

# 10. The East Asian Legal Models

## What is Asia ?

“Europe” and “Asia” are the result of the globalization of Greek geographic categories. [**Ruskola 258**]

## What is East Asia ?

“East Asia” is a category institutionalized by Americans: “in 1958 the U.S. Congress legislated such areas into existence through Title VI of the National Defense Education Act. Each designated area was to be studied (with government support) by a particular group of area studies specialists; one of these areas was East Asia”. [**Ruskola 258**]

East Asia is “the sphere of influence of Chinese culture” [**Ruskola 258**]

Part II – Comparative Law Across Legal Traditions





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## 10. The East Asian Legal Models

### What is China ?

In the 19<sup>th</sup> and 20<sup>th</sup> century thought, Europeans viewed China as a paradigmatic instance of “Oriental despotism”, governed by the caprice of despotic rulers and characterized by a cultural emphasis on the collective over the individual, duties over rights, and more generally custom and morality over law.

At the same time, China was often portrayed as a country where all human actions were controlled by meticulous, over-rationalized laws and regulations, with no room for the development of individuality.

As a result, Chinese law, if any, was dismissed as not capable of protecting property, rights and freedom, and promoting justice, rule of law, and progress.

**Part II – Comparative Law Across Legal Traditions**

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### What is China ?

This idea about the allegedly stagnant, arbitrary, irrational, and backward nature of the entire Chinese civilization was instrumental to the protection of Western economic interests and was oblivious of the respect that Europeans had shown for Chinese imperial civilization for centuries before the Opium Wars (1840-1842).



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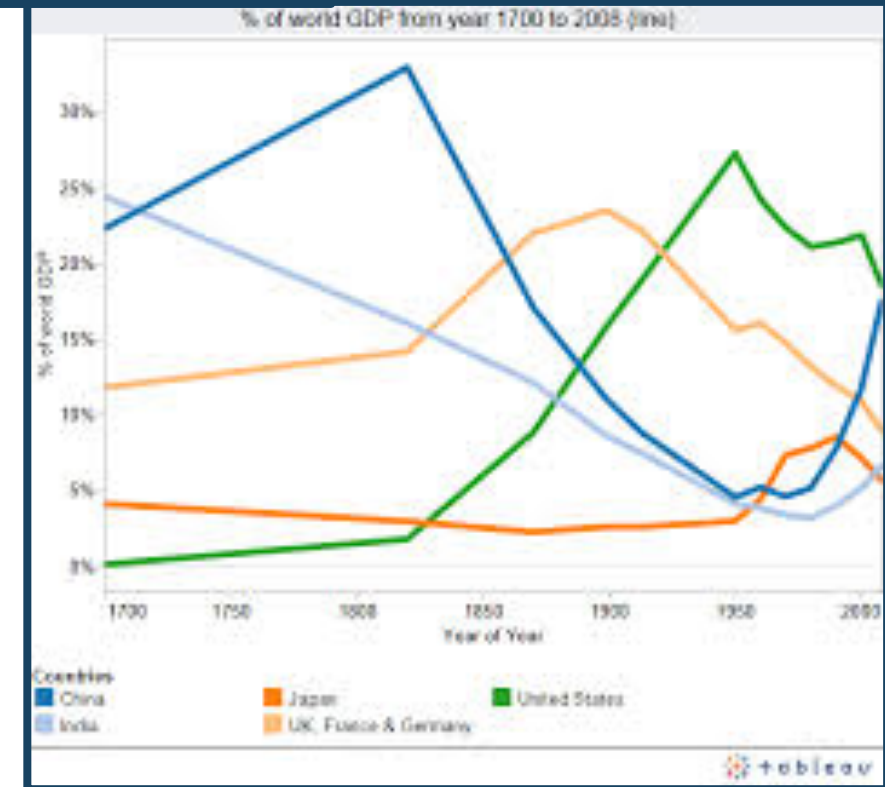
## What is China ?

- ▶ first Chinese dynasty in 2070 BCE with no system of writing
- ▶ writing developed as early as 1200 BCE
- ▶ Chinese culture, literature and philosophy developed between 1046–256 BCE
- ▶ from 221 BCE to nowadays, Chinese civilization has stretched in a uniquely long period of economic and political hegemony, which assured unity and continuity to the enormous and diverse Chinese empire mainly through centralization and a specialized bureaucracy.

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China under Ming dynasty (1368-1644)



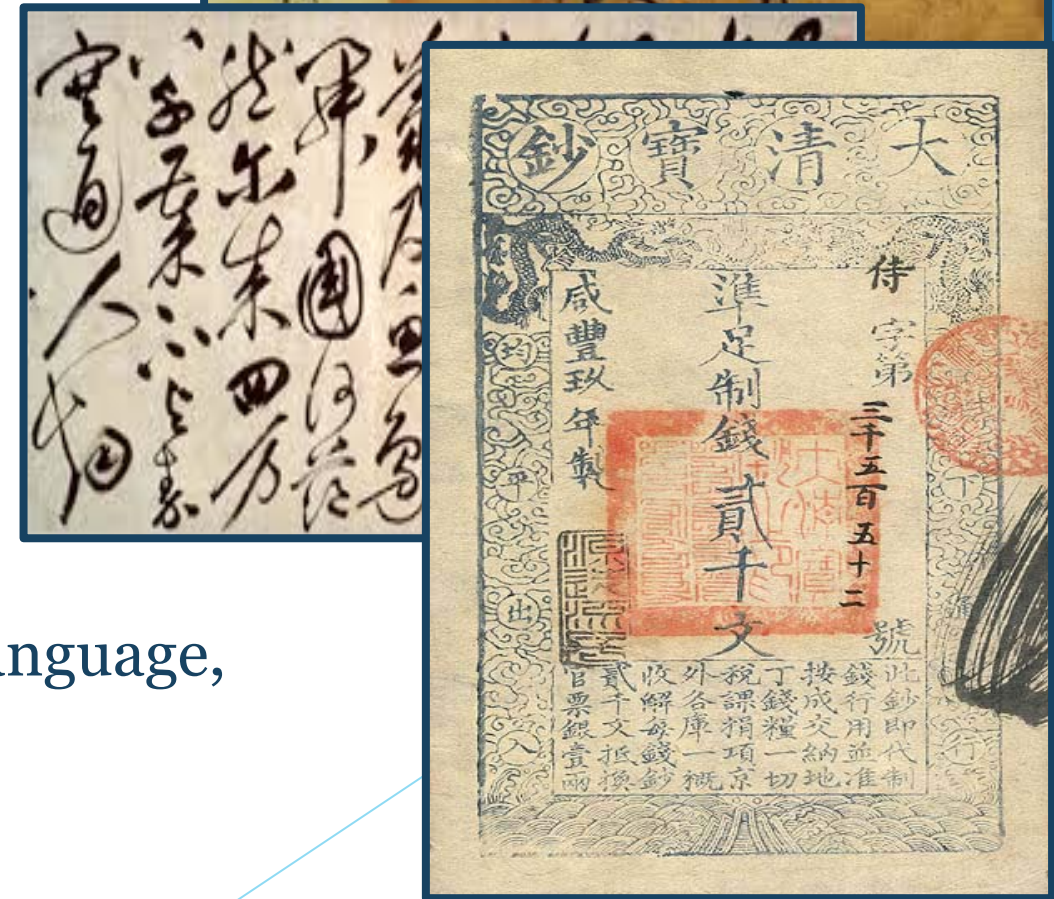
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## What is China ?

- ▶ The Chinese empire became a reference model for the entire region. It was diffused and maintained through the so-called tributary system (i.e. neighbouring states got autonomy and peace in exchange for recognizing the Empire's superior power and his right to get taxes).

As such, the Empire spread its authority, its language, and its laws.

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### What is China ?

- ▶ Chinese judicial system came into play in the most serious cases, and was regulated by codified laws – China had codes before Europeans. E.g.: the classic Tang Code (624 CE) deal with constitutional and administrative law issues, but also covered crimes, family, property and contract law [**Ruskola 264-265**];
- ▶ legal institutions (such as ‘contracts’) were widely utilized by ordinary people to serve their interests in everyday life, and were protected by the state;
- ▶ legal rules dominated the internal and external structure of the Empire.

Chinese law provided “a kind of transnational East Asian legal order, a Confucian *ius gentium* that provided a normative standard of civilization for political recognition, a set of constitutional norms for a properly administered polity, and guidelines for interactions among states” [**Ruskola 268**]

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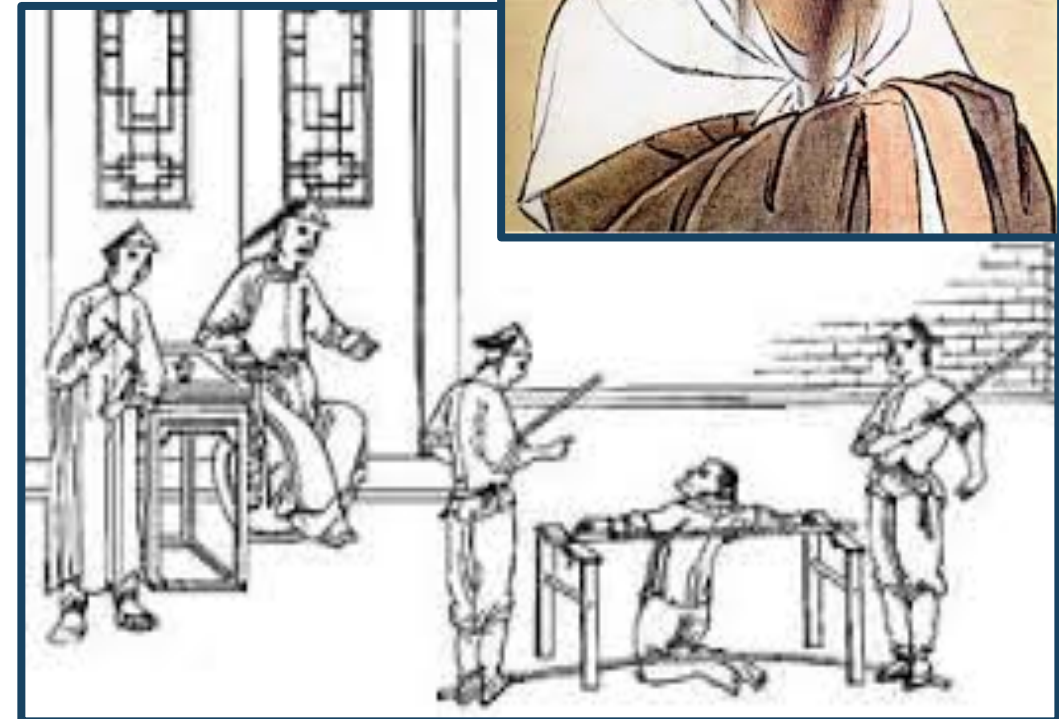
## What is China ?

Main features of Chinese (and then East-Asian) legal tradition:

- ▶ Confucianism;
- ▶ emphasis on family hierarchy and kinship, and generally on the community over the individual;
- ▶ respect for authority;
- ▶ meritocracy and bureaucracy;
- ▶ harsh penalties;
- ▶ conflict-avoidance;
- ▶ flexibility of the law (from no regulation to oppressive control);
- ▶ Sinocentrism.

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## What is China ?

China in the last two centuries:

- ▶ In 1902, the Emperor Guangxu (Qing dynasty) issued an order to reform China's legal system and established a law reform commission headed by jurist Shen Jiaben.
- ▶ A Supreme Court was established in 1906.
- ▶ The Qing, as well as the Chinese Republic (1912–1949), took steps to promulgate criminal and commercial laws. In 1929-1930 a Civil Code (Guomintang Code) was enacted, mostly influenced from German law.

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## What is China ?

China in the last two centuries:

- ▶ In 1949, the Chinese Communist Party (CCP) abolished all laws set up by the Republic. The CCP forcefully removed the Guomingdang government, including its judiciary and the entire body of laws.
- ▶ From 1949 to 1958 Soviet legal scholars taught students in China, and Chinese students studied in the Soviet Union. China developed a legal framework under Soviet law influence designed to administer the judicial and prosecutorial systems.

Part II – Comparative Law Across Legal Traditions



# 10. The East Asian Legal Models

## What is China ?

China in the last two centuries:

- ▶ From 1958 to 1965, the ‘Great Leap Forward’ policy caused widespread famines.
- ▶ From 1966-1976, the ‘Cultural Revolution’ programme prohibited the development of either a Western- or Soviet-styled legal system. The few open law schools were closed. Law libraries and books were destroyed by the Red Guard. The legal profession disappeared overnight. For ten years, virtually no law was enacted and book published.

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## What is China ?

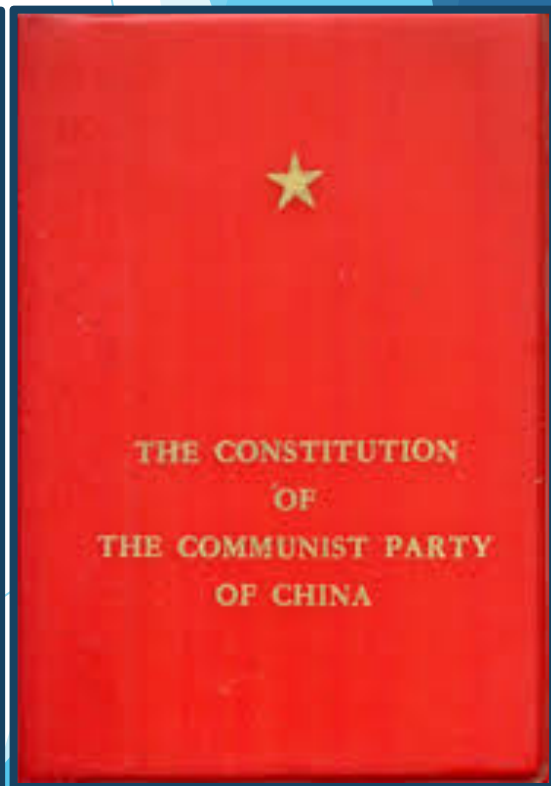
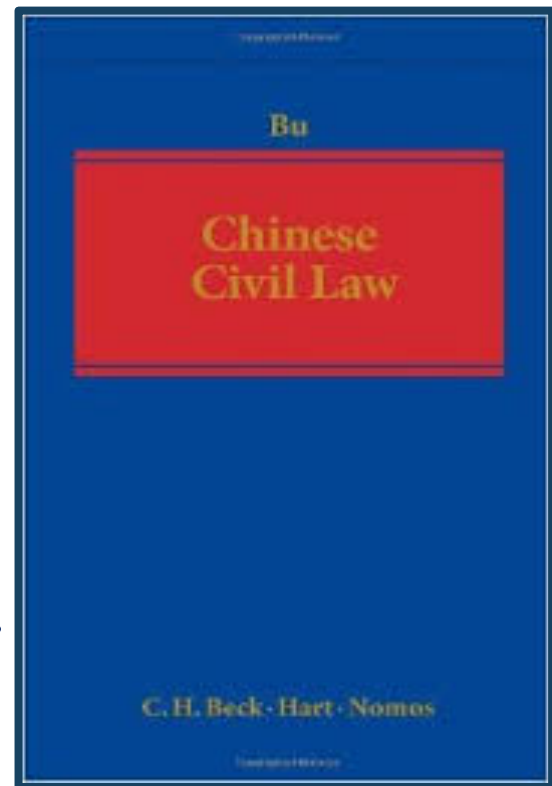
China in the last two centuries:

From 1976 to nowadays, massive reforms, mainly inspired from German and US law:

- ▶ Constitution (1982)
- ▶ General Principles of Civil Law (1986)
- ▶ Contract Law (1999)
- ▶ Real Rights Law (2007)
- ▶ Tort Liability Law (2009)

In 2020 the Chinese Civil Code was enacted.

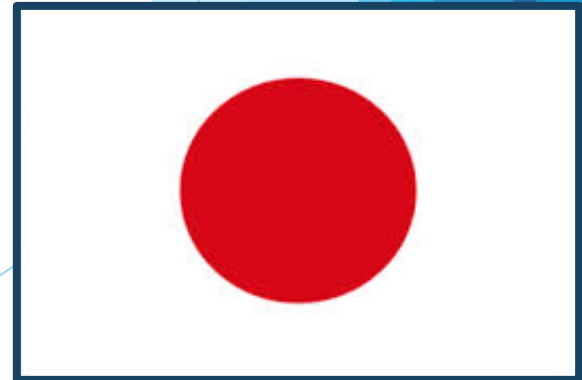
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## Korea

- ▶ 2333 BCE. The first dynasty (Kojoseon) enacted the Eight-articles Law
- ▶ Influence of Confucianism and Chinese legal culture
- ▶ Under the Joseon dynasty (1392-1910 CE), a comprehensive codification of legal rules took place.  
In 1484 the ‘Great Code for Governing the Country’, deeply influenced by the Chinese Ming Code, was enacted. In 1894 a written Constitution was adopted.
- ▶ From 1910 to 1945, Japanese occupation: import of (Westernized) Japanese legal system



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## Korea

- ▶ After 1945, the Korean Peninsula was divided in the Republic of Korea in the South (under U.S. military rule) and the Democratic People’s Republic of Korea in the North (under the Soviet Union control).

The Republic of Korea was established in 1948. Its law, heavily influenced by European continental law, was reformed following Anglo-American models. Korean modern legal system therefore absorbs features of the European civil law systems, American legal system and Korean customary laws.

The Democratic People’s Republic of Korea was founded in 1953. Its law mixes Japanese colonialistic (and Western driven) remnants, Soviet auspices, and Korean customary laws.

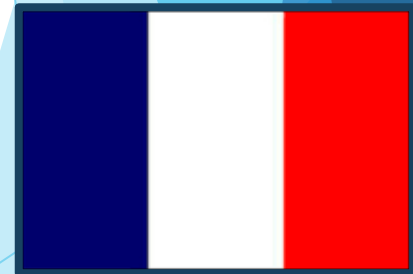


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## Japan

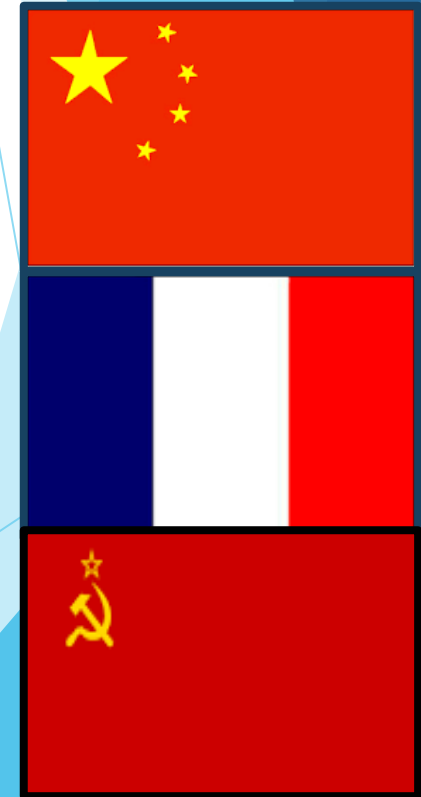
- ▶ 5<sup>th</sup> century CE: unification under the Emperor. Customary laws.
- ▶ from 7<sup>th</sup> century: import of Chinese law, administration and taxes
- ▶ from 12<sup>th</sup> century to 16<sup>th</sup> century: feudal laws prevail
- ▶ from 16<sup>th</sup> century to 19<sup>th</sup> century (Tokugawa Shogunate): isolation policy; autonomous development of administrative-like law
- ▶ from 1853 to 1867: Americans ! Treaty of Kanagoma (1854) and Treaty of Edo (1858)
- ▶ from 1867 to 1945: Meiji restoration and 'modernization' of Japanese legal system mostly under German (and French) influence
- ▶ from 1945 to nowadays: reforms under US influence



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## Vietnam

- ▶ from 111 BCE to 938 CE under Chinese rule
- ▶ from 938 to 1862 many dynasties, enacting original (under the Lê dynasty, 1428-1788) or Chinese-influenced (under the Nguyen dynasty, 1802-1945)
- ▶ from 1862 to 1946 under French colonial rule. In 1880 a Civil Code was enacted
- ▶ From 1946 to the 1980s: independence and intense borrowing from Soviet legal culture
- ▶ From the 1980s to nowadays: legal reforms adopted following French and Chinese legal models



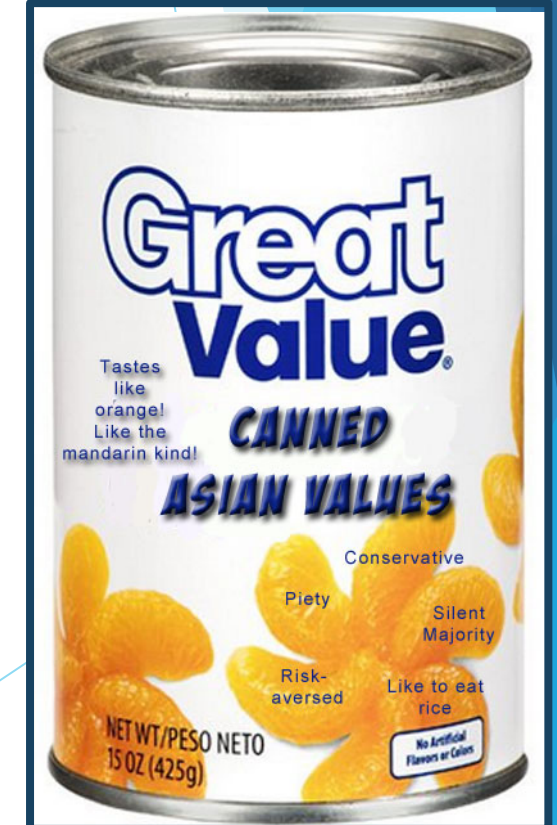
# 10. The East Asian Legal Models

## What is left of East-Asian commonalities ?

1993 Bangkok Declaration on Asian Values  
(Singapore, Malaysia, Indonesia and China):

- ▶ priority of collective notions of responsibility over individual rights;
- ▶ priority of economic rights over political rights;
- ▶ parity — if not priority — of duties vis-à-vis rights;
- ▶ cultural preference for the cultivation of social consensus rather than toleration of dissent.

Part II – Comparative Law Across Legal Traditions





# 10. The East Asian Legal Models

What is left of East-Asian commonalities ?

**Traditional culture of conflict avoidance:**

**“It is better to die of starvation than to become a thief; it is better to be vexed to death than to bring a lawsuit”**

- ▶ According to Mao, “disputes among people” ought to be resolved, whenever possible by “democratic methods, methods of discussion, of criticism, of persuasion and education, not by coercive, oppressive methods”.
- ▶ In recent years, top political-legal authorities of the Chinese Communist Party have been promoting mediation as the key to resolving all disputes and linking it to the Chinese Communist Party's new ‘harmonious society’ political doctrine.



# 10. The East Asian Legal Models

What is left of East-Asian commonalities ?

## **Traditional culture of conflict avoidance**

To Western eyes, the new emphasis on mediation and the consequent marginalization of the Chinese judiciary put in danger the 'rule of law'.

Yet mediation and official law may also strengthen each other. Semi-official dispute resolution mechanisms can be backed by, and support the growth of, the official system.

Economic development, by contrast, is undermining the traditional structure of Chinese society and its foundational values – filial piety, respect for authority and the elderly, the preservation of relationships harmony



# 10. The East Asian Legal Models

What is left of East-Asian commonalities ?

## **Traditional culture of conflict avoidance**

The recent economic growth has spurred emerging individualism, consumerism, urbanization, demographic expansion, personal isolation, loosening of network ties and community structures, as well as increased litigiousness in certain fields.

Emergence of new values:

- asserting one's rights;

- freedom;
- equality;
- legality;
- professionalism.



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What is left of East-Asian commonalities ?

## **Traditional culture of authority and respect**



社会信用体系建设规划纲要

(2014—2020年)

Chinese State Council, Planning Outline for the Construction of a Social Credit System 2014-2020: “A social credit system [SCS] is an important component part of the Socialist market economy system and the social governance system. It is founded on laws, regulations, standards and charters; it is based on a complete network covering the credit records of members of society and credit infrastructure [...] its inherent requirements are establishing the idea of an sincerity culture, and carrying forward sincerity and traditional virtues. It uses encouragement to keep trust and constraints against breaking trust as incentive mechanisms, and its objective is raising the honest mentality and credit levels of the entire society”

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What is left of East-Asian commonalities ?

## **Traditional culture of authority and respect**

Chinese social credit is often described by Western media as a mechanism relying on proprietary algorithms, artificial intelligence and massive data harvesting to establish a total surveillance society.

“The Chinese government is preparing a more sweeping version that could combine the social credit scoring with AI-enabled tools like facial-recognition and predictive policing” in order “to enhance authoritarianism and consolidate its social control” and “turn Orwell’s 1984 into reality”.

**Part II – Comparative Law Across Legal Traditions**



社会信用体系建设规划纲要

(2014—2020年)

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What is left of East-Asian commonalities ?

## **Traditional culture of authority and respect**

Actually, the Chinese social credit system does not exist as such. It is rather made up of different systems, different from one another and loosely coordinated (if any) with one another.

Many of such systems are low-tech and generally aimed at easing the objective management of public administration and the assessment of interpersonal trust in rapidly urbanized environments. Moreover, only some of them rely upon social scoring.

**Part II – Comparative Law Across Legal Traditions**



社会信用体系建设规划纲要

(2014—2020年)

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NDRC 2017	SCS Regulation Scoring	NDRC 2019	SCS Regulation Scoring
Hangzhou	YES (N)	Qingdao	NO
Nanjing	NO	Wuhan	NO
Suqian	YES (N)	Anshan	NO
Suzhou	YES (N)	Pudong New Area	NO
Xiamen	YES (N)	Jia ding	NO
Huizhou	NO	Wuxi	N/A
Wenzhou	YES (N)	Hefei	NO
Yiwu	YES (N)	Huaibei	NO
Rongcheng	YES (N)	Wuhu	YES (N)
Weifang	N/A	Anqing	N/A
Weihai	YES (N)	Fuzhou	YES (N)
Chengdu	YES (L)	Zhengzhou	NO
Lu Zhou	YES (L)	Xianning	N/A
		Yichang	N/A
		Putian	N/A
		Lu Zhou	N/A

YES (N) = scoring of natural persons  
 YES (L) = scoring of legal persons  
 NO = no scoring  
 N/A = information not available

## Part II – Comparative Law Across Legal Traditions



Wenzhou:  
Ou River  
(瓯江)



Suzhou:  
Osmanthus  
Fragans  
(桂花)



Fuzhou:  
Jasmine  
(茉莉)



Xiamen:  
Litte Egret  
(白鹭)

划纲要

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What is left of East-Asian commonalities ?

## Traditional culture of authority and respect

The Chinese embracement of social credit, for the time being, looks like a state-directed version of private quantitative devices gathering and providing data on the performance, solvency or quality of the data subjects that are also widespread in the West.



**Doing Business**

A comparison of two rating systems: Michelin Star and Amazon Customer Reviews. The Michelin Star section is on a red background and describes the prestige of the award. The Amazon section shows a 4.3 out of 5 star rating with a bar chart of customer ratings.

**MICHELIN STAR**

Coveted by many chefs but bestowed upon only to an excellent few. Getting a star (or three) could change the fate of a restaurant.

High quality cooking, worth a stop	Excellent cooking, worth a detour	Exceptional cuisine, worth a special journey
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**amazon**

Customer reviews

★★★★☆ 4.3 out of 5

314 customer ratings

5 star	73%
4 star	9%
3 star	4%
2 star	2%
1 star	12%