

China Law & Policy Interview with Jeremy Daum
Senior Research Scholar at Yale Law School's Paul Tsai China Center and Founder & Editor of *China Law Translate*.
October 24, 2018

Transcript of October 24, 2018 Interview with Jeremy Daum

This is *China Law & Policy* and welcome to our podcast. China's social credit system and its implications for citizen and corporate data, has largely been described by the Western press as "dystopian" and "Orwellian"; it has been compared to the British television show "*Black Mirror*" and the Hollywood blockbuster "*Minority Report*"- stories of technology out of control. It has been used to show what could come to the West if we are not careful with our technology.

[00:00:30] But is that what China's social credit system really is? We sat down with [Jeremy Daum](#), senior research scholar at Yale Law School's [Paul Tsai China Center](#), and the founder and chief editor of [China Law Translate](#). At *China Law Translate*, Jeremy has translated numerous government directives, policy pieces and local regulations on China's social credit system, making him an expert on this emerging system. He has also [written a slew](#) of informative articles and has just come out with [a podcast](#) that gives a general overview of social credit. But to get a better understanding of China's social credit, what it is, is it different from the West and what are the real threats within the system, we now turn to Jeremy.

CL&P: All right. Thank you again Jeremy for taking the time to sit down today to give us the T, the truth on China's social credit system. I guess let's start with the beginning.

[00:01:28] **JD:** Sure.

CL&P: What exactly is social credit? When did it come about? Can you give us some background on this idea in China now that its this social credit system?

[00:01:37] **JD:** It's a big question what it is. I think it refers to a lot of different systems. It's probably just a working name at this point. But social credit is a lot of ideas linked by the concept of centralizing data to assess credibility, but it's taking a lot of different forms. I would say that primarily what people talk about, there's three big parts of it that we could discuss. The first of those is similar to financial credit evaluations in other countries. It's about trying to make sure the financial credit extends to more and more people.

[00:02:20] The other is an administrative regulatory system that involves blacklists that we've heard about where various agencies put people on blacklists for violations in their fields. The third major area I think we can talk about, is a moral education component of the government trying to extend the concept of sincerity and trust throughout society. We've all heard about the extent of fraud and dishonesty that is rampant in some Chinese markets, and I think they're trying to address that as well. There are other pieces including government transparency [which] is government social credit. I think those three main areas are a good way to think about it.

[00:03:04] *CL&P:* Just in terms of background are there currently national laws, local regulations? What is the law that's bringing this about, the social credit system?

[00:03:15] **JD:** There's already quite a bit of authority in effect. Some of it is provisional regulations, but some of it is fully up there. The one that you see cited in media reports a lot is this outline plan –

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the 2014 through 2020 outline for establishing a social credit system. That, I have [a roadmap](#) of that as I call it of my site where I try to just pull out all the action items. Even doing that it comes out as 11 pages of document, just saying all the things it wants to do. But mainly it's a list by different fields including education, the internet, food safety and what they will do to establish social credit in areas like that. But in addition to that planning outline, a lot of more practical, implementable law has started to come out.

- [00:04:06] There are blacklists in almost every regulated industry at this point. And rules for how a person gets on those blacklists, how a person gets off those blacklists and how long information remains on them. A few areas have their own local provincial level regulations, which is a high level of authority governing a more comprehensive idea of the social credit system. There's a lot out there including guiding documents down to very specific implementation rules.
- [00:04:42] **CL&P:** *On the national level though, you don't have an actual law, you have a plan, a policy plan?*
- [00:04:48] **JD:** Yes, at this point we have a plan, but there's also quite a few normative documents. These are things calling from the National Reform and Development Committee. Calling for the blacklists to be created; calling for each ministry to create its blacklist; calling for the creation of a unified social credit code for both people, natural persons as well as corporations. All of the local rules are usually in response to a national level mandate.
- [00:05:25] **CL&P:** *Just to clarify, I think there's been a lot of perception in the Western media about the social credit system and there being a credit score. You mentioned that one of the aspects is this financial credit that's similar, but does the social credit system itself institute a credit score? I guess for those in the US who are used to a FICO credit score. How is what's going on here different or similar or...?*
- [00:05:55] **JD:** It's important I think to address score. A lot of places have shown a three digit number based on the US model. Some people –
- [00:06:03] **CL&P:** *When you say a lot of places do you mean –*
- [00:06:05] **JD:** I mean media, media. A lot of media has reported on that. *Wired* had [an article](#): a three digit score could control your life or determine your place in society. There are scores involved in this, but let's back up. Even in that financial component, which I call the credit reporting component of social credit. It actually uses a different uses a different word. It doesn't use 信用, which is usually credit or trust in Chinese. It uses 征信, which is the same 信 but a slightly different word, and I translate it as “credit reporting.” I do that rather than scoring because it doesn't necessarily imply giving a score even in that context.
- [00:06:49] For example, right now the People's Bank of China does have a personal credit reporting system using that 征信. But what they put out actually doesn't give a score. It's a list of debts and obligations and asset evaluations, but it doesn't give an ultimate score. It just gives a data sheet

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that a lender might be interested in seeing. So with credit reporting private companies might base on some of the data that they get start to give scores that would be useful to people, but that would be a credit product they're offering to people. That's what we're talking about the financial situation. What people are really interested in and what I think is sexy about the idea of social credit is the idea that people are being rated and evaluated in some sort of a holistic way. That actually there is no score. There isn't even really a holistic evaluation of people in any way.

[00:07:48] There are a few local pilots that do give people scores, that do seem to be a sort of “citizenship score.” The idea is this will in some way tell you how good a person this is. It considers a lot of different things like doing charity work and volunteer work. I view those primarily from my main research focus where I'm a criminal procedure researcher and I look to see how state power is used to enforce these lists. What I found is that in all of these point systems, there are no consequences of a “bad score.” There are some minimal rewards for “good scores” – often things like you get your lawn mowed for free or you don't have to participate in some other mandatory obligation of sorting recycling or something to this effect. There's some mild benefits. Not dissimilar to what being a model worker or model family used to be in the old days. I would call it more of an educational system. This is part of that educational component trying to convince people sincerity is an important value rather than anything like an enforcement mechanism of any kind.

[00:09:04] **CL&P:** *Okay, so it's just to promote positive behavior and not necessarily to punish negative behavior. It would just be in this sphere of charity work, doing good work?*

[00:09:13] **JD:** Well some of them are holistic and are trying to ... They would include things like if you had a criminal violation, they would count that in, but what they're doing with that in that context is making the score that doesn't have any real negative consequences besides maybe shaming. Which might be there. I've seen very minimal. One of the most extreme that I've heard about is you got a larger share of communal farming profits if you had a high score in one of these systems. These scores are really a very minimal part of what going on and don't really have teeth.

[00:09:52] Shanghai for example is the example I'd like to raise the most where they do have an app that gives a score. Shanghai is a big modern city. But this app is entirely voluntary. There are no consequences attached to it. But Shanghai is one of the cities with a full regulation, a social credit regulation available. The regulations themselves don't mention a score, don't mention this app anywhere in it. This app is just a promotional tool, a publicity stunt at worst, an educational device at best.

[00:10:27] **CL&P:** *Going back to social credit in general and the three aspects that you talked about. The financial credit, the administrative regulatory, the blacklisting and then the moral education. When did the Chinese government start with this plan? When was the plan initially rolled out and why are they doing this now?*

[00:10:48] **JD:** Let's take it backwards, social credit has existed in a few incarnations. The modern incarnation is really within the span of that plan I mentioned, the overarching plan. Why are they doing it? Well, within the financial credit sector there is still a huge percentage of China's

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population, I hear estimates of two thirds, that are the unbanked. They simply do not have a profile in the banking system's personal credit system. The banks, the government hopes to reach them with credit because a credit economy grows faster, people can have money in two places at once. They needed something to base lending to these people on. If they had never taken out a loan, never bought a house, never had a mortgage, they had to look to other factors. Actually looking to foreign models they had the idea what if we look to some other indicators that this is a good person.

[00:11:50] So far, that hasn't panned out in China. Where the systems, including Sesame Credit run by Ant Financial, that have tried to create an alternative evaluation of a person's credit as a borrower, ultimately it didn't seem to be a good indicator of whether they would be good at returning debts and they had a conflict of interest where they were basing it mainly on how much was spent on their own products. That made it even more unreliable. But beyond the financial sector, there is a trust crisis in China. One example that I like to bring up is a terrible story that happened a little while ago at a kindergarten here in Beijing, that I think [did make international news](#). A rumor began that a teacher was injecting students with something. Then this grew into a larger rumor that they were drugging students and sexually abusing them at this kindergarten. It's every parent's worst nightmare, of course.

[00:13:05] The police then go and investigate. What their investigation finds is that there was a teacher who was in fact pricking students fingers with a needle as punishment, but they weren't drugging them and there was no real indication of sexual abuse. But from this rumor starting we can see the lack of trust on all sides and how quickly it spreads. The parents were willing to believe that their teachers would do this to their children and then try and cover it up. But they would further believe that the police, rather than have this international embarrassment, would fake an investigation and pretend this wasn't happening to children in their own country just to make it blow over. There's the lack of trust on all sides. Nobody trusts anyone. The school can't trust its parents. No one trusts what the kids are saying and people are ready to believe that the police are engaged in a massive cover-up.

[00:14:08] A quicker shorter example would be just thinking of how food safety violations traditionally have happened in China. Not everyone is as high profile as the milk powder scandals of a few years back but product safety in the food area has been a real issue. What used to happen was when you got fined or discovered for these major safety issues, you would simply reincorporate under another name and start doing business. No one would attach this bad will to you or know to be afraid of the products. So people creating shoddy goods could keep doing it in various forms. Part of what the social credit system hopes to do with these real name systems and unified codes is to make it so you can't escape this record. Now of course that only follows you for a certain amount of time, and you can recover a reputation, but it's to make it so you can't just dodge the administrative regulation.

[00:15:13] **CL&P:** *Just to follow-up on that, that's interesting because. . . I don't know that the United States has any more trust than what you have or a lack of trust, but what you do have is a functioning legal system, you have a much more transparent government. Why is the Chinese government choosing to go what to me seems like a much more convoluted route where it's top-*

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down to impose this trust system as opposed to something bottom-up where, "Well this teacher can be sued, if this was America." This teacher can be sued for pricking children. You get a discovery, you find out what's happening and you have transparency with the police and the investigation, you have transparency in the court system. Why is the Chinese government choosing to go what to me just seems like a much harder route to instill trust or to instill a system where trust is. . . where you trust the system?

[00:16:11] **JD:** I don't think it is a harder route. I won't get into the reasons why people lack trust except that it's important in all context to remember exactly how quickly China has developed. The culture has urbanized at an amazing pace. As for American's trust, I think we actually have an undue amount of trust where I really do believe the FDA has made sure that packaged foods and processed foods that get to me are going to be safe. People from the FDA have told me that might be misplaced faith. Our companies through regulation, but also through litigation like you said, have learned to be more proactive about recalls. Most of the recalls are voluntary, *et cetera*. Is China taking a harder route to establish trust? I don't think so.

[00:17:02] I think it only sounds that way if you're overthinking what social credit is again. Because what it really is, is that they're just making sure. . . and again, this is mainly that middle core of administrative regulations, the most active currently in social credit. What they're doing is they're making sure that administrative records, and that primarily includes what they call the double designations of administrative punishments and administrative permits, that those are linked both to corporations by that unique number, but also to the leaders of that corporation, so they can't just go start a new company somewhere. It's really just about making the data accessible. It's not imposing new obligations. It's not making a complicated new ranking system. It's really about making that data accessible.

[00:17:57] **CL&P:** *Which is not too far . . . I know working in the United States, working in landlord-tenant, you do see a lot of bad landlords that hide behind the corporate form and are doing horrible things. That's something we fought for is to try to see behind that corporate form and that we've gotten pushed back in the United States. That does seem like a good thing to have greater transparency.*

[00:18:22] **JD:** It's funny because one of the most invasive parts of the actual social credit plans, contrary to what you see emphasized in media reports, is this "through the corporate veil." The fact that the actual controller, even primary shareholders can be held accountable for the conduct of a company. That could be really risky for individual rights. But what's interesting is I think that part would actually sell really well to most of the American public.

[00:18:56] **CL&P:** *Yeah.*

[00:18:56] **JD:** I think that a lot of people have frustration that CEOs seem to walk away with golden parachutes from corporate misconduct. This system does, at least in form, look like it's made to prevent that. Again, I think the main reason for it here is just to stop the people from repeating their offense in a different form. You see a lot of professional certification bans where somebody who is on a serious blacklist, wouldn't be allowed to be the manager of a company in that field

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again after they had a violation. So if I created poisoned powdered milk, I wouldn't be allowed to open another powdered milk plant within a certain period of time.

[00:19:37] **CL&P:** *Right. Right. Let's go back to the blacklists because I feel like that's something that has gotten a lot of attention in the Western media too. Can you give a little bit more description, what exactly are these blacklists? Who are making these blacklists? How public are these blacklists? Can you give a little bit more information about the blacklists?*

[00:19:55] **JD:** Yeah. Understand the blacklists, which is the administrative regulatory part of the system, which is currently the most active, in my mind by far, part of the system. It's really a three step thing to understand. The first is real name registrations. Real name applies to when it's a real person, a natural person. You have to give your real name to get a bank account. You have to give your real name to get a phone. And there's limits on how many of these things you can get so that you don't get 20 phones in your name and then give them out to your friends so they are not using their real name. Internet connections, real name. And that's usually by the way real name behind the scenes. So the company you're doing it with creates a real name, but if I'm going onto an online service, usually up front I can still use an alias to the public, but they have to have my real name on file somewhere.

[00:20:52] **CL&P:** *So you can still be Bunny Honey.*

[00:20:53] **JD:** I can still be Bunny Honey if I want, yes. Everything gets linked back to your real name should somebody need to figure out who's responsible for something. Now that's important because that is going to make all of your acts go into a file essentially. Which is why it gets compared a lot to China's old 档案(“dang’an”) system, the archive system.

[00:21:21] The second step is the blacklist creation. All of the administrative agencies were charged with creating standards for who would get put on these lists within their area of regulation. Those standards are when you violate a certain level of law, then we're going to put you on it. They also in addition to the blacklists have red lists, which are for positive behavior. And they have warning lists, which they call “key scrutiny lists” sometimes. These are for behavior that was negative, but not quite bad enough to get you on the blacklist. The blacklist is usually a pretty high standard. Now again, this isn't for generalized bad conduct. This is for certain violations within their authority. Often we even say you have to receive an administrative punishment for this.

[00:22:18] **CL&P:** *Okay.*

[00:22:19] **JD:** What getting on the blacklist does is, and these are industry specific blacklists that each area creates based on their regulatory jurisdiction, so the blacklists though do get centralized on this unified credit platform, which sounds way menacing until you realize it's a website. What this means is monthly or so they send over the list of people who are to be entered into the blacklist for that particular area. These are searchable. They get released and you can Google or

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Baidu for them. You see wave one of such and such blacklist, wave two. It used to be easier to find some of them, but now it's a little harder.

[00:23:09] Then the third step of it is the more controversial one, which is that through Memorandums Of Understanding (“MOU”) between different agencies, between different ministries and different regulatory areas, there will be some joint punishment of people who are on the blacklists. Now what I have noticed in reviewing all of these blacklists and MOUs is that the joint enforcement has a few unique characteristics that make it different than the other, sorry than the industry specific punishments. A great example is the No-Fly List. The No-Fly List blacklist breaks down the negative conduct into two distinct types. The first type is aviation misconduct. If you get in a fight with a person at the boarding gate, yeah they're not going to let you on the plane.

[00:24:09] **CL&P:** *That would be the industry blacklist?*

[00:24:13] **JD:** Exactly. That gets you on the industry's blacklist-

[00:24:16] **CL&P:** *Because you violated a specific industry regulation. In that regard do you get . . . I know you said they're industry specific, there's usually an administrative punishment. Will there be some kind of process by which you are informed that you've been put on the blacklist, that you've been informed you violated the law.*

[00:24:34] **JD:** Yeah. Before you get-

[00:24:35] **CL&P:** *Industry blacklists.*

[00:24:36] **JD:** Right. In most situations an attack on a boarding gate ticket checker is a spur of the moment violation, but usually when you're being alerted of misconduct they'll tell you that one possible consequence of this misconduct is being placed on the blacklist. You'll see that most of the blacklist standards, these rules laying out how the blacklist is created, will actually mandate that. That you have to get this warning. Then you get warned when you're actually entered on it again. If there's an administrative punishment involved, you have the normal remedies involved there of having administrative reconsideration or administrative litigation in the courts to fight it.

[00:25:23] **CL&P:** *Okay, it's like if you jump a turnstile on a New York City subway, you get a ticket from the police officer. If you want to fight it you go to the Transit Bureau Court System.*

[00:25:31] **JD:** Right. There are in theory ways to be arguing against this, China's system being what it is, you might find this unreliable. But yes, there are methods. Those in an aviation specific offense that gets you banned from the plane, that's what could have happened before already.

[00:25:54] **CL&P:** *Right.*

[00:25:54] **JD:** That's just the Civil Aviation Administration doing its thing. It has to give a punishment within its sphere of power, and so it's going to block you for this misconduct.

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[00:26:07] The second category though that they concern themselves on the blacklist is some of these joint offenses. That includes things like where you've been given a securities violations fine.

[00:26:19] **CL&P:** *Okay.*

[00:26:20] **JD:** Here it's a little different because it's not just punitive. It's not just you get a fine for your securities violation and you can't ride planes, that's your punishment. It's coercive, you can get off of that by paying the fine. It's meant to make you do something. The most famous example of this and the most commonly confused with being the entire social credit system is the court judgment defaulters blacklist. Part of this is a legal jargon problem that people have mistranslated it. What it literally should be is a list of people who have defaulted on obligations from an enforcement court. What that means is that an enforcement division of a Court has issued a ruling that says, "You have either failed to perform on a court award at a civil trial or you were given an administrative punishment, didn't pay that fine, didn't act on it." Then the administrative organ went to the Enforcement Court and got a court judgment saying-

[00:27:26] **CL&P:** *- You got a court judgment against you -*

[00:27:27] **JD:** *- You had failed to fulfill your obligations there. That one has an MOU. The criteria for the blacklist there is failure to perform on an enforcement judgment, which is a single criteria. But because it has court judgment involved maybe, more ministries, more departments, are willing to sign on for joint enforcement of it. It has really wide reaching consequences, including a plane ban, a ban on riding on the best trains, some that I really don't care for, like your children can't go to private schools. These are all called limits on high spending or high consumption.*

[00:28:08] **CL&P:** *Let me just for our listeners that are based out of China. I mean I guess how different is this from what's going on in some sectors of the United States, right? I know from my practice in New York State if you have a state tax debt of a certain amount, I think it's maybe about \$50,000, I forget, but a lot of people do. Then the New York State Tax Authority informs the Department of Motor Vehicles and Department of Motor Vehicles revokes your license. Is that different? How similar is that to what's going on here with these joint enforcement of punishments?*

[00:28:50] **JD:** It's the same concept and I think when there's a court judgment in play, a lot of countries don't have as much problem having these auxiliary or supplementary consequences to get you to pay. The idea is that you've had your due process and now you should be doing it. Sometimes it doesn't seem to make much sense. Suspending driver's licenses in the US is going to make it harder for you to earn money to pay back those judgements.

[00:29:17] **CL&P:** *Exactly.*

[00:29:18] **JD:** In China the idea is that most of these awards are going to be monetary and you shouldn't be spending a lot of money if you haven't paid back this award. Your money should be going to fix that problem.

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[00:29:28] **CL&P:** *Let me ask another question. In the United States when you get a money judgment against somebody you can garnish their wages, you can put a lien on any property they own. You can do a search to figure out what are their assets and how do I get the money out of those assets? Why is that not a system that's working here in China? Why are they going this route of having this joint enforcement blacklist to enforce court judgements?*

[00:29:56] **JD:** They have similar procedures here, it just haven't proven effective enough. That could be because individuals don't always have the assets. It could be because they have legal mechanisms for shuffling them around and they've tried this as much. But this is aimed to get at the individual. The best way to think about that is if you look at what it's; the judgment defaulter is a corporation and we talked about going behind the corporate form. Instead of just getting the corporation, we're going to make it so the CEO's kid can't go to private school and the CEO can't fly on a plane. Now do I agree with that? No, I think that actually has a lot of problems. One of the main problems is it treats all court judgements as equal and I think that say a judgment for me to give a formal apology to somebody or to visit my mom more often on the holidays is very different than an environmental polluter's judgment to clean up an eco-disaster.

[00:30:51] **CL&P:** *Right, right.*

[00:30:52] **JD:** I don't think the consequences should be the same for those. Now the court does have some discretion, doesn't have to impose all of these exactly the same, but my feeling is that more often than not it's just they get a blanket restriction on high spending.

[00:31:07] **CL&P:** *In terms of the high spending, that's another interesting aspect I think of it is that they just are blacklisting high spending. They're blacklisting you and it impacts your high spending stuff. It does seem like the repercussions or the targeting is more for rich people or corporations as you said. So to the extent that people captured by this it's people who fly on planes, it's people who take high speed rails, it's people who send their kids to private school. How intentional was that? Because you still, you must have farmers in the countryside that are suing each other that will have a small judgment. Does the law take into blacklisting of them. And how intentional was it to go after people that are more economically well-off?*

[00:31:54] **JD:** You're right, there are limits on high spending and I think that's because, like I said it's seen that you should be fulfilling your financial obligations before you get to spend money on pleasure. Of course there's farmers with disputes between them and people who don't have means, it may not be as likely that they go through the court system to try and resolve those issues.

[00:32:16] **CL&P:** *Okay, that's true.*

[00:32:17] **JD:** I think the crisis and certainly the part that holds back the economy is when it's larger sums involved. It's about clearing out these bigger cases. But mainly I think there's also a feeling that this is in some way just. Like I said, that we're not going to let you have fun until [you pay]. Now on a lower level there are some places that try things, even with the judgment defaulter list that are along the lines of shaming. That is a mechanism that would work beyond just limiting

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your own spending, but letting the public know. One place, blanking on where it was, but has it where you're on the judgment defaulter list when people call your phone, before it picks up, instead of playing a nice waiting music, it plays a message that they are calling a person who is on the judgment defaulter list and they should be careful with you.

[00:33:05] People have said that they actually do get pressure from their peer groups from being on this list. I think that would be a great study if someone wanted to look into something about what's really happening with social credit is whether this is actually working. Are court judgments getting enforced more effectively? Are people not wanting to be on the blacklist. It's a great area for research. We've seen some stuff about public opinion of social credit, but social credit is such an expansive term and really a work in progress as a term that covers so many different programs that I don't think it gets too much. Whereas the judgment defaulter list is pretty concrete item.

[00:33:42] **CL&P:** *I mean I guess that's something that you're touching upon that is interesting too is, yeah, to what extent do people really care if they're on the blacklist for something stupid. Let's say. . . to what extent do you think in Chinese society, young people, middle aged people actually care that they might be on a blacklist because they had words with a flight attendant and now they're on the No-Fly List or something like that. Or to what extent is that a badge of "oh, hey, I had a fight with a flight attendant." Or when you look in the United States like I know for doctors you can look up how many medical malpractice cases are against them. I always assume there's going to be one or two because we're a much more litigation happy society and I don't really take it to heart. Now if there's like 20 I might not go to that doctor. To what extent do you think this is influencing or shunning people from society?*

[00:34:38] **JD:** The judgment defaulters list, to focus on that, that actually limits enough of your conduct that it's going to have consequences as its goals. Most of the industry specific blacklists, and these MOUs that enforce them with joint enforcement, limited joint enforcement, I don't think there's a risk of anyone seeing it as a badge because what it really is is just you got an administrative fine, an administrative penalty, and they tend to be for fairly serious things, but professional things. The target of that is mainly corporations not individuals and the individuals primarily come into this by virtue of their association with a corporate entity. So being the actually controller, or stockholder, CEO, or the manager for who was responsible for a problem.

[00:35:29] It's not going to be so much even about you, you're just going to be trying to fix the problem. If you worked for a factory anywhere where the environmental authorities came and said that you were just putting out too much exhaust or waste water and gave you a fine saying that you need to fix this, well that's not ever going to be something like well I just don't care. You're going to have to deal with it. You might do a cost benefit analysis but you're going to have to address it. That's really all the industry specific blacklists are. It's worth repeating that I have seen so far there are no new obligations imposed by social credit, it is just calling the obligation . . . It's consolidating existing obligations and penalties into a blacklist for the more serious ones and warning list for less serious ones.

[00:36:19] **CL&P:** *Has anybody done any studies like. . . let's talk about the court blacklists which is the judgment default. Has anybody analyzed that blacklist to see how many are just average Joe's*

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that just got sued and how many are corporations doing bad things and haven't paid their debts and the people associated with them so the CEOs that are behind them?

[00:36:42] **JD:** Yeah, so there's been monthly, a really decent analytic reports and they don't do the full social credit system but they do do the judgment defaulter system pretty well where they do give that sort of breakdown of how many natural persons. Now it's important to remember that with that piercing the corporate veil aspect we talked about, corporations are going to have natural persons to go on the list with them, but the list for the judgment defaulters is always there and searchable. The monthly report tells you not only how many entities and real persons were put on the list in the month, but how many came off in the month. You can take a look at that at any time. I don't have the list in front of me but it is a lot of people. I think in September it was over 220,000 people got put on the list.

[00:37:35] **CL&P:** *Okay. Just in terms of the corporations and the people associated with it. So what's going on here on the defaulter judgment list is you're putting people like the CEO individually and you are, in what we call in the United States, piercing the corporate veil.*

[00:37:50] **JD:** Yeah.

[00:37:51] **CL&P:** *To what extent, I mean in the United States you can't really do that, it's very, very hard to pierce the corporate veil, but here by putting somebody, giving them repercussions, let's say CEO-*

[00:38:03] **JD:** Legal representative or actual controller-

[00:38:06] **CL&P:** *Putting them on the No-Fly List, they're getting the repercussions of their corporation's bad business-*

[00:38:10] **JD:** That's right.

[00:38:11] **CL&P:** *- Bad acts. So to what extent is this creating a new liability for those people, or have you always been able to pierce the corporate veil under Chinese law?*

[00:38:23] **JD:** That's a good question. I think this is certainly a new, more direct consequence for them and even for individuals who are owing a court judgment, this is a new enforcement mechanism. Joint enforcement didn't exist and there's actually debate in Chinese legal circles if whether it's legal. Because where's the authorization for this. I think though even looking only at the judgment defaulters list I think that there's still very much a live controversy over whether this is allowed towards anyone because where does the Civil Aviation Authority get its power to ban you from flying based on this court judgment, where is that coming from? Do the courts and the Civil Aviation Authority have that power unto themselves?

[00:39:14] **CL&P:** *Right, right, right. In terms of the blacklist itself, can you get off of the blacklist?*

[00:39:20] **JD:** The judgment defaulter list?

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- [00:39:22] **CL&P:** *Yeah, the court, let's stick with just the court one because that's the easiest one.*
- [00:39:40] **JD:** Let's call it the judgment defaulter list to make it clear because I know some reporting has thought there was a general credit blacklist that if you fall below a certain something then you're on a certain magical citizenship list, but this is for judgment defaulters.
- [00:39:40] Your question was how do you get off it? You can perform, you can perform on the obligation. In theory, you should be able to show that you shouldn't be on it in the first place. And you can show that you don't have the ability to act on it because it's supposed to only apply to people who are willful judgment defaulters. That is, you have the ability to perform but are not performing.
- [00:40:07] **CL&P:** *If you were let's say the CEO of corporation X, corporation X doesn't pay because corporation X is basically bankrupt, you're on the No-Fly List, you can essentially petition, would it be the court or would it be. . .this is for the court default judgment blacklist. You can petition say look, I don't have, my corporation doesn't have enough money, I don't have enough money, can you please take me off. Is that it?*
- [00:40:37] **JD:** That's right. You would present the evidence in an appeal or a collateral appeal to show that either you've already performed and don't owe this or that you're somehow ineligible, which would include that you don't have the ability to perform.
- [00:40:50] **CL&P:** *Okay, so this is sort like in the IRS, like I know with tax debt, there's a currently not collectable status for individuals that are so low income it's like getting blood from a stone and then they can go into that status.*
- [00:41:03] **JD:** Right, and this would be . . . it seems from this outsider's point of view that it's less proceduralized that it ought to be at this point. People have complained about trying to get off the list and get news about where they are, why they're on the list and had trouble. I don't doubt that, but I think that's more of a bureaucratic problem than anything else.
- [00:41:26] **CL&P:** *Okay, so the bureaucracy is still being worked out and stuff.*
- [00:41:30] **JD:** Yeah.
- [00:41:33] **CL&P:** *Here's another question, what about foreign corporations doing business with China? How does this impact them?*
- [00:41:41] **JD:** To my understanding when foreign corporations do business here they have to have a legal status here.
- [00:41:46] **CL&P:** *Right.*
- [00:41:48] **JD:** When they do, like United Airlines, they have a social credit number attached them. I think foundations as well. Anything that has a legal entity status here, that legal entity is part of the system.

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- [00:42:04] **CL&P:** *Okay. The other thing that you mentioned in the beginning about the social credit, the financial credit, the administrative regulatory/blacklist, but also this moral education and I think that's one of the one that I think a lot of Westerner's have a hard time getting their head around is this idea of developing a system of trustworthiness and sincerity throughout society. How exactly does the social credit system go about building that?*
- [00:42:34] **JD:** *There's a lot of different factors, and again I think the part that's most confusing is that all of this stuff gets grouped in together under the title of social credit. People think that somehow those blacklists and somehow those financial credit things must be feeding into these other components whereas it's really very siloed sort of stuff. Even though some of it does involve data centralization. Part of the way they do it is with education, straight out education and publicity. Having programs, teaching people about financial credit, but also about moral trustworthiness. The idea that you need to be as good as your word. They're putting that in school curriculums for children, they're putting it in outreach things for retirees. They're creating majors of credit management in the financial sense in universities and they're just trying to spread that idea.*
- [00:43:30] *The other part of it though is just taking, trying to put forward role models. Departments, this is part of the red list side of things, are supposed to pick people who they think are doing their job great. Going the extra mile and being above what the law requires and put those forward. Then they get publicized through the media and the like. This is not too dissimilar. . . I have a picture you can put on your website if you want from near my house that is model families and it has the photo is of three families in my neighborhood who have been chosen as role models –最美家庭. And do they get any benefits from that? They probably got a fruit basket or something, but they're just being put up there as a model. That maybe seems a little hokey or-*
- [00:44:32] **CL&P:** *Yeah, like student of the month.*
- [00:44:34] **JD:** *Maybe to our cynical background it seems silly and I suspect it does to a lot of people in China too. But I think that's pretty much the extent.*
- [00:44:45] **CL&P:** *Let me ask you, that's an interesting thing you bring up about financial education and including the morality component in financial education. If it's about paying your debts I don't think actually in the United States in my interaction with a lot of the clients I work with, there is an embarrassment for some people in not paying back their debt, and there is also a lack of financial sophistication, especially in low- income individuals because the products are so complicated.*
- [00:45:17] *Do you know to what extent, if China is looking to create a society, you have two thirds of your society that are unbanked, so they don't really know banking products, they don't know credit products, how they can be taken advantage by it. Is part of the financial education to teach them the bad parts of banking? I know when my clients come in there's overdraft fees. They're paying, even with a Bank of America, Wells Fargo credit card or bank account, yeah they're not going payday lenders, but they basically have the same effect because of overdraft fees on a \$20 purchase they're paying 300% on not having enough money in your account, overdraft fees and*

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stuff like that. Is the financial education component looking to teach people who haven't been banking about the dangers of some of these products?

[00:46:09] **JD:** Yes. I don't think the market here is as complex yet. We've seen various attempts to branch out in the peer-to-peer lending situation which is now getting regulated more tightly. In effect yes, I think it's teaching people the consequences of not being able to pay back your loans, but also how to evaluate a loan and an opportunity and investment as well. The government wants to make money more mobile to make the population more mobile and this is part of its effort to do that.

[00:46:51] **CL&P:** *Going back to some of the misconceptions about social credit in the Western press, I think you mentioned before the Sesame Credit. Can you talk a little bit more about the private credit market, developing a credit dossier in the private market vis-à-vis the social credit system itself?*

[00:47:19] **JD:** Yes. Sesame Credit, and the reason I've written about it at all, is because early on there were some people out there confusing it with China's social credit system. Even after I've written on it and other people have largely cleared that up, people still seem to think it's a private version of the social credit system and that's not right either. This isn't something that's going to have a public equivalent. What Sesame Credit is, is if we're looking within those general categories I mentioned earlier of what social credit contains, they're within that financial portion. And the People's Bank of China already has a personal credit reporting system.

[00:48:02] And it authorized, in its attempt to reach the great unbanked, it authorized eight companies that were data-rich to develop systems that might eventually become personal credit reporting systems. Amongst these was Ant Financial affiliated with the Ali Baba empire, and there was Tencent, Tencent had one. But the most prominent has been Ant Financial, Sesame Credit. And this does have a score rating and it has a lot of really cute graphics that have an odometer, sort of, green to red. Sesame made a lot of statements early on about how their system was going to tell you if someone was trustworthy. And they talked about how they were going to mobilize their big data to get this going on. I should say right off the back that none of those eight companies that was given permission to develop a functional system received a license ultimately, to create a licensed personal credit report system.

[00:49:08] **CL&P:** *So basically the Chinese government said, look we want to see where this goes. We're going to let you guys experiment, see where it goes, and then they saw where it went and they're not adopting any of this.*

[00:49:19] **JD:** Yes. They created a little incubator to let these try off and they have a lot of natural advantages and data. But, and I think I mentioned earlier with Ant Financial and Sesame Credit they said well the main problem here is your conflict of interests. You're basing your evaluation of people solely on their use of your products.

[00:49:38] **CL&P:** *Right.*

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[00:49:39] **JD:** The other problem was that it just wasn't a great indicator. Now, what they've done since then is they've created an internet lending database. This isn't bank lending, but this is lending that was happening through the internet and each of those eight companies that wasn't given a license originally now owns an equal share in this database that is going to be part of – I'm a little shaky on it myself honestly because there's not a lot out there – but is going to be part of what they try again to create a viable credit score on. We'll have some other data outside of their own sphere of influence. And these companies will not be sharing data with each other is my understanding. Sorry, they'll share the 百行 – the credit-

[00:50:25] **CL&P:** *The credit report . . . ?*

[00:50:27] **JD:** Well no-

[00:50:29] **CL&P:** *The actual report that shows what you owe?*

[00:50:30] **JD:** So they'll share this common database the government has licensed with the internet data and they'll all draw on that and then mix that with their own special sauce at home to create their reports. Ant Financial won't give Tencent it's commercial data.

[00:50:45] **CL&P:** *Okay, so you could theoretically have a different "credit score" from Ant Financial as opposed to Tencent-*

[00:50:51] **JD:** And you would.

[00:50:53] **CL&P:** *pOr if all you do is use Ant Financial products you would have no credit score with Tencent or . . .*

[00:50:58] **JD:** How those companies choose to create credit products will be up to them-

[00:51:03] **CL&P:** *Will be up to them.*

[00:51:03] **JD:** And they might create more than one because part of what the government wants to do in this financial sector is allow companies to start creating more products that would be useful to different people. And so what they create will be up to them.

[00:51:17] To go back to Sesame Credit and what it is now. So Sesame Credit, because it doesn't have an official license, while it would very much like to become something like a FICO score, right now it is really not much more than a rewards or loyalty point system.

[00:51:35] **CL&P:** *Yeah.*

[00:51:36] **JD:** It's important to say again, it's a private scheme, not a pilot for a government scheme. It gives you rewards for using Ant Financial and Ali Pay products and those rewards tend to be

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things like the waiver of deposits at companies that have signed agreements with Ant Financial, there are no penalties because-

[00:51:58] **CL&P:** *They want you just to do more commerce. They're just encouraging you to get commerce there.*

[00:52:03] **JD:** This is a rewards program and some people like it.

[00:52:05] **CL&P:** *It's like United Airlines, you're a part of that program, the rewards program, so therefore you're going to try to do more United Airlines.*

[00:52:11] **JD:** That's right. When I ask sometimes people on the street or students that I've had who are trying to understand social credit, I ask if they have a Sesame Credit. Sometimes people have to check and see if they do and those who have used it have that same sort of zealot mentality of someone who really loves their Discover card. It's not a thing. Now that might change someday as it grows.

[00:52:39] **CL&P:** *As we were talking about what the Bank of China has which is basically ... In the United States you can go to annualcreditcheck.com or whatever and you can pull your credit report and it just lists what your debts are, it doesn't give you the score. It sounds like that's what Bank of China has. I know in the United States there is a tremendous amount of criticism about our credit reports. And again our credit reports and our credit score, most states in the United States do not outlaw the use of credit report pull to get a job, even if it's not affiliated with anything related. To get a job at McDonald's in most states, I think New York City is one of the few cities where they've banned the box, but you have to agree to allow them to pull your credit even though you're just wiping the floors in McDonald's.*

[00:53:27] *There's a lot of criticism of credit reports in the United States because it doesn't allow people . . . it's only about your debts, it's only about your credit cards, it's only about your student loans. It's not about anything good you're doing, like that you pay your rent on time. So rent doesn't appear on your credit report. And then a lot of these cards, like the Rush card which is targeted toward people who are unbanked, if you make payments on that it doesn't, again, appear on your credit report. Only if you stop making payments does it appear so it's only negative. Has the Bank of China in looking at credit report and what they've created on the national level, have they looked . . . Are they just adopting what the United States has, which is definitely not a perfect system, or are they looking to be more holistic and to help people who generally are unbanked get a good credit report by putting their rental income that they're current on, something like that.*

[00:54:25] **JD:** I'm not honestly sure how they go about calculating the scores. My colleague [Jamie Horsely](#) has spent more time looking at these issues. I've seen a few reports that come out of it, but I'm not clear. I would say as a general rule while the US and other international foreign models have undoubtedly inspired a lot of what's happening with the idea of credit reports and even a credit economy, nothing remains unchanged. It will be the "with Chinese characteristics versions." I think the goal, of course, is to have people with good credit, but there is also this

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strain of wanting to punish the people who are dishonest that you hear in all the rhetoric and it wouldn't surprise me to hear that some of that's there.

[00:55:18] **CL&P:** *In concluding, so it seems like the social credit system, I mean it's a fascinating, fascinating thing what they're trying to do. I think it's maybe not all scary. I think there's a lot that does need to be done helping people get better credit for your economy and stuff. But what do you think is. . . I mean but there is things . . . I mean it is going to a level of knowledge about people that to us as Westerners is really scary. What do you think are the things that people should be . . . that the Chinese government and the Chinese people maybe should be looking at to be a little nervous about?*

[00:55:56] **JD:** Yeah, so there's a few things. The first is something that's already happening which is the real name systems. This is a phenomena that I think a lot of governments are dealing with trying to end data islands by connecting all of this data that the government collects. The government-created data in China is known as public social credit information. Public in the sense of government, not private, not market. I think that anonymity in some aspects of your life, not having all of your data linked is important. It's not just important for political dissonance and dissent, it's important for people with unpopular opinions and unpopular lifestyles.

[00:56:39] The homosexual community might not want the data that they use in their personal life being somehow mingled with the other data. Now in theory it's only the government that has any access to this data and there wouldn't be much purpose for mixing everything together. I don't want to imply that there's a question about your sexuality in there, but if all of your internet access is done through a real name registration system and all the platforms that you log onto have to have a real name registration, then any sites which requires a login is going to have it and that creates quite a decent profile of a person's personal life as well, if not to mention, purchasing histories, *et cetera*.

[00:57:24] I think anonymity is important for protecting people, not just in terms of privacy, but in terms of freedom from discrimination, freedom from persecution. In this society if you're a Christian it could be an issue. There are always going to be groups that aren't popular in a community and you should be able to have access to things that don't hurt people without having to make it public. The other question is, like you said, there is a sort of tendency of people like you were talking about in the US with the credit stores we have, to want to generalize beyond this and to want to take a rating in one area and extend it to all other areas. Criminal records are another thing in the US where a criminal record, or even a record of an arrest where you were later exonerated, can be something that can really follow you for quite a long time.

[00:58:20] **CL&P:** *I mean even . . . I think even in the world I work you have a blacklist for tenants who have been sued, who are largely low-income in New York City. And regardless of whether they've ... the action was frivolous brought by the landlord, they're still on this blacklist. And unless they're sophisticated enough to demand that they get taken off the blacklist, they're on it and then they can't rent another apartment for five years. And granted it's a blacklist that is created by a corporate . . . like corporations go in and they review and they create it and then they sell it, but it is still very, very damaging.*

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- [00:58:58] **JD:** And that's exactly the sort of system that shows the right kind of problem, is that people are always looking for shorthand to rule out. Anyone who's ever done hiring or admissions knows that you can't holistically consider every situation so if there is a blackmark of any kind, even if it turns out it's based on some sort of an unfair rule system or a faulty premise, you're going to rely on it to some extent.
- [00:59:23] The other thing that I think with China's system that's important to remember is while I've said that the administrative regulation part isn't so much new or bad as social credit because all it's really doing is enforcing legal obligations, existing laws. Just that something was in an existing law doesn't mean it's good. Better enforcement of bad laws is a problem. Generally speaking enforcement of laws is desirable, but if your law is already unfair that can be an issue. And there are laws in China that I disagree with.
- [01:00:04] There are limits on the freedom of speech that go beyond anything I can tolerate and other areas as well of course. So that becomes a real issue. This enforcement might work. There is still a fear that these joint punishments will eventually extend to things beyond just judgment defaulters. And judgment defaulter's already a pretty broad category given that any administrative agency is seeking enforcement on its administrative penalty can go to a court to get an enforcement judge. The concern would be that they try to mobilize this massive array of penalties against people for other types of violations. Essentially making a sort of outlaw system where if you failed to follow the rules then the society is no longer protecting you, you're now on the outside. Now that doesn't seem to be happening now, but that is the direction that some people fear. But even with what is happening now, with the real name systems, the tendency of people to overgeneralize and the fact that we're enforcing laws that aren't great to begin with, it could be really problematic.
- [01:01:17] **CL&P:** *How does social credit interact with some of the privacy issues, some of the surveillance issues that we're seeing?*
- [01:01:23] **JD:** One thing that surprises a lot of people is how much ink is spent in the social credit regulations aimed at corporations and at people on privacy. A lot of it discusses how information has to be protected from outsiders. Like all privacy discussion in China's criminal law, China's regulatory laws in general, it always talks about duties of confidentiality, but always assumes this doesn't sort of apply to the government. Police are supposed to protect confidential information that they come across in investigations. But you don't get to protect that from the police. This is sort of the same thing in the social credit. There's actually a lot of discussion about making sure that your personal information isn't abused, sold to people, or transferred to third parties, but the government has few qualms about gathering it up.
- [01:02:18] It's worth pointing out here another thing which is a lot of people seem to mingle parts of China's surveillance apparatus as a whole with social credit. These aren't necessarily the same systems. Social credit for sure is part of the way of keeping tabs on people in China. It has these administrative permits and administrative punishments in it primarily and also this lending information and financial parts. It's certainly part of that, but the police also have their own

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systems that involve the cameras we see on the street. That involve the ability to access computers and networks.

[01:03:01] This is part of why when I hear discussion of this being the totalitarian control through social credit, I'm like "China actually has plenty of very blunt, straightforward tools for control." And you only need to look at Xinjiang to see that. When China has a problem that it wants to deal with it usually has few issues with taking a direct approach to resolving it. Despite appearances, I think China's actually pretty transparent about what the goals of social credit are and what the goals of surveillance are.

[01:03:35] **CL&P:** *When you say Xinjiang, look at Xinjiang, is that to exemplify the surveillance state or is there anything going on in there with social credit?*

[01:03:44] **JD:** I don't think it has much to do with social credit, I think Xinjiang shows you exactly how blunt and direct a tool China can use when it wants to resolve a problem quickly. Here we have large numbers of people being detained. Is there a legal basis? Shaky at best. It's an end justifies the means situation, where they've decided that they're going to do this. Social credit I think is really about building institutions, and China . . . the point is that China has plenty of tools at its disposal for social control and social management.

[01:04:26] **CL&P:** *And Xinjiang is the example of that?*

[01:04:27] **JD:** It doesn't need to create new ones.

[01:04:31] **CL&P:** *To what degree, I mean in your learning about the social credit system here in China, I mean this is a huge amassing of data in one place and to me it's not clear that other countries are not going in that direction. Yes, Facebook has a lot of your data, but what you brought up about the gay community . . . a lot of the stuff if you wanted to find out you can just look at people's friends, Facebook does all these algorithms, figure out what is your thing. Granted it's to target advertising. But to what extent do you think other countries, other governments will be looking at country, at least in the amassing of data on their people?*

[01:05:12] **JD:** I think it's less looking about China than recognizing the fact that we simply create more data now than ever before. Everything we do now has records and we do things through automated information tech systems. I think how every society, let alone every country deals with that is really one of the defining issues right now. In the US, we seem primarily . . . we've had our share of government surveillance scandals, but primarily we're letting corporations deal with the data and deciding when to limit corporation's collection of data. Europe has taken a harder line in the interest of privacy rights against corporations.

[01:05:56] In China, it's no surprise that the government is taking the lead on it over corporations. The government is trying to harvest all of its data. The question is what do you do with the data and that's a technical question but also a policy question. I'm a layman for data science but it seems to me that you'd actually start gathering all this data, have way more data than would be useful to

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you and it would be really hard to analyze. But I'm sure for specific purposes you could start to find useful things.

[01:06:31] **CL&P:** *Going back to China what's next on the horizon for social credit, what should we be expecting in the next six months –*

[01:06:38] **JD:** *In the next six months well –*

[01:06:39] **CL&P:** *To a year.*

[01:06:39] **JD:** *We have a plan through 2020 that tells us what's going to happen and within that there's specific dates. For people who are interested in what's going to happen to individuals and individual credit-worthiness which is part of that social credit plan, we're seeing more and more provincial level governments putting out their plans which have timelines in them of what will be done. Mainly it seems to be focusing on the reputation of people in key professions. Doctors, travel agents, people who really effect a lot of other people's lives. We'll see I think regulation in those, and I think what it'll mainly take the form of is the people who have violations of the rules in that field are going to be banned from working in that field for a period of time. But I think we've already seen . . . we're well into that 2014 through 2020 phase and I think we're already seeing the shape of things that are coming out.*

[01:07:37] **CL&P:** *All right, well thank you very much, Jeremy, for giving us the T on social credit. We'll probably be following up with you. Your blog has been great, [China Law Translate](#) has been great with a lot of the translations and analysis of social credit so thank you very much for that. Yeah, we'll be keeping tabs on you through social credit.*

[01:08:00] **JD:** *Thanks Elizabeth.*