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# THE HUMAN RIGHTS IMPLICATIONS OF CHINA'S SOCIAL CREDIT SYSTEM

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## I. Introduction

When the topic of a social credit system is brought up, people generally assume the subject relates to the episode of *Black Mirror* called Nosedive.<sup>1</sup> In the show, everyone has a personal score that is constantly changing based on ratings they receive from people they interact with throughout the day.<sup>2</sup> The main character is *obsessed* with these ratings, and for good reason, as a person's score has significant socioeconomic benefits or consequences.<sup>3</sup> While there are some

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<sup>1</sup> See Alice Vincent, *Black Mirror is coming true in China, where your 'rating' affects your home, transport and social circle*, THE TELEGRAPH (Dec. 15, 2017), archived at <https://perma.cc/23Y2-QPCY> (describing the *Black Mirror* episode where the characters social standing was decided by technology and voted on by people with whom she interacted); Sadaf Ahsan, *Black Mirror's chilling social credit score is a reality in China*, NATIONAL POST (last updated Mar. 23, 2018), archived at <https://perma.cc/YG8J-Z2ZT> (explaining the fictional social credit score as depicted in the dystopian program); Gabrielle Bruney, *A 'Black Mirror' Episode Is Coming to Life in China*, ESQUIRE (Mar. 17, 2018), archived at <https://perma.cc/YYU2-RUBZ> (drawing a parallel between the "Nosedive episode" of *Black Mirror* and China's social credit system).

<sup>2</sup> See Ahsan, *supra* note 1 (detailing the technology used in the *Black Mirror* episode). Everyone owns and is subjected to an app that allows that to rate their interactions with each other while also sharing personal updates. *Id.*

<sup>3</sup> See Vincent, *supra* note 1 (summarizing the implications of the social credit score in the episode). Having a good score (above four-point-five out of five) meant that

similarities between the dystopia portrayed in *Black Mirror* and the Social Credit System (SCS) being implemented in China, it would be unfair and inaccurate to portray them as the same.<sup>4</sup>

This paper discusses China's SCS and how it complies, or fails to comply, with Chinese law and human rights obligations under international law.<sup>5</sup> Part II provides background on the SCS, including a brief history of the program's development, its purpose, and how it operates.<sup>6</sup> Part III discusses the relevant legal framework and identifies areas where the SCS seemingly diverges from established law.<sup>7</sup> Part IV introduces the human rights guaranteed under international law and considers the problems raised by the SCS.<sup>8</sup>

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the main character could qualify for a luxury apartment. *Id.* If she lost her temper with a waiter or shop assistant, or associated with people with lower scores, her score would drop, excluding her from the more refined parts of society. *Id.* See also Elizabeth Dwoskin, *Facebook is rating the trustworthiness of its users on a scale from zero to one*, SEATTLE TIMES (Aug. 21, 2018), archived at <https://perma.cc/UNE9-BKPY> (indicating areas of social interaction where user's reputation is assessed and scored).

<sup>4</sup> See Vincent, *supra* note 1 (explaining the social credit scores in China, as opposed to in the episode). Users will be given a score between 350 and 950, and rewards those with "good" scores with perks and rewards. *Id.* Paying back debts will give you a good rating, but so will having certain qualifications, the products you choose to buy and, crucially, the company you keep. *Id.*

<sup>5</sup> See Vrinda Vinayak, *The Human Rights Implications of China's Social Credit System*, OXFORD HUMAN RIGHTS HUB (April 19, 2020), archived at <https://perma.cc/2A9Q-ZDEA> (noting the social credit system suffers from possible privacy breaches).

<sup>6</sup> See Rogier Creemers, *China's Social Credit System: An Evolving Practice of Control*, UNIV. OF LEIDEN (May 9, 2018), archived at <https://perma.cc/8WWW-564Y> (framing the origination of SCS in moralistic terms since its beginning). The purpose of SCS is to "stimulate 'sincerity' and 'trustworthiness'." *Id.* See also Larry Catá Backer, *Next Generation Law: Data-Driven Governance and Accountability-Based Regulatory Systems In The West, And Social Credit Regimes In China*, 28 S. CAL. INTERDISC. L.J. 123, 125–26 (demonstrating the cultural shift in the approach to surveillance to promote social development). Movement included better usage of punishment and reward to promote accountability. *Id.*

<sup>7</sup> See XIANFA am. 6, (1982) (CHINA) (explaining the basis of the socialist economic system, characterized by socialist public ownership); Yu-Jie Chen et al., "Rule Of Trust": *The Power and Perils of China's Social Credit Megaproject*, 32 COLUM. J. OF ASIAN L. 1, 14–15 (2018) (providing the State Council-issued Guiding Opinion imposing sanctions on entities demonstrating "serious trust-breaking behavior"); Rogier Creemers et al., *Translation: Cybersecurity Law of the People's Republic of China [Effective June 1, 2017]*, NEW AMERICA (June 29, 2018), archived at <https://perma.cc/5PUX-7QHV> (listing China's relevant cybersecurity laws).

<sup>8</sup> See Vinayak, *supra* note 5 (affirming China's social credit system is the epitome of the disastrous consequences of technological advancement without a commensurate commitment to human rights); G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) (recognizing the inherent dignity and inalienable rights of all members of the human family).

Finally, Part V posits that while there are legitimate concerns about China's implementation of the program, there are benefits and potential for a positive future with a social credit system.<sup>9</sup>

## II. What is China's Social Credit System?

### A. Brief History of the Social Credit System

The idea of "social credit" has been present in China in some form for centuries.<sup>10</sup> In the early 2000s, the concept was introduced in the context of increasing financial creditworthiness during economic reforms.<sup>11</sup> In April 2007, the State Council established a joint conference for the construction of the SCS.<sup>12</sup> The primary nature of this initiative was still economic and focused on three overarching goals – providing better credit information records in the market economy, creating credit information systems, and developing credit

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<sup>9</sup> See Martin Chorzempa et al., *China's Social Credit System: A Mark of Progress or a Threat to Privacy?*, PETERSON INST. FOR INT'L ECON. 1, 1 (2018) (noting the potential incentives and drawbacks of China's Social Credit System).

<sup>10</sup> See *id.* (claiming that 2,500 years ago Confucius stated that to rule a country, "信 credit, faith, or sincerity; 食 food; and an army 兵" are needed, but if he could only have one it would be the first). See also Helen Chan, *China's corporate social credit system to raise big risk, compliance challenges for multinationals*, THOMSSON REUTERS (Nov. 14, 2019), archived at <https://perma.cc/ZC5L-HYSQ> (discussing the objective of a corporate social credit system to "promote corporate social responsibility and deter misconduct such as fraud.").

<sup>11</sup> See Creemers, *supra* note 6, at 8 (summarizing the early steps of creating the social credit system). In 2002, the Report at the 16th National Congress of the Chinese Communist Party (CCP) called for the establishment of a social credit system as part of a broader effort to modernize the market system. Creemers, *supra* note 6 (explaining that the focus was primarily on credit trustworthiness, but a broader notion of trust and honesty in marketplace conduct was also included). In 2006, the Credit Reference Center was established and required Chinese banks and financial institutions to report on customers' creditworthiness based on financial and non-financial information. See *id.* at 9 (describing non-financial information as that obtained from courts, government departments, telecommunications companies, and other fiscal authorities).

<sup>12</sup> See *id.* (detailing the goals set forth by the state council in constructing the SCS). See also Genia Kostka, *China's Social Credit System and Public Opinion: Explaining High Levels of Approval*, NEW MEDIA & SOC'Y 1565, 1567 (2019) (explaining how the state council's actions in 2007 resulted in 18 central government departments initiating an SCS and laid the framework for further SCS implementation).

service markets.<sup>13</sup> At this point, the current form of the SCS started to emerge as various provinces established pilot programs.<sup>14</sup>

In response to public outcry over fraud and the lack of trust in Chinese society, the 6th Plenum of the 17th Party Congress was dedicated to culture and identity in 2011.<sup>15</sup> This further strengthened the call for the construction of the SCS to foster sincerity in society with regard to commercial affairs, as well as social and political morality.<sup>16</sup> A large step towards this came in 2012 with the revision to the Civil Procedure Law for the People's Republic of China.<sup>17</sup> Under the new revision, individuals that did not carry out legal obligations could be prohibited by a court from leaving the country, have a new entry placed in their credit file, and have their names published in the news.<sup>18</sup> Further, in 2013 the Supreme People's Court issued

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<sup>13</sup> See Creemers, *supra* note 6, at 9 (describing the economic objectives of an accompanying SCS document).

<sup>14</sup> See *id.* at 11 (detailing further the evolution of the social credit system) In 2007, the Zhejiang province launched a program that expanded the definition of "credit" from the market economy to include sincerity of civil servants. *Id.* In 2010, the Suining province introduced a "mass credit" program that measured and scored individual conduct. *Id.* at 7 (explaining how individuals could have points added or deducted, how they were ranked, and the impact of those rankings). See also Simina Mistreanu, *Life Inside China's Social Credit Laboratory*, FOREIGN POL'Y (Apr. 2018), archived at <https://perma.cc/9Z3Q-X294> (articulating Rongcheng's approach to a social credit system).

<sup>15</sup> See Creemers *supra* note 6, at 11 (further expanding on origins of social credit system). See also Larry Cata Backer, *Next Generation Law: Data-Driven Governance and Accountability-Based Regulatory Systems in the West, and Social Credit Regimes in China*, 28 S. CAL. INTERDISC. L.J. 123, 132 (2018) (claiming that leaders' frustration in trying to solve recurring problems involving breaches of trust such as food poisonings, chemical spills, fraud, and academic dishonesty contributed to the development of the SCS).

<sup>16</sup> See Creemers *supra* note 6, at 12 (explaining how this policy shift greatly affected the conception of the SCS).

<sup>17</sup> See *id.* at 14 (stating how The Joint Punishment System, a major program in the 2014 Social Credit Plan, originated in the 2012 revision of the Civil Litigation Law). See *Civil Procedure Law of the People's Republic of China*, CHINA INT'L COM. CT. (July 29, 2017), archived at <https://perma.cc/5VNC-PEM3>.

Where any person fails to perform the obligation specified in the legal documentation, the people's court may take steps towards or seek the assistance of his employer in the imposition of restrictions on him leaving the country, record in the public credit system or publicize through the media the fact that he has failed to perform his obligation, or adopt other measures provided by the law.

*Id.*

<sup>18</sup> See Creemers, *supra* note 6, at 14 (stating ramifications under the 2012 revision of not carrying out legal obligations from a court judgement).

regulations concerning Publishing Name List Information, which provided more detailed regulations for a comprehensive blacklist.<sup>19</sup>

In 2014, the present-day SCS was defined in the Planning Outline for Construction of the Social Credit System.<sup>20</sup> The plan is divided into two main components – first, creating a dataset by integrating currently disconnected data held by government and non-government entities; and second, implementing a “carrots and sticks” system to increase the sincerity of individuals and organizations.<sup>21</sup> The timetable through 2020 provided for the realization of several major objectives.<sup>22</sup> The first objective was to create the legal and regulatory framework for the SCS.<sup>23</sup> The second objective was to build infrastructure for credit investigation and oversight.<sup>24</sup> The third objective was to foster a flourishing market built on credit services.<sup>25</sup> The final objective was to complete the mechanisms for incentives and punishments.<sup>26</sup>

A follow-up to the 2014 Planning Outline came in the 2016 Memorandum of Understanding (MOU) regarding the Joint Punishment System, which listed restrictions for individuals and businesses.<sup>27</sup> These restrictions impact individuals’ access to economic opportunities, their ability to receive government subsidies, their eligibility to serve in senior positions in certain organizations, their eligibility for honorary titles, and their ability to purchase real

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<sup>19</sup> *See id.* (detailing the 2013 Supreme People’s Court’s blacklist system). Under the regulations, anyone who was capable of fulfilling a legal obligation and failed to do so was recorded on a blacklist which was published online and through mass media. *Id.* Additionally, government agencies, financial institutions, and credit agencies were required to extend penalties to those on the blacklist. *Id.*

<sup>20</sup> *See* Planning Outline for the Construction of the Social Credit System, 2014–20 (adopted by the State Council and effective on June 14, 2014).

<sup>21</sup> *See* Chorzempa, *supra* note 10 (detailing the two main components of the 2014 SCS).

<sup>22</sup> *See* Creemers, *supra* note 6, at 12 (outlining the five objectives of China’s plan for a social credit system).

<sup>23</sup> *See id.* (detailing the first of five objectives in a timetable for 2020).

<sup>24</sup> *See* Creemers, *supra* note 6, at 12 (explaining the second objective for China’s SCS plan).

<sup>25</sup> *See id.* (noting the third objective centers around credit services).

<sup>26</sup> *See id.* (articulating the intent to create incentives and punishment).

<sup>27</sup> *See id.* at 14–15 (describing the seven categories of restrictions for individuals and businesses).

estate.<sup>28</sup> Also issued in 2016, the Guiding Opinion from the Central Committee General Office and State Council General Office confirmed the MOU's substantive measures and provided more detailed procedural standards for the blacklist system.<sup>29</sup> It also broadly identified four priority areas of "serious trust-breaking behavior" – 1) behavior that seriously damages people's health, lives and security; 2) behavior that seriously damages the market order or fair competition and normal order in society; 3) refusal to fulfill legal obligations; and 4) refusal to fulfill national defense obligations.<sup>30</sup> At the end of 2017, the National Development & Reform Commission and the People's Bank of China selected "model cities" that had made large strides in the local implementation of a social credit system.<sup>31</sup> By mid-2018, forty municipal and provincial governments established pilot social credit systems.<sup>32</sup>

Currently, the consolidated national system that was envisioned does not seem to have materialized.<sup>33</sup> Instead, the SCS should be viewed as three fragmented initiatives comprised of national blacklists, social credit systems in pilot cities, and social credit systems employed by financial institutions.<sup>34</sup> Perhaps the most significant difference between government and commercial credit systems is that participation in government programs is mandatory, while individuals are permitted to opt-in or opt-out of the commercial systems.<sup>35</sup> Further, government programs are set up as a mechanism of social management by improving law enforcement and regulatory practices, whereas commercial programs function more as loyalty schemes with

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<sup>28</sup> See *id.* at 15 (listing some restrictions for blacklisted individuals including prohibition from booking first class travel, holidays, luxury items, and enrolling their children in fee-paying schools).

<sup>29</sup> See Chen et al., *supra* note 8, at 14 (noting that the Guiding Opinion encouraged local governments, social organizations and businesses to institute their own punishments and restrictions).

<sup>30</sup> See *id.* at 14–15 (identifies four priority areas of criteria for "serious trust-breaking criteria").

<sup>31</sup> See Creemers, *supra* note 6, at 18–19 (attempting to encourage successful social credit initiatives).

<sup>32</sup> See Kostka, *supra* note 13, at 1567 (explaining the rising popularity of social credit systems).

<sup>33</sup> See Daithí Mac Síthigh & Mathias Siems, *The Chinese Social Credit System: A Model for Other Countries?*, 82 MODERN L. REV. 1034, 1071 (Sept. 4, 2019) (detailing the reality of the envisioned rating system).

<sup>34</sup> See *id.* at 1048 (introducing an alternative perspective of SCS including three fragmented initiatives).

<sup>35</sup> See Yongxi Chen & Anne Sy Cheung, *The Transparent Self under Big Data Profiling: Privacy and Chinese Legislation on the Social Credit System*, 12 J. COMP. L. 356, 362 (2017) (explaining the difference between government and commercial systems).

benefits for participants.<sup>36</sup> This paper focuses primarily on the government-run program and considers the implications of a centralized SCS, but touches on important aspects of provincial and commercial programs as well.<sup>37</sup>

### B. Purpose and Function of the Social Credit System

In establishing the SCS, Chinese leaders sought to develop a national reputation system that would “allow the trustworthy to roam everywhere under heaven while making it hard for the discredited to take a single step.”<sup>38</sup> To do so, the program utilizes a rating system to assess the trustworthiness of citizens in keeping their promises and complying with legal rules, moral norms, and professional and ethical standards.<sup>39</sup> The SCS rates both individuals and entities, including foreign workers and companies in China, and possibly even Chinese citizens overseas regardless of their place of residence.<sup>40</sup> In pursuit of this goal, the system focuses on four areas – 1) sincerity in government affairs; 2) commercial sincerity; 3) societal sincerity; and 4) judicial credibility.<sup>41</sup>

For the SCS to work, the first step is to ensure that everyone – individuals and organizations – can be identified.<sup>42</sup> To accomplish

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<sup>36</sup> See Kostka, *supra* note 13 at 1566 (discussing similarities and differences between government-led and commercial-led SCS pilot systems).

<sup>37</sup> See Chen & Cheung, *supra* note 35, at 362 (explaining how the government system’s sanctions differ from the commercial systems); Kostka, *supra* note 13, at 1566 (articulating distinctions between two forms of SCS).

<sup>38</sup> See Engelmann et al., *Clear Sanctions, Vague Rewards: How China’s Social Credit System Currently Defines “Good” and “Bad” Behavior*, Conference on Fairness, Accountability, and Transparency 2019: Association for Computing Machinery (Jan. 2019), archived at <https://perma.cc/D4FD-TSRT> (quoting how the Chinese government views the goals of the social credit system).

<sup>39</sup> See Chen & Cheung, *supra* note 35, at 356 (discussing national implementation of social credit system).

<sup>40</sup> See *id.* (giving a broad overview of the social credit system’s functionalities).

<sup>41</sup> See Backer, *supra* note 16, at 131 (noting that the social credit program focuses on “sincerity in government affairs,” “commercial sincerity,” “societal sincerity,” and “judicial credibility”); Chen et al., *supra* note 8, at 9 (reiterating the government’s plan for regulating every citizens’ social life related to governance, business, society, and the judiciary). See also Engelmann et al., *supra* note 38, at 3 (noting that while the system is focused on improving honesty and sincerity, it is also expected to boost the domestic economy by allowing unbanked citizens without financial history to have access to credit and investment opportunities).

<sup>42</sup> See Creemers, *supra* note 6, at 20 (noting the importance of having a system of identification).

this, the “uniform social credit code” was established and provides unique identifiers and real name registration systems for digital platforms so that the government can connect data to individuals and businesses.<sup>43</sup> The legal basis for this arrangement can be found in the 2003 Identity Card Law, which mandates that individuals be assigned identity cards with a unique lifelong identifying number.<sup>44</sup> Additionally, the administrative “Five Licenses into One” regulation required the administrative, tax, organizational, social security, and statistics registration numbers of corporations be combined so that each entity has a single identifying number.<sup>45</sup>

The next step is to aggregate political, administrative, commercial, social and judicial scores into a single score.<sup>46</sup> The most common form of collection is the transfer of records generated by “various responsible agencies” to dedicated information systems.<sup>47</sup> The scope and categories of the information collected is determined by local governments, with most prohibiting the collection of certain sensitive personal data and some permitting the collection of data from non-state service credit providers, industry associations, media, or other members of the public.<sup>48</sup> An aspect of this system that raises privacy concerns is that consent to the collection of information is not required.<sup>49</sup> In some jurisdictions, individuals are entitled to access their data and dispute inaccuracies.<sup>50</sup>

Once the information is collected, it is published on the national Credit China site or other provincial sites like Credit China

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<sup>43</sup> See *id.* at 21 (noting that the SCS provides unique 18-digit code for registration).

<sup>44</sup> See *id.* at 20 (explaining the 2003 Identity Card Law).

<sup>45</sup> See *id.* at 21 (noting various administrations and organizations were consolidated under one license number).

<sup>46</sup> See Chen & Cheung, *supra* note 35, at 358, 365–66 (noting the system aggregating political, administrative, commercial, social and judicial scores); John Weaver, *Everything is Not Terminator: Is China’s Social Credit System the Future?*, 2 J. ROBOTICS, A.I. & L. 445, 445 (2019) (noting that municipalities rely on individual personal data to create a unified social score).

<sup>47</sup> See Chen & Cheung, *supra* note 35, at 365 (articulating that most local legislation does not require individuals be notified about the transfer of their information to these information platforms).

<sup>48</sup> See *id.* (dividing public credit information into two major categories: 1) individual identity information, and 2) credit records generated by government agencies in the course of exercising administrative powers or providing public services).

<sup>49</sup> See *id.* (describing that government agencies do not need to obtain consent of data subjects to collect PCI).

<sup>50</sup> See *id.* at 373 (recognizing a new trend in local legislation providing individuals with the right to access their own PCI data, and dispute PCI data they deem to be inaccurate).

(Beijing).<sup>51</sup> The publication of information is done to effectuate “social discipline” and “market discipline.”<sup>52</sup> Individuals can be placed on either a Blacklist or a Redlist – the former is for individuals that engaged in “bad” behavior and the latter praises those for “good” behavior.<sup>53</sup> The consequences of being placed on a blacklist can include being prohibited from air or train travel, banned from certain holidays and hotels, banned from enrolling in the best schools, and having your dog removed.<sup>54</sup> On the other hand, inclusion on the Redlist leads to benefits such as expedited travel applications, boosted profiles on dating sites, discounts on bills, better interest rates, and rent without deposits.<sup>55</sup> Prior to being entered on a blacklist, notice must be given to the individual.<sup>56</sup> Upon fulfillment of the legal obligation related to the placement on the blacklist, the individual’s information and associated penalties must be removed within three days.<sup>57</sup>

In a paper published in 2019, researchers conducted an analysis of two information platforms – Credit China and Credit China (Beijing).<sup>58</sup> The Credit China (Beijing) site contains three publicly accessible databases with information on “bad” behavior – the Blacklist, Special Attention List, and Administrative Punishment list.<sup>59</sup> The Blacklist contains sixteen subcategories for bad behavior and published full names and explanations for the individual’s

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<sup>51</sup> See *id.* at 362 (noting where collected information is published, such as Credit China website and other major news websites).

<sup>52</sup> See *id.* at 370 (explaining social discipline is achieved through public criticism and moral pressure, while market discipline includes restrictive measures and discriminatory treatment by industry associations and businesses).

<sup>53</sup> See Chen & Cheung, *supra* note 35, at 370 (delineating what behavior qualifies a person to be on either list).

<sup>54</sup> See Alexandra Ma, *China has started ranking citizens with a creepy ‘social credit’ system — here’s what you can do wrong, and the embarrassing, demeaning ways they can punish you*, BUS. INSIDER (Oct. 29, 2018), archived at <https://perma.cc/H9SZ-9876> (detailing how individuals placed on the blacklist for bad behavior are restricted in their daily lives).

<sup>55</sup> See *id.* (dictating the benefits of being on the Redlist and deemed a good citizen).

<sup>56</sup> See Creemers, *supra* note 6 (specifying prior warning requirement for being put on a blacklist and right to appeal).

<sup>57</sup> See *id.* (outlining the requirement that when an individual on the blacklist completes their legal obligations, a court must remove them from the system within three days). All other bodies that imposed restrictions on the blacklisted individual are also required to “promptly” remove the individual’s information. *Id.*

<sup>58</sup> See generally Engelmann et al., *supra* note 38 (analyzing methods of placement based on behavioral records and reports).

<sup>59</sup> See *id.* (listing publicly accessible databases with bad behavior information on Credit China (Beijing) platform).

punishments.<sup>60</sup> As far as the Credit China (Beijing) Redlist, the site includes twenty-four categories – three for individuals and twenty-one for corporations.<sup>61</sup> In contrast to the entries on the site’s Blacklist, those analyzed from the Redlist did not include justifications as to why an honorary title was given.<sup>62</sup> Credit China reports good behavior as “Stories of Integrity” and describes how the individual or entity sacrificed their own self-interest for the common good.<sup>63</sup> In addressing the information asymmetries between the Blacklists and Redlists, the authors of this paper posit two explanations.<sup>64</sup> First, there may be an economic motivation behind limiting the information on Redlists.<sup>65</sup> Because there are only finite resources to be used as rewards, providing details on how to win them could lead to distribution problems.<sup>66</sup> On the other hand, information can be more freely shared on Blacklists because an infinite amount of people can be excluded from receiving such rewards.<sup>67</sup> Second, because much of the information on Blacklists comes from records that are already in existence, it is objectively easier to publish.<sup>68</sup>

A discussion of how the SCS functions would not be complete without addressing the use of various technological tools to facilitate

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<sup>60</sup> *See id.* (describing organization of entries on the Redlist).

<sup>61</sup> *See id.* (identifying the individual categories as “Taxi Star,” “Top 10 Tour Guides,” and “Five-Star Volunteer” while the categories for corporations referred to honorable statuses such as “Harmonious Labor Relations,” or “Excellent Contributor to Developing Chinese Socialism”).

<sup>62</sup> *See id.* (explaining that there is not a specific justification for why honorary titles are given).

<sup>63</sup> *See id.* (detailing that individuals who sacrifice their own “self-interest for the common good” are rewarded with good social credit).

<sup>64</sup> *See* Engelmann et al., *supra* note 38 (finding differences between blacklist and Redlist data sets). Blacklist entries are transparent and have explanations for why companies are registered. *Id.* Redlist entries provide no reasoning for why companies are registered. *Id.*

<sup>65</sup> *See id.* (describing economic motivations behind Redlist information limits). *See also* Nicola Jentzch et al., *Study on Monetising Privacy: An Economic Model for Pricing Personal Information 1* EUR. NETWORK & INFO. SEC. AGENCY (2012), archived at <http://perma.cc/V3LJ-3424> (highlighting the correlation between individual privacy concerns and monetary transactions).

<sup>66</sup> *See id.* (depicting that such a detailed list of instructions could in fact cause distribution problems if many people got ahold of them). “On the other hand, another explanation for the current informational asymmetries of the SCS might be that already existing records of legal offenses were used to start filing blacklists.” *Id.*

<sup>67</sup> *See* Engelmann et al., *supra* note 38 (explaining that infinite amounts of people can be excluded through the Blacklist).

<sup>68</sup> *See id.* (stating that the Blacklist was created using previously existing legal records).

the program.<sup>69</sup> China has a reputation for intensive state surveillance of its citizens using methods like CCTV, internet censorship, and big data analytics.<sup>70</sup> The most well-known surveillance tool at the State's disposal is its network of 626 million facial recognition cameras, which allow the government to identify and track individuals through the use of facial recognition.<sup>71</sup> It has been suggested that the SCS is subtler than traditional surveillance tools because it "embeds political goals with algorithms."<sup>72</sup> To store and analyze the information collected, China is building at least five data platforms.<sup>73</sup> These platforms are required to exchange data with each other in order to support the overall objective of constructing a centralized infrastructure to support the SCS.<sup>74</sup>

As mentioned previously, the SCS is not a consolidated system.<sup>75</sup> In regard to the operations of provincial social credit programs, the best example can be found in the program established in Rongcheng in 2013.<sup>76</sup> Under this scheme, individuals start with one

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<sup>69</sup> See *id.* (proposing that SCS technologies and metrics are not released in order to promote behavioral engineering goals).

<sup>70</sup> See Fan Liang et al., *Constructing a Data-Driven Society: China's Social Credit System as a State Surveillance Infrastructure*, 10 POLICY & INTERNET 1, 6 (2018) (outlining Chinese state-surveillance methods); see also Kenneth Roth, *Blindfold Big Brother: We Need a Global Right to Privacy in Public Spaces*, HUMAN RIGHTS WATCH (June 16, 2019), archived at <https://perma.cc/GN4N-JPDL> (providing additional information on Chinese state-surveillance methods).

<sup>71</sup> See Lauren Dudley, *China's Ubiquitous Facial Recognition Tech Sparks Privacy Backlash*, THE DIPLOMAT (Mar. 7, 2020), archived at <https://perma.cc/3PJY-SLGK> (describing Chinese state-sponsored facial recognition system).

<sup>72</sup> See Liang et al., *supra* note 70, at 421 (arguing that ownership of data determines the distribution of power, so it is vital that any data collected by local governments or private companies be shared with the central government).

<sup>73</sup> See *id.* at 431 (listing these centralized data platforms as NCISP, Credit China, Credit Reference Center, National Enterprise Credit Information Publicity System, and List of Dishonest Persons Subject to Enforcement).

<sup>74</sup> See *id.* at 431–32 (stating that "both financial and non-financial data collected by multi-sector actors will be integrated by central government to serve as a centralized data infrastructure.").

<sup>75</sup> See *id.* at 432 (that the SCS is not simply a political surveillance and control system, but rather a comprehensive infrastructure that is upgrading government's ability to surveil all facets of society).

<sup>76</sup> See Mistreanu, *supra* note 14, at 3 (illustrating Rongcheng's success by devising 1,000 points to each of its 740,000 adult residents).

thousand points and hold a grade from A+++ to D.<sup>77</sup> Individuals can only lose points if the deduction can be “backed by official facts with official documents,” generally resulting in deductions only for breaking the law.<sup>78</sup> In regard to the commercial social credit systems, the most notable example is Sesame Credit, which was launched by Alibaba in 2015.<sup>79</sup> This program functions as an internal rating system based on the spending habits of Alipay users.<sup>80</sup> A concern raised as to the fairness of this system arises from the fact that credit scores are affected not only by the spending and lending habits of the user, but also by what the money is being spent on and the spending and lending habits of the user’s friends.<sup>81</sup> The Sesame score has significance outside the context of the company, as it affects screenings at the airport, insurance premiums, the ability to adopt a pet from a shelter, and even placement of profiles on online dating platforms.<sup>82</sup>

Remarkably, and perhaps shocking to those from Western countries, a majority of Chinese citizens seem to be supportive of the SCS.<sup>83</sup> In a 2019 study based on a survey of Chinese citizens, 80% of

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<sup>77</sup> *See id.* (describing the point system, wherein score brackets reflect ratings between A+++ to D).

<sup>78</sup> *See id.* (noting that factors influencing ratings are backed by official documents to regulate legality). Because official documents are required to support rating changes, most adjustments are attributed to illegal activity, such as drunk driving. *Id.*

<sup>79</sup> *See* Chen & Cheung, *supra* note 35, at 369 (delineating Sesame Credit as a branch of Alibaba, China’s largest e-commerce platform). Sesame Credit established Alibaba, the internal rating system, in 2015. *Id.* at 361.

<sup>80</sup> *See id.* at 369 (explaining Sesame Credit’s system as making credit scores available to Sesame subscribers who allow Sesame to access their personal information).

<sup>81</sup> *See id.* at 361 (expounding on concerns relative to Sesame Credit’s system, which bases scoring on more than spending habits). The internal rating system bases the credit score off personal spending, what the money is being spent on, money lent to others, and how their peers spend money. *Id.* *See also* Adam Epstein, *Facebook’s new patent lets lenders reject a loan based on your friends’ credit scores—but don’t freak out*, QUARTZ (Aug. 5, 2015), archived at <https://perma.cc/2RRA-3FR4> (describing a new patent obtained by Facebook that allows creditors to review the credit scores of people within your social network and make a determination about your credit-worthiness).

<sup>82</sup> *See id.* at 361–62 (accentuating the influence of Sesame Credit on everyday life, including level of airport security or candidacy for pet adoption). While some enjoy the intricacies of Sesame Credit, others do not have a choice whether to participate. *Id.*

<sup>83</sup> *See generally* Xinyuan Wang, *Hundreds of Chinese citizens feel just fine about the controversial social credit system*, PRI (Dec. 19, 2019), archived at <https://perma.cc/SKC2-49ZN> (explaining that Chinese citizens are shockingly supportive of the Social Credit system and are not shy to share their opinion on political views); Chorzempa et al., *supra* note 9, at 7 (explaining that public debate on the Social Credit System has been mostly positive or neutral).

respondents either somewhat or strongly approved of the Social Credit System, while only 1% reported strong or somewhat disapproval.<sup>84</sup> Respondents indicated that they do not perceive the program as an instrument of surveillance, but rather as an instrument to improve quality of life and close institutional and regulatory gaps.<sup>85</sup> In analyzing the results of the survey, the author noted that it is important to acknowledge that the results could have been affected by China's authoritarian nature.<sup>86</sup> However, the survey results do align with the claims that Chinese citizens are in favor of the program as it is a strong method for addressing the "crisis of trust" and holding people accountable for their actions.<sup>87</sup> It is worth recognizing that the SCS has consistently received favorable coverage by domestic media and is hailed as a "cure all for social and economic problems."<sup>88</sup>

### III. The Social Credit System and China's Legal Framework

The primary legal basis for the establishment and operation of the SCS is the Notice Concerning Issuance of the Planning Outline for the Construction of a Social Credit System as discussed in Part II.<sup>89</sup> Another piece of legislation that is key to the analysis of the SCS is the Constitution of the People's Republic of China.<sup>90</sup> Because Chinese

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<sup>84</sup> See Kostka, *supra* note 12, at 1573, 1584 (indicating that the results were somewhat surprising as the author expected younger, better-educated, coastal urban residents to be more skeptical of the Social Credit System, whereas the results show that while younger respondents are less approving, better-educated and wealthier respondents do approve).

<sup>85</sup> See *id.* at 1585 (discussing that survey findings portray that Chinese citizens find that the Social Credit System is an improvement to the quality of life).

<sup>86</sup> See *id.* at 1586 (explaining that the authoritarian nature of China's government could have had an effect on the results of the survey).

<sup>87</sup> See *id.* at 1587 (stating "[o]ur finding that respondents associated SCSs with the functions "improve accountability and honesty" and "abide by regulations" suggests that SCSs are also perceived as useful tools that help to increase trust in society and close particular institutional and regulatory gaps").

<sup>88</sup> See Engelmann et al., *supra* note 38, at 4 (noting the media's identification of the SCS as a "cure for all social and economic problems"); Chen et al., *supra* note 8, at 28 (explaining that Chinese media portrays the Social Credit System positively and in low-trust society, favorable coverage is enjoyed).

<sup>89</sup> See Creemers *supra* note 6, at 12 (explaining the overall construction of the Social Credit System is done through a Planning Outline). The Planning Outline combines economic aspects of credit with the objective to bolster social amicability and government regulation. *Id.*

<sup>90</sup> See CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA (Dec. 4, 1982), art. 6 (establishing socialist economic system and foundation of public ownership).

data privacy laws are drafted in response to specific problems, the laws are fragmented and don't provide as much protection as an interconnected structure would.<sup>91</sup> With that being said, the law that requires inclusion in the discussion of the SCS is the 2016 Cybersecurity Law.<sup>92</sup> Finally, the Regulation on Open Government is relevant as it dictates how individuals can access personal information held by the government that may be used in the SCS.<sup>93</sup>

Under the Constitution, all Chinese citizens are provided certain rights and protections. Article 35 guarantees the freedom of speech, press, association and assembly.<sup>94</sup> Article 37 states that “[t]he freedom of person . . . is inviolable.”<sup>95</sup> This means that citizens may only be arrested with the approval or by decision of a procuratorate or court and arrests must be carried out by a public organ.<sup>96</sup> Article 38 prohibits “insult, libel, false charge or frame-up directed against citizens.”<sup>97</sup> Article 40 guarantees the freedom and privacy of correspondence.<sup>98</sup> However, it also provides that public security or procuratorial bodies may infringe upon this right and censor correspondence in cases necessary for state security or during the investigation of criminal offenses.<sup>99</sup> Article 41 provides that Chinese citizens have the right to “criticize and make suggestions to any state organ.”<sup>100</sup> Any citizen can make a complaint or charge against a state organ, but fabrication or distortion of facts is prohibited.<sup>101</sup> Chinese

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<sup>91</sup> See Síthigh & Siems, *supra* note 33, at 25 (explaining that China has taken a reactionary approach rather than creating an overarching framework).

<sup>92</sup> See Rogier Creemers et al., *Translation: Cybersecurity Law of the People's Republic of China* [Effective June 1, 2017], NEW AMERICA (June 29, 2018), archived at <https://perma.cc/7W3F-UBCQ> (implementing standards for cybersecurity).

<sup>93</sup> See REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON OPEN GOVERNMENT INFORMATION, art. 17, (2007) (Jamie P. Horsley trans., 2007) (explaining requirement for government to disclose personal information that it has collected).

<sup>94</sup> See CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA, art. 35 (1982) (outlining rights and protections of citizens).

<sup>95</sup> See *id.* (stating freedom of person of citizens in People's Republic of China).

<sup>96</sup> See *id.* (explaining scope of protection).

<sup>97</sup> See *id.* at art. 38 (noting protection of personal dignity).

<sup>98</sup> See *id.* at art. 40 (explaining citizens' freedom and privacy of correspondence).

<sup>99</sup> See *id.* (describing limitations of protection for cases of state security or criminal investigations).

<sup>100</sup> See CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA, art. 41 (1982) (listing citizens' right to criticize and make suggestions).

<sup>101</sup> See *id.* (delineating prohibition of fabrication or distortion of facts in complaints or charges).

citizens who bring complaints are protected from retaliation and no one may suppress any charges.<sup>102</sup>

In addition to the basic rights set forth in the Constitution, the Cybersecurity Law sets out additional requirements and protections.<sup>103</sup> One such requirement under Article 37 is that any personal information and important data collected and generated by critical information infrastructure operators in China must be stored domestically.<sup>104</sup> Article 41 requires Network Operators obtain consent before collecting personal data and further states that any collection must be related to its services.<sup>105</sup> Additionally, the Network Operator must explicitly state the purpose, means and scope of the collection and use of personal data.<sup>106</sup> Article 42 prevents the disclosure, tampering with or destruction of collected personal information by Network Operators.<sup>107</sup> Chinese citizens have a right to request the deletion of their personal information if a Network Operator violates the provisions of the Cybersecurity Law.<sup>108</sup> Lastly, Articles 46 and 47 require Network Operators monitor the content posted by users, remove “unlawful” content, and report unlawful content to authorities.<sup>109</sup>

Finally, the Regulation on Open Government Information (“ROGI”) is a necessary piece of the legislative puzzle as it deals with the government’s handling of personal information.<sup>110</sup> Under Article 13, citizens have a general right to request the disclosure of

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<sup>102</sup> See *id.* (explaining anti-retaliation policy for citizens who chose to bring complaints).

<sup>103</sup> See generally Creemers et al., *supra* note 92 (providing a translation of the additional requirements and protections set forth by the Cybersecurity Law).

<sup>104</sup> See *id.* (outlining Article 37 which states that personal information or data that is collected or created in the mainland of China must store it within mainland China).

<sup>105</sup> See Xiayon Zhang et al., CHINA’S CYBERSECURITY LAW 1 (2018), archived at <https://perma.cc/XAE7-VZT3> (defined Network Operators to include “owners, operators, and service providers of networks.”).

<sup>106</sup> See *id.* at 2 (defining what elements a “notice” must explicitly state).

<sup>107</sup> See *id.* (defining the purpose of Article 42 to protect the personal data of individuals from a data breach or tampering of personal information).

<sup>108</sup> See *id.* (defining the purpose of Article 43 as the right for citizens to delete or amend their personal data if a Network Provider violates the law).

<sup>109</sup> See *id.* (setting forth the requirements of Articles 46-47 that monitor published content, remove unlawful content, and report unlawful content to keep records).

<sup>110</sup> See Chen & Cheung, *supra* note 35, at 364 (stating that the legislative and administrative enactments of social credit data and ROGI have become the most important sources of law on information rights).

information held by government agencies.<sup>111</sup> However, this right is subject to exemptions and there is uncertainty over the scope of the information that is actually accessible.<sup>112</sup> Article 25 guarantees individuals' access to government information about themselves and permits the request of corrections if information is not recorded accurately.<sup>113</sup>

The current implementation of the SCS seems to contradict the rights and freedoms guaranteed by the above pieces of legislation.<sup>114</sup> Specifically, there is ample opportunity for violations of freedom of speech, freedom of person, freedom and privacy of correspondence, and the right to criticize the government.<sup>115</sup> Because the intention is to rate citizens on a variety of behaviors like online speech and spending habits, individuals will likely be limited in their ability to act as they ordinarily would for fear of reprisals.<sup>116</sup> Internet sites with comments sections are required to keep blacklists of people who make "illegal" statements.<sup>117</sup> However, there is a lack of clarity as to what would constitute an illegal statement and there is a plethora of stories recounting the punishment of activists based on comments they have made that are not aligned with the CCP.<sup>118</sup> In practice this means that there really is no freedom of speech, as anyone could be punished based on the subjective determination of a government official that an

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<sup>111</sup> See *id.* at 365 (stipulating that Article 13 of the RACII requests consent of the subject of information, unless for information which should be disclosed for administrative regulations).

<sup>112</sup> See *id.* at 374 (describing how ambiguity arises when the scope of information extends beyond the categories in the article).

<sup>113</sup> See *id.* (explaining that Article 25 of ROGI guarantees access to information including tax and administrative fee payments, social security and medical care information).

<sup>114</sup> See Mistreanu *supra* note 14, at 2 (explaining that there is fear the SCS will tighten China's already scant freedoms).

<sup>115</sup> See Vrinda Vinayak, The Human Rights Implications of China's Social Credit System, OXFORD HUMAN RIGHTS HUB (Sept. 6, 2019), *archived at* <https://perma.cc/H2CE-L6GP> (explaining how the SCS infringes on rights such as privacy and speech).

<sup>116</sup> See Daithí Mac Síthigh & Mathias Siems, *The Chinese Social Credit System: A Model for Other Countries?*, 82 MOD. L. REV. 1034, 1035 (2019) (discussing the rating system where each citizen is given a score determinant of their lives). See also John Harris, *The tyranny of algorithms is part of our lives: soon they could rate everything we do*, THE GUARDIAN (Mar. 5, 2018), *archived at* <https://perma.cc/HR6N-LN9N> (highlighting that the credit system will apply to ordinary individuals and their everyday behavior).

<sup>117</sup> See Chorzempa et al., *supra* note 9, at 5 (explaining that internet sites with commentary features are supposed to keep blacklists of those users who make "illegal" statements on their website).

<sup>118</sup> See Mistreanu, *supra* note 14, at 10 (explaining that a journalist was placed on a blacklist after publishing an article alleging someone was an extortionist).

individual's statement somehow falls into the realm of being "illegal."<sup>119</sup> People will be forced to be more cautious than ever before or risk being identified as a dissident and subjected to multifaceted punishments.<sup>120</sup> That being said, the SCS could be viewed as another tool used by the government to surveil and suppress Chinese citizens.<sup>121</sup>

Additionally, while the Cybersecurity Law is touted as a piece of legislation that protects online data, there are some requirements that could result in further crackdowns on free speech and privacy.<sup>122</sup> The fact that Network Operators are required to monitor, remove, and report "unlawful" user content seems to suggest that users do not have the privacy or anonymity that many people expect online.<sup>123</sup> The constitutional guarantee of freedom and privacy of correspondence thus seems nonexistent.<sup>124</sup> It is also important to note that this law protects only against private actions, not those of the government.<sup>125</sup> Finally, the "data localization" requirement has been seen by many as yet another way to reinforce the government's oversight of online activities.<sup>126</sup>

Although the ROGI provides an avenue for Chinese citizens to gain access to and correct personal information being held by the government, in practice an individual's ability to accomplish either of these things is limited.<sup>127</sup> Under the ROGI "government information"

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<sup>119</sup> See *id.* (explaining concerns about people becoming more cautious as a result of dissidents receiving multifaceted punishments).

<sup>120</sup> See Mistreanu, *supra* note 14, at 10 (maintaining that individuals fear the "multifaceted punishments" that they are subject to).

<sup>121</sup> See *id.* (explaining that the Chinese Government is inclined to use high tech to monitor its citizens).

<sup>122</sup> See Zhang et al., *supra* note 105, at 2 (explaining the purpose of Cybersecurity law to protect online data).

<sup>123</sup> See *id.* (setting forth the requirements of Articles 46-47 that monitor published content, remove unlawful content, and report unlawful content to keep records).

<sup>124</sup> See Chen et al., *supra* note 7, at 27 (stating that the constitutional mandates regarding freedom and privacy made no difference until the Cybersecurity Law went into effect).

<sup>125</sup> See *id.* (emphasizing that the law protects against individuals and businesses from accessing personal information illegally, not the government).

<sup>126</sup> See *id.* (stating that data localization might be a way to offer security, but could also be used to reinforce the government's online surveillance of activists and dissidents).

<sup>127</sup> See REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON OPEN GOVERNMENT INFORMATION, art. 2, (2007) (Jamie P. Horsley trans., 2007) (outlining regulations of personal information regulated by the government).

is defined as information made or obtained by administrative agencies in the course of exercising their powers and recorded and stored in a given form.<sup>128</sup> However, courts have blocked access to information that would seemingly fall within this definition by referencing a provision in the 1991 Cadre Archives Regulations.<sup>129</sup> This provision states that “no one shall be allowed to consult or borrow the personal archives about himself or his intermediary relatives.”<sup>130</sup> Therefore, information that is found to constitute “personal archives” is exempt from the disclosure requirement.<sup>131</sup> Under the hierarchy of Chinese law, the ROGI would ordinarily supersede the Cadre Archives Regulations in the event of a conflict, but this has not been the reality.<sup>132</sup> This lends credence to the supposition that the Chinese government manipulates the legal system to allow for its control over its citizens and their information.<sup>133</sup>

Exacerbating the uneasiness surrounding the SCS are the limitations on actions that can be brought against public authorities under the Chinese legal system.<sup>134</sup> There is no set legal definition of “privacy,” meaning it is very difficult to challenge intrusive actions by the government.<sup>135</sup> In fact, the laws and policies that are in place seem to facilitate the government’s collection and control of personal data rather than deter it.<sup>136</sup> Therefore, the likelihood of an individual succeeding in an action against the government, or even bringing the

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<sup>128</sup> See *id.* (defining government information).

<sup>129</sup> See ‘Xiemou su rugaoshi jiaoyuju’ (Xie v. Education Bureau of Rugao City), People’s Ct. of Rugao City (2011) (showcasing an example of a case where the Cadre Archives Regulation was used as a way to prevent an individual from accessing information relating to his dismissal from his job).

<sup>130</sup> See Art. 31(5), ‘Ganbu dangan gongzuo tiaoli’ (Cadre Archives Regulations) (adopted by the Organization Department of CCP Central Committee & State Archives Administration on April 2, 1991, effective April 2, 1991) (referencing 1991 archive regulations in relation to personal information about relatives).

<sup>131</sup> See *id.* (indicating personal archives are exempt from disclosures).

<sup>132</sup> See Chen & Cheung, *supra* note 35, at 374–75 (explaining hierarchy of Chinese law).

<sup>133</sup> See REGULATIONS OF THE PEOPLE’S REPUBLIC OF CHINA ON OPEN GOVERNMENT INFORMATION, art. 2, (2007) (Jamie P. Horsley trans., 2007) (describing Chinese government manipulation over personal information); Chen & Cheung, *supra* note 35, at 374–75 (outlining Chinese government manipulation of legal system).

<sup>134</sup> See Sítigh & Siems, *supra* note 33, at 1058 (indicating limitations imposed under Chinese law).

<sup>135</sup> See Chen et al., *supra* note 7, at 27–28 (emphasizing that privacy is not defined in Chinese legislation).

<sup>136</sup> See *id.* (stating that Chinese laws do not deter governmental collection and control of personal data).

action in the first place, is probably very low.<sup>137</sup> Moreover, there is a general consensus that the judiciary does not operate independent of the CCP.<sup>138</sup> Because the SCS expands the scope of behavior that falls under government scrutiny beyond the existing legal system, the need for a strong judiciary as a check on government action is vital.<sup>139</sup> The lack of this weakens the integrity of the judicial system and further deteriorates the protections of Chinese citizens, leaving them at the mercy of governmental control.<sup>140</sup>

#### IV. The Social Credit System and International Human Rights Obligations

The most important piece of international human rights law is the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>141</sup> The inalienable rights most relevant to this discussion are: 1) protection against discrimination, 2) the right to freedom of opinion and expression, 3) the right to freedom of movement, and 4) the protection against

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<sup>137</sup> See *id.* (articulating the likelihood of success in an action against the government).

<sup>138</sup> See *id.* at 28 (clarifying that the judiciary and CCP do not operate independently).

<sup>139</sup> See *id.* (indicating need for judiciary check on government action).

<sup>140</sup> See Síthigh & Siems, *supra* note 33, at 1058 (emphasizing lack of protections for Chinese citizens); Chen & Cheung, *supra* note 35, at 374–75 (outlining lack of integrity in Chinese judicial system); Chen et al., *supra* note 7, at 27–28 (indicating difficulty in challenging governmental action).

<sup>141</sup> See Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR] (reaffirming the United Nation's faith in fundamental human rights).

It is essential to promote the development of friendly relations between nations, whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

*Id.* International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 [hereinafter ICCPR] (demonstrating that human beings can only enjoy civil and political freedom if they have civil and political rights). International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Exec. Doc. 95-2 993 U.N.T.S 171 [hereinafter ICESCR] (recognizing human rights in economic, social, and cultural realms).

arbitrary interference with one's privacy, family, home or correspondence.<sup>142</sup> The guarantee against discrimination requires that all people are treated equally and entitled to equal protection of the law.<sup>143</sup> The freedom of expression guarantees that everyone has the right to hold opinions without interference and may seek, receive, and impart information of all kinds through any media of his or her choice.<sup>144</sup> The right to freedom of movement states that all people shall have the liberty to move within their country and choose their place of residence.<sup>145</sup> Further, all people shall be permitted to leave any country, including their own.<sup>146</sup> Finally, the protection against arbitrary interference of one's privacy and correspondence dictates that everyone has the right to protection of the law against such

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<sup>142</sup> See UDHR Art. 7–19, *supra* note 141 (listing inalienable rights under the UDHR); see also ICCPR Art. 12–26, *supra* note 141 (enumerating crucial human rights as related to the social credit system). These rights are included under Articles 17, 18, 19, 24 and 26. ICCPR. See also *The Right to Privacy in the Digital Age*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (Oct. 20, 2020), archived at <https://perma.cc/KMA2-VCGF> (stressing the importance of protecting individual privacy and limiting surveillance in accordance with international human rights law).

<sup>143</sup> See UDHR Art. 2 (demonstrating the reach of the Declaration to all those protected under it regardless of “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”). The UDHR applies all rights equally. *Id.* ICCPR Art. 2 (delineating that those who the covenant protects may not have their inherent rights infringed upon regardless of social identity factors). “Each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” *Id.*

<sup>144</sup> See UDHR Art. 19, *supra* note 141 (articulating the right of all people to formulate their own opinions and expressions during the exchange of ideas); See ICCPR Art. 1 (protecting peoples’ ability to determine their own “economic, social and cultural rights indispensable for his dignity and the free development of his personality.”).

<sup>145</sup> See UDHR Art. 13, *supra* note 141 (expounding the right to move within one’s state and select a residence independently); see ICCPR Art. 12, *supra* note 141 (establishing the ability to move and freely select residence within one’s state when lawfully present).

<sup>146</sup> See UDHR Art. 13, *supra* note 141 (highlighting that people may leave their home country and return on their own volition). See UDHR Art. 14, *supra* note 141 (noting that in addition to capability to leave and return their home country, people may seek asylum in other countries to escape persecution). See ICCPR Art. 12, *supra* note 141 granting the right to leave any State, including their State of residence).

interference or attacks.<sup>147</sup> Restrictions of these rights are only permitted when necessary for the respect of others' rights or reputation, protection of national security or public order, or protection of public health or morals.<sup>148</sup>

Bearing in mind these universal rights, there has been much concern raised about China's SCS.<sup>149</sup> With China's reputation for strict regulation and suppression of political speech and other activities, one of the major concerns is that the SCS could be abused to further the government's social control of Chinese citizens.<sup>150</sup> Using the additional access under the SCS, the government could more easily identify and punish anyone that does not toe the party line.<sup>151</sup>

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<sup>147</sup> See UDHR Art. 12, *supra* note 141 (prohibiting arbitrary breaches of one's "privacy, family, home or correspondence, nor to attacks upon his honour and reputation."). See ICCPR Art. 17 *supra* note 141 (furthering the law's protection against arbitrary or unlawful interference). See generally EU General Data Protection Regulation 2016/679, 2016 O.J. (L 119) (describing the GDPR's protections for EU individuals and their data privacy).

<sup>148</sup> See UDHR Art. 29, *supra* note 141 (providing the guarantee of all rights and freedoms so long as they do not impede on morality and public order). See also ICCPR Art. 5, *supra* note 141 (requiring the establishment and maintenance of all enumerated rights so long as the State is protected by the Covenant). See also ICESCR Art. 8, *supra* note 141 (explaining that the right to form and join trade unions may only be infringed in the interest of national security, public order, or the preservation of other rights).

<sup>149</sup> See Cheng, *China is building a 'comprehensive system' for tracking companies' activities, report says*, CNBC (Sept. 3, 2019), archived at <https://perma.cc/E4D6-XEFM> (explaining that though the system is meant to create a transparent business environment, there are concerns about how the government might use the data, especially in light of escalating trade tensions with the U.S.). See also Chorzempa et al., *supra* note 9, at 5 (discussing possible implications of the system on freedom of speech, particularly, if a critical comment about the government would lower one's social credit score).

<sup>150</sup> See Chorzempa et al., *supra* note 9, at 1 (considering how China's record of regulating political speech and other activities suggests that the SCS could also be abused for social control, punishing those who don't toe the party line). See also *Limits on Freedom of Expression: China*, LIBRARY OF CONGRESS (July 24, 2020), archived at <https://perma.cc/M7H5-KWSH> (describing how China's Constitution declares freedom of speech for citizens, however, China actually aggressively restricts all media). The report describes China's government as "one of the world's most restrictive media environments and its most sophisticated system of censorship, particularly online." *Id.*

<sup>151</sup> See Chorzempa, *supra* note 9 (stating the ability for China to monitor and assess whether its citizens are following the SCS and determine whether or not punishment is appropriate for violating the SCS). See also Chen et al., *supra* note

Because there is no truly objective way to measure the trustworthiness of an individual or entity, everyone is subject to the whims and biases of government officials.<sup>152</sup> The problem of the CCP's increased power to punish those deemed to be in non-conformance with its rules is compounded when punishments doled out under the SCS are disproportional to the violation committed.<sup>153</sup> In some cases, consequences can be far-reaching and are not justifiably linked to the original infraction.<sup>154</sup> Further, some punishments actually violate the rights outlined above.<sup>155</sup> For example, banning an individual from traveling for what would ordinarily be considered a civil or minor

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7, at 29 (stating that “pocket crimes” – for example, “picking quarrels and provoking trouble” and “gathering a crowd to disturb order in a public place” are abused by the police to punish activists and dissidents). *See also* Christina Zhou & Bang Xiao, *China's Social Credit System is pegged to be fully operational by 2020—but what will it look like?* ABC NEWS (Jan. 1, 2020), archived at <https://perma.cc/F7EV-ENTS> (outlining the blacklist system implemented in China). The “Joint Punishment System,” China’s national blacklist system regulates its citizens by banning “aspects of their lives or operations.” *Id.* at 4. In order to promote “social stability,” individuals who violate the ideals of Chinese Communist Party will be placed on restrictions such as transportation bans and spending limits. *Id.*

<sup>152</sup> *See* Chen et al., *supra* note 7, at 34 (highlighting the proclivity for human bias in algorithms and statistics involved in decision making by China). *See also* Chorzempa et al., *supra* note 9, at 9 (emphasizing the possibility for such a powerful tool like SCS to be manipulated by individuals or a single government department). *See also* Jena Lynn, *The Chinese Social Credit System*, MEDIUM (Mar. 4, 2019), archived at <https://perma.cc/3S33-XS98> (arguing that the social credit system forces Chinese citizens to act according to the Chinese government’s wishes).

<sup>153</sup> *See also* Chorzempa et al., *supra* note 9, at 9 (explaining the extreme consequences for what may appear to be a small infraction). *See also* Christina Zhou & Bang Xiao, *supra* note 151 (analyzing the different infractions and level of consequences). For example, a person who has jaywalked five times in a year, “will be categorized as discredited individuals, reported Chinese state media, which also added that “public governance should prioritize problem-solving at the root cause rather than strict punishment.” *Id.* at 7. *See also* Charlie Campbell, *How China is Using “Social Credit Scores” to Renew and Punish Its Citizens*, TIME (Oct. 13, 2020), archived at <https://perma.cc/LH8T-PSFG>. *See* Chen et al., *supra* note 7, at 29 (describing how citizens of the Communist Party of China are being punished for minor infractions).

<sup>154</sup> *See* Chen et al., *supra* note 7, at 30 (providing examples of infractions and consequences). *See also* Chorzempa et al., *supra* note 9, at 2 (suggesting that those with transgressions like failure to comply with traffic judgements or violating traffic laws face harsh penalties, blocking them from various services). *See also* Christina Zhou & Bang Xiao, *supra* note 151 (revealing that failure to comply with a law in one jurisdiction can impose restrictions in other, unrelated, aspects of their lives). “[I]f trust is broken in one place, restrictions imposed everywhere.” *Id.*

<sup>155</sup> *See* Chen et al., *supra* note 7, at 30 (commenting how some punishments violate certain rights).

criminal violation intrudes upon one's freedom of movement.<sup>156</sup> This becomes an issue that extends past the imposition of the penalty itself, as expansive punishments have been shown to hamper upward mobility and social integration, creating a *de facto* lower social class.<sup>157</sup>

In addition to the punishments themselves being disproportionate, the system itself could operate as a tool for discrimination against particular groups.<sup>158</sup> China is well-known for its use of technology to monitor and even oppress certain social groups.<sup>159</sup> For example, the Uyghurs in Xinjiang have been under expansive surveillance by the government, which utilizes an extensive network of facial recognition cameras and gathers individuals' biometric data.<sup>160</sup> Because this group is subject to such high scrutiny, the probability that they will be found to have committed "bad" behavior is much more likely than individuals in other groups.<sup>161</sup> In addition to this government-sanctioned discrimination, the SCS also poses the risk of discrimination by other members of society.<sup>162</sup> When people determine certain online interactions are detrimental to them in some way, they are likely to eliminate that harmful link while also

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<sup>156</sup> See *id.* (noting that physical mobility can be restricted in terms of traveling).

<sup>157</sup> See *id.* (explaining that the lower social class would be identified as an unwelcome group that is excluded from many public spheres).

<sup>158</sup> See Sithigh & Siems, *supra* note 33, at 1056 (stating that the reliance on rating and reputation may have this effect, but that there is also an argument that such a system could actually displace discrimination).

<sup>159</sup> See Kenneth Roth, *Blindfold Big Brother: We Need a Global Right to Privacy in Public Spaces*, HUMAN RIGHTS WATCH (June 16, 2019), archived at <https://perma.cc/Q8KM-D2RW> (highlighting the government's use of technology to monitor and suppress citizens).

<sup>160</sup> See Chen et al., *supra* note 7, at 31 (describing the strict surveillance the Uyghurs are under); see also Kenneth Roth, *supra* note 159 (noting that surveillance cameras are all over China). These cameras use facial recognition data as well as object recognition data. Kenneth Roth, *supra* note 159.

<sup>161</sup> See Chen et al., *supra* note 7, at 31 (recognizing that the higher level of scrutiny will result in more faults found).

<sup>162</sup> See Chen et al., *supra* note 7, at 31 (postulating that if data colored by discrimination shapes the automated decision making process of SCS, then hidden social discrimination may permeate through Chinese society). See also Nicole Kobie, *The complicated truth about China's social credit system*, WIRED (June 7, 2019), archived at <https://perma.cc/ZC9Y-BR72> (explaining that the Northwest of China has become the test site for the social credit system where the minority Uighur population have been subjected to increased surveillance and discrimination).

seeking to strengthen beneficial ties.<sup>163</sup> This leads to an “online social cleanup,” which can then become social polarization wherein disadvantaged groups are prevented from interacting with those in more powerful social groups.<sup>164</sup> However, this segregation does not stop online. Studies have shown that there is a link between online and offline socialization, meaning that when someone sanitizes their online contacts, they are likely to do the same in real life.<sup>165</sup> Because the SCS requires the publication of the names of those found to have committed “bad” acts, it is very likely that other individuals and entities would not want to be associated with them for fear of having their own score negatively impacted.<sup>166</sup> By legitimizing online shaming and ranking, the probability that the same will happen in real world interactions is very high, leading to increased discrimination in violation of the UDHR and ICCPR.<sup>167</sup>

There are also due process concerns when it comes to the inclusion of an individual on a Blacklist and the imposition of sanctions.<sup>168</sup> In some cases, individuals have had their names added

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<sup>163</sup> See Nizan Geslevich Packin & Yafit Lev-Aretz, *On Social Credit and the Right to be Unnetworked*, COLUM. BUS. L. REV. 339, 392 (discussing this in the context of financial transactions).

<sup>164</sup> See *id.* at 393 (stating that individuals are grouped based on the financial risk they carry.) This leads to individuals from disadvantaged backgrounds interacting with each other. *Id.* Similarly, Ivy League alumni only associate with other elite peers. *Id.*

<sup>165</sup> See *id.* at 395 (revealing that removing individuals from online networking is directly associated with ceasing in-person interactions with those same individuals).

<sup>166</sup> See Sarah Lily, *Why China’s “Social Credit” Scheme Will Create More Corruption, Not a Better Citizenry*, FEE (Dec. 17, 2018), archived at <https://perma.cc/TWG3-EVHY> (suggesting that being friends with or messaging other people with low scores who commit “bad behaviors” will lower ones’ social credit score).

<sup>167</sup> See Geslevich Packin & Lev-Aretz, *supra* note 163, at 393 (theorizing that the social credit system will force citizens of similar socio-economic classes to solely communicate with one another for fear of affecting their social credit score negatively).

<sup>168</sup> See Yu-Jie Chen, et al., “*Rules of Trust*”: *The Power and Perils of China’s Social Credit Megaproject*, 32 COLUM. J. ASIAN L. 1, 33 (2018) (describing the due process concerns the SCS raises). Each government agency manages its own blacklist. *Id.* Once a record is found to be incorrect, the blacklisted individual has complied with relevant rules, or the required period of time has passed the agency may remove the individual from their blacklist. *Id.* Other agencies may also then remove their sanctions on the individual. *Id.* However, if the agencies fail to do so, there is no effective remedy available. *Id.*

to a Blacklist without prior notification.<sup>169</sup> Furthermore, sanctions are imposed without adhering to the typical judicial process of conducting a hearing or trial.<sup>170</sup> Once a name is added to a blacklist, it has also proven challenging to get it removed, even though some regulations require removal within a certain time period.<sup>171</sup> Because there is no reliable process by which individuals are notified of an alleged violation and given a chance to respond, the fairness of the system is rightfully called into question.<sup>172</sup> The lack of codification as to what constitutes “bad” or “trust-breaking” behavior means that individuals and entities may not know what they are being penalized for.<sup>173</sup> Additionally, provinces and municipalities employ different criteria and scoring calculations, increasing the opacity of the system.<sup>174</sup> Finally, some individuals are subject to sanctions not because of any action they took, but because of their association with someone who was judged to have engaged in “trust-breaking” behavior.<sup>175</sup> The fact that someone could be punished for someone else’s behavior is inherently unfair and could lead to the disintegration of society if people start reporting on others’ behavior in an attempt to keep their

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<sup>169</sup> See Wang, *supra* note 83 (explaining the importance of the Blacklist); Christina Larson, *Who Needs Democracy When You Have Data?*, MIT TECH. REV. (Aug. 20, 2018), archived at <https://perma.cc/Y3WD-EFMD> (highlighting how individuals can be added to the Blacklist without notification).

<sup>170</sup> See Vinayak, *supra* note 5 (noting the due process implications of sanctions on individuals). “Sanctions are imposed without following principles of natural justice or conducting a trial, and there is no mechanism to appeal, or be removed from the blacklist.” *Id.*

<sup>171</sup> See Wang, *supra* note 83 (discussing the challenges an attorney faced in trying to get his name removed from several blacklists); Chen & Cheung, *supra* note 35, at 362 (highlighting the issues related to having a name on the Backlist).

<sup>172</sup> See Larson, *supra* note 169 (highlighting the concerns that citizens have no recourse for disputing false or incorrect allegations and there is no overarching notification process). “Some [people] have found their names added to travel blacklists without notification after a court decision.” *Id.*

<sup>173</sup> See Chen et al., *supra* note 7, at 14 (defining the term “trust breaking”); Vinayak, *supra* note 5 (explaining that there is no codification of ‘undesirable behaviour’).

<sup>174</sup> See Vinayak, *supra* note 5 (describing how different municipalities employ different criteria and scales for calculation of points). Employing different criteria and scales affects the rights of citizens to receive the same benefits. *Id.*

<sup>175</sup> See *Father with Low Credit Score Causes University to Suspend Son’s Admission Application*, CGTN (July 13, 2018), archived at <https://perma.cc/3E3T-QC5H> (discussing one situation where a father’s failure to pay his debts caused a university to suspend his son’s admissions application and another where a student was rejected by a private school because his parent was on a blacklist).

score high.<sup>176</sup> The purpose of the SCS is to enforce behaviors that society has deemed acceptable and discourage and punish those that are unacceptable.<sup>177</sup> However to effectively do this, people need to know what behaviors fall into each category.<sup>178</sup> Therefore, without codification the SCS is bound to be unfair and stands in contrast to its alleged purpose.<sup>179</sup>

One last aspect that requires consideration is the role China's use of technology plays in the SCS.<sup>180</sup> The increasing availability of technological tools has greatly increased China's data collection and evaluation capabilities, turning the internet into a type of "real-time, privately run digital intelligence service."<sup>181</sup> However, there is big question as to the accuracy of the data being collected and used.<sup>182</sup> For example, how can facial recognition cameras trained to recognize the features of Han Chinese people accurately recognize members of minority groups?<sup>183</sup> Another potential problem is the use of predictive algorithms as a method of policing.<sup>184</sup> While algorithms can be useful

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<sup>176</sup> See *id.* (referring to how a father's past mistakes and subsequent Backlisting can come back to affect his son in the future).

<sup>177</sup> See *China's Social Credit System*, CENTER FOR PUBLIC PHILOSOPHY (Oct. 15, 2020), archived at <https://perma.cc/KX9M-GPWK> ("The Chinese State Council postulates that if citizens are rewarded for good behavior and punished for bad behavior, then people will want to act better."); see Kobie, *supra* note 162 (explaining the unique Chinese Social Credit System). The Chinese government claims this system is about building trust as the Chinese society has trust issues. Kobie, *supra* note 162. The government's plan notes that as "trust-keeping is insufficiently rewarded, the costs of breaking trust tend to be low." *Id.*

<sup>178</sup> See Chen et al., *supra* note 7, at 18 (outlining the categories a person can enter based on behaviors).

<sup>179</sup> See Engelmann et al., *supra* note 38 (recognizing that the current SCS seems to make behaviors leading to punishment more transparent than those resulting in rewards, but there was no information found as to how specific behaviors are scored or rated). The study questions "whether the degree of the current SCS's transparency is intentionally engineered or whether it is simply a manifestation of work in progress." *Id.*

<sup>180</sup> See Chen & Cheung *supra* note 35, at 356 (explaining intention of the Chinese government to use "ambition and power of big data technology").

<sup>181</sup> See Larson, *supra* note 169 (quoting Richard McGregor, a senior fellow at the Lowy Institute and the author of *The Party: The Secret World of China's Communist Rulers*). See also Alicia Hope, *China Cracks Down on Unethical Data Collection of Personal Information via Apps*, CPO MAG. (Jan. 20, 2020), archived at <https://perma.cc/87FQ-VCAA> (highlighting the ease of data collection with the emergence of new applications).

<sup>182</sup> See *id.* (noting that "there's no public record or accountability for how these calculations are built or weighted").

<sup>183</sup> See *id.* (questioning the accuracy of facial recognition software with regard to minorities).

<sup>184</sup> See *id.* (noting that the algorithms police use to predict who is likely to be a criminal is not disclosed to the public).

in guessing the character and behavior of individuals, they can also be used to selectively monitor and profile groups, even when no crime has been committed.<sup>185</sup> This goes back to the overriding concern that the SCS will be used as just another tool of oppression rather than a program that effectively improves society.<sup>186</sup>

## V. The Future and Potential Benefits of Social Credit Systems

As aforementioned, there are legitimate concerns surrounding the use and implementation of the SCS in China.<sup>187</sup> However, it would be remiss to ignore the potential benefits of a well-governed system.<sup>188</sup> If the SCS is correctly implemented and managed, it could bring transparency, oversee those in power, regulate the economy with less direct government intervention, and encourage people to treat people more fairly.<sup>189</sup> One benefit of the SCS is that it has improved law enforcement in areas where traditional methods were ultimately ineffective at curbing bad behavior.<sup>190</sup>

It is also important to acknowledge that similar systems have been established by governments in other countries.<sup>191</sup> For example, the United States utilizes credit-rating agencies that rank people based on their trustworthiness.<sup>192</sup> In the United Kingdom, individuals are ranked by preference for things like job applications and access to social services based on a score generated from data relating to credit score, phone usage, and rent payments.<sup>193</sup> Similar to the no-fly list in

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<sup>185</sup> See Liang et al., *supra* note 70, at 420 (noting that the new approach to surveillance targets minority groups); Larson, *supra* note 169 (recognizing an increase in violence in which minority group have been targeted).

<sup>186</sup> See Larson, *supra* note 169 (noting that SCS is “not quite the free-for-all that it’s made out to be.”).

<sup>187</sup> See Chen et al., *supra* note 7, at 31 (noting that SCS is further shrinking privacy and data protection).

<sup>188</sup> See *id.* at 1 (noting that “Chinese leaders see SCS as an effort to shore up trust in the government and regulate business and private conduct by assuring them that decisions are being made based on data and not arbitrary whims.”).

<sup>189</sup> See *id.* (explaining the benefits of well-governed SCS).

<sup>190</sup> See *id.* at 4 (discussing social punishments in the realm of transportation).

<sup>191</sup> See *id.* at 1 (recognizing that several governments are now “combining previously fragmented public and private data to make critical decisions”).

<sup>192</sup> See *id.* at 2 (comparing China’s SCS to the United States’ credit report system).

<sup>193</sup> See Weaver, *supra* note 46, at 446 (showing the systems in the United Kingdom for generating credit score and how that score affects citizens access to various services).

the United States, Israel utilizes a system of assigning codes to passengers as part of a risk-based security system.<sup>194</sup> Many countries also provide public access to certain criminal records and information related to insolvent debtors.<sup>195</sup> So while the Chinese SCS is different in scope, the concept of it is not entirely different from the systems used in other countries.<sup>196</sup>

In addition to these government-run programs, there are also rating systems in the private sector that bear similarities to China's SCS.<sup>197</sup> Perhaps the best-known examples are the rating systems used by Uber, Lyft, and Airbnb.<sup>198</sup> On these platforms, all parties get to rate each other and if someone's score drops below the preset threshold they are removed from the platform.<sup>199</sup> This kind of system allows users to engage in a form of self-policing, somewhat similar to that the Chinese government has set up with the Social Credit System.<sup>200</sup> Another perhaps less known example is the reputation score Facebook attempted to incorporate into its platform.<sup>201</sup> Under this system, Facebook assigned users a reputation score and predicted their trustworthiness.<sup>202</sup> Facebook also created and patented another scoring system that allowed creditors to assess an individual's creditworthiness based upon the credit ratings of people in his or her online social network.<sup>203</sup> In addition to these fairly straightforward

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<sup>194</sup> See Síthigh & Siems, *supra* note 33, at 165 (describing the different types of "risk-based security systems"). In Israel, different codes are assigned to different passengers depending on their risk level. *Id.*

<sup>195</sup> See *id.* (noting other countries who enable members of the public to access to criminal records). Additionally, other countries provide public access to data regarding an individual's inability to repay a debt. *Id.*

<sup>196</sup> See Weaver, *supra* note 46, at 446 (highlighting the similarities of China's Social Credit System to credit systems in other countries). China is not alone in the credit system endeavor. *Id.* The United States, the United Kingdom, and Germany use similar credit systems in which individuals are ranked based on several factors including their credit scores. *Id.* See also Síthigh & Siems, *supra* note 33, at 1053 (explaining that other countries enable the use of "credit scoring").

<sup>197</sup> See *id.* at 1055 (showing that many different private companies utilize a rating system as an integral part of its peer to peer services).

<sup>198</sup> See *id.* (showing some popular private companies using some sort of rating system).

<sup>199</sup> See *id.* (discussing how an Uber driver can be removed from the app for having too low of a rating and how riders can have a higher likelihood of receiving a ride with a high rating).

<sup>200</sup> See Weaver, *supra* note 46, at 445 (comparing the Chinese credit score system to other forms of self-policing).

<sup>201</sup> See Dwoskin, *supra* note 2 (reiterating Facebook no longer uses this 1-5 scoring system and has implemented a new way to review user pages).

<sup>202</sup> See *id.* (outlining the scoring system Facebook uses on its profiles).

<sup>203</sup> See Harris, *supra* note 116 (stating Facebook patented a credit rating system). Epstein, *supra* note 81 (summarizing Facebook's credit rating patent system).

reputation rating systems, there is another type of social credit system employed by businesses that revolves around consensual data disclosure.<sup>204</sup> An example of this is insurance company Progressive's Snapshot program.<sup>205</sup> Under this program, customers are offered a reduced rate in return for enrolling in a program that monitors driving information that would otherwise be unavailable.<sup>206</sup> The idea of sacrificing some privacy in exchange for an economic benefit is clearly appealing to some people, as evidenced in a study by the European Network and Information Security Agency.<sup>207</sup> The results of this study indicated that a majority of consumers would prefer a more privacy-invasive provider if it meant a cheaper price.<sup>208</sup>

The popularity of private rating programs and tolerance of government programs seems to indicate that some people are less concerned about their privacy rights and are more interested in what benefits can be found in sacrificing some privacy.<sup>209</sup> From that perspective, it could be argued that the Chinese SCS is simply tapping into the concerns held by Chinese people, particularly the worry regarding the lack of trust in society.<sup>210</sup> The program is often portrayed as a means to create a "culture of integrity" while also solving economic problems and improving governance.<sup>211</sup> As mentioned in Part II, a major concern held by Chinese citizens is the lack of trust, so if it is possible that the SCS will resolve that worry at the expense of

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<sup>204</sup> See Packin & Lev-Aretz, *supra* note 163, at 383 (quoting "Data is often collected based on

a consensual exchange, in which personal information is used as currency to pay for various products and services.").

<sup>205</sup> See *id.* at 384 (describing a successful model of a consensual disclosure system).

<sup>206</sup> See *id.* (providing such information includes a driver's mileage, speed, time of driving, and frequency of hard braking).

<sup>207</sup> See Jentzch et al., *supra* note 65 (explaining an analysis of the monetization of privacy).

<sup>208</sup> See *id.* (indicating the tendency of service-providers' consumers to prioritize lower prices over privacy). See also Packin & Lev-Aretz, *supra* note 163, at 385 (affirming that most consumers would not mind potential privacy invasions if it accompanied lower prices).

<sup>209</sup> See Kostka, *supra* note 12, at 1565 (summarizing the cost-benefit analysis undertaken by Chinese citizens to embrace the SCS).

<sup>210</sup> See *id.* at 1586 (examining the idea that the function of the SCSs to resolve regulatory enforcement issues coincides with a "lack in trust within society" perceived by Chinese citizens).

<sup>211</sup> See Sithigh & Siems, *supra* note 33, at 1051 (explaining how the Chinese media frames the Social Credit System as encouraging virtuous behavior as well as benefitting commerce).

privacy, it may very well be a sacrifice people are willing to make.<sup>212</sup> Especially if the program is successfully implemented and the “gamification of good citizenship” leads to improved quality of life and civic engagement.<sup>213</sup>

With all that being said, the benefits of any social credit system are contingent upon its proper implementation and management.<sup>214</sup> To succeed in this, the first step is to establish a system that is transparent and discloses relevant information.<sup>215</sup> The more information people have in regard to what impacts their score, the more informed their decision-making will be.<sup>216</sup> This would lead to better results, as everyone would know what constitutes “good” and “bad” behavior.<sup>217</sup> There may be some concern that total transparency could result in behavior becoming more of a market transaction than a moral decision, which could result in people no longer being considered to act with genuine moral character.<sup>218</sup> However, it is likely that there will be some who try to commoditize the system regardless of the level of transparency.<sup>219</sup> Transparency is also vital to such a system because it allows the managing agency to be held accountable.<sup>220</sup> Eliminating the secrecy behind scoring calculations also eliminates the potential for abuse and discrimination, reassuring the public that the system is being fairly administered to the benefit of public good.<sup>221</sup>

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<sup>212</sup> See Chorzempa et al., *supra* note 9, at 1 (chronicling some of the reasons, such as Ponzi schemes and food safety concerns, why the Chinese people have lost trust in the integrity of their government over the past several years).

<sup>213</sup> See Weaver, *supra* note 46, at 447 (acknowledging the theoretical benefits of implementing a credit system).

<sup>214</sup> See *id.* (positing that proper implementation of a social credit system would ensure “the right behavior is being rewarded,” the technology is not biased, and there are appropriate safeguards).

<sup>215</sup> See Packin & Lev-Aretz, *supra* note 163, at 409 (detailing the benefits of mandating increased disclosure, such as fostering a more informed group of consumers and decision-makers).

<sup>216</sup> See *id.* at 410 (explaining that the presence of informed decision-makers would advance “efficiency and governance”).

<sup>217</sup> See Engelmann et al., *supra* note 38, at 11 (suggesting that a transparent social credit system is necessary to effectively encourage “good” behaviors from citizens).

<sup>218</sup> See *id.* (arguing that if the SCS were entirely transparent, “complying to a norm would likely become a market transaction”).

<sup>219</sup> See *id.* (highlighting the analysis to provide evidence of the different ways people may seek fiscal advantages with the SCS regardless of the efforts to combat it)

<sup>220</sup> See *id.* (describing how transparency allows citizens to understand the agencies’ decision-making processes).

<sup>221</sup> See Weaver, *supra* note 46, at 447–48 (proffering to require transparency with systems such as the SCS to assure the public that it is fairly administered and is aimed toward the public good).

The methods through which data is collected, stored and analyzed are also vital to the success of a social credit system.<sup>222</sup> One way to ensure fairness and respect for privacy is to limit the sources from which data can be collected.<sup>223</sup> There must be some guarantee of privacy so that people feel comfortable with the program.<sup>224</sup> If everyone knows what sources are collecting their data for purposes of a social credit score, they will not have to worry about whether a private conversation with a friend or family member is going to factor in.<sup>225</sup> This would also alleviate infringements upon freedom of speech and guarantee the right to privacy in correspondence and family.<sup>226</sup> Some key protections under the European Union's General Data Protection Regulation (GDPR) would also make sense in the implementation of China's SCS.<sup>227</sup> For example, under the GDPR people have the right to ensure data is up to date and can challenge any inaccuracies.<sup>228</sup> Individuals also have the right to have their information erased, with automatic deletion a part of some systems.<sup>229</sup> This would be a useful requirement for the SCS, as some reports indicate that once a name is entered onto a blacklist, it is very difficult to have it removed.<sup>230</sup> Instituting an enforceable policy that requires deletion of personal information upon correction of a violation would

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<sup>222</sup> See Chan, *supra* note 10 (highlighting the types of data involved in the transfer of data to the Chinese government and addressing the associated data-related risks).

<sup>223</sup> See Hope, *supra* note 181 (discussing China's efforts to limit and regulate data collection as well as citizen's personal data).

<sup>224</sup> See *The Right to Privacy in the Digital Age*, *supra* note 142 (describing how the General Assembly calls on all States to review their procedures related to collection of personal data and emphasized the need for States to ensure the full implementation of their obligations under international human rights law).

<sup>225</sup> See *id.* (positing that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence).

<sup>226</sup> See *id.* (identifying that electronic surveillance threatens individuals rights, including the right to privacy and the freedom of expression).

<sup>227</sup> See Sithigh & Siems, *supra* note 33, at 1057 (explaining the state of data privacy protection in China compared with the EU). There has been "robust data protection legislation... especially in the European Union, whereas data protection and privacy legislation in China is fragmentary at best." *Id.*

<sup>228</sup> See 2016 O.J. (L 119) art. 5(1)(d) (outlining that every reasonable step must be taken to ensure that personal data is accurate and up to date).

<sup>229</sup> See 2016 O.J. (L 119) art. 17(1) (describing that the controller shall have the obligation to erase personal data without undue delay).

<sup>230</sup> See Wang, *supra* note 83 (discussing the challenges that are faced in trying to get a name removed from several blacklists).

thus be an improvement to the current system.<sup>231</sup> Perhaps most relevant to the Chinese SCS, under the GDPR individuals cannot be subject to a decision with any legal or similar effects based solely on automatic processing.<sup>232</sup> One of the largest problems with the SCS is its imposition of sanctions without any sort of judicial process, so requiring further inquiry would be a huge step towards ensuring fair application.<sup>233</sup>

Finally, setting up some sort of governance group that reviews the system for flaws and areas of improvement would reinforce public confidence in the system.<sup>234</sup> This group would be accountable to the public and could periodically release information on the system's operations and give members of the public an opportunity to provide feedback.<sup>235</sup> Arguably the most important next step for the Chinese SCS is to institute an effective appeals process.<sup>236</sup> One of the most frequent complaints is that there is no easy way to challenge the award or reduction of points, therefore, establishing such a process is of utmost importance.<sup>237</sup> An impartial system of checks and balances is required for any social credit system to succeed and because China suffers from a reputation of engaging in discriminatory and oppressive practices, it is even more important for its system to be independent of any politics.<sup>238</sup>

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<sup>231</sup> See Chen, et al., *supra* note 7, at 33 (describing concerns about how the current system works to remove false or outdated information). Currently, each government agency is responsible for keeping its own blacklist. *Id.* If an incorrect record is found, the agency may update their list and notify other agencies. *Id.* However, there is no effective remedies in place if an agency fails to correct their records. *Id.*

<sup>232</sup> See 2016 O.J. (L 119) art. 22 (noting that individuals are not subjected to automated processes); Síthigh & Siems, *supra* note 33, at 24 (noting controversial automated decision making). A recent decision shows that “. . . [A]utomated decisions made by credit entities through statistical profiling can violate anti-discrimination provisions of national law.” Síthigh & Siems, *supra* note 33, at 23.

<sup>233</sup> See Síthigh & Siems, *supra* note 33, at 25 (noting the lack of a judicial review in the Social Credit System). “Judicial review should be provided as a way of protecting individual rights but also as a means of ensuring checks and balances in the design and operation of the Social Credit System.” *Id.*

<sup>234</sup> See Weaver, *supra* note 46, at 448 (establishing that a governance group would be more beneficial to public confidence).

<sup>235</sup> See *id.* (describing how a governance group should operate). “This group should hold public meetings, accept public comment, and publish reports on its finding and recommendations.” *Id.*

<sup>236</sup> See *id.* (noting that an appeals process would be an important step for SCS).

<sup>237</sup> See *id.* (stating how there is no easy way to challenge or appeal the reward or deduction of points).

<sup>238</sup> See Síthigh & Siems, *supra* note 33, at 23 (constituting how the system is a form of discrimination).

## **VI. Conclusion**

At first blush, a social credit system that judges behavior and publishes rankings sounds draconian and like a major invasion of privacy. In many ways, it can be both of those things. As China is the first country to institute a social credit system on such a large scale, there is a lot of criticism and concern coming from some individuals within the country and many people and governments in other nations. As this paper discussed, there are legitimate problems with China's system that need to be fixed in order to prevent the ongoing abuse and violations of human rights. However, there is arguably some precedent for such a system and evidence that suggests a properly managed system could be highly effective. The most important aspect of any government-sponsored program is that it reinforces equality and protects the rights guaranteed by law. As China continues to develop its SCS, we must all be vigilant in ensuring the Chinese citizens' sacrifice for a greater public good does not become too much to tolerate.