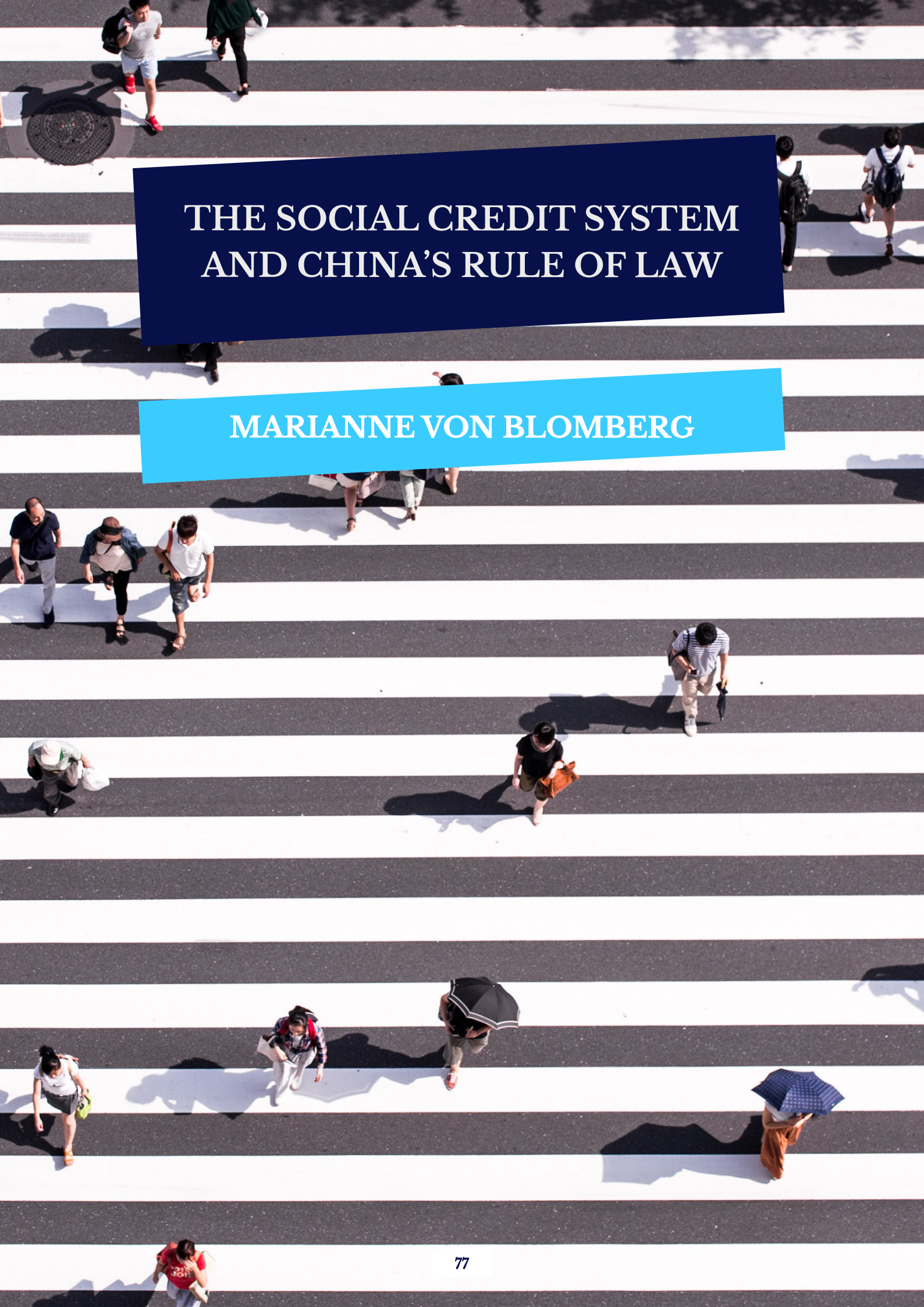

THE SOCIAL CREDIT SYSTEM AND CHINA'S RULE OF LAW

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ABSTRACT

In 2014, the PRC's central government formally declared the construction of a Social Credit System (SCS) a national task. Meanwhile, government-designated localities and companies are experimenting with scoring systems for businesses, citizens and the administration. The government's initiative introduces mechanisms for a massive aggregation and exchange of data about 'credit subjects', pushes for the application of such credit information in the decision-making processes in both the public and the private sector, and elevates the punishment of naming and shaming to new prominence. Its conceptual heritage is social management, a governance strategy born in the political apparatus of the PRC that does not operate with the traditional notion of law. The SCS' potentially heavy impact, as well as its conceptual heritage in social management, begs the question of what difference it makes to the rule of law in the PRC. A legal framework for the SCS does not (yet) exist. This thesis aims to bring to light challenges that arise from the SCS for the rule of law. It does so by considering the SCS' conceptual cradle, and further mapping what has surfaced of the SCS to date in policy and legislative documents, the commercial credit market, and local pilot projects. Drawing on this comprehensive picture of the SCS, elements which appear at odds with rule of law will be pointed out. They include a lack of legal definitions for SCS key terms such as 'trustworthiness', opaque procedures and possible penalties that bypass the law. Ways to integrate them into the Rechtsstaat will be considered, all of which necessitate a re-definition of what law is. Finally, the angle of social management offers a meta-social credit system as a solution to conciliate the SCS and rule of law. The question remains whether the SCS can truly solve all problems that it brings about merely by means of its own conceptual heritage, social management theory – or whether an independent organ outside of itself is indispensable.

"The internet is truly God's gift to China"
— 刘晓波 —

"Sincerity, the Way of Heaven. Thinking about sincerity is the way of man."
— 孟子 —

"This word [government] must be allowed the very broad meaning it had in the sixteenth century. 'Government' did not refer only to political structures or to the management of states; rather, it designated the way in which the conduct of individuals or of groups might be directed – the government of children, of souls, of communities, of the sick...
To govern, in this sense, is to control the possible field of action of others."
— *Michel Foucault* —

1. INTRODUCTION

As the PRC remains shaken by fraud, bribery, and weak implementation of laws, as well as court judgments (*zhixing nan* 执行难), Xi Jinping`s administration has taken the fight against what it summarizes as 'trust-breaking behaviour' to new heights. Making use of the new possibilities that digitalization has opened up, he pushes forward the concept of 'social management' (*shehui guanli* 社会管理) to build a moderately wealthy, harmonious socialist society. Because sharing information about a person or an organization's trustworthiness is now possible effortlessly and in real time, the consequences of (un)trustworthy behaviour can follow legal and natural persons further into other areas of their lives than ever before. Based on this, the State Council published its Planning Outline for the Construction of a Social Credit System in 2014. It shares a vision of how social management supported by big data can help the PRC`s government to achieve its goals. 'Social credit' (*shehui xinyong* 社会信用)[1] is a record (not necessarily a score!) of trustworthiness of an individual, a private organization, or a public organ. These so-called credit information subjects (*xinyong xinxi zhuti* 信用信息主体) shall enjoy benefits in all areas of life if behaving in a 'trustworthy' manner and face restraints and punishments when engaging in 'untrustworthy' conduct. 'The trustworthy shall roam everywhere under heaven, while those who breach trust shall not be able to move a single step,' as Xi Jinping puts it (NDRC, PBOC 2017).

An ambitious governance project, the Social Credit System (*shehui xinyong tixi*社会信用体系, hereafter SCS) is developed in several realms simultaneously. This paper will focus on the SCS development in the legal realm.

Despite its major impact on every actor in society, no national legislation for the SCS

exists to date. Merely the people`s congresses of some pilot provinces have passed relevant local regulations. The Party and the government have recognized that, in order to operate as an effective mechanism for raising levels of trust, the system requires a national legal framework and therefore declared the establishment of such the first of four basic principles for the acceleration of the SCS (State Council & CCP Central Committee, 2016). It is, according to a statement of the NDRC, already underway (Ohlberg et al., 2017: p.11).

However, the very structure and function of the SCS as it is planned calls into question the currently existing legal system. This paper suggests that by its conceptual nature, the SCS fundamentally challenges the rule of law.

The SCS does so firstly by introducing new forms of punishment parallel to what is laid down by law. In setting up institutional cooperation among government departments, Party organs, and companies, those who break trust in one department's field of responsibility are denied services in another organ's or company's sphere of influence. It is the result of such partnerships, for example, that by early 2017, 6.15 million citizens have been banned from buying plane tickets (O'Meara, 2016). Further, naming and shaming as a mechanism of punishment is called for and implemented through various channels.

Secondly, as the groundwork for the former, government bodies and agencies as well as companies are held to extensively collect information relevant to a (legal) person's credibility. This encompasses the set-up of credit evaluation mechanisms to aggregate such information, which also entails the creation of rules and standards defining trustworthiness. As one's credit status is, according to the plan, to become a central criterion for decisions on recruitment, grants of financial support for a project, and others, such rules will inevitably gain substantial importance.

This underlines the accurate description of the SCS as "evolving practice of control" (Creemers, 2018: p.1). The question this work addresses is: what difference does the SCS make to the rule of law – and what difference does the rule of law make to the SCS?

To explore this question, the SCS will be evaluated against the backdrop of the rule of law as it exists in the PRC. Randall Peerenboom's application of a thin rule of law framework to the PRC will be used as the theoretical basis, in which the idea of rule of law as 'legal systems in which the law imposes meaningful limits on state actors' (Peerenboom, 2003: fn. 81) serves as the starting point.

As to a conceptualization of the SCS, this paper will turn to its conceptual cradle, namely social management theory. Through this lens, the SCS appears as one flexible element in the whole of the government apparatus and its legislative framework may appear as a dynamic operational plan, rather than a static law providing safeguards for subjects.

2. THEORY

2.1. THIN RULE OF LAW

Several attempts have been made to describe rule of law as it exists in the PRC. Donald Clarke reflects on the frequently applied, but only seldomly explicitly stated framework of PRC law analysis, which he terms the 'Ideal Western Legal Order' (Clarke, 2003: p.95). This model describes the end state of a legal system, in particular 'what Western legal orders would look like if their perceived imperfections were eliminated' (Clarke, 2003: p.96). Rule of law therein is closely related to democratic institutions, such as a parliament as the legislative body. When applied to the PRC, this model cannot but detect several flaws, which are largely due to the lack of such institutions in the PRC. It is blind to historical, cultural and political particularities of the PRC system and thus fails to accurately describe its crucial elements.

Clarke further points to a possible and somewhat diametrical opposite alternative, drawing on Thomas Stephens' (1992) work. He suggests that in the pursuit of not imposing a Western ideal on the PRC, we must radically put aside any assumption of the existence of legal institutions in the PRC. If we do not assume, for example, that a judge ought to decide independently, we can observe the nature of influences on courts in more detail. This 'disciplinary model' suggests replacing the notion of order as a liberal democratic one by the kind of order that exists, for example, in a family, a nursery or the army. Such a framework, however, ignores that the majority of Chinese voices do regard their institutions as equivalents to those in the West, just as the PRC Constitution and other legal documents do (Chen, 2016: p.7).

A way out of this trap of theories is introduced by Peerenboom: Thin theories of rule of law avoid negating country-specific particularities and can at the same time accept that rule of law in the PRC is possible. In Peerenboom's words, thin rule of law is the necessary requirement and foundation for thick theories; it is a concept of which thick theories are different conceptions of (Peerenboom, 2003: p.5). Thin rule of law stresses those features 'that any legal system allegedly must possess to function effectively as a system of laws' (Peerenboom, 2002: p.3). He adds that any 'legal systems in which the law imposes meaningful limits on state actors merit the label rule of law' (Peerenboom, 2003: fn. 81). Thin rule of law comprises only positive law (law posited by humans), not natural law (Peerenboom, 2002: p.127). Such law must be general, public, prospective, clear, consistent, capable of being followed, stable, and enforced (following Ion Fuller, 1964). A thin rule of law can exist regardless of the ideological, political and economic systems of a state, which frees the term of many values such as those a liberal democratic order is associated with. This notion of rule of law is useful in the analysis of the SCS as it allows for more variations and possible outcomes.

Peerenboom argues that even though many refuse to accept that the government ever intended to introduce rule of law, the discourse among PRC officials in preparation of its introduction clearly shows that what is strived for cannot be mistaken for rule by

law. This can be held even though from its very beginnings with the judicial reforms in 1978, it was clear that the relationship between the judiciary, the public security organs and the procuratorates shall be one of 'dialectical unity', functional through mutual restraint and cooperation at the same time (People's Daily, 1978). In its fundamental idea, this has not changed - courts safeguard not only the law, but also government policies (Chen, 2011), hence law in the PRC should not be regarded 'as an autonomous sphere, but one intimately connected with politics and governance' (Creemers, 2018: p.5). However, a body of law is continuously expanded, amended, and more vigorously enforced than ever before (Chen, 2016).

As administrative law describes legal relations between the state and the societal actors in it, it appears as a key area when observing the rule of law as it stands. After the development of administrative law began to set off in the 1980s and since 1990, when the first Administrative Procedure Law went into effect, citizens could sue public administrative organs (not, however, CPC organs). Since then, significant steps forward have been taken with the introduction of the principles of due process (Law of Administrative Licensing 2003, Law of Administrative Coercion 2011) and the enactment of the Regulations on Openness of Government Information (2007) which gives rise to administrative litigation and has further been confirmed by a judicial interpretation of the SPC.

Criminal law and criminal procedure law are core instruments to restrict the exercise of state power where it is most intense. The underlying principle of any coded criminal law is nullum crimen, nulla poena sine lege (as first so phrased by Feuerbach, 1801): only if it is stipulated by law may behaviour be regarded as criminal and the state may only punish in strict accordance with a law stipulating the respective punishment and linking it to a certain crime. The PRC's Criminal Law stipulates it most clearly in Article 3. The less severe forms of punishment by the state, administrative penalties, are, since 1996, listed and laid down in the respective law as well. PRC law further adds another, positive dimension to this basic principle which it calls the 'relative nulla poena'. It stipulates that 'where acts are explicitly defined as criminal acts in law, the offenders shall be convicted and punished in accordance with law' (Li, 2010: p.657).

Carl Minzner (2011, 2018) points out that in recent years, the development of rule of law has fallen prey to a revival of authoritarianism. The government's call to avoid litigation and turn to mediation as well as an overall rhetoric emphasizing that adjudication ought to represent the 'mass line' are Minzner's main arguments. Chen (2011) however replies that these two changes, which are not novel to the PRC's legal system, but rather date back to the Mao era, might as well 'be interpreted as a moderate policy adjustment in response to changing social circumstances' (p. 15), emphasizing that the legal system as it stands remains.

2.2. SOCIAL MANAGEMENT: SYSTEMS ENGINEERING FOR GOVERNANCE

Hoffman (2017a) places the SCS in its broader conceptual cradle of social management. The birthplace of social management is the PRC's political apparatus. Since the 1950s, the idea of bringing scientific concepts from systems engineering to the sphere of governance has been developed, with Yu Guangyuan, Qian Xuesen and Song Jian as prominent scholars in the field (Hoffman, 2017a; Creemers, 2018). The notion of 'social management' derived from neoliberal ideas of public management (as the better and newer form of public administration) and in the party-state context have been aerated with the PRC's focus on social stability and security (Pieke, 2012: p.155). Governance was 'increasingly seen as management rather than politics involving both state and non-state institutions' (Pieke, 2012: p.155). The result was the understanding of social management as a comprehensive net of mechanisms outside of the public administration which bridge the gap between the people and the CPC and thus act to help the government resolve upcoming stability problems (Hu, 2005). In this understanding, non-state forces are no longer a potential threat, but an asset to party rule.

Social management took a substantial step forward when the theory of cybernetics and complex systems management emerged. Complex systems are, amongst others, defined by the fact that they cannot be described by observing their component parts. Instead, the multiple variables that determine the overall dynamic of the system by interacting with each other need to be observed. It is the investigation of these variables' interaction that explains the behaviour of a complex system. Despite a strong sensitivity to starting conditions, complex systems also display a long-term stability as they steadily reflect their environment (Svyantek & Brown, 2000; Gallagher & Appenzeller, 1999).

These concepts elevated social management to another level, both in terms of its importance to the PRC leadership – The 12th Five-Year Plan (2011) dedicates a whole chapter to the discussion of the necessity to innovate social management as a major target of the government – and in terms of what it can achieve. Social management in the age of digitalization in the PRC is described as 'complex systems management process through which the Party leadership interacts with both the entire Party and society' (Hoffman, 2017a: p.47).

Hoffman's work demonstrates that a useful framework to describe social management is complex systems management theory. It should be noted at this point that this work does not agree with and does not rely on what she wrote about the SCS in particular (Hoffman, 2018).

An autonomic system is defined by its capability to operate in a constantly changing environment and perform operations necessary to preserve itself, thereby substituting any need for a system administrator manually performing these tasks. It combines several elements, all of which 'must be self-managing and must function

interdependently for the system to achieve equilibrium' (Hoffman, 2017a: p.59). Autonomic computing is thus the application of 'technology to manage technology' (IBM, 2005: p.4), installing control loops which collect and forward information to the next cycle. More precisely, autonomic computing's characteristics can be summarized as self-configuring, self-healing, self-optimizing, and self-protecting. Self-configuring is the process of readjusting to a changing environment. Self-healing describes the capability of the system to detect and repair faults that appear as well as predict threats. Self-optimization refers to a constant search for possibilities to enhance the system's capabilities and make it more efficient. Finally, self-protection is the capability to make out potential dangers in the environment of the system. All four processes support each other and are strongly interdependent (Hoffman, 2017a; IBM, 2005). They each operate by engaging in the following four operations: monitoring their own operations, analysing the environment, planning and deciding, and finally, executing the changes in accordance with the knowledge won in the previous steps (as laid down by IBM, 2005). The system is thus designed to constantly learn and adapt to changing circumstances, thereby keeping itself fit.

Hoffman finds that these four characteristics directly correlate with the CPC's social management objectives as stipulated in the 12th Five Year Plan: a social management system, combining source governance, dynamic management, and emergency response (2017a) and therefore speaks of the PRC's 'autonomic nervous system' (p.12). She situates the SCS in the system's objective of self-optimization. It is part of the responsibility mechanism built to pre-emptively shape and direct behaviour (Hoffman, 2017a: p.106).

3. METHODOLOGY

Other than the theoretical framework, to date, there exists no unified national SCS. The SCS today is a combination of firstly, the central plan designed at national level, secondly, a range of public and commercial pilots (leading Kostka (2018) to speak of SCSs instead of SCS), and finally, the specific local regulations of those pilot provinces which have already passed a version of the SCS. None of these three elements necessarily relate to each other. For example, the Shanghai Sincerity App as a public pilot project seems alien to the municipality's social credit regulation.

Only few have attempted to systematically mark and describe the SCS (Sapio, 2017a-d; Ohlberg et al., 2017; Meissner, 2017; Ahmed, 2017a, 2017b; Kostka, 2018) and even fewer have done so with regard to legal questions (Daum, 2017, 2018; Creemers 2016, 2018; Backer, 2008, 2017a, 2017b; Pelzer, 2018). The result is the lack of a comprehensive account of the SCS(s). This paper hence first sets out to draw together the different strands of hints about the SCS. Even though not every piece of information gathered will reappear in the analysis, because of the lack of comprehensive accounts of the SCS and the many faulty descriptions of it in the media, it is crucial to lay down what this paper refers to when it discusses the SCS it its conclusion.

To provide an idea of where the term and the concept came from, the fourth chapter will contextualize the SCS in its conceptual and historical heritage. Three roots are identified and explained: its predecessor in terms of social control, the Dang'an, the financial credit mechanisms imported to the PRC from the USA, and finally, the discourse around public security informatization.

In the fifth chapter, the PRC's plan for the SCS are investigated. The aims of the system will be summarized and the novel mechanisms it introduces to reach these aims, including mechanisms of data collection, sharing and usage, mechanisms of joint punishment and reward, as well as the mechanisms of creating trustworthiness standards, are laid down. For this purpose, available policy documents related to the SCS and the respective pilot regulations of three SCS pilot provinces are analysed. Local regulations on the SCS were, at the time of research, passed by Hubei, Hebei and Shanghai.

Besides the government's planning at the central level, numerous localities and companies have developed pilot systems which are operating in their respective realms. This paper will investigate one example of each, a public pilot system (Suining County's "the Masses Credit") and a commercial pilot system (Alibaba's "Sesame Credit") regarding experiences they offer for a deeper understanding of the SCS's practical dimension. More than any other public pilot, the Suining pilot system has been vividly discussed inside China and is through today mentioned in connection to the SCS. In addition, the Suining system went much further than any other social credit system that exists today in that it applied a scoring system and its own definitions of trustworthiness. Sesame Credit is by far the most sophisticated and popular among the commercial credit services. The resources used in this chapter range from scholarly works from disciplines such as computer science, law, economics, and philosophy to media reports in Chinese, English and German, mostly derived from online searches.

The final chapter will draw together these findings in the context of the SCS as a measure of social management and evaluate its impact on thin rule of law. A significant short-coming of this research design is its inability to grasp the whole of the SCS due to its fragmentation, the variety of disciplines it touches upon and the lack of literature on the topic. It lacks precision in its analysis due to the fact that there are numerous open questions about the very concept of the SCS, which is reflected in the gaps between what can be observed on the ground and what is stipulated by (local) government(s). This paper is thus a rather flawed pioneer, limited to pointing out what appears most striking in the field of tension between the SCS and the rule of law.

4. CONCEPTUAL AND HISTORICAL ROOTS OF THE SCS

The SCS came into being as a measure of social management as explained above. More precisely, it serves the end of "dynamic management" (in the language of automatic

computing: self-optimization) by constantly optimizing the overall system's operations. It helps guarantee continued Party control by on the one hand strengthening individual responsibility for state security, and on the other hand enforcing the former through a system of joint punishments and rewards that reaches far beyond the public administration's boundaries (Hoffman, 2017a).

An early instance reflecting CPC-designed social management is the Dang'an (档案, files / records) system, which began operating in 1953. A file about every worker was created, only higher cadres and some farmers were excluded. The work unit (*danwei* 单位) administered the file and a copy was kept at the local police station (Moss, 1996). From an elementary school teacher's assessment, children, hospital visits, and reports by employers, several pieces of personal and professional information were stored in the file. It could not be accessed by the individual it concerned (Yang, 2011). In the 1970s, this first instance of social management had to make way for the market economy.

The beginnings of credit in China merely focused on the concept of financial credit known from Fico and Schufa. Lin Jinyue, referred to as a pioneer of the "Theory of the Social Credit System," (Lin, 2012; Ye, 2015; Zhongguowang Xinwang, 2015; Meissner, 2017: p.6) introduced concepts of credit practices in the USA to China. In the late 1990s, at the Institute of World Economics and Politics of the Chinese Academy of Sciences, his group developed the basic concept of evaluating credit at a central level. Pilot projects began from 2000 and it was through their interpretation of credit evaluations that the notion was further expanded to include its social dimension.

In 2007, the Interministerial Conference on Social Credit System Construction (*shehui xinyong tixi jianshe buji liandu huiyi* 社会信用体系建设部际联席会议) was set up by the government, comprised of 46 members from the CPC, the Ministry of Finance, the State Administration for Industry and Commerce, and the Ministry of Public Security. The members that where added later, such as the Central Discipline Committee, the Central Leading Group for Spiritual Civilization Construction, the Central Propaganda Department, the Supreme People's Court and the Supreme People's Procuratorate, display how the SCS's focus shifted from financial credit to a more encompassing idea of social credit (Creemers, 2018: p. 11). Another driving factor was the overall strategic shift of CPC governance towards morals to counter the moral vacuum which the CPC had diagnosed. In the course of this shift, the concept of credit as a measure of social trustworthiness appeared just in time (Pieke, 2012: p. 155; Creemers, 2018: p.12). The main coordinator of the Conference today is the Central Leading Small Group for Comprehensively Deepening Reforms, headed by Xi Jinping himself (Yuandiancredit, 2016).

Another ideological forerunner of social management is the discourse about public security informatization that started in 2008, pushed particularly by Zhou Yongkang 周永康, an official who ironically was later sentenced to life in prison because of corruption (Hoffman & Peter, 2016). He coined the term 'social management system',

which would measure not only indicators of criminal activity, but also happiness levels and encourage compliance, and presented it as a solution to any kind of social stability problem (Zhou, 2006, 2011). He suggested innovative methods of surveillance by using new technology. Zhou's ideas experienced a backlash when he was dismissed from the Party leadership. However, while the discussion of his concepts was criticized (Hoffman & Peter, 2016), under Xi Jinping, initiatives to combat attacks on public safety stepped up. Social management and the idea of the SCS with it soon moved closer to the state security system than it was the case under Hu Jintao (Hoffman, 2017b: p.6). The 2017 Cybersecurity Law, the 2015 Internet Plus initiative, and the 2006 Golden Shield project (Schwarck, 2018) are all closely intertwined with the SCS.

5. THE GOVERNMENT'S PLAN[2]

5.1. AIMS

Four target fields for the SCS are stipulated. The first, judicial credibility (*gongsi gongxin* 司法公信), entails strengthening the (to date rather poor) enforcement of court decisions and 'safeguard[ing] judicial authority' (State Council & CCP Central Committee, 2016). The second, commercial sincerity (*shangwu chengxin* 商务诚信), is mainly directed at fighting fraud, which is the second most common type of crime in the PRC overall (National Bureau of Statistics, 2017). Further, this aim includes avoiding financial risk, which is prevalent in the absence of a free flow of information (Sapio, 2017c); and enforcing regulations directed at companies (Jingjiribao, 2017; Meissner, 2017: p.3).

Societal sincerity (*shehui chengxin*社会诚信) is another aim and needs to be considered against the background of a uniquely grave trust problem in PRC civil society. The frequently shared cases of traffic accidents, where for minutes, every passer-by refuses to help, afraid of being sued as the perpetrator, illustrate the issue (Ahmed, 2017b). Deception and scams, such as fake QR-codes on bikes, flourish (Hawkins, 2017). The SCS is designed to strengthen civil society and services in areas such as labour, welfare, public health and education. The overarching goal is creating 'an upward, charitable, sincere and mutually helpful social atmosphere' (State Council & CCP Central Committee, 2016).

Finally, sincerity in government affairs (*zhengwu chengxin*政务诚信) is to be strengthened. State agencies and administrative entities, including SCS administrators, shall themselves become credit subjects. To this end, the SCS may be a tool to combat corruption and reinstall confidence in public institutions, while at the same time observing changes in the public opinion (Shteyngart, 2016).

All four aims are regarded as keys to further economic growth in the PRC (Wang, 2017; Meissner, 2017; Zhang Zheng in Sapio, 2017d), which complements Hoffman's perspective of the SCS as crucial to ensuring state security. Economic growth is a major element of the CPC's legitimacy narrative.

5.2. GROUNDWORK

Data Aggregation
The analysed local pilot regulations stipulate that public credit information be collected at newly set up public credit information management bodies (Hubei Provincial People's Congress, 2017 (hereafter HU): Art. 9 ff.; Hebei Provincial People's Congress, 2017 (hereafter HE): Art. 10 ff.; Shanghai Municipal People's Congress, 2017 (hereafter SH): Art. 9 ff). All information subjects are encouraged to actively provide their social credit information and are held responsible for the correctness and completeness of their information. Legal persons are further called to share credit information they have accumulated about other (legal) persons during their operations (SH: Art. 13; HE: Art. 17; HU: Art. 14 I).

The type of information collected is restricted to categories stipulated in the public credit information catalogues. They shall include 'information that reflects the credit subject's basic circumstances in public administration and services' (SH: Art. 11 I; HE: Art. 11; HU: Art. 9 II), such as administrative punishments, payments received, volunteer work, and refusals to perform on legal documents.

Some limits on information collection are listed. A legal person may only collect credit information about private individuals if the latter consents (SH: Art. 1; HU: Art. 17;, HE: Art. 16). "Personal data" (for example, Art. 6 VI SPC on JDL) may not be collected; however, this very notion is nowhere defined, neither in the context of the SCS, where it is so frequently used, nor elsewhere in national laws (Chen & Cheung, 2017: p.2). In Shanghai, collection is also limited by 'the principles of truthfulness, objectivity, and necessity' (Art. 6). It is prohibited to collect information on religious faith, genetics, fingerprints, blood type, illnesses, and medical history (HE: Art. 16 II ; SH: Art. 14 III; HU: Art. 17 III).

Information collection under the SCS however is most likely not limited to what the pilot regulations stipulate. Plans for a wide usage of big data in connection with the SCS have been announced in the context of the 13th Five Year Plan in 2016. According to the definition provided in the policy paper, this would include administrative data, such as medical information and school records, transactional data, sensor data, tracking data (such as GPS information from mobile phones), and data on online behaviour such as searches and social media comments (Cheng, 2014: p.3).

Data Sharing
In pilot regulations and policy documents, credit information data sharing among public and commercial entities is a key point to building the SCS. Most credit information is not aggregated at the central level but scattered across local administrations and other businesses that directly interact with citizens. However, the whole project is heavily relying on a functioning flow of information (Hulianwang Jinrongjia, 2016; Meissner, 2017; Ohlberg et al., 2017). Information inside the public administration shall be shared horizontally and vertically 'to make it so that social

credit information is interconnected and intercommunicating, and used across departments, fields, and regions (HU: Art. 6 I). Further, state organs at all levels are called to cooperate with enterprises for credit information exchange.

A first step was the assignment of a social credit number to every credit subject, the ID number in case of citizens and a new number for legal persons (Ministry of Civil Affairs, 2017; State Council, 2015). All credit information about one legal entity is exchanged under this number across administrative levels and regions.

A second significant step toward the end of sharing credit information are the governmental Public Credit Information Sharing Platforms, the 'data backbone of the social credit system' (Meissner, 2017: p.6). The National Credit Information Sharing Platform (*quanguo xinyong xinxi fenxiang pingtai*全国信用信息共享平台), for example, gathers credit information from more than 30 central ministries and government agencies, overall around 400 datasets. The central policy documents explicitly call upon all government institutions to forward information to the national platform (for example in State Council & CCP Central Committee, 2016, 3 III).

5.3. PENALIZING

Joint Punishment

As to the application of credit information, policy documents and pilot regulations provide for the establishment of 'joint social credit rewards and punishments that cross departments, fields, and regions, and is jointly participated in by administrative organs, judicial organs, and market entities (SH: Art. 21). The facilitating mechanism behind this is a 'name list system for persons subject to enforcement for trust-breaking' (State Council & CCP Central Committee, 2016, part 3). Such blacklists for trust breakers and redlists for the particularly trustworthy have been set up in different contexts and on several levels. Where foreign media have falsely explained that a 'credit score' is calculated, at least in the current layout of the SCS, there is merely the comparably simple concept of blacklists and redlists. The central level blacklist that has brought about most penalties so far is the Supreme People's Court's List of Judgement Defaulters (hereafter LJD), introduced in 2013. It includes individuals who have been ordered by a court to a certain conduct (payment of compensation, for example), are able to comply with it but do not do so and waived or exhausted all chances for legal recourse (SPC Provisions on the LJD 2016). To be removed from the LJD, one must either fulfil the court's order or file a valid complaint. In any case, the name will be removed from the LJD after two years.

The blacklists provide the ground for a new type of state punishment enabled by partnerships between the private sector and state organs. 'Joint punishments' are the result of such partnerships.[3] To date, 44 departments and 60 companies participate in the trial for this mechanism. 30 'joint incentives and joint disciplinary mechanisms' having been set up (Zhang, 2018). For those enlisted in the LJD for example, this means that they cannot purchase train and plane tickets (ID is required in the PRC for such

purchases), book a room in hotels above the standard class, or send their children to private school. Due to a memorandum signed in 2016 between Alibaba and the NDRC, the blacklisted cannot purchase luxury goods on Tmall or Taobao (Jing, 2016).

In February 2017, the SPC announced that since the introduction of the blacklist system, 6.72 million people had faced LJD-related penalties, an increase of six million in two years (Jing, 2016; Jing & Caoyin, 2015). The NDRC is working on a wider range of punishments (Yang, 2017).

More than individuals, companies have also faced blacklist-based punishments. The requirements for companies to be entered on the most relevant blacklists are lower. The decision of an administrative department on whether a company violated a rule suffices. A court proceeding where the company could possibly defend itself is not part of the process. Punishments include higher taxes, denial of licenses, lower chances to gain public contracts, participation in publicly-funded projects, mandatory government approval for investments in sectors where market access is not usually regulated, and several joint disciplinary measures. Meissner (2017) found that these punishments already lead companies to regulate themselves. She and Sapio (2017) point out that old rules now become self-enforcing and government interference invisible. 'If implemented as planned, the system has the potential to become the most globally sophisticated and fine-tuned model for IT-backed and big data-enabled market regulation' (Meissner, 2017: p.11).

Naming and Shaming

Public shaming has long been a measure of the Chinese government to exert additional pressure on suspects and, more importantly, to make an example out of a person as to warn the public from violating rules (Whitman, 1998; Global Times, 2018; Lim, 2018). Nearly every official document on the SCS stipulates such measures to publicly shame the untrustworthy. It is rarely discussed as a formal form of punishment. However, in connection with the blacklist-based punishment mechanism, naming and shaming gains striking importance.

Not only the public credit information catalogues are publicly available, the Credit Information Sharing Platforms display 75% of the credit information they share, with only the remaining 25% designated for limited sharing (Meissner, 2017: p.7). Most importantly, the blacklists are made publicly accessible online as well.

Courts are explicitly encouraged to use the media and widely forward information on who got blacklisted (SPC Provisions on the LJD, Art. 7) and a website listing both individuals and companies on the blacklist was set up.[4] Information to be entered besides the name, ID number, and in some cases, photos and home addresses, include the delinquency, the responsible people's court, the court's order that is to be fulfilled, and 'the situation of the person' (Art. 6 III). Additionally, the court may enter every information that it deems useful, only excluding information relating to 'national secrets, commercial secrets or personal privacy', the latter of which remains undefined

(Art. 6 VI). Furthermore, in the case of public servants and politicians, the names of the blacklisted shall be forwarded directly to their respective work units (Art. 8), leading to a direct impact on careers and work life even if their superiors do not proactively search them on the list.

The official call for measures of naming and shaming has borne fruit in several local projects as well. Sanmen County in Zhejiang and Dengfeng County in Henan, for example, started experimenting with a partnership between courts and telecommunication companies in June 2017. The latter installed a dial tone on the phones of the blacklisted informing the caller that the person they are calling has not complied with court orders, and further encouraging the caller to convince the defaulter to cooperate (Ohlberg et al., 2017: p.12). As a result, not only business deals but also marriages have been cancelled because people have found their partners to be blacklisted.

Reactions by the public display a strong reluctance to accept reputational damaging as a legitimate punishment. When in Huilai County, Guangdong, police sprayed "drug crime related household" on homes with a family member who was found guilty of drug crimes, a public outcry for privacy ensued. Only a few days later, the police returned to remove the writing on the wall (Global Times, 2018).

In the economic sphere, naming and shaming is more prevalent and less criticized. Companies face a new, non-market yardstick they will be measured by, as any failure to comply with environmental protection policies, for example, could be widely published immediately. Wang (2017) speaks of a 'transformation from the mechanism of enterprise competition to the mechanism of competition on credit'.

5.4. RULE MAKING

Using credit information as bases when evaluating credit subjects
Policy documents and pilot legislation has also called for companies, the public administration, as well as industry associations, to widely make use of the credit information available. They are to integrate the credit information they have access to in their daily operations and decision making. Administrative organs at all levels are called upon to make inquiries into credit information in the course of personnel decisions, granting permits, the transfer of land use rights, administrative punishments, the acceptance of residency cards, financial project support, and so on, shall be influenced by public credit information (SH: Art. 28; HU: Art. 24; HE: Art. 35). Market entities are also called upon to make use of available social credit information when negotiating terms of trade, in production, the provision of services and others, and market entities, favouring high scorers over others (SH: Art. 26; HE: Art. 38).

Formulating trustworthiness standards
Media reports have wrongly described the SCS as already calculating trustworthiness scores for citizens according to their behaviour. Such a central calculation does not

happen, nor does this idea appear in any official document the author could find. However, public organs, market entities, and industry associations are called to develop credit evaluation mechanisms and to experiment with grading systems in their respective realms. For the target area 'government affairs' for example, the Planning Outline encourages the creation of 'credit dossiers' for civil servants which, among others, shall list 'violations of discipline' and 'sincerity and cleanliness in government affairs' (part 2, section 1). Targeting the civil society, evaluation systems that are to be set up mainly concern organizational structures in health care, labour and others. Industry associations shall work out a plan for carrying out credit grading and classification for their respective areas and develop possible rewards and punishments (HU: Art. 14; SH: Art. 27; HE: Art. 33).

Any development of such grading systems will entail the formulation of standards according to which trustworthiness will be evaluated. This adds a crucial dimension to the SCS, expanding its role from a mere law enforcement tool to a source of norms and rules itself.

6. THE PILOTS

6.1. A PUBLIC PILOT: THE MASSES CREDIT

One of the very first experiments with social credit was conducted in Suining (睢宁) county in Jiangsu. Starting in 2010, a score was calculated at the local administration according to trial rules laid down by the county government. Credit subjects started with the highest possible score (1000 points, category A), and could reach the lowest category (D, less than 599 points) when not living up to the laid down rules. For example, a maximum of 150 points was given on the grounds of whether one was indebted or not (with banks or other private persons). The range of relevant actions was broad, including for instance not living up to family virtues and jaywalking. The system subjected local party cadres as well as to companies and included provisions that made a promotion of politicians with a score lower than A or B impossible. Rewards ranged from receiving loans from banks with favourable conditions, preferable treatment in public services, to receiving scholarships. Penalties included restrictions on lending money, receiving social welfare, and the renewal of business qualifications and licenses (Suining County Government, 2010; Xindong Bao, 2014).

Major point deductions were disclosed to the public, as were the actions taken against those with low scores (Yan, 2010). Others could retrieve their own score at the local public administration. With every change in one's credit score, a text message would be sent out to the respective credit subject explaining the reason. If credit subjects found a mistake, they could seek correction with the local administration or the court, though the provisions provide little detail on this process. By 2014, 85% of Suining's residents had a social credit score.

The system led to a wave of criticism from state media and individuals. They found

that the collected data was misleading, that the rating was more directed towards citizens and not seriously implemented towards cadres and government entities, and that the local government had no qualifications to rank according to their self-made categories hidden behind catch-all phrases such as 'public order'. For example, citizens who filed complaints were given lower scores (Boxun, 2014; Economist, 2016). Also, it was criticized that those promoting investment effectively received points. Furthermore, and despite being guaranteed by law, citizens had difficulties accessing their own scores and seeking corrections (Boxun, 2014; Economist, 2016).

Even though the criticism resulted in an overall turning-away of the idea of coercively ranking citizens for the time being, the very concept of the system itself was not challenged. Scrutiny was rather directed at its poor implementation. Later experiments covering all of a locality's citizens and commercial entities did not engage in score calculation but merely recorded incidents of law-breaking or non-compliance with court orders. In the absence of such incidents, later pilot systems assume trustworthiness.

6.2. A COMMERCIAL PILOT: SESAME CREDIT

Developing a credit service industry is a crucial part of SCS construction and a central theme in related documents. Commercial actors are not only regarded as credit subjects themselves, they are also critical in developing technology, aggregating credit information and act as agents for enforcement through partnerships with courts as discussed above. Local regulations call upon companies to innovate by participating in international cooperation projects, making use of technological innovations (SH: Art. 39 II, 42; HE: Art. 36 II HE; HU: Art. 25 II) and establishing experimental zones (Art. 42 II SH). Creemers (2018) points to the long-standing tradition of such blurring between public and non-public actors in China. He holds that 'the "social" dimension of the SCS also entails that members of society create the incentives for each other to act in the desired manner, without direct intervention of State actors' (p.8).

On January 5th 2015, the PBOC granted official licenses to eight private companies to conduct social credit pilot tests. Among them was Ant Financial (subsidiary of Alibaba), who rolled out its pilot called Sesame Credit (*zhima xinyong*芝麻信用) only weeks later. The smartphone application calculates a score from 300 to 950 for every user. Categories of information include credit history, fulfilment capacity, and personal characteristics, which are applied by traditional credit rating services in other countries as well. A novel category Sesame Credit applies is interpersonal relationships. Being friends with a low scoring peer on Sesame Credit will lower one's own score (Ahmed 2017b). A fifth category is called 'behaviour and preferences'. It is, for example, comprised of a person's shopping habits (Hatton 2015). Taking cheap offers on Alibaba's shopping platforms will lower a person's score, while buying sport and kitchen equipment or handicrafts will raise the Sesame Credit score. People buying diapers are more trustworthy than those playing computer games, Li Yingyun explained (in Lee, 2017).

With the category on behaviour and preferences, Sesame Credit is conducting a rating of trustworthiness clearly exceeding financial credibility. The exact procedures, algorithms and categories used by the rating remain undisclosed, termed as 'trade secrets' (Ahmed, 2017a; Yang, 2015). 30% to 40% of the data used to calculate the score comes from Alibaba-owned companies. The remaining amount is contributed by any other service connected to the Alipay app and from government bureaus (Ahmed, 2017a). As Alibaba has partnered up with the dating platforms Baihe and Didi Chuxing, who run the country's most-used payment service Alipay, the amount of data at its disposal is vast.

Sesame Credit offers several benefits to high scorers, including booking a rental car or a hotel room without paying a deposit, receiving loans at a lower interest rate, having online purchases delivered for trial without having to pay, and skipping the queue when applying for visas to Luxembourg, Japan and Singapore (Ahmed, 2017a). The credit service industry is to date nearly entirely in the hands of Alibaba's Sesame Credit. More than 500 million users have started to adapt their behaviour to raise their Sesame Credit score (Huang, 2017).

In July 2017, the PBOC decided not to grant licenses to any of the companies for a continuation of the experiment (Hornby, 2017), saying commercial actors 'cannot be trusted' (Ohlberg et al., 2017: p.12). The failure was due to insufficient privacy protection, but also to the fact that all eight competed with each other, presenting 'a potential impediment to the centralized vision of social credit that would require these firms to share their proprietary data with one another' (Ohlberg et al., 2017: p.12).

In 2017, a silent conflict between commercial credit entities and the state over their definitions of trustworthiness ensued. Reports pointed out that, very different from the government, commercial credit rating businesses interpreted creditworthiness as loyalty to their services (Ohlberg et al., 2017). Still however, the state relies on the companies' credit information data and scoring technology.

For now, this problem seems to be solved. On January 4th, the National Internet Finance Association (*Zhongguo Hulianwang Jinrong Xiehui* 中国互联网金融协会), a PBOC initiative, 'in cooperation with' the former eight credit information service pilots founded Baihang Credit Scoring (*Baihang Zhengxin*百行征信) (Guo, 2018). The pilots each hold 8% of the shares. The National Internet Finance Association is the largest shareholder with 36%. With a seed capital of one billion Yuan, Baihang will draw on credit information it receives from the eight former pilot companies, all of which are big-data-driven, to create a profile for every credit subject. It is yet unclear whether there will be a unified score (China Daily, 2018; Xinhua, 2018). In PRC media, questions about how coercive this step is, are vigorously cast aside. Alibaba and others may have to share their data, but in return 'receive a good credit environment and better conditions for operating' (Caijing Toutiao, 2018).

The close connection of this association to the government and the fact that eight big-data driven, credit information service companies are its shareholders both indicate that Baihang Credit Scoring is to be the company under which a unified credit information service under the SCS will evolve (Caijing Toutiao, 2018).

7. ANALYSIS

7.1. THE SCS IN THE LAW

It might be possible to integrate the SCS into the legal system. If one applies the thin rule of law theory, it was a legitimate ruling. In the following, the elements of the SCS that appear at odds with the rule of law will be discussed.

Social credit norms and the law

When considering an integration of the SCS as described above into the existing legal framework, a first impediment for a national legislation appears to be the lack of a clear definition of the key concept of the SCS: trust. Not keeping trust (*shixin* 失信), keeping trust (*shouxin*守信), trustworthiness and credit (*xinyong*信用), social credit (*shehui xinyong* 社会信用), and sincerity (*chengxin*诚信) all are key terms in every legislative and policy document, depicting the overall goal that all SCSs aim to reach. None of them are unambiguously defined.

All pilot regulations formally describe trustworthiness in the SCS sense as law-abiding. Provisions on the blacklists also define trust-breaking entities as those who broke the law, or indirectly did so by refusing to comply with court orders. This definition is what several spectators argue for. Luo (2016), observing the Suining experiment, brings up the example of a credit punishment for citizens who do not visit their parents regularly. This may only be implemented because a respective clause exists in the PRC's Law of the Protection of Rights and Interests of the Elderly. In this scenario, the SCS does not necessarily touch upon rule of law.

It remains nebulous however why the new term "trust" is even needed if it can be translated to "law" without losing any of its meaning. If trustworthiness was to be defined as law obedience, the SCS was merely an innovative law enforcement system.

It was shown that in the name of the SCS, rules are to be created to evaluate trustworthiness in different areas. While some of these rules impacting social credit have the quality of law – such as the requirements to be entered on the pilot region's public credit blacklists – some do not. In several instances, rules relevant to social credit evolve which are not law in the formal sense as stipulated in the Legislation Law. For example, local public credit bodies are to draft specifications according to which public credit information is to be evaluated (HU: Art. 23; SH: Art. 23: HE: Art. 29). Such "specifications" will possibly be the de facto-rules according to which punishments and rewards will be granted, although they don't classify as law. That the SCS shall reach beyond what is stipulated by law is also indicated by the educational measures on

trustworthiness introduced in the relevant documents: Shanghai and Hebei's education plans, for example, will cover 'social morals, professional ethics, family virtues and individual morals' (SH: Art. 47; HE: Art. 9). Further, in the name of trustworthiness, companies are steered according to their compliance with the policy directives shown above. All these findings suggest that the SCS makes and enforces norms that are not law. This reflects the finding that in the PRC, several policies have a de-facto power of law (Chen, 2011).

Chen (2011) argues that a clear distinction between what is law and what not is under way. Following his path, a possible way out of this collusion of trustworthiness definition is to clearly define areas where trustworthiness rules emerge (for example inside of the social credit evaluation systems that are to be developed in the public health sector). Then, procedures could be stipulated which will elevate the new rules or criteria to the status of formal law. The definition of trustworthiness as law-abiding, which is so frequently proclaimed, could be kept – and the SCS could, at least in this regard, smoothly be integrated in the legal system.

However, the question regarding the utility of the "trust" terminology would remain. The Fourth Plenum, and particularly Xi Jinping himself, has repeatedly insisted that the rule of law and the rule of virtue need to go hand in hand, suggesting that law shall not stand alone but be supplemented by extra-legal and non-defined guidelines. Viewed through the lens of social management, this lack of clarity might be intentional. It offers space for the leadership to fill with norms that situationally appear necessary, keeping the system from growing stiff. For the social management system to operate automatically, it needs to engage in self-learning. The lengthier the process to formulate trustworthiness rules, the smaller the probability that such rules will effectively serve the ends of ensuring the survival of the system. Static trustworthiness rules halt the control loop mechanism which constantly tests and reacts to new rules. Hence, when viewing the lack of definitions from the perspective of social management, it appears incompatible with thin rule of law, if keeping the above-mentioned definition of law as prospective, clear, and stable.

Social credit penalties and the law

The potential power of the SCS to punish untrustworthy behaviour together with the vagueness about what can be regarded as untrustworthy behaviour cast doubts on whether the SCS can be realized in adherence with *nullum crimen, nulla poena sine lege* (no crime without a law stipulating it as such, no punishment without a law laying it down).

Punishments that are part of the SCS are mostly laid down in Memoranda of Understanding and largely do not exceed what has been stipulated as administrative penalty before social credit came to life. However, measures against blacklisted entities are not laid down the way nullum crimen requires. While stipulated in the respective memoranda of understanding, they are not necessarily connected to a specific conduct but rather apply to the entire group of enlisted entities regardless of the behaviour

which had them be entered on the list in the first place. Nullum crimen sine lege however requires any punishment to be directly bound to a certain legal norm describing the conduct.

More importantly, the penalty of naming and shaming is systematically employed, even though it causes significant harm to not only the perpetrator, but his friends, colleagues and family members as well. It cannot be brought into compliance with nullum crimen sine lege because the deterrence effect it unfolds through punishing for instance the perpetrator's children lies at the core of naming and shaming. As reputational damaging cannot be contained, it is in any case at odds with thin rule of law.

As a measure of social management, punishment is not an act conducted in a separate space, concerning the state and the subject of punishment only. Being one element of the automatic system of the state, punishment must be influencing and itself be influenced by the other elements. In this light, the deterrent power of a punishment heavily defines its usefulness for the system. In other words, the very purpose of punishment is less compensation of guilt or the re-installation of justice (as absolute theories of punishment hold), but the prevention of future crimes (relative theories of punishment). Against this background, a SCS legislative framework from a social management perspective would not control punishment through linking it to a defined set of offences. Rather, punishment is checked through integrating the system threatening external influences, such as an instance of public anger against a particular act of punishment. Not justice, but the equilibrium (critical to autonomic systems) would determine punishment. The legislative framework in this context would consist of operational clauses stipulating the punishment system's setup, unfolding applicability only to this very system rather than to societal actors and their lawyers.

Again, the social management perspective reveals that thin rule of law with a Fullerian conceptualization of law as described above is incompatible with the concept of the SCS.

Transparency

If the trustworthiness definition will in fact reach beyond norms laid down by law, a transparency problem arises. To meaningfully restrict state actors by law, it must be available to the subjects wishing to invoke it (in Fuller's words: public and clear). The Dang'an 'haunting' (Yang, 2011) its respective subjects, blurry score calculation methods throughout the Suining pilot project and the poor procedures for complaints and corrections have demonstrated that the SCS has the potential to impede the rule of law through obscuring norms and procedures.

All three pilot regulations stipulate a right to know one's own credit information (SH: Art. 34; HU: Art. 34; HE: Art. 42). It can be enquired through a platform managed by the public credit information service centres (HE: Art. 24 II, SH: Art. 18 II; HU: Art. 20). The procedure does not mention courts, which would probably only come into play if an

administrative lawsuit was filed against the centres. More importantly, it works merely under the prevalent circumstances where social credit related punishment is only applied in relation to a certain unlawful or trust-breaking act.

7.2. THE LAW IN THE SCS

Several of the observed strands of the SCS point to a future where trust-related acts will not directly be linked to a penalty. They might rather be drawn together to create a more or less complex trustworthiness record, according to which credit subjects will be awarded or punished. This is the concept that was tested in Suining and is now, on a voluntary basis and with rewards instead of punishments, tested with Sesame Credit and the Sincere Shanghai App. It is the alternative to the existing, binary blacklist model which only knows the categories trustworthy and untrustworthy. It responds to both, with foreign media reports painting the Orwellian dystopia of an all-powerful social credit score, but also social management. Precisely because it appears to be in line with the latter, even though technologically and institutionally far from being reality, the following paragraphs will consider implications for rule of law for this highly controversial scenario.

Legislation for a score-based SCS would entail quantifying a catalogue of behaviour, which means attaching certain amounts of points to certain behaviours. This extra step between behaviour and punishment would effectively decouple the act from the punishment that the criminal code or administrative penalty law provides. This carries a problem with the blacklist mechanism one step further: the blacklist mechanism already enacts the same group of punishments on everyone on the list regardless of their respective trust-breaking action. Under umbrella terms such as "judgment defaulters", someone blacklisted for not visiting his or her parents regularly faces the same penalties as the owner of a factory who did not pay his employees because both of them lost the respective lawsuit. This categorization by lists would become superfluous if a quantified score was introduced. The score could take the place of lists and further generalize them. It would further disconnect the action of a credit subject and the punishment that awaits it.

This would not change even if the calculation methods including how which act translates into which amount of points were clearly laid down in law. The laid down calculation methods are likely to become overly complex and barely comprehensible for non-specialists as the system grows more sophisticated. Transparency might be seriously impeded, posing a major obstacle to an effective rule of law.
As a solution within the universe of social management, a meta-social credit system which allows for a transparent rating of those who rate can be considered (Backer, 2017a, in line with Zhu's thoughts in Schmitz, 2017). Anyone and any mechanism involved in evaluating social credit, constructing measurement criteria or others would be subjected to such a 'social credit system of social credit systems' (Backer 2017a: p.15). In social management terminology, it closes the control loop and thereby guarantees continuous self-monitoring and the other three procedures connected to it. Thereby,

potential threats, such as a large number of demands for an explanation of score calculation, would be forwarded to the meta-system which, in its constant effort to reply to environmental challenges, would perhaps pressure the lower level to solve the problem by for example drafting explanations or even adjusting the score calculation itself. Similarly, threats in the shape of administrative abuse would be found and reported to the next cycle, which would activate a self-configuring process to adapt and keep harm as low as possible. A thin understanding of rule of law would accept such a mechanism as an effective way to exert control over the rulers, even though it is subject to debate whether its means may be called law.

This would respond to the fourth aim put forward in the Planning Outline 2014, which is to strengthen sincerity in government affairs (*zhengwu chengxin*政务诚信) by subjecting state agencies including SCS administrators to the SCS in order to combat corruption. The pilot regulations already establish a mechanism which resembles an SCS for the SCS. They stipulate a 'corporate veil piercing' inside the administration: individual civil servants may be held personally responsible if they disobey rules and the principle of reasonable administration when handling social credit information (HE: Art. 48; SH: Art. 50; HU: Art. 40).

It is questionable whether the detected problems the SCS poses to thin rule of law can entirely be solved from within the thinking of social management itself, fully substituting traditional legal procedures. Several observers doubt this (Backer, 2017a, Chen & Cheung, 2017).

Liberal democracies define the quality of their legal systems through the independence of the organs. The notion of the courts as guardians of the law outside of the system is held so dear that legal systems elsewhere are regularly judged based on this criterium. Only through the independence of the judiciary can the abuse of power be prevented. From this perspective, the faultiness of an SCS is assumed. Therefore, solutions from within the project itself are delusive. The premise for an effective safeguard for credit subjects must be the likeliness of errors in the system, the procedures behind it and by system designers themselves, regardless of system immanent solutions.

7.3 RECONSIDERING THE CONCEPT OF LAW

The SCS proved compatible with thin rule of law when ignoring the law's traditional character. As the previous chapters have shown, the greatest difference the SCS makes to the thin rule of law is its challenging of the influential notion of law Fuller (1964) put forward (particularly it being public, prospective, clear, and stable). Integrating the SCS in such a legal system 'means to unify and integrate systems of monitoring, of transparency and of compliance within the traditional law-administrative regulation construct of state systems, [and] appears to be one of the most innovative and interesting efforts of this decade' (Backer, 2017a: p.2).
It suggests that if the notion of law would be opened up, the SCS in its most radical

scenario could become a part of the *Rechtsstaat* as found in the PRC. Any case filing, court procedure and decision would have to directly inform the rule makers, and so on.

8. CONCLUSION AND OUTLOOK

This work set out to explore a possible integration of the SCS into the rule of law and found that this is only possible after a thorough reconsideration of the very concept of law. Taking the thin rule of law as a starting point, we found it to not only be in imbroglio with the mother of the SCS, namely social management, but also with the government's design of the SCS as well as with the first instances of the SCS on the ground in China. Problems arise especially from the lack of a clear concept of trust. Understanding trust breaking as law breaking, as some government sources suggest, begs the question why the term is necessary in the first place. There are indicators for the creation of a set of rules beyond law, punishments might be meted out based on mere norms. Additionally, a change in the nature of punishments is beginning to show particularly through the application of naming and shaming in the context of the SCS.

In an experiment of thought, we considered a meta social credit system as a possible solution to the problems the SCS was found to be posing to the rule of law. Such a meta system to supervise the supervisors would itself be rooted in social management and presses an observer viewing it from the angle of liberal democracies to comment. A mechanism of punishment (and reward) such as the SCS might be in the future only if it can effectively be controlled by an independent outside organ with a different underlying logic.

This paper has shown that the SCS questions the concept of law, while at the same time stating to enforce it. Further research might consider taking one step back from the SCS and investigating the compatibility of social management itself with the rule of law.

Such work might start with the finding that social management is a holistic approach (Hoffman, 2017b: p. 4). With a reductionist approach, it aims to solve problems by taking into consideration the overall situation only, instead of looking at the details of one problem. A rule of law system on the other hand traditionally solves problems by granting rights to subjects and stipulating legal procedures, on the grounds of which issues can be solved via court judgements, case by case. It appears to be a reductionist approach and does not resonate with the nature of complex systems (Hoffman, 2017a). Complex systems are not manually managed but are instead self-learning and thus able to handle changing dynamics and threats, such as identifying unsatisfied credit subjects internally. However, neither the problems brought before a court nor the results are systematically re-integrated in the SCS. They are mainly designed to unfold effects outside of the SCS, in the realm of the individual or entity which filed the case.

At most, it signals a warning to the public, and sets a possible precedent for future court decisions (referring to precedents is, although widely informally practised, not mandatory for judges in the PRC's legal system). Since neither the problem nor the solution is directly reported back to the system, the self-learning process is impeded.

NOTES

1. To begin with, note that the term 社会信用, which is translated to social credit, carries a different meaning in the Chinese context: The term 社会, does not necessarily mean 'social', in terms of interpersonal connections. It also is used to refer to 'society' or 'public'. Hence a more accurate translation might be 'the credit of society/ the public'.
2. A wider selection of documents analysed by the author may be found in Appendix 1.
3. Examples for such partnership: State Administration for Industry and Commerce (14.9.2015): Joint Memorandum of Cooperation on coordinated oversight and joint disciplinary action against unreliable Enterprises; China Securities Regulatory Commission (24.12.2015): Memorandum of Understanding (MoU) on the Implementation of Joint Disciplinary Actions for Entities Responsible for Unlawful and Untrustworthy Listed Companies; similarly, policies on joint incentives have been passed, such as the Customs General Administration (19.10.2016): Memorandum on cooperation for the implementation of Joint Incentives for Enterprises with High-grade Customs Certification; Food and Drug Administration (13.9.2016): Memorandum of Understanding on Carrying out of Joint Discipline Actions of the Seriously Untrustworthy in Food and Drug Production and Business.
4. http://shixin.court.gov.cn/

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APPENDIX

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08

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