3.2.5.3.
[1870] Section 3.2.5.3.
[1871] Section 4.1.1.2.
[1872] 国家发展改革委办公厅 人民银行办公厅关于对失信主体加强信用监管的通知 (Notice Of The NDRC And The PBoC On Strengthening Oversight And Management Of Trust-breaking Entities), issued 24 July 2018.
[1873] Section 4.1.1.1.

Secondly, the principle of proportionality prescribes that a state's measure must have a legitimate aim, be suitable to reach that aim, be the mildest available option, and that the effects of the measure are proportionate to the aim pursued. Several SCSP practices fail the proportionality test, and, more importantly, pre-empt the analysis of a measure's proportionality altogether. The legitimate aim is often not sufficiently precise or hardly suitable. For instance, shaming 'trust-breakers' is often legitimised with the aim of government information disclosure, an aim that does not account for the punitiveness of the measures.[1874] Further, SCSP practices are often not suitable to reach the aim because the effectiveness of mechanisms such as JAD and CBR is limited or hardly proven.[1875] Many fail the necessity test as they regularly cause more damage than required to reach the aim, for instance, by impacting persons in the target subject's surroundings in addition to the target subject.[1876] Besides these instances of SCSP practices failing the proportionality test, they further structurally undermine the application of the proportionality principle. Joint disciplinary measures are imposed batchwise on all who were designated 'trust-breakers' and thus leave no room for a separate evaluation of the specific case and a consideration of the previous punishment load imposed on the target subject. Further, in the CBR mechanism, administrative decisions regarding SCSP subjects are recommended to officials based on credibility assessments. Such recommendations in practice shrink discretion spaces as officials are incentivised not to deviate from them.[1877]

Thirdly, the prohibition of improper connection principle requires that a substantive connection exists between an administrative action and its purpose. The less concrete an SCSP rule stipulates a 'trust-breaking' behaviour and the applicable disciplinary measure, the higher the risk of breaching this principle. Further, the massive collection of social credit information in files without a clearly stipulated purpose systematically creates improper connections. Credibility assessments, too, combine and thus decontextualise records from several fields, all without a clear statement of purpose.

Fourth, the prohibition of double sanctioning requires that a secondary punishment not be imposed for a legal violation which was already punished. Disciplinary measures are, qua their setup, levied only where regular administrative punishment was already imposed. Even though commentators played them down as not constituting 'punishment', but only 'disciplining' or even 'karma', disciplinary measures for 'trust-breaking' are unlawful secondary punishment at least in those setups where officials re-evaluate law-breaking behaviour and designate it 'trust-breaking'.[1878] The fact that their punitive nature is brushed over by the use of the 'disciplining' language and by pointing

[1874] Section 4.1.2.1.
[1875] Section 4.1.2.2.; See for the limitations of SCSP mechanisms: section 3.2.
[1876] Section 4.1.2.3.
[1877] Section 4.1.2.4.
[1878] The prohibition of double sanctioning principle suggests that where officials have no discretionary space, no re-evaluation of unlawful behaviour takes place and thus no secondary punishment is constituted. In consequence, the diminishing of discretionary space would ease the breach of the principle. In contrast, breaches of the other administrative law principles through SCSP practices are alleviated by providing more space for administrative discretion to officials.

to the societal actors' participation in punishing, e.g., in shaming, impedes a meaningful application of the prohibition of double sanctioning principle in practice.

Finally, the due process principle of administrative law refers to first, procedures for investigating the relevant facts before an administrative act, including that only the fact-finding agency can make the punishment decision. Shaming by disclosing negative comprehensive credibility assessments, assuming it constitutes administrative punishment, breaches due process: The social credit agencies creating and disclosing the credibility assessments for a punitive effect do not themselves investigate the facts of the 'trust-breaking' behaviour; they only draw on the final administrative decisions forwarded to them by departmental regulators. This splits up the processes of fact-finding and decision-making in violation of the due process principle. Second, the due process principle encompasses procedures for decision-making, such as the duty for agencies to inform the SCSP subject prior to enacting the punishment. While notification duties are gradually included in local departmental SCSP rules, the provisions often fail to provide for a time period between notification and the beginning of the punitive action during which the SCSP subject can prepare and submit its objection. This time period is crucial given that shaming is hardly reversible once imposed.[1879] Finally, in the face of (semi-) automated decision-making in state agencies, recent legal literature in China and abroad developed the due process principle to encompass duties for agencies to proactively explain their decision-making, including the operating principles of technological applications involved ('technological due process').

In sum, SCSP practices not just breach several principles of administrative law, but they also undermine their functionality in assessing the lawfulness of state action. When applied to review SCSP measures, principles of administrative law regularly run empty: SCSP measures often lack a clear purpose, shrink discretion spaces and open new ones outside of the public administration, decontextualise behaviours and escape the control of the administrative agencies that impose them. These and other features render administrative law principles unfit to serve their function of protecting the legal rights and interests of citizens.

The second element of the *protecting legal rights and interests* function of administrative law is channels for subjects to seek remedy for undue impacts on their rights and interests. A key challenge that SCSP practices pose is that even one action – for instance, a disciplinary measure for 'trust-breaking' – usually involves multiple different administrative acts and multiple state agencies and non-state actors.[1880] For SCSP subjects seeking remedy through administrative reconsideration and administrative litigation, it is unclear which exact action to address and which agency to address it to. Furthermore, many of the administrative acts behind SCSP practices exert a detrimental impact on SCSP subjects' rights and yet are not actionable at all, including shaming measures and credibility assessments.[1881] Finally, a meaningful review of those SCSP

[1879] Sections 4.1.1.2. and 4.1.5.2.
[1880] A single disciplinary measures for 'trust-breaking', for instance, may involve the following acts: Agency A finds a violation of law reaching the threshold of 'trust-breaking', agency B inserts this record in their credibility assessment, and agencies C, D, E, and so on imposing disciplinary measures based on that assessment, plus a series of non-state actors exerting reputational pressure on the subject.
[1881] Section 4.2.1.2.

practices that involve (semi-)automated decision-making is hardly possible. First, courts and administrative reconsideration institutions lack the required technical expertise. Second, reviewing officials' and judges' belief that technological applications produce neutral outcomes (automation bias), as well as the consequences it has for reviewers if they find an automated decision-making software unlawful impedes the thorough review of SCSP practices.[1882]

Review procedures of the legality of legal norms, both in the legislature and in courts, hold potential as they can address the entire normative setup of software, enabling credibility-based regulation.[1883] However, officials do not currently document their technological applications' decision-making with reviewability in mind. Generally, procedures to review the legality of norms remain underapplied[1884] and incidental review of norms through courts is vested with little power.[1885]

A core problem with all remedial channels for relief after the fact is that they cannot account for irreversible damages arising, for instance, from shaming or the sharing of negative social credit records among state departments. Ex-ante remedial procedures are crucial. Objection procedures, handled directly by the agency that imposed the SCSP measure, to some extent, provide ex-ante relief. However, objection procedures' ex-ante rules, including prior notification, are so far only available against blacklisting decisions in some setups, and not at all against other trustworthiness assessments, such as social credit file entries and credibility assessments.[1886] Objection procedures may be slightly stronger in reviewing (semi-) automated decision making because they are brought to the agency that made the decision and thus has at its command the technological expertise about the applied software. On the downside, the agency is likely to be even more biased than external reviewers, as they generally have faith in the application they themselves built or chose for their operations.[1887]

5.3. The SCSP transforms the law

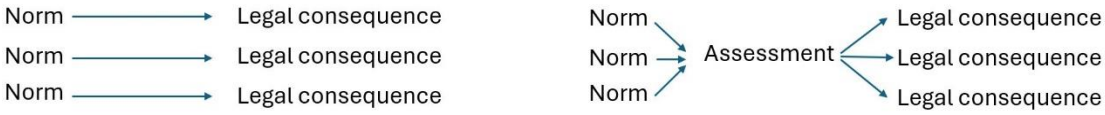
A transformation is a slow and long-term process, and the SCSP is far from complete. Transformations that the SCSP brings to administrative law do not yet occur at a large scale, but only in those few fields that the SCSP mechanisms permeate. However, SCSP practices promise fundamental paradigm shifts for both, the *enabling the public administration* function and the *protecting legal rights and interests* function of administrative law. Specifically, SCSP practices transform the law by introducing two new concepts to public regulation: the technique of assessments and the normativity centred on 'trustworthiness'.

[1882] Section 4.2.1.3.
[1883] Section 4.2.2.3.
[1884] Sections 4.2.2.2. and 4.2.2.1.
[1885] Section 4.2.2.2.
[1886] Section 4.2.5.3.
[1887] Section 4.2.5.3.

5.3.1. *Enabling the public administration,* the technique of 'assessments' and the 'trustworthiness' normativity

Administrative law's *enabling the public administration* function describes that the public administration must make and act by clear and transparent rules. The SCSP gives rise to a paradigm shift in the clarity requirements of rules.

With the introduction of the SCSP normativity to the legal system, norms that are enforced by the state are no longer limited to those laid down in regulatory laws and regulations, but further include norms stipulated across credibility assessment indicators, PCI catalogues, technical standards and other documents that are not formal law.[1888] These documents are not always clear and transparent. Even if these non-legal documents that contain state-sanctioned social credit norms were fully published,[1889] norm clarity was not achieved: The social credit norm-stipulating documents, especially in CBR, do not lay down *specific behaviours* alongside their respective *specific punitive consequences* as regulatory laws usually do. Regulatory law is usually structured in if-then phrases. Social credit norm-stipulating documents, however, include *indicators* alongside *values* (points, grades, ranks, etc.). The indicators may consist of behavioural norms but also of other markers, such as the level of formal education of a company's employed engineers. The values consist of quantified 'trustworthiness'. They centre an ideal and thereby create an "objectives-based legality"[1890]. The values themselves indicate no specific punitive or rewarding consequence.[1891] Seen from the standpoint of regulatory law, they insert a step in between the codified behaviour (the 'if') and the specific actions that a state agency undertakes as a consequence of that action (the 'then'). Only in the next step, where it is handed to administrative agencies to use as decision-making reference, or published for reputational effects, does it have tangible effects for the SCSP subject. Whereas the lawful/unlawful binary characterises regulatory law, in the SCSP normativity that develops within administrative law, a non-binary assessment of trustworthiness is the central category (see figure below).



This insertion of a trustworthiness assessment into the operational flow transforms the *enabling of the public administration* function. Arguably, social credit norms are clearly stipulated as indicators of 'trustworthiness'. However, *enabling the public administration* function of administrative law refers to clarity not only over where the red lines run but also what consequences await subjects should they cross the lines. To some degree, these consequences help describe the stipulated behaviours. The mere disclosure of the

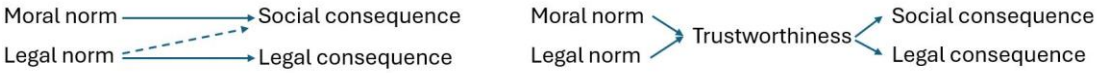
[1888] Sections 3.1.1. and 3.2.4.
[1889] Many of these documents, especially technical standards, are publicly available. Conflicts of interests at the local level widely hinder the disclosure of PCI catalogues, but the SCSP builders require them to be publicly accessible in principle.
[1890] Larry Catá Backer (2024) Social credit 'in' or 'as' the cage of regulation of socialist legality, *The China Review* 24(3), pp. 71-106, p. 94.
[1891] Section 4.2.2.3.

trustworthiness assessment indicators is insufficient to achieve the clarity of state-sanctioned norms.

The insertion of the assessment link in the process of regulatory action entails that to achieve clarity of state-sanctioned rules, not just the trustworthiness assessment indicators, but also the formulas, algorithms, software, system operating principles and other elements of the assessment production procedure must be communicated in a manner understandable to persons outside of the state agency that applies the trustworthiness assessment. Judges and other officials in charge of reviewing an SCSP measure's legality, too, must take into account and potentially trace the entire assessment production process and operating logic. The *enabling the public administration* function of PRC administrative law requires that the rules by which state agencies regulate are clear, a function that developed precisely to depart from and counter the risk of arbitrary rule.[1892] It transforms in the face of trustworthiness assessments in the public regulation: The simple 'disclosure' paradigm requires a redefinition to encompass proactive explanation of rules as well as assessment procedures. Otherwise, the very purpose of the *enabling the public administration* function – which lies with countering arbitrary rule, shaped in the aftermath of Mao Zedong's tumultuous administration[1893] – disperses. To achieve clarity of rules, then, the regularly overlooked but norm-stipulating documents containing social credit norms must be actively informed about in a digestible manner.[1894]

A second transformative moment for law arises with the SCSP-declared new normative core of 'trustworthiness'. Chapter three investigated the SCSP's norm-setting and law enforcement capacities, illustrating that not just law but moral norms, too, are created and enforced through SCSP mechanisms. These moral norms are not a set of top-down imposed norms drawn up by the CPC. Rather, the social credit norm-setting bodies include a diverse range of central and local state and Party institutions, village leaders, technical experts, industry representatives, researchers, social organisations, and industry associations, to name some. Norms are accordingly various and comprise professional ethics, social behaviour norms, and corporate social responsibility, among others. The 2020 legality reform sought to ensure that only behaviour codified in the law is subject to SCSP disciplinary measures. However, the reform left loopholes: It rules out that non-codified moral behaviour directly leads to SCSP disciplining, but does not change the fact that such behaviours flow into credibility assessments as well as into rewarding scoring schemes. Credibility assessments, in turn, can give rise to disciplinary measures for trust-breaking, and rewards for trust-keeping can have a punitive impact on those excluded.[1895] The state's SCSP mechanisms, despite the reform, indirectly continue to enforce even those social credit norms that are not based on laws. The figure below illustrates the regulatory enforcement chain without (left) and then with (right) trustworthiness assessments, such as credibility assessments inserted in the process.

[1892] Sections 2.2.2. and 2.2.3.
[1893] Section 2.2.3.
[1894] This resonates with requirements of 'technological due process', see section 4.1.5.3.
[1895] Section 3.2.5.



Most of the enforced norms that are not laws do have a substantive relationship with legal norms. These include, for instance, personal data protection standards for companies that set higher thresholds than the legal standards do. Unsurprisingly, some accounts draw parallels between ESG regimes and the SCSP.[1896] Further, the SCSP-law relationship features a range of parallels to the relationship between China's government-sponsored CSR policy guidelines and the law, as examined by Virginia Harper-Ho in 2013. The SCSP, like the state-centric CSR in the PRC, "establish[es] standards that better convey the 'spirit' of the law"[1897]. This places the SCSP into the broader context of the global rise of soft law regimes, which transcend local and national jurisdictions. These set norms and enforce them often with the help of assessments and reputational means.[1898] The relationship between soft law regimes and 'traditional' law may best be understood as one of multiple entangled legalities.[1899]

The emergence of soft law regimes is argued to possibly update and safeguard the validity of the Balance Theory of administrative law: They may provide the key to achieving the balance between administrative powers and rights for subjects in the era of active administrative law.[1900] In this reading, the SCSP may contribute to the transformation of extant functions in a way that the Balance Theory remains intact.

The impact of the trustworthiness normativity, however, also confirms younger, ideology-oriented theories about purposes and functions of PRC administrative law, which have not yet been fully fleshed out. Consider the propositions made by Baoying Guan and others introduced in Chapter two: He maintains that the functions of the arising active administrative law include managing society as a whole. Administrative law, pursuantly, no longer only permits or punishes but also actively shapes society, also through targeted investments and services. Such administrative law is ideal-oriented, with the supreme ideal being the realisation of 'socialist modernisation'. It surpasses its previous functions of largely passively guarding the red lines of the law with licenses and punishments.[1901] Consequently, Baoying Guan calls for the inclusion of non-traditional normative documents, such as technical standards, into the system of administrative law.[1902] He holds that administrative law ushers in new functions, such as the *promoting cultural*

[1896] Charles Redclyffe (2021) "Why the Tesla crypto scandal may have proven that ESG is just Social Credit for corporates", Forbes, 30 May 2021, https://www.forbes.com/sites/charlesradclyffe/2021/05/13/why-the-tesla-crypto-scandal-may-have-proven-that-esg-is-just-social-credit-for-corporates/.
[1897] Virginia Harper-Ho (2015) Corporate social responsibility in China: Law and the business case for strategic CSR, *South Carolina Journal of International Law and Business* 12(1), pp. 377-440, p. 432.
[1898] See for instance: Chris Brummer (2015) *Soft law and the global financial system: Rule making in the 21st century*, Cambridge University Press; sections 2.2.2. and 2.2.3.; *Kui Shen: The theoretical foundations*, p. 28, 50.
[1899] Nico Krisch (2022, ed.) *Entangled legalities beyond the state*, Cambridge University Press.
[1900] *Kui Shen: The theoretical foundations*, p. 51.
[1901] Section 2.2.3.; See also: Larry Catá Backer (2024) Social credit 'in' or 'as' the cage of regulation of socialist legality, *The China Review* 24(3), pp. 71-106, p. 77; Tao Ji 季涛 (1999) 行政权的法律倒空 (The legal control of administrative power), 西南政法大学学报 (Southwestern University of Political Science and Law) 1(1), pp. 35-37.
[1902] *Baoying Guan: Reconstruction of the functions*, p. 17.

development function.[1903] The common denominator of proposals that administrative law has new functions centring around (rather than just being subject to) socialist ideology may be that they regard administrative law as a tool to manifest the moral authority of the state.

It was established above that the trustworthiness normativity featured in the SCSP is objectives-based. Trustworthiness, as far as the CBR mechanism is concerned, is a measurable and non-binary unit. Binary elements of the trustworthiness normativity, such as blacklists, are on the retreat or being diversified. Relevant norms are laid down in technical standards, which are recognised as crucial for administrative law by New Service Theorists. The type of soft law regimes driven by the SCSP thus confirms theories that posit the emergence of a completely new set of functions of administrative law revolving around manifesting the moral authority of the state. This raises the question of what kind of 'morality' the SCSP nurtures – one embodying socialist values, such as the official socialist core values,[1904] as is argued by some SCSP discussants?[1905]

Upon analysis, the trustworthiness normativity appears strikingly empty in substance. It may be filled by any participating SCSP actor flexibly with normative content. Consequently, the SCSP does not help achieve a "fusion of the authority of law with the authority of the Party"[1906] by directly inserting Party-set rules, moral norms, or conflict resolution programs into law, as do other contemporary projects such as the 'Fengqiao Experience' of grassroots governance in legal practice, as demonstrated by Zeming Liu and Benjamin Liebman.[1907] Instead, it contributes to socialist modernisation by building a legal regulatory infrastructure that suits the Party-state. The institutions, mechanisms, operations, procedures and technologies that the SCSP creates lend themselves to the enforcement of political priorities from the Party centre. Even though moral norms in the SCSP normativity are diverse and not dictated by the CPC centrally, they nevertheless emerge within the CPC-set legal framework of the PRC. The CPC actively curates, ends and initiates China's social credit-related soft law regimes. The SCSP, in other words, is less about the CPC defining morality, but instead about the CPC providing and shaping the arenas in which morality is being negotiated.

The SCSP case is yet to enter mainstream theories about administrative law and its functions. Especially the debate about the relationship between administrative discretion and soft law may be furthered by studying the case of CBR.

[1903] *Baoying Guan: Reconstruction of the functions*, p. 15.

[1904] First propagated by the CPC at the 18th CPC Congress in 2012. CPCCC General Office Opinions on Training And Practicing Socialist Core Values (中共中央办公厅关于培育和践行社会主义核心价值观的意见), 23 December 2013, https://www.gov.cn/zhengce/2013-12/23/content_5407875.htm, archived at https://web.archive.org/web/20230810110610/https://www.gov.cn/zhengce/2013-12/23/content_5407875.htm.

[1905] Section 1.3.3.

[1906] Zeming Liu and Benjamin Liebman (2025) Redefining law in China*, The American Journal of Comparative Law* 73(3), pp. 672–735.

[1907] Characterizing the redefinition of PRC law under the Xi Jinping administration as a fusion of the authority of the law with the authority of the Party, with Party leadership being formalized in nonarbitrary legal terms: Zeming Liu and Benjamin Liebman (2025) Redefining law in China*, The American Journal of Comparative Law* 73(3), pp. 672–735, p. 675.

5.3.2. *Protecting legal rights and interests* and the emergence of 'trustworthiness assessments'

The above-described paradigm change in regulatory action entails transformative moments for administrative law's *protecting legal rights and interests* function, too. Chapter four analysed the legality of SCSP practices through the lens of principles of administrative law. It revealed not only the shortcomings of SCSP practices in terms of legality, but also the limitations of the principles of administrative law as yardsticks for evaluating the SCSP practices' legality. Specifically, the principles failed to adequately grasp the trustworthiness assessment that underlies all SCSP practices. Trustworthiness assessments, such as blacklist designations and credibility assessments, are the core category of the SCSP (and public and private trustworthiness assessment regimes on the rise globally), and yet current legal principles have no language or concepts to accommodate trustworthiness assessments. For instance, they are generally not deemed administrative acts because their external effects, one of the constituting elements of administrative acts, are not immediate.[1908]

Likewise, SCSP practices pose challenges to remedial channels: For instance, current remedial channels nearly all require the SCSP subject to know of the (imminent) impact on its rights and interests, and that it has the information to counter the relevant actions. However, remedial channels that require the SCSP subject to act are ill-suited when it comes to addressing harm from SCSP practices. Harm to citizens' rights and interests is, where automation is involved, often covert, delayed and in the single case small but concerning a large group of citizens at once.[1909] Harm from SCSP informational practices of administrative agencies often does not unfold until long after the initiating action was taken, and often in ways that concerned subjects can hardly trace back the detrimental impact they incur to one original action.[1910] Objection procedures are the only currently available remedial channel that, at least to some extent, provides for an ex-ante means to avoid, rather than just ex-post counter, undue harm from state agencies' SCSP practices.

Transformations to the *protecting legal rights and interests* function of administrative law do not keep up with the corresponding transformations to the *enabling the public administration* function outlined above. The introduction of the prohibition of improper connection principle into jurisprudence, legislation and policy is the only discernible transformation with practical significance. Others remain at the level of scholarly suggestions: Chinese legal literature widely acknowledged the structural mismatch between categories of administrative law and 'trustworthiness assessments' applied throughout SCSP mechanisms. Suggestions to remedy this issue include to incorporate 'technological due process',[1911] establish a fourth type of 'credit' liability next to the

[1908] Sections 4.1.1. to 4.1.5.
[1909] These challenges are similar to those that litigants globally face in personal data protection law, see section 4.2.6.2.
[1910] Section 4.2.6.2.
[1911] E.g., Jie Yang 杨杰 (2021) 论行政信用评级的属性及其法律控制：基于行政过 程论视角的分析 (On the attribution of administrative credit ratings and their legal controls), 交大法学 (SJTU Law Review) 4/2021, pp. 123-138, p. 133.

existing criminal, civil and admin liabilities,[1912] and use administrative process theory as a starting point to re-conceptualize the administrative process to include trustworthiness assessments.[1913] The suggestions resonate with influential legal scholar Zhiwei Tong 童之伟's recent call to establish an independent concept of 'power' in PRC jurisprudence as a counterpart to the concept of 'rights', to better reflect the Constitutional structure.[1914] In any case, this would require a comprehensive reform which is unlikely given the trend towards a division and closure of departmental public law disciplines.[1915]

Winners in SCSP-induced impacts on administrative law are those procedures for relief that simultaneously function as reinforcers of SCSP mechanisms. Procedures such as objections against errors in social credit files function better than most remedial channels because they not only serve as relief channels for unduly impacted SCSP subjects but, at the same time, further the SCSP's goal to enhance data accuracy. SCSP subjects here benefit from the fact that SCSP-building state agencies have a self-interest in accurate social credit information. For SCSP implementors, the more accurate and complete the information, the better the SCSP mechanisms work. They are, therefore, incentivised to build structures for SCSP subjects to help them achieve that goal by pointing to errors via objections. Most notably, credit repair, the SCSP's own procedure, is a non-adversarial restorative procedure rather than a means for protecting legal rights and interests. It allows SCSP subjects with negative social credit status to admit their wrongdoing, engage in relevant locally prescribed credit repair actions and as a result have the public display of their negative records terminated or marked as 'repaired'. Whether the state action was right in the first place is not addressed. Arguably, credit repair even has effects weakening the *protecting legal rights and interests* function of administrative law: With other remedial channels often useless, SCSP subjects whose rights were unduly impacted by excessive SCSP-related state action are incentivised to make 'fake' concessions and take the blame, because it is the most promising and convenient path to attain relief.[1916] Where such 'fake' credit repair cases become

[1912] Junhai Liu 刘俊海 (2019) 信用责任: 正在生长中的第四大法律责任 (Credit liability: The fourth legal liability currently evolving), 法学论坛 (Legal Forum) 34(6), pp. 5-17.

[1913] *Binglin Tan: Disciplining trust-breaking*; *Wei Fan: The legal character*. The recommendations are reminiscent of Weidong Ji's proposal to embrace 'neoproceduralism' as early as 1993: Weidong Ji 季卫东 (2021) 法律程序的意义：对中国法制建设的另一种思考 (The significance of legal procedure: A different perspective on the construction of a Chinese legal system), 中国法制出版社 (China Legal Publishing House).

[1914] Zhiwei Tong 童之伟 (2022) 法学基本研究对象与核心范畴再思考——基于宪法视角的研究 (Rethinking the basic research objects and core categories of Law——Research from a constitutional perspective), 法学 (Legal Science) 490(9), pp. 45-61, p. 55.

[1915] *Kui Shen: The theoretical foundations*, p. 47.

[1916] This structure is reminiscent of the 2019 criminal justice reform introducing the 'Leniency for Pleading Guilty and Acceptance of Punishment 认罪认罚' system. Arguing that this setup paves the path to miscarriages of justice: Yu Mou (2024) Leniency for pleading guilty and acceptance of punishment: An overriding principle of Chinese criminal justice, in Máximo Langer, Mike McConville, and Luke Marsh (eds.) *Research handbook on plea bargaining and criminal justice*, Edward Elgar Publishing, pp. 186-199, p. 199; for an empirical study highlighting abuse of the system: Ming Hu 胡铭 (2022) 认罪认罚案件中的量刑协商和量刑建议 (Sentence negotiations and sentencing recommendations in Leniency for Pleading Guilty and Acceptance of Punishment cases), 当代法学 (Contemporary Law Review) 2/2022, pp. 79-88.

commonplace, systemic excessive action by SCSP mechanism-applying state agencies will hardly be identifiable, and state agencies evade responsibility.[1917]

The selective strengthening of remedial channels where they benefit SCSP building[1918] resonates with the character of administrative law captured in theories that posit that administrative law now functions as a tool to manifest the moral authority of the state, as described above. The protection of legal rights and interests of citizens, therein, is but one means to realise the ideological ideal of socialist modernisation. CPC-coined socialist rule of law represents "the application of the goals of socialist modernisation to the regulatory sector of society"[1919]. Rights are not the core category but the means to achieve goals on the CPC agenda.[1920] Administrative law's remedial channels serve to improve governance by detecting potential risks to CPC authority, such as abuse, nonfeasance or corruption in local government practices. It serves the centre to oversee its local agents.[1921] Administrative remedial channels, then, are but one function of political prerogatives set by the CPC.[1922] Where they benefit the CPC's larger political agenda, which includes SCSP building prominently as part of realising the 'socialist market economy', they develop. If other means become available to realise the agenda, those may prevail. The strengthening of relief procedures that simultaneously serve governance functions signals a (re-)alignment of administrative law with the prerogative of the vanguard Party to the detriment of rights-centred concepts that entered during Reform and Opening and were inspired by liberal-democratic legal systems.

However, the current remedial setup highlighting non-adverse channels falls short of serving its role as an indicator of local grievances which is one part of administrative law's *protecting legal rights and interests* function.[1923] For the shift in SCSP remedial channels to truly align administrative law with the 'socialist legal system with Chinese characteristics', accountability structures – even if they do not rely on individuals taking action – must emerge. Such structures to identify and tackle regulatory excesses and failures that do not require individuals to act include the relatively new channel of procuratorate-initiated administrative public interest litigation.[1924] Another possibility lies within the SCSP itself, namely, its fourth and yet barely implemented target field of government sincerity 政务诚信.[1925] This target field refers to enhancing the

[1917] Sections 4.2.3. and 4.2.6.
[1918] Sections 4.2.3. and 4.2.5.
[1919] Larry Catá Backer (2024) Social credit "in" or "as" the cage of regulation of socialist legality, *The China Review* 24(3), pp. 71-106, p. 77.
[1920] Sections 2.2.2. and 2.2.3.
[1921] Section 2.2.
[1922] Section 2.2.3.
[1923] Section 2.2.4.
[1924] Section 4.2.6.3.
[1925] Well-captured by Wenhao Cheng: "The government plays two roles in building an honest society: One is to establish rules and regulations and strictly enforce them, and the other is to set an example for the people. The former means that the government should establish a Social Credit System through institutional construction and credit information system construction, reward honest behavior and punish trust-breaking behavior. The latter means that the government itself must first be honest and trustworthy and become a model of honesty for the entire society. In China, the government is regarded by the masses as the embodiment of justice, morality and authority, so it should be the leader in building honesty. For an honest society, the government must step up first."[1925] Wenhao Cheng 程文浩 (2006) "诚信社会，政府先行 (For an honest society, the government must step up first)", 小康 (Insight China) 10/2006, p. 37.

trustworthiness of state agencies, specifically, their acting in accordance with the law. To date, it has received only a fraction of the attention that other SCSP target fields enjoy.[1926] Future research might explore this inside-facing element of the SCSP and explore its potential and real contributions in holding the state agencies that use SCSP mechanisms accountable. Respective findings have implications for the larger question of whether the SCSP mode of governance can provide one answer to how the SCSP-law relationship may resolve its internal paradoxes.

5.4. Beyond China

The debate in the field of law and society studies regarding the impact of data-driven regulatory practices has produced a range of new and to different extents overlapping terms such as algorithmic regulation, [1927] automated decision-making in public regulation[1928] and state-administered trust registers.[1929] Literature widely highlights risks to legal protection and general authoritarian tendencies emerging from the use of data-driven regulatory practices. In her study of European administrative agencies' use of algorithmic systems for regulation, Nathalie Smuha, for instance, finds that

> "the danger associated with algorithmic rule by law is that the legal protection of individuals and the translation from open-ended legal rules to code is seen as a mere techno-scientific enterprise, to the detriment of human dignity, human rights, the rule of law, and other essential values"[1930]

Many risks identified in that literature mirror those raised by trustworthiness assessment-driven regulation of the SCSP.[1931] This thesis contributes an empirically grounded account to the debate about the legality of assessment-driven governance by offering an analysis of the case of the SCSP in China, the first national-level strategy that centres on the "social technology of trust"[1932]. The case of the SCSP offers insights into the impact of trust assessment regimes on the law beyond China.[1933] To the extent that functions of

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[1926] Local policy documents address government sincerity much less than the target fields of commercial sincerity and societal sincerity: Yucen Liu 刘禹岑 (2020) 地方政府建设信用城市的政策工具研究——基于首批信用示范城市政策文本分析 (Policy instruments on credit city building: An analysis of policy texts from national model cities of SCS building), draft presented at the 全球命运共同体与国家治理能力现代化"第十四届珞珈国是论坛全国博士生学术论坛跨学科研讨会", 30 October 2020, Wuhan, conference proceedings, pp. 76-95, p. 87.

[1927] E.g. Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, for a review of the concept of algorithmic regulation, see: Lena Ulbricht and Karen Yeung (2022) Algorithmic regulation: A maturing concept for investigating regulation of and through algorithms, *Regulation & Governance* 16, pp. 3-22.

[1928] E.g. Herwig C. H. Hofmann (2024) Automated decision-making (ADM) in EU public law, in: Herwig C. H. Hofmann and Felix Pflücke: *Governance of automated decision-making and EU law*, Oxford University Press, pp. 1-31.

[1929] E.g.: Katja Turha, Simon Vrhovec, Igor Bernik (2024) State surveillance in the digital age: Factors associated with citizens' attitudes towards trust registers, *Arxiv* (Cornell University), 19 August 2024, https://doi.org/10.48550/arXiv.2408.09725.

[1930] Nathalie Smuha (2024) *Algorithmic rule by law*, Cambridge University Press, p. 294

[1931] Summarized in section 5.2.

[1932] M. Todd Henderson and Salen Churi (2019) *The trust revolution how the digitization of trust will revolutionize business and government*, Cambridge University Press, p. 50.

[1933] "China offers a reference point for rethinking the politics of automation and data-driven systems being used in governance in the 21st century": Haiqing Yu and Rogier Creemers (2025) Automating governance and data-driven scoring in China: A critical introduction, in: Haiqing Yu and Rogier Creemers (eds.) *Automating governance in China?* pp. 11-32, Leiden University Press.

administrative law in China resemble those in liberal-democratic countries,[1934] and the extent that the SCSP resembles trust assessment regimes in public governance globally,[1935] findings from observing the SCSP-administrative law relationship enrich scholarship on how law is impacted by data-driven modes of regulation.

Consider the massive reliance on the private sector that is characteristic of the emergence of data-driven regulation in China as well as beyond. SCSP policy language frames it as 'co-governance 共同治理'. It manifests in several ways: Private firms provide technological infrastructure, carry out reputational disciplining and impose tangible disciplinary measures on 'trust-breakers' as mentioned above. Globally, "the turn to dataist statecraft facilitates a corporate reconstruction of the state"[1936] and creates a transformative moment for functions of administrative law.

This study highlighted that the involvement of the market in public regulation through the SCSP also marks a shift of rulemaking to market actors. Specifically, coders of credibility assessment software, as they translate legal rules to system commands, insert their subjective values. Spaces of administrative discretion shrink within the regulatory agencies, and they newly emerge in technology firms and fora for technical standardisation.[1937]

The public-private partnerships and other means of involving actors from beyond the responsible state agency in regulatory work that are characteristic of both, the SCSP and its counterparts abroad illustrates how law enforcement becomes highly dependent on elements beyond a state agency's control: Only when technology service providers deliver functioning credibility assessment producing technologies, only when recipients of negative social credit information decide to ostracise the concerned 'trust-breaker', only when state-owned enterprises carry out their duties to ban consumption of the blacklisted entities, does law enforcement work. The reliance on private actors empowers enforcement on the one hand, as it extends its reach deep into business and social lives. On the other hand, risks emerge. Firms that provide credit repair trainings, one link in the process of repairing one's credit, are regularly fined for fraudulent practices.[1938] Currently, the only strategy for mitigating risk appears to be to allocate tasks to different companies, rather than overly relying on one strong firm.

The reliance on the market brings risks not only to enforcement capacity but also to legal protections of SCSP subjects. Consequential decision-making shifts to private actors while the current setup of remedial channels builds on having state agencies at the centre of administrative action. While non-state actors carry out important tasks and,

[1934] Section 2.2.2.
[1935] See also: "We argue, therefore, that what is happening in China can be seen as a specific instance of a wider phenomenon. Even more so, as reputation-based quantitative tools have become established in the West, the Social Credit System may tell us something about their evolution in Western countries (or even the future of global normative orders": Daithí Mac Síthigh and Mathias Siems (2019) The Chinese Social Credit System: A model for other countries? *Modern Law Review* 82(6), pp. 1034-1071, p. 1036.
Advocating to adopt the term "social credit system" for describeing all sorts of trust assessment regimes: *Orgad and Reijers: How to make the perfect citizen*, p. 1101.
[1936] *Fourcade and Gordon: Learning like state*; see also Shoshana Zuboff (2019) *The age of surveillance capitalism: The fight for a human future at the new frontier of power*, Profile Books.
[1937] Section 3.2.3.4.
[1938] Section 4.2.3.1.

consciously or not, increasingly wield discretionary power, SCSP subjects can hardly hold them legally accountable.[1939]

This investigation demonstrates the multi-dimensional impact of trustworthiness assessments on administrative law in China. I found that for administrative law to continue to fulfil its functions of both, making enabling the public administration's effectiveness (function one) and protecting the legal rights and interests of subjects (function two), the 'trustworthiness assessment' must be established as an object of administrative law. This entails fundamental structural changes that look different depending on the specific administrative law structures in the respective jurisdiction.

To the scholarly debate about data-driven regulatory practices, this examination proposes the lens of trustworthiness assessments. In the SCSP, trustworthiness assessments are blacklisting decisions and credibility assessments. However, trustworthiness assessments as defined in this thesis covers risk profiles, ratings, or safety scores, too, all commonly applied practices of data-driven regulation in the public governance landscape outside of China.[1940] They have in common that administrative discretionary decision-making turns to use the *status* of a regulatory subject, which itself is the accumulation of multiple behaviours, as a reference.[1941] The trustworthiness assessment lens mapped in this study may offer a useful approach to address the problems that the debate around data-driven public regulation has outlined.

The findings above indicate that focusing legislative efforts pertaining to data-driven regulatory practices on the assessment element may help build adequate legal protections. Current legislation at the European level appear to dismiss the SCSP alongside the concept of trustworthiness assessments (as if it did not already exist).[1942] In the EU, current foci of regulatory frameworks regarding data-driven public regulation revolve around personal data protection and risks from AI systems. They cannot fully capture the precise risks that emerge from the decontextualising of behavioural records in the course of creating credibility assessments, risk profiles, compliance grades, or other trustworthiness assessments in use by regulatory agencies. Previous studies that focused on trustworthiness assessments highlighted their use by private actors in the market. Henderson and Churi, for instance, describe how trustworthiness assessments by platform companies may present a form of self-regulation superior to regulatory intervention by public regulators, overlooking the fact that many public regulators, too, apply the technique.[1943]

[1939] The *Jiangsu SCS Regulations* require market actors who handle social credit information to process objections, too. Section 4.2.5.2.; Art. 64(3), *Jiangsu SCS Regulations*.
[1940] Section 1.1.
[1941] Section 4.1.3.1.; 4.1.4.1. and 4.1.4.2.
[1942] As the EU Artificial Intelligence Act appears to do with its blanket ban on social scoring that lacks a clear definition. Recall Art. 5(1) c, Artificial Intelligence Act (Regulation (EU) 2024/1689), adopted by the European Parliament and of the Council of 13 June 2024, OJ L 1689.
[1943] M. Todd Henderson and Salen Churi (2019) *The trust revolution. How the digitization of trust will revolutionize business and government*, Cambridge University Press.

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