

C.4 The Algorithms of Law: Essays

The Woke State and Publicly Managed Social Collectives: China Leads the Way

Coalition for Peace & Ethics

Prepared by

Larry Catá Backer¹

In the United States, the terminologies of “wokeness”, of being “woke” as a strategic political necessity, or of the challenge to the disruptive politics of the “woke” has transformed its traditional and limited origins. Now popularized and weaponized, “wokeness” references an ideological and discursive state of being aligned with the times as such may be defined by a meaning making collective with great influence or in power.² And yet it retains its connection to its origin meaning of not rational enlightenment but rather an awakening to truth.³ It assumes a role as symbolic politics that signals an allegiance to any number of competing justice orthodoxies vying for positions of control in the narrative of US legalities. Wokeness in this sense serves as a disciplinary tool. It is positive in the sense of its fundamental normative ideals; it is negative in its use to manage and control what is determined to fall outside the realm of the woke.

¹ Member, Coalition for Peace & Ethics, also holds an appointment as the W. Richard and Mary Eshelman Faculty Scholar, Professor of Law and International Affairs at Pennsylvania State University (B.A. Brandeis University; M.P.P. Harvard University Kennedy School of Government; J.D. Columbia University) where he teaches classes in constitutional, corporate, and transnational law and policy. Professor Backer is a member of the American Law Institute and the European Corporate Governance Institute. For further information see his website, Backerinlaw, available [<https://backerinlaw.com>].

² Staci M. Zavatarro and Domonic Bearfield, ‘Weaponization of Wokeness: The Theater of Management and Implications for Public Administration,’ (2022) 82(3) Public Administration Review 585-593, 587.

³ Ibid., p. 586.

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Wokeness finds in mirror image in some trajectories of narrative construction and discourse in China. Orthodoxy must be preserved as a key element of democratic centralism and of the role of the vanguard in leading the nation. In China, it is the vanguard that is both woke and that is charged with the responsibility of protecting the wokeness of the masses. Two recent examples suggest the contours of Chinese wokeness. The first touches on the reporting of expression that violates a wokeness taboo; the second touches on the regulation of algorithmically based recommendations.

A. The People Serve Their Nation Best by online reporting form for harmful information)Denouncing Dangerous and Harmful Remarks that Mislead the Public! On China's Reporting Zone for Harmful Information ["涉历史虚无主义有害信息举报专区"]

There has been much discussion in the West about the way in which the social order has more aggressively used tactics of denunciation and social and economic exclusion as a means of punishing words or actions that are now deemed not merely offensive, but also incompatible with the emerging core principles of correct social conduct. Much of this has been informal and private, sometimes aligning the interests of economic and non-economic actors. Some of it has been memorialized in law and administrative systems. But the systems of punishments and rewards for breaches of emerging core cultural taboos tends to be driven by private rather than public actors within market based social systems.

The practice has caused some controversy but also appears to be somewhat effective--at least in with respect to aspects of life that can be recorded and then distributed through social media and press outlets--in substantially curbing the public expression of private opinion. But, in a way that is consistent with the organization of societal. cultural, political and economic life in liberal democracies, the efforts have been largely unregulated, and the process tends to avoid any of the niceties of formal process overseen by the state. Within institutions, such patterns of denunciation have been better bureaucratized, especially in large institutions. In either case the process is marked by cultures of surveillance, denunciation, and exclusion or punishment.

Marxist-Leninist States have not escaped this apparently global trend. But while the construction of systems of denunciation, exclusion and rectification have been largely driven by social and market forces in liberal democratic states, in China, such systems are likely to be much more centrally organized and public. Where alignments of economic and societal forces drive such systems in the West, in China such systems are driven by the vanguard and operationalized through organs of its administrative apparatus.

It comes as no surprise, then, that Chinese authorities have now announced the institutionalization of systems of denunciations of

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expressions that threaten the social and political order. The issue has become more sensitive as the vanguard party gears up to celebrate its 100th anniversary. To that end, Chinese authorities have announced the establishment of a denunciation hotline, “涉历史虚无主义有害信息举报专区” operated by the Reporting Center of Cyberspace Administration of China.⁴

The fundamental principle invoked is one of wokeness—the need to protect the emerging state of the awakening of the masses under the guidance of the vanguard against error.

"A country that destroys people must first go to its history." For some time, some people with ulterior motives, under the banner of so-called "rethinking history" and "restoring the truth", have taken things out of context and created things out of nothing. Slandering and denying the history of the party, the country, and the military, attempting to confuse thinking, confuse people's hearts, and dispel the "four self-confidences", it has a bad influence. [“灭人之国，必先去其史。”一段时间以来，一些别有用心者打着所谓“反思历史”“还原真相”等旗号，断章取义、无中生有，在网上散布历史虚无主义错误言论，恶意歪曲、诋毁、否定党史国史军史，企图混淆思想、搞乱人心、消解“四个自信”，影响恶劣。]

Where in the West, denunciation is centered on the great anti-discrimination campaigns of the last half decade, now intensified, in Marxist Leninist States such systems of denunciation are geared to the protection of the integrity of the vanguard system itself. These are encompassed not merely in the great patriotic campaigns (themselves a proxy for the development of the ideal member of collective society), but also in the inculcation of the principle of a vanguard led society. Expressions of disloyalty or disrespect, in both contexts, to the great principles to be protected must be denounced to protect the core principles on which the integrity of each system, respectively, is grounded.

It follows that the system of denunciation in China, especially during the celebrations of the CPC's centennial, would focus on the preservation of the correct view of Chinese history, and the political

⁴ Central Cyberspace Administration of China Report Center, Historical Nihilism-related Harmful Information Reporting Area (9 April 2021); original: 举报网上历史虚无主义错误言论请到“12377”——举报中心“涉历史虚无主义有害信息举报专区”上线 中央网信办举报中心 [Please go to "12377" to report online historical nihilism and erroneous remarks - the "Reporting Center's "Historical Nihilism-related Harmful Information Reporting Area" is online. Central Cyberspace Administration of China Report Center] (hereafter “涉历史虚无主义有害信息举报专区”).

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economic model that has made China what it is today. Included, then, among expressions that must be denounced are:

1. Distorting the history of the Party, the history of New China, the history of reform and opening up, and the history of socialist development; 2. Attacking the party's leadership, guiding ideology, principles and policies; 3. Defamation of heroes and martyrs; 4. Denial of Chinese excellent traditional culture, revolutionary culture, and advanced socialist culture.
- [1. 歪曲党史、新中国史、改革开放史、社会主义发展史的；2. 攻击党的领导、指导思想、方针政策的；3. 诋毁英雄烈士的；4. 否定中华优秀传统文化、革命文化、社会主义先进文化的。].⁵

The great value in studying these efforts for those in liberal democratic states is the opportunity it offers to consider the ways in which both systems appear to be aligning their disciplinary objectives, even as they each more distinctly evidence the very different approaches (grounded in fundamental differences in guiding ideology) to implementation.

While liberal democratic and Marxist Leninist systems do clearly embrace quite different hierarchies of values and objectives, the tactics that they use to attain them appear more similar than different, even if they are operationalized differently and consistent with the operating logic of each system.⁶ In both cases, societies identify and privilege those aspects of fake or false or dangerous statements that attack the integrity of the political system and its societal objectives, The impulse to identify and suppress dangerous ideas, words, thoughts, and the principles they represent, is thus common to both contemporary expressions of imperial narrative. What distinguishes them is both what is privileged as central to the integrity of the system (anti-discrimination and equality principles in once case and collective prosperity and stability) and the way that methods of suppression are understood as legitimate (or tolerable) within each system.

B. Regulating the Tech Aspects of Some Mechanisms for the Operation of Social Credit Systems: 国家互联网信息办公室关于《互联网信息服务算法推荐管理规定（征求意见稿）》[National Internet Information Office on "Internet Information Service Algorithm

⁵ “涉历史虚无主义有害信息举报专区”, *supra*.

⁶ In liberal democratic orders much of this has been privatized. They are either maintained by platforms themselves or non-governmental intermediaries have produced online reporting pages. See, e.g., Internet Watch Foundation, Report Harmful Content ; available <<https://reportharmfulcontent.com/?lang=en>>.

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Recommendation Management Regulations (Draft for Solicitation of Comments)]"⁷

The construction of social credit systems--whether under the coordinating guidance of state organs in Marxist Leninist systems, or subject to compliance oversight of the administrative organs of the state but otherwise markets driven in liberal democratic systems--is heavily dependent on its analytics. And those analytics are a critical aspect of systemic integrity. Just as data management is an important responsibility of those charged with its stewardship, so the construction and application of analytics--especially algorithms that embody in quantitative form the key normative elements embedded in its assumptions--becomes a critical element in the protection of the integrity of social credit systems. More importantly, the management of algorithms in this context also expresses in quantitative form the political power of those who assert authority over its data based systems of nudging behaviors and embedding societal expectations in collectives.

It is natural then for political bodies now driving their domestic legal orders through the mechanisms of quantitative measures, to take a substantially more protective set of measures touching on the development, use and modification of algorithms. To that end the Chinese National Internet Information Office has distributed a draft for comments of its "Internet Information Service Algorithm Recommendation Management Regulations 国家互联网信息办公室关于《互联网信息服务算法推荐管理规定（征求意见稿）》".⁸ The object is to bring some order, and to assert a more centralized control at some high level of generality, of mechanisms through which quantitative recommendations are exploited--and their use sometimes corrupted--by its producers.

The principal target is "applied algorithm recommendation technology."⁹ These are defined as "algorithmic technologies such as generation and synthesis, personalized push, sorting and selection, retrieval and filtering, and scheduling and decision-making to provide information content to users."¹⁰ Among its more interesting provisions include the delegation of some measure of self-regulation (subject of course to public oversight) (¶5).¹¹ The required systems of

⁷ Cyberspace Administration of China on "Provisions on the Administration of Internet Information Service Algorithms Recommendation (Draft for Comment)" (27 August 2021) [国家互联网信息办公室关于《互联网信息服务算法推荐管理规定（征求意见稿）》]; available <http://www.cac.gov.cn/2021-08/27/c_1631652502874117.htm>.

⁸ Ibid.

⁹ Provisions on the Administration of Internet Information Service Algorithms Recommendation, *supra.*, Article 2.

¹⁰ Ibid. ("前款所称应用算法推荐技术，是指应用生成合成类、个性化推送类、排序精选类、检索过滤类、调度决策类等算法技术向用户提供信息内容。").

¹¹ Ibid. "第五条 鼓励相关行业组织加强行业自律，建立健全自律制度和行业准则，组织制定行业标准，督促指导算法推荐服务提供者建立健全服务规范、依法提

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accountability and auditing (§8)¹² is also worth considering. The object here is not so much to reduce the power of algorithmic systems of recommendations and its nudging effects, but to ensure that the direction and amplitude of such exercises reflects and augments the political objectives of the vanguard and the policy directives of its state apparatus. In that respect the focus is on compliance, monitoring and guidance, rather than on restriction and interdiction. Coordination in the service of the state under the leadership of the vanguard is the necessary predicate to the value of this new form and language of social discipline.

Here the state moves from the passive and reactive disciplinary aspects of protecting a woke narrative—through building cultures of reporting deviations from orthodox positions, to a more active engagement with the development of the woke narrative itself. Mechanisms for nudging behaviors are themselves the quantified expressions of regulatory objectives in the societal sphere. It is it e means through which the abstract principles of mass awakening may be encoded on the bodies of the masses through systems of behavior punishment and reward. To achieve that objectives, the vanguard must both centralize the coordination of the mechanics of these systems and develop methods of policing those structures (in this case platforms) that constitute an essential element in the cultivation of popular views, belief and behaviors.



供服务并接受社会监督。” [“Article 5 Encourage relevant industry organizations to strengthen industry self-discipline, establish and improve self-discipline systems and industry standards, organize and formulate industry standards, urge and guide algorithm recommendation service providers to establish and improve service standards, provide services in accordance with the law, and accept social supervision.”].

¹² Ibid. “第八条 算法推荐服务提供者应当定期审核、评估、验证算法机制机理、模型、数据和应用结果等，不得设置诱导用户沉迷或者高额消费等违背公序良俗的算法模型。” [Article 8 Algorithm recommendation service providers shall regularly review, evaluate, and verify algorithm mechanisms, models, data, and application results, etc., and shall not set up algorithm models that induce users to indulge in addiction or high consumption, etc. that violate public order and good customs.]