

Legalism and the Social Credit System

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IN EARLY NOVEMBER 2019, Smartisen CEO Luo Yonghao 罗永浩 received a ruling from a court in Danyang that he had been added to a national database of discredited individuals. Due to his large debt, Luo now faces restrictions on travel, finance, luxury spending, and educational opportunities for his children. A similar story applies to 15 million other citizens of the People's Republic of China (PRC) who have run afoul of its recent crackdown on behaviour it deems unsociable. A similar fate awaits those who score poorly in the emerging Social Credit Systems (SCSs). These social sanctions form part of the push by the Chinese Communist Party (CCP) to encourage good behaviour and honesty among the country's immense citizenry using emerging technologies.

The SCS consists of several independent trials — commercial and governmental — united by common characteristics. All SCSs operate through assigning a social credit score to individuals, which is altered according to their behaviour. Actions that can lower your score range from fraudulent dealings to jaywalking and religious association; those that can raise it are charitable acts, prompt repayment of loans, and good familial conduct. Punishments vary from restrictions on travel and employment to public shaming, while rewards include preferential access to government services and tax deductions. The SCS is not a monolithic enterprise, but an evolving series of localised trials loosely guided by governmental memorandums. There have been more than forty trials, all with their own goals, variations on the system, rewards, and punishments.



Jaywalking can lower your social credit score ratings in China

Source: Gautheir Delecroix, Flickr

When then secretary-general Jiang Zemin first proposed the SCS in 2002, it was presented as a method to increase the 'trustworthiness' 守信 of financial actors.¹ By 2014, it had evolved into a general method of social control. The fragmentary network of trials and experiments that makes up the SCS today shares a common aim: the instilling of behavioural codes, backed by rewards and punishments, which promote 'self-governance' by citizens. SCS, in its use of big data, artificial intelligence (AI), and sophisticated surveillance, including of all online activity, takes on a high-tech guise. But the scheme's philosophical roots lie deep in Chinese history.

The Doctrine of Legalism

The ancient philosophical school of legalism 法家 arose in the chaos of the Warring States period from 475 to 221 BCE. The legalists sought peace and stability through a regime of near-totalitarian social control based on the principles of *fa* 法 (law), *shu* 术 (management), and *shi* 势 (power). By combining these three concepts with an extensive system of mutual surveillance, a ruler could effectively dominate his empire without needing to leave his palace.

The central pillar of this system is *fa*: the use of harsh penal law as a tool of absolute domination. With certain caveats, its application was to be universal, with the exception of the

ruler himself, so that 'the highest minister cannot escape' and 'the lowest farmer' would 'not be passed over'.² Legalists advised rulers to tailor this legal code to encourage behaviour that would meet the needs of the state. They suggested implementing a set of rewards and punishments (the 'two handles' of government) that would exploit people's tendency to pursue pleasure and avoid pain. Fear, it was thought, was a greater motivator than pleasure, so punishments should be disproportionately harsh compared with the crime committed, and rewards benign. To enhance enforcement, people were grouped into communal units held mutually responsible for any crimes committed by any of their number.³

The legalists paid special attention to ministers and officials. The ruler relied on his advisors but was vulnerable to deceit or even usurpation. This is where *shu* came in; it was a system of 'names and tallies' 姓名 by which to assess ministerial performance. The 'name' was a specific task or position and the 'tally' a record of actions and results. If they matched, a minister would be rewarded and promoted; if not, he would be punished severely. By ignoring what was said and focusing on what was done, the ruler could no longer be deceived.⁴

While *fa* and *shu* were ingenious methods of social control, they counted for little if the ruler could not enforce them. Hence the ruler must also have *shi*: effective power. Both *fa* and *shu* rely on the rulers' ability to monitor the actions of individuals and dole out the appropriate rewards and punishments. The legalists thus advocated a system of mass surveillance to guarantee that no good deed went unrewarded and no bad deed unpunished.⁵

Legalism rose to prominence under Qin Shi Huang, who conquered the Warring States and unified China in 221 BCE. Though the Qin dynasty lasted only fifteen years, the state bureaucracy and legal system it produced survived relatively unchanged throughout the history of Imperial China, despite the adoption of Confucianism as the official state ideology.

Similarities with the Social Credit System

Both this legalist philosophy and the rationale underlying the SCSs espouse a universal set of rules backed by a system of rewards and punishments, embracing the logic of self-governance via the 'two handles'. Under some of the trial SCSs, family members and associates of individuals with low social credit scores may also find their own scores lowered, with all that entails.



Poster depicting the Twelve Core Socialist Values
Source: Benjamin Penny

As with the legalist ideal, these schemes do not apply a single behavioural code to every area of society. Rather, there are sector-specific criteria. There are different sets of rules, rewards, and punishments for the healthcare sector, heavy industry, tourism, business, and education.⁶ This mirrors the ancient system of 'names and tallies'.

Some commentators interpret the promotion of trustworthiness in these schemes as a Confucian measure.⁷ Yet the State Council frames it as a method first to 'further perfect the socialist market economy system' and then to build a 'socialist harmonious society'.⁸ This goal more closely matches the legalist ideal of building a strong and rich state than any Confucian ideal of an empire governed in accordance with the Way (*Dao* 道).

A spirit of *fa* and *shu* underlies the logic of the SCSs. President Xi Jinping makes frequent references to legalist writers in his speeches and books,⁹ as well as to the legalist notions of ‘wealth and power’ 富强 and the ‘rule of/by law’ 法治, which the Eighteenth Party Congress in 2012 listed as Core Socialist Values 社会主义核心价值观. The similarities with legalist systems of governance look more than coincidental. While the SCS is still in its experimental phase, it is difficult to predict its scope or effectiveness. However, the increasingly sophisticated mass surveillance networks and big data algorithms currently in development in tandem with them may provide the *shi* necessary to realise what Qin Shi Huang could not: the ideal system of legalist governance. Most people within China are not affected by the SCS, and many do not even know of its existence; among those who do, 80 percent approve of it.¹⁰ At this moment, the SCS does not weigh heavily on people’s lives. However, if the case of Luo Yonghao is any guide, many Chinese citizens who score poorly on the SCS will feel its impact.

Notes

- 1 Rogier Creemers, ‘China’s Social Credit System: An evolving practice of control’, 9 May 2018, pp.8–9, online at: papers.ssrn.com/sol3/papers.cfm?abstract_id=3175792
- 2 Han Fei, *Han Feizi: Basic Writings*, New York: Columbia University Press, 2003, p.28.
- 3 Shang Yang, *The Book of Lord Shang: Apologetics of State Power in Early China*, New York: Columbia University Press, 2017, p.210.
- 4 Han Fei, *Han Feizi*, p.36.
- 5 Zhengyuan Fu, *China’s Legalists: The Earliest Totalitarians and Their Art of Ruling*, Armonk, NY: M.E. Sharpe, 1996, pp.40–41.
- 6 State Council of the People’s Republic of China, *Planning Outline for the Construction of a Social Credit System (2014–2020)*, Beijing: State Council, 14 June 2014.
- 7 Martin Chorzempa, Paul Triolo, and Samm Sacks, ‘China’s Social Credit System: A mark of progress or a threat to privacy?’, *Policy Brief No. PB18-14*, Washington, DC: Peterson Institute for International Economics, 2018, pp.1–2.
- 8 State Council of the People’s Republic of China, *Some Opinions Concerning the Construction of a Social Credit System*, Beijing: State Council General Office, 23 March 2007 [Last modified 26 March 2016].
- 9 Delia Lin, ‘The CCP’s exploitation of Confucianism and legalism’, in *Routledge Handbook of the Chinese Communist Party. Volume 1*, London: Taylor & Francis, 2017, p.48; Xi Jinping, *The Governance of China*,

Beijing: Foreign Languages Press, 2014, pp.434, 457; and Xi Jinping, *The Governance of China. Volume 2*, Beijing: Foreign Languages Press, 2018, pp.152, 322, 324.

- 10 Genia Kostka, 'China's Social Credit Systems and Public Opinion: Explaining High Levels of Approval', *New Media & Society*, vol.21, no.7 (2019): 1573.