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The assessment impact of Artificial Intelligence (AI) on basic human

rights: the Chinese case study

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Abstract: This paper addresses the use of Artificial Intelligence (AI) as an alarming technology that impacts a variety of human rights-related concerns, including discrimination, equality, political participation, privacy, and freedom of expression. AI is increasingly being used in society and in the economy globally. However, there is much concern about problematic and harmful AI implementations; for example, whether and how AI systems will comply with ethical standards which have sparked a multi stakeholder dialogue on AI ethics and the creation of AI governance initiatives. Nevertheless, an increasing number of states are using sophisticated AI surveillance tools to track, monitor, and watch over citizens to achieve a variety of policy goals, some of which are legal, others of which are against human rights, and many of which fall somewhere in the grey area. This essay looks at the international legal system's regulatory responses and the Chinese national legislation regulating AI, and the cultural reasons behind it.

Artificial intelligence (AI), which includes everything from face recognition software to autonomous vehicles, search engines, translation tools, and programmes that forecast stock market price movements, is a technology that is increasingly being used in society on a global scale and progressively integrated into our daily lives.¹ Compared to conventional technologies, AI is superior at reading and responding to data recorded, generated, and stored in electronic devices. The Data then interacts with one another and produces what is known as "big data."² In this view, AI is a constellation of several processes and technologies that gradually replace human behaviours with automated data processing.³

In the academic literature (as well as in public discourse), several concepts and words are interchangeably used to characterise "AI"; these include, for instance, algorithmic/profiling, automation (supervised/unsupervised), machine learning, deep neural networks, etc.⁴ Predictive analytics (such as recidivism in criminal justice contexts, predictive policing, forecasting risk in business and finance), automated identification via facial recognition, insurance, finance, education, employment, marketing, governance, security, and police are just a few of the contexts and social domains where AI has been used, with varying degrees of success.⁵ Nevertheless, there are also concerns about AI's complex and risky applications, particularly in industries like the military, healthcare, and criminal justice. These worries have sparked a global discussion on AI ethics, leading to the publication of numerous articles and governance projects and guidelines by scholars, and actors from various governments and industries.⁶

¹ Steven Feldstein, "The Global Expansion of AI Surveillance", Carnegie Endowment for International Peace, Accessed September 17, 2019,

https://carnegieendowment.org/2019/09/17/global-expansion-of-ai-surveillance-pub-79847.

² Kathleen McKendrick, "Artificial Intelligence Prediction and Counterterrorism", Chatham House, 2019, <u>https://www.chathamhouse.org/sites/default/files/2019-08-07-AICounterterrorism.pdf</u>, 4.

³ Alexander Kriebitz, Christoph Lütge, "Artificial Intelligence and Human Rights: A Business Ethical Assessment", 2020, Business and Human Rights Journal 5 (1), Cambridge University Press: 84–104, https://doi.org/10.1017/bhj.2019.28, 85.

⁴ Daly Angela, Hagendorff Thilo, Hui, Li, Mann Monique, Marda Vidushi, Wagner Ben, Wang Wei, Witteborn Saskia, "Artificial intelligence governance and ethics: global perspectives", 2019, https://arxiv.org/ftp/arxiv/papers/1907/1907.03848.pdf, 5.

⁵ Steven Feldstein, "The Global Expansion of AI Surveillance", 22.

⁶ Daly, A., Hagendorff, T., Hui, L., Mann, M., Marda, V., Wagner, B., Wang W., Witteborn S., "Artificial intelligence governance and ethics: global perspectives", 5.

Legal framework

Nonetheless, some critics point to the dangers that could come along with this technological revolution, even though AI offers significant benefits for humanity in the form of more precise diagnostic tools, improved methods to combat crime and predict terrorism more effectively (timing and location of attacks, the vulnerability to radicalisation, identification of terrorists).⁷ Prominent academics and business leaders signed the Open Letter on AI in 2015, which ignited a heated discussion on how to govern AI and avoid potential problems related to the improper use of this technology.⁸ Stephen Hawking described AI in this context as potentially the worst development in human history, capable of bringing about the extinction of humanity, and other predictions about AI-related technology are similarly ominous to those made in Orwell's "Nineteen Eighty-Four" or Huxley's" Brave New World.¹⁹

A definite possibility of conflict between the ethical pillars of our civilisation and the practical use of AI exists, even as AI unquestionably helps achieve numerous social and environmental objectives, such as the 2030 United Nations (UN) Social Development Goals. As a result, lawmakers and scholars worldwide have started to discuss legislative norms and standards to address potential instances of AI misuse and to govern the subject. The UN and its bodies are engaged in several AI-related activities at the international level. UNICEF and the United Nations Development Program (UNDP) are members of the multistakeholder Partnership on AI - a group of businesses, academics, and non-profit organisations that was established in 2016 by the tech giants and worked to ensure that AI is developed safely, morally, and in a transparent way.¹⁰

A Centre for Artificial Intelligence and Robotics is being established by the UN "Interregional Crime and Justice Research Institute" in The Hague, Netherlands. At the regional

⁷ Kathleen McKendrick, "Artificial Intelligence Prediction and Counterterrorism", 2.

⁸ Gibbs Samuel, "Wozniak and Hawking urge ban on warfare AI and autonomous weapons", The Guardian, Accessed June 7, 2023,

https://www.theguardian.com/technology/2015/jul/27/musk-wozniak-hawking-ban-ai-autonomous-weapons.

⁹ Alexander Kriebitz, Christoph Lütge, "Artificial Intelligence and Human Rights: A Business Ethical Assessment", 85.

¹⁰ United Nations Development Programme, "UNDP joins Tech Giants in Partnership on AI", Accessed June 7, 2023, <u>https://www.undp.org/press-releases/undp-joins-tech-giants-partnership-ai</u>.

level, the recently published OECD "Principles on AI" are the most well-known on a global scale (2019), also embraced by the Trump Administration and six non-member governments (Argentina, Brazil, Colombia, Costa Rica, Peru and Romania). The Group of 20 (G20) major economies agreed on a set of guiding principles for employing AI in June 2019.¹¹ These guidelines are based on the OECD Principles described above but are also characterised as non-binding (G20 2019).¹² At the interstate level, examples like the "European GDPR" (2016), the "Asilomar AI Principles" (2017), the "AI4People's Ethical Framework for a Good AI Society" (2018), the "Montreal Declaration for Responsible AI" (2018); and at the national level, the "House of Lords Artificial Intelligence Committee" (2017) and the "German Ethics Code for Automated and Connected Driving" (2017), cover significant facets of ethical issues relating to AI.¹³

Delegates from several national data protection and privacy authorities published a "Declaration on Ethics and Data Protection in Artificial Intelligence" at the 40th "International Conference of Data Protection & Privacy Commissioners" (ICDPPC) in 2018, which was held in Brussels. The Declaration advocates for establishing "shared governance norms on artificial intelligence" and outlines six guiding principles. Since then, a permanent working committee on ethics and data protection in artificial intelligence has also been established by the ICDPPC.¹⁴ Canada and France, in 2020, together with other states, including Australia, Germany, and Italy, have established the "Global Partnership on Artificial Intelligence" (GPAI) to support and direct the responsible development of artificial intelligence that is based on human rights, inclusion, diversity, innovation, and economic growth. This is necessary to realise the full potential of AI that benefits all citizens.¹⁵

¹¹ OECD Observers, "What are the OECD Principles on AI?", Accessed June 7, 2023, <u>https://www.oecdilibrary.org/docserver/6ff2a1c4en.pdf?expires=1679182618&id=id&accname=guest&checksum=757</u> <u>B5E8358BE5A4B6191F639DCD5E3D7</u>.

¹² Daly Angela, Hagendorff Thilo, Hui, Li, Mann Monique, Marda Vidushi, Wagner Ben, Wang Wei, Witteborn Saskia, "Artificial intelligence governance and ethics: global perspectives", 9.

¹³ Alexander Kriebitz, Christoph Lütge, "Artificial Intelligence and Human Rights: A Business Ethical Assessment", 85.

¹⁴ Daly Angela, Hagendorff Thilo, Hui, Li, Mann Monique, Marda Vidushi, Wagner Ben, Wang Wei, Witteborn Saskia, "Artificial intelligence governance and ethics: global perspectives", 9.

¹⁵ Government of Canada, "Canada concludes inaugural plenary of the Global Partnership on Artificial Intelligence with international counterparts in Montréal", Accessed June 7, 2023,

Human rights impact: governing different cultures

Human rights are recognised as the highest standard of law in Western philosophy and serve as the foundation for most legal systems. Most international law experts think human rights constitute a self-contained framework that guarantees human autonomy and self-determination rather than merely specific individual rights. According to Isaiah Berlin, freedom is "the absence of constraints on one's potential choices and pursuits"¹⁶. In these situations, interference with an individual's autonomy is only legal if that person's permission supports them or if that person's freedom interferes with others' interests. Even with some required exceptions, such as emergencies, the transfer of property, the implementation of medical treatment, or an intervention in the inviolable integrity of the body, they are only legal if they have the person's explicit consent.

Nonetheless, by the proportionality principle, the state's interference must be commensurate with the harm avoided. This idea stems from the high status given to the concept of equality prior to the law, which can be linked to the Aristotelian concept of "corrective justice," which holds that the harm caused by legislation or other government act must be equitably balanced against the harm avoided.¹⁷ From this viewpoint, the regulation of AI derives some basic human rights. Firstly, the consent principle, so an individual's rights may only be transferred with that person's permission; secondly, the harm principle, which means that the only reason to employ force against someone else's will is to keep them safe; and finally, the proportionality principle, so the threat must be taken into account before using force.¹⁸

In Asia, Confucianism does not conceive human rights in the same manner as the Western world. Confucian Communitarians are intensely concerned with the social repercussions of individualistic human rights. These last are particularly welcomed and encouraged if they help to

 $[\]label{eq:https://www.canada.ca/en/innovation-science-economic-development/news/2020/12/canada-concludes-inaugural-plenary-of-the-global-partnership-on-artificial-intelligence-with-international-counterparts-in-montreal.html.$

¹⁶ Alexander Kriebitz, Christoph Lütge, "Artificial Intelligence and Human Rights: A Business Ethical Assessment", 86.

¹⁷ Weinrib, Ernest .J., "Corrective justice in a nutshell, 2002, The University of Toronto Law Journal, 52(4), <u>https://doi.org/10.2307/825933</u>, 349.

¹⁸ Alexander Kriebitz, Christoph Lütge, "Artificial Intelligence and Human Rights: A Business Ethical Assessment", 87.

promote moral and ethical community life. On the contrary, excessive individualism represents the root of moral degradation in society. For some, Westernization serves as "a convenient label for all the evils that eroded the foundation of a sound, non-corrupt Asian society."¹⁹ Also, the concept of consensus acquires an entirely different sense. Collective interests are more important than individual ones: as a consequence, what constitutes collective interests should be based on "consensus." As previously suggested, the technical challenges of gathering opinions from all interested and affected parties typically end up being resolved by a fusion of state and society, in which the elected political leadership assumes the role of defining both the consensus and the national interests by fiat. Singapore is a remarkable illustration of Confucian communitarian ideology, still pervasive in society. At the "Create 21 Asahi Forum" in 1992, Lee Kwan Yew explained that the reason why American politics was unable to solve some social problems, such as drugs, riots and poverty, resides in the "excessive rights of the individuals at the expense of the community as a whole".²⁰ On the contrary, Singapore proudly declared to manage drug issues thanks to the "Asian values". Lee declared that to safeguard the community, the state passed a law which authorised police, immigration offices and other state authorities to obtain the urines of people considered suspicious. This kind of law would be unconstitutional in the United States since it violates the individual's privacy. It constitutes the main reason why organised crime and drug consumption proliferate. As a result, in the US, the community's interests have been compromised in favour of the human rights of drug users and traffickers.

The Chinese case study

China's State Council published its AI development policy in July 2017 under the title "New Generation Artificial Intelligence Development Plan" (AIDP) (新一代人工智能发展规划). The Plan highlighted China's goals to dominate AI by 2030 and to turn AI into a trillion-yuan (about

 ¹⁹ Han, Sang-Jin, 2005, "Confucianism and human rights", <u>https://doi.org/10.1163/9789004415492_004</u>, 7.
²⁰ See note above, 11.

\$150 billion) sector.²¹ The policy's primary goal is for China to become the global leader in artificial intelligence innovation by 2030 and for AI to serve as the primary driving force for China's industrial upgrading and economic transformation.²² The Plan, guided by a new AI Strategy Advisory and coordinated by the Ministry of Science and Technology (MIST), focuses on three critical areas—international competition, economic growth, and social governance. This paper will concentrate on the latter.

In China, social governance also includes citizen behaviour. According to academics, the collapse of the Maoist era and the subsequent "opening up" have left China with a moral void. The Chinese government, including President Xi, has acknowledged the "moral decline" in China as an issue that has to be fixed and has advanced the idea of a "minimum moral standard" within society.²³. In this regard, the AIDP highlights that the AI potential could be used for implementing the Social Credit System (2014). Its final goal is not limited to maintaining "good" governance in the conventional sense, but it extends to control citizen behaviour and strengthening their moral integrity, which is thought to be a government responsibility.

The "Outline for the Establishment of a Social Credit System" lists several social issues the strategy aims to address, such as academic dishonesty, food safety concerns, tax fraud, internal security and policing. The Uyghur Muslim minority in the Xinjiang Uyghur Autonomous Region (XUAR) has been the primary target of increased Party-state controls for the past 10 years by the Chinese Communist Party (CCP), which has established an unprecedented surveillance apparatus. Since 2009, rioting, bombs, and knife attacks have claimed hundreds of lives and injured. As a result, the Uyghurs have been designated as China's "primary battlefield" in the war against the "three evils forces" (三个势力) of terrorism, extremism and splittism²⁴ as part of Xi Jinping's

²¹ Roberts, Huw, Josh Cowls, Jessica Morley, Mariarosaria Taddeo, Vincent Wang, and Luciano Floridi. "The Chinese approach to artificial intelligence: an analysis of policy, ethics, and regulation. Ethics, Governance, and Policies in Artificial Intelligence", 2021, 47-79, <u>https://doi.org/10.1007/s00146-020-00992-2</u>, 59.

²² European Parliament, "China's Ambitions in Artificial Intelligence", Accessed March 18, 2023. <u>https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/696206/EPRS_ATA(2021)696206_EN.pdf</u>.

²³ Roberts, Huw, Josh Cowls, Jessica Morley, Mariarosaria Taddeo, Vincent Wang, and Luciano Floridi. "The Chinese Approach to Artificial Intelligence: An Analysis of Policy, Ethics, and Regulation", 66.

²⁴ Duchâtel Mathieu, "Terror Overseas: Understanding China's Evolving Counter-Terror Strategy", ECFR, 2016, <u>https://ecfr.eu/publication/terror overseas understanding chinas evolving counter terror strategy7160/</u>, 2.

overall strategy for ensuring "social stability and enduring peace" (社会稳定和长治久安). According to David Lyon, surveillance includes not only "watching" but also "social sorting."²⁵

In the case of Xinjiang, the surveillance apparatuses divide residents into categories for control (who can be trusted and who needs to be closely monitored), management (maintaining harmonious ethnic relations and upholding social stability), entitlement (who gets what benefits and when), punishment (who needs to be locked up or re-educated), and protection (against the "three evil forces"). To accomplish this, the Party authorities have built a sophisticated, multi-layered network of mass monitoring in Xinjiang in reaction to instability.²⁶

The local Uyghur population, whom the Chinese government portrays as potential dissidents or terrorists, can be tracked not only by forced kinship and physical surveillance but also through automated, technologically advanced methods like GPS tracking, voice and facial recognition software, machine learning algorithms, and other software and hardware. Moreover, the government has recruited individuals as informers. As a reward, they are rewarded with discounts at places like coffee shops. Moreover, people cannot freely drop out of the system, and no information exists regarding the consent requirement.²⁷ Every person in Xinjiang instals the "Cleannet Bodyguard" security programme on their smartphones. In other situations, local police will even provide homeowners with free phones with the tracking app pre-loaded. The police are conducting spot checks to ensure the app is installed. The software aims to "automatically detect terrorist and illegal religious films, photos, e-books and electronic papers" and notify the appropriate authorities so that the content can be removed. Along with capturing IMEI numbers, SIM card data, and WIFI login information, the programme also collects and reports on Weibo and Wēixin posts.²⁸ According to Lyon's idea of "informatisation of the body" (2008), human bodies act as significant information

 ²⁵ Lyon, D., "Surveillance as social sorting: Privacy, risk, and digital discrimination", Psychology Press, 2003.
²⁶ Leibold James, "Surveillance in China's Xinjiang Region: Ethnic Sorting, Coercion, and Inducement",

Journal of Contemporary China", 2020, <u>https://doi.org/10.1080/10670564.2019.1621529</u>, 59.

²⁷ Agrawal, Vishakha, "Demystifying the Chinese Social Credit System: A Case Study on AI-Powered Control Systems in China", Proceedings of the AAAI Conference on Artificial Intelligence 36 (11):13124–25, 2022, https://doi.org/10.1609/aaai.v36i11.21698.

²⁸ James Leibold, "Surveillance in China's Xinjiang Region: Ethnic Sorting, Coercion, and Inducement, Journal of Contemporary China", 52.

carriers in today's hyper-digital world, undermining the conventional separation between the body and the information it contains.²⁹

This framework clearly explains the different AI strategies adopted by the PRC and the European Union. Both plans are the most thorough attempts to promote and regulate AI, with each outlining what they feel a "Good AI Society" should entail. Nevertheless, Western and Chinese cultures perceive these ideas differently and how they fit into their respective value systems. Chinese policy differs from the EU's in emphasising ethical outcomes by protecting fundamental rights and reducing the potentially harmful impact. In contrast, China's approach emphasises "common prosperity", with greater political control over companies, often at the expense of innovation. Consequently, the constitution and achieving a "Good AI Society" depends on cultural and political factors.³⁰

Another point to consider is whom the AI development is supposed to benefit. The European Commission adopted a "human-centric" approach, which respects the fundamental EU values "including the rights of persons belonging to minorities."³¹ Instead, the AIDP emphasises the advantages that can be delivered to China in terms of the country's international competitiveness, economic development, or societal progress. Individual rights are rarely cited as the focal point. Implementing the widely publicised but as of the already mentioned Social Credit System(s)—a system that can be understood as an effort to influence individual behaviours to achieve outcomes that the government considers societally beneficial, notably public trust—reveals tensions with individual rights. So, the AIDP might be considered "human-centric" in a different sense, which lays a higher emphasis on the benefits that can be brought about to China as a state and society, focusing on the individual being essentially secondary.³²

²⁹ Avi Marciano, "Reframing biometric surveillance: from a means of inspection to a form of control", Ethics and Information Technology, 21(2), pp.127-136, 2019, <u>https://doi.org/10.1007/s10676-018-9493-1</u>, 128.

 ³⁰ Wong, PH, "Cultural Differences as Excuses? Human Rights and Cultural Values in Global Ethics and Governance of AI". Philos. Technol. 33, 705–715 2020. <u>https://doi.org/10.1007/s13347-020-00413-8</u>, 706.
³¹ European Commission (2018). Communication artificial intelligence for Europe,

https://ec.europa.eu/digital-single-market/en/news/communication-artificial-intelligence-europe.

³² Huw Roberts, Josh Cowls, Emmie Hine, Jessica Morley, Vincent Wang, Mariarosaria Taddeo & Luciano Floridi, "Governing artificial intelligence in China and the European Union: Comparing aims and promoting ethical outcomes", 9.

Impact on fundamental human rights

As a result, this severely undermined citizens' liberties violating, among many, the right to privacy and accessible communication enshrined in article 12 of the Universal Declaration of Human Rights: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor attacks upon his honour and reputation. Everyone has the right to protect the law against such interference or attacks" (UDHR, art. 12).

Uyghurs also suffer from the elimination of non-Han cultural, linguistic, and religious activities, the reduction of places for independent, bottom-up social mobilisation and the deterioration of social trust in Xinjiang society. The need for personal autonomy, normal psychological functioning, and stable interpersonal relationship is fundamental to preserving an excellent psychophysical balance. Current forms of AI surveillance also jeopardise the capacity of the individual to process information, to make decisions without external constrictions. Indeed, the Special Rapporteur on the right to privacy affirms that the right to privacy "enables the enjoyment of other rights³³", such as: "The free development of an individual's personality and identity and an individual's ability to participate in political, economic, social and cultural life". Since human rights are not isolated but must be conceived as an interdependent group, there is an increasing risk that other liberties and basic human needs are also in danger, such as the right to freedom of thought, conscience and religion (art. 18 UDHR); right to freedom of opinion and expression, together with the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (art. 19 UDHR); right to freedom of peaceful assembly and association (article 20 UDHR).

Because of the uncertainty, husbands may begin to distrust their wives, sisters, brothers, Uyghurs, their fellow Uyghurs, and Party leaders to distrust their fellow Party members. A corresponding decline in social cohesion and rise in public suspicion exist in countries where social

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³³ United Nation General Assembly, Human Rights Council, "The right to privacy in the digital age", 2015, Accessed June 7, <u>https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/068/78/PDF/G1506878.pdf?OpenElement.</u>

and political monitoring is normalised. Current anthropological and empirical investigations in Xinjiang show a similar lack of trust. Following the recent attacks, tensions between the Uyghur and Han communities have worsened since the interethnic violence of the 5 July 2009 riots. Moreover, social anomie and atomisation are rampant inside ethnic communities and amongst various demographic groups. Like other ethnic communities in China, the Uyghur population is sharply split along geographical, class, and educational lines. These local identities coexist with a stronger sense of otherness than the Han majority.³⁴

Conclusions

Over time, AI has become more and more pervasive in all aspects of our society. Human rights legislative gaps concerning the use of AI raise serious concerns: the use of these technologies increasingly compromises, more in autocratic than in democratic governments, the right to privacy, freedom of expression and assembly. Democracies' need to control terrorism is consistent with expanding human rights discourse as a pillar of their foreign policy agendas. The duty to preserve fundamental rights should be included in national AI policies, guidelines, and potential regulations, and governments should be aware of their responsibilities in this area. States can push for AI development that upholds human rights in international organisations like the UN by participating more actively in these forums. At the same time, technology corporations should establish effective channels of contact with regional civil society organisations and researchers, particularly in places with significant concerns about human rights, to recognise and address dangers associated with AI deployments. Academics should continue investigating the benefits, constraints, and interactions between human rights legislation, human dignity approaches, humanitarian law, and ethics.

³⁴ James Leibold, "Surveillance in China's Xinjiang Region: Ethnic Sorting, Coercion, and Inducement", Journal of Contemporary China, 60.

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