



ARCHAEGRAPH  
*Wydawnictwo Naukowe*

**CHINA AND THE CHINESE  
IN THE MODERN WORLD  
AN INTERDISCIPLINARY STUDY**

EDITED BY  
ZUZANNA KOPANIA  
IGOR SZPOTAKOWSKI

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## PREFACE

This monograph is a collection of chapters devoted to modern China on various approaches. First, by looking for links between the past and the present through Chinese history, politics and culture and in part two, the aim is to look at contemporary China through the prism of law and legal language.

The first part is divided into four chapters, regarding various and unique topics strongly connected with Chinese history, politics and culture, such as: Sino-German cooperation in the past and now, discovering the roots of the Hanfu movement development, a brief overview of constructing Sino-Polish bridges and last but not least the perspective of Chinese and European about *mianzi* and *guanxi* concepts in the 21<sup>st</sup> century.

The second part is also divided into four chapters, focusing on the relationship between cultural heritage and the present day in the case of Chinese law and legal language. There is no future without a past and a modern China is a country that skillfully combines the new with the old and the authors have attempted to present this phenomenon in this book. This part brings to light issues such as a honorificativity in Chinese administrative and legal documents, a comparison of Chinese and Western legal traditions in the past and now, modern Polish and Chinese civil law perspectives on the principle of good faith and finally, the Chinese government's efforts to end gender discrimination in the workplace.

The interdisciplinary research field thus marked out enabled to present contemporary China and its inhabitants in a differentiated way. The thematic scope of individual





## PREFACE

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chapters reflects the research and scientific interests of individual authors.

The editors of the volume hope that such a selection of the topics of the chapters will allow the reader to look at contemporary China from many different perspectives, broadening the readers' horizons and curiosity to further search for information about contemporary China – a country with still so much to discover.

Zuzanna Kopia  
Igor Szpotakowski  
*Editors*

# PART I

# CHINESE HISTORY, POLITICS AND CULTURE





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# GERMANY AND CHINA - TRADE AND COOPERATION SINCE 19TH CENTURY TILL MODERN TIMES

## BEGINNING – GERMAN DIPLOMATIC MISSION

China was known to the Europeans for many centuries. Even Roman Empire and Han Dynasty, through trade, knew about each other and used Silk Road to exchange silk for gold. When Marco Polo returned from his travel to China, he started telling stories about unbelievable riches of China to his countrymen in Venice. In 16<sup>th</sup> century Portuguese sailors reached China through sea and established trade settlement in Macau<sup>1</sup>. Since their establishment in 1540, the Jesuits travelled to China, wanting to learn about this mysterious country and hoping to achieve their mission – convert people of China to Catholicism,

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1 W.Rodziński, Historia Chin, Wrocław 1974, p.320



through adaption of Chinese rites into Christian religion. The most famous Jesuit was Matteo Ricci, who thought Chinese officials European science, translated both Western and Chinese books and even was invited to Forbidden City by Emperor Wanli. The Jesuits through their missions became first adepts in sinology and many national “first to visit China” men were part of Society of Jesus, like Michał Boym for Polish and Adam Schall von Bell for Germans. But for first official diplomatic relations Europe had to wait till 19<sup>th</sup> century and second opium war, when Great Britain, accompanied by France, Russia and United States enforced establishment of their embassies. After the war, in 1860 Kingdom of Prussia sent its diplomatic expedition to Asia to establish official international relations with far-away countries. In 1861 German delegation, led by count Fritz zu Eulenburg, arrived in China and talks with Chinese mandarins began.<sup>2</sup> The negotiations were fierce: Germans wanted to get similar benefits as other great powers, most importantly an embassy in Beijing, but Qing officials did not want to concede to another western country, especially when they could not see proof of Prussian military might. The stubbornness of both sides almost led to a breakdown in negotiations, but fortunately for Prussians, French diplomats trying to gain an ally against the British and their colonial empire, intervened in their favour. After few months of fierce talks, Chinese gave up and the treaty was officially signed on 2<sup>nd</sup> September 1861, establishing official relations between Prussia (and by extension German Customs Union) and Qing Empire.

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2 M. Bernd, *The Prussian Expedition to Far East (1860-1862)*, “The Journal of the Siam Society”, 1990, pp. 36-37



## SINO-GERMAN COOPERATION THEN

History of partnership between Germany and China began in 19<sup>th</sup> century, when Chinese government started purchasing various armaments from Germany and other European powers in order to modernize its army and fleet. In exchange for massive amounts of silver, China bought ships equipped with modern cannons produced by such companies as Krupp, Armstrong or Mauser.<sup>3</sup> The best example of these purchases were two sister ironclad warships Dingyuan and Zhenyuan, made in Stettin. Unfortunately this attempt at modernization was nullified by horrifying corruption in Qing court and upgraded fleet was demolished in First Sino-Japanese war. During naval battles, even though Chinese crews were more accurate when firing cannons, their shots did no damage – shells they fired were filled with sand instead of explosives, which definitely was cheaper, but also incomparably less effective.

Another partnership began in 1927 – China, ruled now by Kuomintang was now freed from shackles of Manchurian dynasty and was going through a period of rapid modernization in every aspect.<sup>4</sup> This was also the case for Chinese National Revolutionary Army, which was in dire need of upgrade – it managed to pacify various warlords and their units during Northern Expedition, but it was ages behind militaries of other nations. Till 1927 Nationalist army was dependant on soviet help, but new leader of Kuomintang – Chiang Kai Shek decided to throw out soviet advisors, fearing that they will spread ideals of

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3 K. van Dijk, *Pacific Strife- The Great Powers and their Political and Economic Rivalries in Asia and the Western Pacific 1870-1914*, "Amsterdam University Press", 2015, p.296

4 J. Polit, *Gorzki Triumf – Wojna Japońsko-Chińska 1937-1945*, Kraków 2013, p.11



communism in his officers and undermine their loyalty.<sup>5</sup> After the expulsion the leader of Chinese Republic had to find a country who would help him modernize his military. A country which's army was known for its achievements and efficiency. A country that had experience in fighting the modern war. And probably most important – a country that does not have any business in China, in order not to exploit its weakness during future cooperation. Germany was that country. Its military managed to keep up with the Entente during the Great War, and because of that had a vast experience in modern warfare. Because of its loss and humiliating Treaty of Versailles, it lost all of its colonial possessions, including port in Qingdao and had no influence in China. Soon, Chinese diplomats started asking German officers to come and help with military modernization. This attempt succeeded and in 1927 Erich's von Ludendorff protégé – Max Bauer arrived in China along with a corps of 30 German officers. His arrival started a 11 years long cooperation in effort to change Chinese military into modern army. This partnership not only involved officers training, but also allowed Germans to its sell equipment to China in exchange for money and resources. The most important person that arranged this trade was Hans von Seeckt, leader of German advisor group in 1934-1935, who had contacts with German industry. This allowed to create HARPO - Handelsgesellschaft für industrielle Produkte, a company which only purpose was to sell weapons to the Chinese. What is interesting about HARPO, is that it did not sell items by ordered quantities – it sell exact amount of goods needed by a military unit.<sup>6</sup> Unfortunately, German

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5 J.P. Fox, *Max Bauer: Chiang Kai-Shek's First German Military Adviser*, "Journal of Contemporary History", 1970, p. 22

6 D.T Tow, D.T Stuart, *China's Military Turns to the West*, "International Affairs (Royal Institute of International Affairs 1944-)", 1981, pp. 507-508



involvement in Chinese military upset another country in the region – Japan, which had its eyes on weakened neighbour and was preparing for expansion into China. German and Chinese efforts to improve the performance of National Revolutionary Army soon were to see their first trial in real combat. In 1931 Japanese invaded Manchuria. At the beginning, Chinese decided to continue training of the divisions, but soon, in 1932 first German-trained units were used in fight against the aggressors. During the engagement they managed to stop Japanese advance and Japan had to divert about 70 thousand troops in order to break the stalemate. Western observers stated then that it was the first time Chinese military was able to give “reasonable resistance” against modern army.<sup>7</sup> Foreseeing another Japanese aggression, Alexander von Falkenhausen sped up new divisions training. His decision soon payed off – in 1937 Japanese staged Marco Polo Bridge Incident and declared war on China. At that moment Chiang Kai Shek had 80 thousand German-trained troops at his disposal. Those men were one of the first to fight the Japanese invasion, trying to slow down Imperial Japanese Army. Although they managed to achieve this task, it came at the price. Those divisions soon were annihilated during fierce defence of Shanghai, but till the very end were thorn in Japanese military side. Infuriated Japanese sent many diplomatic objections towards Germany, opposing German meddling in conflict between two Asian nations. In 1938, one year after Second Sino-Japanese War began, Adolf Hitler, pressured by Japanese diplomats recalled German officers in China, threatening to punish their families, had they ignored his order.<sup>8</sup> This

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7 B.K. Walsh, *The German Military Mission in China, 1928-38*, The University of Chicago Press, Irvine 1974, p.507

8 J.W.M. Chapman, *A Dance on Eggs: Intelligence and the 'Anti-Comintern'*, *Journal of Contemporary History*, 1987, p.342





marked the end of cooperation, but not every officer listened to the Führer, and a few of them decided to stay and help in Chinese war effort.

## SINO-GERMAN COOPERATION NOW

Relations between Germany and China began anew after Sino-Soviet Split and China opening to the world. Official relations were established on October 1972 and soon trade between two countries began. China again wanted to modernize its military and started buying weapons from the West. Although Germany wanted to participate in this trade, it had to be wary of reaction from the Soviet Union. In 1978 and 1979 Germans sold 600 anti-tank missiles and a few B0-105 helicopters. Later Chinese have shown interest in German tanks and armoured vehicles, but fearing the reaction from Moscow, the talks never began. Because Germany had to balance its trade with China and its relations with the Soviet Union, it adopted different strategy – instead of selling arms directly, it funded or produced components to military equipment made by international companies, preferably with their headquarters in other countries.<sup>9</sup> Chinese arms trade with the West flourished till the massacre of Tiananmen, when in response to this United States and European Nations imposed embargo on selling weapons to China. But many of the embargoing nations did not want to follow America's lead entirely, which banned all arms exports, and loosened their policy towards China. For example – France sells “only” non-lethal systems, such as radar systems and electronics. Germany “only” sells diesel engines and United Kingdom “only” sells weapons that will not “probably” be used

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9 W.T.Tow, D.T.Stuart, China's Military Turns to the West, International Affairs (Royal Institute of International Affairs 1944-), 1981, pp.292-294



for internal repressions.<sup>10</sup> By 1994 value of arms trade between EU4 (France, Germany, United Kingdom, Italy) and China surpassed the 1989 pre-Tiananmen peak.

Today partnership between two countries is thriving and is not focused only on selling military equipment to each other as it was then. As of 2017 Germany was the biggest trading partner of China in Europe. Value of Chinese export to Germany is 109B \$, which is 4,5% of its total export— second in place in Europe is United Kingdom, with 59B \$ worth, equal to 2,4% of China export. It is also true in case of Chinese import – Germany imported goods worth 95B \$, equal to 6,2% of total Chinese import, earning again first place in Europe, while the next biggest exporter to China in Europe, Russia sold 39B \$ worth of goods, which is 2,5% of total Chinese import.<sup>11</sup> Most important in this trade are mechanical and electrical goods, mainly computers, broadcasting equipment and office machine parts which are over half of German imports from China. On the other hand China imports mainly various electronics, which are 36% of its import value from Germany and transportation goods – cars and vehicle parts, which are contributing 30% of Chinese import from Germany.<sup>12</sup>

While the trade partnership between two countries is flourishing and keeps improving, diplomatic relations between China and Germany are more complicated. Since the unification of East and West Germany high level government officials from both China and Germany frequently visited each other,

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10 O. Bräuner, Beyond the Arms Embargo: EU Transfers of Defense and Dual-Use Technologies to China, *Journal of East Asian Studies*, 2013, pp.459-461

11 OEC – China. Exports, Imports, and Trade Partners, available [online], <https://oec.world/en/profile/country/chn/> (accessed 31 March 2020)

12 OEC- Products that Germany exports to China, available [online] [https://oec.world/en/visualize/tree\\_map/hs92/export/deu/chn/show/2017/](https://oec.world/en/visualize/tree_map/hs92/export/deu/chn/show/2017/) (accessed 31 March 2020)



which allowed to significantly develop their relations. Since 2004 on annual meetings between German and Chinese are arranged, followed by government consultation since 2010.<sup>13</sup> Moreover during his visit in Germany at the end of March 2014, Chinese General Secretary of Communist Party of China, Xi Jinping announced that relations between China and Germany are from now not only strategic partnership for global responsibility, and became comprehensive strategic partnership, enlarging fields of cooperation between the two countries.<sup>14</sup> China and Germany have shown their aligning interests on multiple occasions: both nations opposed invasion of Iraq in 2003 and involvement in Libyan Civil War, as well strengthening their ties since the United States pulled out of the Paris Agreement. After Donald Trump became the President of The United States, Germany, while historically since the end of World War Two being aligned to America, started cooling its relations with the US in favour of China, seeing China as more reliable partner than the country ruled by the unpopular President.<sup>15</sup>

Of course both countries have not only similar interests, but also have their differences and conflicts. Fortunately none of them are lethal and do not need involvement of armed forces, but still, there are many disagreements between China and Germany. Berlin is mainly concerned about Chinese investors taking over German companies and restrictions made by

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13 M.A.Güler, Sino-German Relations: Is Germany an agent of change in global affairs?, available [online] <https://www.dailysabah.com/op-ed/2019/10/03/sino-german-relations-is-germany-an-agent-of-change-in-global-affairs> (accessed 31 March 2020)

14 S. Tharoor, China and Germany: So Far, Yet So Close, available [online] <https://thediplomat.com/2017/12/china-and-germany-so-far-yet-so-close/> (accessed 31 March 2020)

15 Y. Samrai, Trading with the frenemy: Germany's China policy, available [online] [https://www.ecfr.eu/article/commentary\\_trading\\_with\\_the\\_frenemy\\_germanys\\_china\\_policy](https://www.ecfr.eu/article/commentary_trading_with_the_frenemy_germanys_china_policy) (accessed 31 March 2020)



Beijing for foreign companies to enter Chinese market, especially in the financial and insurance sector.<sup>16</sup> Many German corporations urged their government and the European Union to press the Chinese to follow its promises to open the market, suggesting appliance of control measures against companies and investors from China. One of the ideas to solve the issue of German companies being bought out and often being too small to compete effectively with their Chinese counterparts, proposed by German Minister of Economics, Peter Altmaier is to allow for merger of European companies in order for them to become strong enough to enter the competition as equals. Another proposed solutions are investments in key industrial branches, especially metallurgy, automobile, optics and defence. Out of all, the most problematic is the German car industry, as its one of the most famous and biggest sectors, but also becoming more and more outdated. It's development stagnated over years, while Chinese automobile companies kept improving their technologies. Now Germans have to put large effort in technological race and focus more on the research of batteries for new electronic vehicles. Another problem for German motorization industry is outsourcing – more German cars are made in China than in Germany and in 2019 the indigenous production reached its lowest point since 2009.<sup>17</sup>

Disagreements between two powers come not only with economic problems, which are probably most important for both Berlin and Beijing, but also with their stance on different

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16 B.A. Düben, Are the Gloves Coming Off in China-Germany Economic Relations?, available [online] <https://thediplomat.com/2019/05/are-the-gloves-coming-off-in-china-germany-economic-relations/> (accessed 31 March 2020)

17 E. Heymann, German auto industry: Output in China exceeds domestic production, available [online] [https://www.dbresearch.com/servlet/reweb2.ReWEB?rwsite=RPS\\_EN-PROD&rwobj=ReDisplay.Start.class&document=PROD0000000000505697#](https://www.dbresearch.com/servlet/reweb2.ReWEB?rwsite=RPS_EN-PROD&rwobj=ReDisplay.Start.class&document=PROD0000000000505697#) (accessed 31 March 2020)



internal and international affairs. As stated before, Germany took part in international backlash against China after the Tiananmen Massacre. It also took part in writing the letter to the United Nations Human Rights Council and United Nations High Commissioner for Human Rights, denouncing Chinese policy towards the Uyghurs in Xinjiang and calling for an end of detention program.<sup>18</sup> New problem arose with Hong Kong protests, during which German Foreign Minister Heiko Maas met with one of the activists, Joshua Wong. After this meeting Chinese officials and media started warning Germany, stating that it tries to meddle into internal policy of China and disrespects its sovereignty.<sup>19</sup>

## THE END – CONCLUSION AND A LOOK TOWARDS THE FUTURE

China and Germany are respectively second and fourth largest economies in the world. Both are production and export powerhouses – China earned first place in export value, selling to the world goods worth nearly 2,5 trillion \$, while Germany placed third, after United States, being able to sell 1,5 trillion \$ worth of products.<sup>20</sup> Both countries have interesting and complicated history. Germany was united by a small Kingdom of Prussia, which managed to win against the Habsburgs and French in the quest of unification. Then it managed to become

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18 C. Putz, Which Countries Are For or Against China's Xinjiang Policies?, available [online] <https://thediplomat.com/2019/07/which-countries-are-for-or-against-chinas-xinjiang-policies/> (accessed 31 March 2020)

19 C. Wong, China blasts Germany after foreign minister meets Hong Kong activist Joshua Wong at human rights event, available [online] <https://www.scmp.com/news/china/diplomacy/article/3026567/china-blasts-germany-after-foreign-minister-meets-hong-kong> (accessed 31 March 2020)

20 D. Workman, World's Top Export Countries, available [online] <http://www.worldstopexports.com/worlds-top-export-countries/> (accessed 31 March 2020)



powerful enough to rival the hegemony of United Kingdom, not only with its military and navy, but also thanks to its economy and industry. It was the British who introduced famous Made in Germany mark, hoping to discourage purchases of German-made goods, German manufacturers managed to introduce it as an advertisement and symbol of good quality merchandise.<sup>21</sup> Even though it started both World Wars and was blinded by the Nazism, it managed to rebuild itself and become one of the worlds most powerful countries. History of China is as long as its complicated, full of wonders and horrifying events. It was going through non-ending cycle of dynastic changes, accompanied by periods of prosperity and stability, but also downfall and chaos. Then, at the beginning of 20<sup>th</sup> century Chinese overthrew the Emperor and established a republic. Unfortunately the development and modernization of China was brutally smashed by internal instability and Japanese invasion, followed by civil war, during which republic was replaced by communist dictatorship under Mao Zedong. China isolated itself from the world and begun following Maoism, which ultimately led to its economic collapse and meant death for millions of people. But then, it opened itself for the rest of the world and entered period of mass modernization and development. In 30 years, starting with horrible economy, undercut by disastrous Great Leap Forward campaign, China managed to become second largest economy. Those two countries cooperated on many occasions in the past, when Germany sent its officers in an effort to bring Chinese army up to modern standards, and in the present, becoming very close trade partners. Of course this relationship is marked by hardships,

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21 R. Wenkel, How much is 'Made in Germany' really worth?, available [online] <https://www.dw.com/en/how-much-is-made-in-germany-really-worth/a-17372908> (accessed 31 March 2020)



caused by various disagreements, but it still thrives and as for now nothing foreshadows its end. What will happen in the future? Nobody knows. Maybe China will democratise. Maybe two countries will face conflict that will not allow for further cooperation. Or maybe this partnership will be continued for next decades, without any significant changes.

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# DISCOVERING ROOTS: THE DEVELOPMENT OF HANFU MOVEMENT AMONG CHINESE DIASPORA

## INTRODUCTION

A group of people dressed in embroidered garments and elaborate coiffures are posing in the park, later they are attending tea ceremony. Someone could think that they traveled there from the past. Another scene is located at a crowded street and one of pedestrians is wearing a dress stylized on VIII century's Tang China. These examples are not taken from a movie, nor a special show is being held. These are XXI century images taken from the life of a member of the Hanfu Movement, a growing up phenomenon. Origins of the movement are connected with a decision made by Wang Letian to dress himself in



the outfit recognized as one among traditionally worn by Han ethnicity. Popularly this group of garments is called *hanfu*. It was in 2003 in Zhengzhou, and among others, his actions to show it in public launched other events, which finally led to the rise of movement known today<sup>1</sup>.

This paper aims to analyze motivations and a mission behind the establishment of Hanfu Movement associations or groups operating outside China. Activities of eleven associations were explored. This amount contains one diverse European group, one South American, three from North America, two groups from Australia and Oceania, and finally, four based in Asia. These examples were chosen to show diversity of aims and actions undertaken by Hanfu Movement groups among diaspora. These associations' goals are pursued as a continuation of ideas related to the emergence of Hanfu Movement in China. Moreover, their activities can be helpful in building a mutual understanding between Chinese diaspora and the rest of society. There are also questions about the main recipient of undertaken actions. Are they only diaspora members, Chinese descendants or everyone who would like to deepen its knowledge?

## THE BIRTH OF CHINESE DIASPORA

Increasing population of Chinese emigrants was correlated with economic difficulties in the XIX century. The possible choices of settlement varied with political changes which led to increased demand for Chinese workforce. In these circumstances Chinese diaspora was becoming more and more visible in countries like Malaysia, Singapore, Indonesia, Australia, South

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1 Ch. Low, (2019), *Hanfu sees revival as elegant Chinese look wins new admirers*, Chinadaily.com.cn, 17 June, available [online] [https://www.chinadaily.com.cn/a/201906/17/WS5d06d5e5a3103dbf143287ba\\_1.html](https://www.chinadaily.com.cn/a/201906/17/WS5d06d5e5a3103dbf143287ba_1.html) (accessed 25 June 2020).



America and the USA. Emigration was a chance to obtain a better life, however, often it was a road full of hardships and hostility<sup>2</sup>. Daniel Goodkind stated that:

The present day Chinese diaspora includes those people living outside of China who were born in China or who otherwise identify as Chinese based on the language they speak and/or their ancestry<sup>3</sup>.

This definition defines members based on a few factors, although the fulfilment of even one among them, allows to be qualified as a part of Chinese diaspora. In addition to the term Chinese diaspora, the term Overseas Chinese is used to define ethnic Chinese who stay outside China, however, detailed understanding of it varies. For example, Alan A. Lew and Alan Wong included Hong Kong, Macao and Taiwan to this count because they emphasize that Overseas Chinese “reside outside the direct political control of the People’s Republic of China”<sup>4</sup>. James Jiann Hua To<sup>5</sup>, in turn, does not include these three when describing Overseas Chinese<sup>6</sup>.

Chinese presence in the South-East Asia started far before the emigration in the XIX century. It was correlated with activity of merchants in places like Malacca, Sumatra, Luzon

2 P. Buckley Ebrej, *The Cambridge Illustrated History of China* (2nd ed.), Cambridge, Cambridge University Press 2010, pp. 249-252.

3 D. Goodkind, *The Chinese Diaspora: Historical Legacies and Contemporary Trends*, United States Census Bureau, 2019, available [online] [https://www.census.gov/content/dam/Census/library/working-papers/2019/demo/Chinese\\_Diaspora.pdf](https://www.census.gov/content/dam/Census/library/working-papers/2019/demo/Chinese_Diaspora.pdf) (accessed 29 June 2020), p. 2.

4 A. A. Lew, A. Wong, *Tourism and the Chinese Diaspora*, In: C. M. Hall, A. M. Williams (Eds.), *Tourism and Migration: New Relationships between Production and Consumption*, Springer-Science+Business Media, Dordrecht 2002, pp. 209-210.

5 For the purpose of this paper Overseas Chinese will be defined as James Jiann Hua To proposed.

6 J. J. H. To, *Qiaowu: Extra-Territorial Policies for the Overseas Chinese*, Brill, Leiden 2014, p. 1.



or Vietnam. Later, in the XV century, famous expeditions prepared by Admiral Zheng He took place. Moreover, as Ian Rae and Morgen Witzel noted, some of these countries like Vietnam, Thailand or Cambodia were influenced by China. Even if this influence was slight<sup>7</sup>. Rapid growth of Chinese workers in the region was the effect of Western imperialism. In the XIX century Chinese settled in Singapore, Malaysia and Indonesia. For example, Chinese in contemporary Indonesia worked for Dutch in the role of tax farmers, as well as were visible in the plantations of sugar and tobacco<sup>8</sup>.

Gold rush was another reason behind decisions to travel abroad. Since 1860s Chinese miners from Guangdong were present in New Zealand. If it was possible, they later change their occupations to these which let them become self-employed. Their main aim was to earn enough money to be able to support family left in China, as well as go back to their homeland in the future. Change in the attitude of emigrants started to be visible in the XX century. Their circumstances were different, since they had the support of compatriots already settled there. They started to think about New Zealand not only as a place of temporary stay<sup>9</sup>. Similarly, in the second half of the XIX century gold attracted Chinese to travel to Australia, the USA and Canada. In America they used to work not only as miners, but also helped to build new railways. Mostly male Chinese were visible in states like California, Wyoming, and Idaho<sup>10</sup>.

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7 I. Rae, M. Witzel, *The Overseas Chinese of South East Asia: History, Culture, Business*, Palgrave Macmillan, Basingstoke 2008, pp. 12-14.

8 P. Buckley Ebrey, *op.cit.*, p. 250.

9 N. Pawakapan, *No Longer Migrants: Southern New Zealand Chinese in the 20th Century*, In: M.W. Charney, B.S.A. Yeoh, T.C. Kiong (Eds.), *Chinese Migrants Abroad: Cultural, Educational, and Social Dimensions of the Chinese Diaspora*, Singapore University Press, World Scientific, Singapore 2005, pp. 206-210.

10 P. Buckley Ebrey, *op.cit.*, p. 251.



The population of present day Overseas Chinese exceeded 42 million. The data collected between 1948-2014 showed that it was a growing up tendency, the rise from more than 8 million to more than 42 million in 2014<sup>11</sup>. The biggest group is visible in Asia, especially in countries such as Indonesia, Thailand, Malaysia and Singapore. Overseas Chinese in Asia exceeded 31 million. Respectively, the rest was living in North and South America (mainly in the USA and Canada), Europe, Australia, Oceania and Africa<sup>12</sup>. It should be noted that now this community contains also people who joined their residing abroad families, as well as students, diplomats and businessman<sup>13</sup>.

## HAN CULTURE IN THE SPOTLIGHT

The goal of promoting Han culture can be seen as a main purpose behind the establishment of certain Hanfu movement associations. In the USA, it was expressed by established in 2014 Hanfu NYC (New York Hanfu Corporation). On their Facebook page they described their mission as “to promote knowledge, understanding, and practice of the various aspects of the culture of Han ethnicity while taking clothes culture as a start point”<sup>14</sup>. It means that a dress is considered as crucial for

11 Overseas Community Affairs Council (OCAC), *Table 1: Overseas Chinese Population Count*, available [online] [http://www.ocac.gov.tw/OCAC/File/Attach/1168/File\\_23312.pdf](http://www.ocac.gov.tw/OCAC/File/Attach/1168/File_23312.pdf) (accessed 29 June 2020).

12 N.d., *Overseas China Population –by Country Year: 2014*, available [online] [https://www.ocac.gov.tw/OCAC/File/Attach/1168/File\\_1861.pdf](https://www.ocac.gov.tw/OCAC/File/Attach/1168/File_1861.pdf) (accessed 29 June 2020).

13 D. Goodkind, *The Chinese Diaspora: Historical Legacies and Contemporary Trends*, United States Census Bureau, 2019, available [online] [https://www.census.gov/content/dam/Census/library/working-papers/2019/demo/Chinese\\_Diaspora.pdf](https://www.census.gov/content/dam/Census/library/working-papers/2019/demo/Chinese_Diaspora.pdf) (accessed 29 June 2020), p. 3.

14 Hanfu NYC 紐約漢服社, *Our Story*, available [online] [https://www.facebook.com/pg/nyhanfu/about/?ref=page\\_internal](https://www.facebook.com/pg/nyhanfu/about/?ref=page_internal) (accessed 22 June 2020).



their activities, and will be serving as a tool. Active usage of material culture in order to achieve association's aim was chosen by another USA based group, Fuyao Hanfu Association from District of Columbia<sup>15</sup>. According to Jules D. Prown adornment is placed among categories which describe what can be understood as a material culture. It includes not only clothing and accessories, but also aspects such as hairstyle or cosmetics<sup>16</sup>. J.D. Prown observed that material culture is defined as:

The study through artifacts of the beliefs – values, ideas, attitudes, and assumption – of a particular community or society at a given time. The term material culture is also frequently used to refer to artifacts themselves, to the body of material available for such study<sup>17</sup>.

In this light Hanfu Movement associations approach seems to be the correct one, thus can be considered as one of the ways of deepening knowledge about Han. It is Han who constitute China's majority (over ninety percent). The rest percentage is divided between fifty-five other minority nationalities<sup>18</sup>. The reason why Han ethnicity is strongly emphasized by Hanfu NYC lies in a discussion aroused around the time when Hanfu Movement was born in China. As Kevin Carri-co pointed out, before actions like Wang Letian's appearance, there was a lively discussion on the Internet. It was the voice of discontented netizens who were opposed to outfit presented

15 Fuyao Hanfu Association 扶摇汉服社, available [online] [https://www.facebook.com/pg/Fuyao-Hanfu-Association-%E6%89%B6%E6%91%87%E6%B1%89%E6%9C%8D%E7%A4%BE-194258504710254/about/?ref=page\\_internal](https://www.facebook.com/pg/Fuyao-Hanfu-Association-%E6%89%B6%E6%91%87%E6%B1%89%E6%9C%8D%E7%A4%BE-194258504710254/about/?ref=page_internal) (accessed 22 June 2020).

16 J.D. Prown, *Mind in Matter: An Introduction to Material Culture Theory and Method*, "Winterthur Portfolio", Vol. 17, No. 1, 1982, pp. 2-3.

17 Ibidem, p. 1.

18 T.S. Mullaney, *Coming to Terms with the Nation: Ethnic Classification in Modern China*, University of California Press, Berkeley 2011, p. 1.



by Chinese government to politicians during APEC summit in 2001. In their point of view it was the clothing of Manchu origin, therefore showing these jackets as Chinese traditional dresses was improper. The correct choice should be a garment inseparably related to Han and the origins of Chinese culture<sup>19</sup>. Yan Zhang noted that in Chinese society an “identity crisis” was observed. It was affected by modernization which caused lifestyle’s changes. Moreover, Chinese thought that national dignity was broken off under governing made by the last Qing dynasty, which was the Manchu one. In order to restore what was lost, the idea to look into the past and restore old customs and traditions was born. Dressing in *hanfu* was recognized as a part of these actions<sup>20</sup>, although not every enthusiast presented nationalistic attitude. There was a group who described themselves as unpolitical<sup>21</sup>.

Activities undertaken by Chinese diaspora’s associations are overwhelmingly different kinds of events. The first one are meetings in order to celebrate Chinese festivals, like Dragon Boat Festival or to deepen knowledge of members about ancient Chinese culture, etiquette and rituals. The second one are practical workshops how to prepare handmade *hanfu*, or how to dress in *hanfu* properly<sup>22</sup>. There are also events with participation of *hanfu* association, however they are not main

19 K. Carrico, *The Great Han: Race, Nationalism, and Tradition in China Today*, University of California Press, Oakland, California 2017, pp. 35-37.

20 Y. Zhang, *What is Going on in China? A Cultural Analysis on the Reappearance of Ancient Jili and Hanfu in Present-Day China*, “Intercultural Communication Studies”, 17(1), 2008, pp. 228-229.

21 H. Wu, (2019), *Hanfu movement sweeps China in revival of traditional culture*, Reuters, 20 September, available [online] <https://www.reuters.com/article/us-china-anniversary-hanfu-feature/hanfu-movement-sweeps-china-in-revival-of-traditional-culture-idUSKBN1W501J> (accessed 25 June 2020).

22 Hanfu Movement of Eastern Canada 加東漢服運動, available [online] <https://www.facebook.com/HanfuEastCan/> (accessed 26 June 2020).





organizer. For example, Hanfu NYC cooperated with China Institute or Pace University CSSA (Chinese Student & Scholar Association)<sup>23</sup>. In order to deepen members knowledge Singaporean association even prepared joint cultural trip to Taiwan. Keeping in mind movement's goals they were all posing to photos in *hanfu*<sup>24</sup>.

Besides, organizing events associations run their Facebook pages. They post information about events schedule and photograph documentation from finished activities. Moreover, they do not forget about anniversaries of movement emergence and Wang Letian<sup>25</sup>. Sharing online resources like short videos, TV materials, *hanfu* photo sessions can also be observed. These materials let audience be aware about actions undertaken by other *hanfu* enthusiasts and related events held in China<sup>26</sup>. Associations also upload posts about recommended *hanfu* brands and places where there is a possibility to order them<sup>27</sup>. Recommendation to YouTube channel containing information useful for Hanfu Movement members can be found too<sup>28</sup>. It shows that associations promote not only their own actions, but also other works about related topics.

## BRIDGE BETWEEN CULTURES

23 Hanfu NYC 紐約漢服社, available [online] <https://www.facebook.com/nyhanfu/> (accessed 26 June 2020).

24 Han Cultural Society – Singapore, available [online] <https://www.facebook.com/sghanculture/photos/a.615991335122210/2644955545559102/?type=3&theater> (accessed 26 June 2020).

25 Hanfu Movement of Eastern Canada 加東漢服運動, available [online] <https://www.facebook.com/HanfuEastCan/> (accessed 26 June 2020).

26 天南漢家 tiannanhanjia, available [online] <https://www.facebook.com/HANFUARGENTINA/> (accessed 26 June 2020).

27 Hanfu Association of NZ, available [online] <https://www.facebook.com/groups/283406802364293/about/> (accessed 26 June 2020).

28 Han Cultural Society – Singapore, available [online] <https://www.facebook.com/sghanculture/> (accessed 26 June 2020).



The language of communication used in social media depends on a certain association. Three strategies can be observed. The first one is to use only Chinese on a dedicated site or Facebook groups. One example can be Hanfu Malaysia and the other Malaysian group named Dong Hsuan Fang. Dong Hsuan Fang's main goal is to allow young Malaysian Chinese to discover ancestors culture. Behind this there is a wish to deepen their understanding of Chinese culture, as well as to change their perception. In their opinion the lack of understanding became the main reason of traditional Chinese culture be viewed as old-fashioned<sup>29</sup>. Hanfu Malaysia also appears to be established in purpose to connect with people who are Chinese descendants. However, they did not to express it in as straightforward way as Dong Hsuan Fang do<sup>30</sup>. The second strategy is bilingual communication, or even using more languages. The text can be prepared both in Chinese and in native language for the country where such an association is established. Hanfu Movement Indonesia can be taken as an example. They use Bahasa Indonesia, Chinese and sometimes also English to communicate. Group introduction is written both in Bahasa Indonesia and in Chinese<sup>31</sup>. Bilingual was also a site prepared by European Hanfu Association. This NGO contained smaller groups in countries like United Kingdom, Netherlands, France, Germany, Italy and Spain. Their mission was explained in two languages<sup>32</sup>. While exploring a Facebook Page of Argentinian

29 东玄坊 Dong Hsuan, *Our Story*, available [online] [https://www.facebook.com/pg/donghsuanfang/about/?ref=page\\_internal](https://www.facebook.com/pg/donghsuanfang/about/?ref=page_internal) (accessed 22 June 2020).

30 馬來西亞-漢服運動 - Hanfu Malaysia, 關於我們, available [online] [https://www.facebook.com/pg/hanfumalaysia/about/?ref=page\\_internal](https://www.facebook.com/pg/hanfumalaysia/about/?ref=page_internal) (accessed 22 June 2020).

31 印尼漢服運動 Hanfu Movement Indonesia, available [online] <https://www.facebook.com/groups/142786853689/about/> (accessed 22 June 2020).

32 European Hanfu Association, *Organization Aim*, available [online] <http://eu.hanfuhui.cn/aboutus.html> (accessed 23 June 2020).



Tiannan Hanjia Association can be found that Spanish is used as a language to describe their mission, however, descriptions of presented content is made in Chinese, Spanish or both languages<sup>33</sup>. The third strategy is to use English as a main language of communication, sometimes with added Chinese text. The illustration of this method can be a Facebook Page created by Hanfu Movement of Eastern Canada. The page appears to be focused on people who use English as their first language of communication<sup>34</sup>. Worth of notice is also a strategy prepared by Hanfu NYC which created two sites. Their Facebook Page is mostly prepared in English<sup>35</sup>, while another site on Weibo is written in Chinese and focused on Chinese language user<sup>36</sup>. Weibo is a Chinese platform, so it gives an impression that Hanfu NYC's aim is to be able to communicate easily with members or fans based in China.

Hanfu associations can also help to build mutual understanding between cultures. Associations who openly welcome anyone who is interested in their activities can be seen in a few countries. Han Cultural Society in Singapore invites both Chinese Singaporeans, as well as Non-Chinese ones<sup>37</sup>. The same idea was expressed on the Facebook group managed by Hanfu Association of NZ. Although they would like to gather together Chinese living in the New Zealand, still they would allow other

33 天南漢家 tiannanhanjia, available [online] <https://www.facebook.com/HANFUARGENTINA/> (accessed 23 June 2020).

34 Hanfu Movement of Eastern Canada 加東漢服運動, available [online] <https://www.facebook.com/HanfuEastCan/> (accessed 23 June 2020).

35 Hanfu NYC紐約漢服社, available [online] <https://www.facebook.com/nyhanfu/> (accessed 23 June 2020).

36 紐約汉服社, available [online] [https://www.weibo.com/newyorkhanfu?fbclid=IwAR08ocv6UAzT9sZiFFdJyGwOgVSq4kfN9KFDQe6iTgY2lvkkCFdPDgkols&is\\_all=1](https://www.weibo.com/newyorkhanfu?fbclid=IwAR08ocv6UAzT9sZiFFdJyGwOgVSq4kfN9KFDQe6iTgY2lvkkCFdPDgkols&is_all=1) (accessed 23 June 2020).

37 Han Cultural Society – Singapore, *Our Story*, available [online] <https://www.facebook.com/sghanculture/> (accessed 22 June 2020).



nationalities to attend their meetings too<sup>38</sup>. Moreover, Queensland Hanfu Association aims “to promote and facilitate cultural communications by adding to our diverse and inclusive multicultural community”<sup>39</sup>. This one although not openly invites non-Chinese yet focuses on aspect of cultural communication. Possibilities such as these seem to be an occasion to cultural exchange between Chinese diaspora and other people. It could become something more than only to present *hanfu* and other aspects of the Chinese culture to members of other ethnicities. While sharing a joy from meeting in these special circumstances, discussing new clothing designs, exchanging useful advice on how to wear certain style of dress, new bonds can be created.

## CONCLUSIONS

It appears that Hanfu Movement becomes more and more visible among Chinese diaspora around the world. This initiative is spreading not only in Asian countries, but also in Australia, Europe, and in North and South America as well. Diaspora’s associations use the Internet as a medium to promote their activity, but they are not only limited to existence in the web. Gatherings in real life are important part of their activity. Thanks to that, they are able to share their passion with people having the same interests. Moreover, it gives a possibility to present their activity to a wider audience, and maybe to recruit new members. The aims behind establishment of Hanfu Movement associations outside China appear to base on motivations linked with the emergence of the movement in China. Han

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38 Hanfu Association of NZ, available [online] <https://www.facebook.com/groups/283406802364293/about/> (accessed 22 June 2020).

39 Queensland Hanfu Association 昆士兰汉服社, available [online] [https://www.facebook.com/pg/hanfu.qld/about/?ref=page\\_internal](https://www.facebook.com/pg/hanfu.qld/about/?ref=page_internal) (accessed 23 June 2020).



culture and Han ethnicity is clearly emphasized in their mission declarations. Moreover, the movement would like to help other Chinese descendants to discover their ancestors culture. In addition, they want to change the way in which Chinese culture is viewed. Hanfu Movement probably can help to build bridges between cultures and unite local societies. Educational work made by passionate members could help to deepen understanding of Chinese culture, also by foreigners. However, it should be noted that some aspects of the Chinese dress history could not be described objectively. Nevertheless, successful spread of the Hanfu Movement is a sign of a substantial potential contained in this idea.

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FROM ESTABLISHING  
DIPLOMATIC RELATIONS TO  
*HANYU QIAO*  
– A BRIEF OVERVIEW  
OF CONSTRUCTING  
SINO-POLISH BRIDGES

Since the economic and political reforms of Deng Xiaoping (Chinese: 改革开放) at the turn of the 1970s and 1980s, the People's Republic of China has embarked on a new path of development, slowly shedding the burden of a country that is backward, ossified, collectivized or struggling with hunger or illiteracy. The political changes, which resulted in opening the country to foreign capital, joining international organizations such as APEC (1991) and the World Trade Organization (2001) also brought about a relaxation in scientific, cultural or tourist exchange (for example, according to the National Bureau of Statistics of China, in 1990 China was visited by



2,579,400 foreign tourists<sup>1</sup>, and in 2017 this number increased to 139,482,400 people, generating 11% of the then GDP<sup>2</sup>). The promotion of Chinese culture is a multi-faceted activity in the People's Republic of China, one of the first bodies dealing with this area was established in 1982, i.e. China National Tourism Administration (Chinese: 中华人民共和国国家旅游局), which in May 2018 was merged with the then Ministry of Culture (Chinese: 中华人民共和国文化部), creating a new administrative unit - Ministry of Culture and Tourism of the People's Republic of China (Chinese: 中华人民共和国文化和旅游部), provides wide variety of information on travel agencies offering tours to the Middle Kingdom and tourist attractions.

Growing interest in the People's Republic of China on the international arena as a potential business partner or tourist destination is also reflected in the number of people who want to start learning Chinese (referred to as the Modern Standard Mandarin Chinese, part of which is a variety from mainland China called *putonghua*, Chinese: 普通话 - literally "common language" and Taiwanese variant of *guoyu*, Chinese: 国语 - "state language"<sup>3</sup>). The growing interest of foreigners in learning the language, which in terms of the number of native speakers is the first in the global scale<sup>4</sup>, was countered by the Ministry of Education of the People's Republic of China (Chinese:

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3 Shi Dingxu, *Standard Chinese*, In: Chan Sin-wai et al. (ed.), *The Routledge Encyclopedia of the Chinese Language*, New York 2016, p. 723

4 Ethnologue, Chinese, Mandarin, available [online] <https://www.ethnologue.com/language/cmn> (accessed 9 March 2020)



中华人民共和国教育部), which in 1987 established the Office of Chinese Language Council International (Chinese: 国家汉语国际推广领导小组办公室) - an entity responsible for the promotion of Chinese culture (including the popularization of language learning), which is often abbreviated by Hanban (Chinese: 汉办). The flagship project of this institution is the Confucius Institute, whose activities focus on promoting Chinese culture through the organization of cultural events, meetings and workshops, but above all through a wide range of language courses at all levels. The first centre was established in November 2004 in Seoul (however, earlier, in June of that year, a pilot project of the Institute of Confucius in Uzbekistan's capital, Tashkent, was launched), and by the end of 2019 there were already more than 500 of them around the world; moreover, there were already more than 1193 Confucian classes, i.e. Chinese classes conducted in primary and secondary schools, which also fall under Hanban administration<sup>5</sup>. The establishment of the Confucius Institute was also a kind of response to those countries that have their own units promoting culture and language abroad, such as the Portuguese Instituto Camões, the British Council of the United Kingdom, France's Alliance Française, Società Dante Alighieri from Italy, the Spanish Instituto Cervantes, the German Goethe-Institut or the Polish Adam Mickiewicz Institute. However, in contrast to the above-mentioned centres, the Confucius Institute in most cases functions as a subordinate unit under the aegis of a particular university, for example, in Kraków it functions under the Jagiellonian University, similarly in Opole at the Opole University of Technology, in Poznań at the Adam

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5 P. Jakhar, Confucius Institutes: The growth of China's controversial cultural branch, available [online] <https://www.bbc.com/news/world-asia-china-49511231> (accessed 10 March 2020)



Mickiewicz University, as well as in Wrocław at the University of Wrocław and in Gdańsk at the University of Gdańsk. The fact that the Confucius Institute is subject to direct administration by the government bodies of the People's Republic of China, and at the same time shows an expansive character on a global scale, fits into the framework of the notion of soft power, which was introduced to the discourse of political science by Joseph Nye in 1991. According to his concept, state power can be divided into hard power, i.e. the potential of a given state resulting from geostrategic and economic factors, and soft power, which he defines as the ability of a state to win allies and gain influence through the attractiveness of its own culture, politics and ideology<sup>6</sup>. Due to the apolitical nature of higher education institutions, the presence of Confucius Institute as a partner unit may arouse controversy, even though it is not the purpose of this institution to promote politically motivated content.

The first Confucius Institute in Europe was founded in 2005 in Sweden at the University of Stockholm, but the agreement between the Chinese and Swedish parties was binding for a period of ten years, after which it was not extended. In the explanatory memorandum, there was, among others, the following statement from the vice-rector of the university, Astrid Söderbergh Widding: 'Generally speaking, establishing institutes that are funded by another nation within the framework of a university is rather a questionable practice'<sup>7</sup>. In June 2015, the first European branch of the Confucius Institute was closed. Currently there are two Confucius Institutes in Sweden (Lulea

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6 J. Nye, *Soft Power. Jak Osiągnąć Sukces W Polityce Światowej – perswazyjne środki oddziaływania politycznego (kultura, propaganda, dyplomacja)*, Warsaw 2007, p. 3-7

7 L. Zhou, *Swedish university severs ties with Confucius Institute*, available [online] <https://www.scmp.com/news/china/article/1677976/swedish-university-severs-ties-confucius-institute> (accessed 10 March 2020)



and Borlange), although similar cases of closing institutes have taken place in Canada and the United States.

Europe still continues to be the continent with the largest number of Confucian Institutes in the fleet of Hanban, until the time of writing the article in March 2020 the United Kingdom is the European country with the highest number of institutes (17). A matter of time, therefore, was the emergence of the Confucius Institute in Poland, which since the proclamation of the People's Republic of China has maintained very good relations with it, suffice it to mention the fact that the authorities of the People's Republic of China were the second (just after the Soviet Union) to recognise the Central Government of the People's Republic of China with Chairman Mao Zedong at the head, while establishing the diplomatic relations. In addition, talks between the American side (represented by the then Ambassador Jacob D. Beam) and the side of the People's Republic of China (represented by Wang Guoquan) were held at the Warsaw Myslewicki Palace to establish potential diplomatic relations (as the US government had previously recognised the authorities of the Republic of China in Taiwan as the sole head of the Middle Kingdom). After the economic reforms of Deng Xiaoping, foreign cooperation with Europe gained even greater momentum, mainly due to the rapid development of the private sector. The economic changes are striking, since at the beginning of the economic reforms in 1978, according to Zhang Guibin and Qin Zhong, only 140,000 people formed the private sector in China, which, with a population of almost one billion at the time, was a factor not exceeding a hundredth of a percent<sup>8</sup>. And as for 2018, private companies already generated

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8 Zhang Guibin, Qin Zhong, *The development of private businesses in China*, Asia-Pacific Economic and Business History Conference. Responses to Environmental Change, Melbourne 2008



over 60% of China's GDP<sup>9</sup>. The political changes at the turn of the 1980s and 1990s in Poland also resulted in an increase in the role of the private sector (in 1990 it generated 30.9% of Polish GDP, and in 2005 this value increased to 66.2%<sup>10</sup>).

The strategic location of the Republic of Poland in the centre of Europe is also important for Chinese investors and politicians. The "One Belt One Road" (Chinese: 一带一路) initiative deserves special attention in the context of economic relations between the Chinese and Polish sides. It was inaugurated by President Xi Jinping during his visits to Kazakhstan and Indonesia in 2013. The project involves a wide range of infrastructure investments, from the construction of roads and rail networks to airports or seaports. The name refers to the Silk Road (Chinese: 丝绸之路), which was a system of commercial networks connecting East Asia (the beginning of the road started in Chang'an, the former Chinese capital, today's Xi'an) and the Mediterranean world from the 3rd century BC to modern times. Poland is a country which, due to its central-eastern location on the map of Europe, remains an important logistic hub of the European Union, Christoph Szakowski, managing partner in LogConEast, in an interview with Trans.INFO portal, reveals that about 90% of goods imported from the People's Republic of China to Europe by rail are transhipped in Małaszewicze, a small village 5 km from the border with Belarus, one

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9 Liu Ming, China's private sector contributes greatly to economic growth: federation leader, available [online] <https://www.chinadaily.com.cn/a/201803/06/WS5a9e7735a3106e7dcc13fef8.html> (accessed 10 March 2020)

10 M. G. Woźniak, *Zmiany strukturalne gospodarki Polski po 1990 roku*, „Prace Komisji Geografii Przemysłu Polskiego Towarzystwa Geograficznego” 12, 2009, p. 34



of the largest dry ports in Poland and Europe<sup>11</sup>. In addition, since 2013 there are rail cargo connections between Łódź and Chengdu. Since the inauguration of regular connections with the capital city of Sichuan, there has been talk of the need to establish a terminal in Łódź dedicated exclusively to container connections between Poland and China, so a Polish company Hatrans established a joint venture with its Chinese partner, which was to purchase the appropriate land and carry out the planned investment. In order for the investment to be successful, it was crucial to develop the plot of land belonging to the Military Property Agency (Polish: Agencja Mienia Wojskowego), which twice cancelled the tender for the aforementioned land, and therefore the construction of the logistics hub did not take place<sup>12</sup>. Poland is slightly less attractive in terms of logistic attractiveness compared to other Central European neighbours. It is worth mentioning the data of the World Bank, which in the Logistics Performance Index ranking places the country on the Vistula River in the 33rd position, while e.g. Lithuania is in the 29th position and the Czech Republic in the 26th position<sup>13</sup>. The European country which scored the best in this ranking was Germany, which also remains the most important trade partner of the People's Republic of China among the EU Member States (the value of imports and exports between both

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11 M. Maćkowiak, Wywiad Trans.INFO. Czy Polska jest niezbędnym elementem w rozwoju Nowego Jedwabnego Szlaku?, available [online] <https://trans.info/pl/nowy-jedwabny-szlak-polska-niezbednym-elementem-118914> (accessed 10 March 2020)

12 A. Bartosiewicz, P. Szterlik, *Łódź na Nowym Jedwabnym Szlaku. Analiza przypadku*, „Studia Ekonomiczne” 385, 2019, p. 99

13 World Bank, International LPI Global Rankings 2016, available [online] <https://lpi.worldbank.org/international/global/2016> (accessed 10 March 2020)





countries reached 199 billion euro in 2018 - this is more than in the case of trade with neighbouring France<sup>14</sup>).

Summarizing the abovementioned data, it is not difficult to say that Poland can be an interesting figure on the political and economic chessboard of Europe, not only as a strategic gateway to neighbouring Germany, a local economic superpower. The bridge that made a special exchange between Poland and China possible is not any massive reinforced concrete structure, but i.a. the Confucius Institute, which appeared in Kraków in 2006. The decision to establish the first facility in this city was not accidental. Since 2001, the Jagiellonian University in Krakow has hosted the Department of the Middle and Far East (now known as the Institute of Middle and Far Eastern Studies of the Jagiellonian University), which offered the opportunity to learn selected languages of the Far East, including Chinese. The creation of this department was connected with the figure of a visionary, Prof. Andrzej Kapiszewski, who was its first head. It was on his initiative that the idea of creating the first Confucius Institute in Poland was born, because at the beginning of the new millennium sinology as a field of study existed only at the University of Warsaw (at the Faculty of Oriental Studies) and still remains the oldest Polish centre educating academic youth in Chinese language and culture since its establishing in 1933). In the face of growing interest in learning Chinese, the authorities of the Jagiellonian University signed an agreement with the then Ambassador of the People's Republic of China, Yuan Guisen, on the establishment of the first Confucius Institute. On the day of the opening ceremony, a statement was signed between the Jagiellonian University's Rector,

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14 Mu Xuequan, China remains Germany's most important trading partner, available [online] [http://www.xinhuanet.com/english/2019-02/18/c\\_137831889.htm](http://www.xinhuanet.com/english/2019-02/18/c_137831889.htm) (accessed 10 March 2020)



Prof. Karol Musioł, and the Director of Hanban, Mrs. Xu Lin, on the establishment of the Institute, and on the day of the establishment of the facility, an agreement was concluded with the Beijing University of Foreign Languages (Chinese: 北京外国语大学). The second part of the opening ceremony took place in the Campus of the 600th Anniversary of the Jagiellonian University Revival, where the Institute's office was opened and a bilingual plaque was unveiled. In 2008 the Institute moved to the Medical House (Polish: Dom Lekarski) in Kraków, at 4 Radziwiłłowska Street, and continued its activities there until 2018, when it moved to its newly renovated headquarters at 2a Oleandry Street. In 2019, the facility was proclaimed the Model Confucius Institute, and the Ambassador of the People's Republic of China, Liu Guangyuan, present at the inauguration ceremony, said that the Model Institute of Confucius is an important flagship of Hanban and will play a leading role in the development of further facilities around the world<sup>15</sup>. Moreover, it was the only institute in Poland to be awarded the title of the Confucius Institute of the Year (December 2016).

The Confucius Institute in Kraków, like other centres in Poland, offers a wide range of activities related to the popularisation of Chinese language teaching. The offer includes language courses at all levels. There are also courses in the form of extra-curricular activities for schools. The Confucius Institute in Kraków also organizes meetings for the youngest (panda mornings and dragon hours), i.e. thematic workshops where children learn about a selected part of Chinese culture, e.g. about the tradition of brewing tea or about Chinese painting.

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15 Hanban News, Confucius Institute in Krakow in Poland Holds Unveiling Ceremony of Model Confucius Institute and Launching Ceremony for New Teaching Area, available [online] [http://english.hanban.org/article/2019-05/27/content\\_774208.htm](http://english.hanban.org/article/2019-05/27/content_774208.htm) (accessed 10 March 2020)



Students can take advantage of the offer of scholarship programs, which are implemented through the recommendation of the Confucius Institute. Short and long-term trips are offered for language courses and studies. The Confucius Institute offers as well Chinese language proficiency test, including written HSK (Chinese: 汉语水平考试), oral HSKK (Chinese: 汉语水平口语考试) as well as Youth Chinese Test (Chinese: 中小学生汉语考试). There is also a library with a rich collection of texts about China and the Chinese language. Confucius Institutes organize the talent show Hanyu Qiao (Chinese: 汉语桥 - literally Chinese Bridge), which is aimed at foreigners who want to present their knowledge of Chinese culture and skills such as playing Chinese instruments or singing Chinese songs. According to Hanban's statistics, in the period from November 1 2018 to November 1 2019, 1804 students studied at the Confucius Institute in Kraków, the main part were primary school students (630 people), 378 people took the HSK exams, and 35 children took the Youth Chinese Test. There were 86 events (not including lectures and seminars) attended by 23185 people. 18 people took part in the scholarship offer, besides there were organized two summer camps to China, attended by 57 participants. The Institute is also active on various social media (mainly through Facebook, where it published 519 posts, and through Instagram, where it gathered a group of 458 observers). The annual page views of the website of the Institute of Confucius are approximately 30,000<sup>16</sup>.

China pursued its foreign policy on many different levels - in the 1970s, so-called ping-pong diplomacy was conducted with the USA, and today the authorities of the People's Republic

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16 Office of Confucius Institute, Beijing Foreign Studies University, Annual Report 2019. Confucius Institutes & International Chinese Education: Practice and Reflections, Beijing 2019, p. 55



of China are sending their Panda Ambassadors as proof of friendship between different countries. In the case of Poland, relations with the People's Republic of China have been going very well since the beginning of the state's proclamation in 1949, and Poland's potential, especially in the logistics sphere, makes the country a strategic partner for Chinese investors. The growing number of Chinese tourists in Poland - in Kraków alone in 2018 they accounted for 0.37% of all visitors (which gives about 12,210 thousand people), although this is not a significant number, however compared to the previous year there was a significant increase, in 2017 Chinese tourists accounted for 0.17% (about 5,185 thousand people) of foreign visitors<sup>17</sup>. Chinese language is becoming more visible at major tourist attractions, information brochures are printed in Chinese, and the knowledge of the Chinese language is slowly ceasing to be considered an exotic fad and impossible to master - thanks to, inter alia, the activity of six Polish Confucius Institutes. The role of the Chinese language as a potential lingua franca is certainly a question of discussion. Whether or not it will replace English in terms of the number of non-native speakers (second language speakers) is extremely difficult to predict, as English is the official or semi-official language in more than 60 countries, and as the second language is spoken by about 900 million people<sup>18</sup>. However, it cannot be denied that the People's Republic of China is an economic titan, a country on which key global decisions will depend in the future.

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17 K. Borkowski (ed.), *Ruch turystyczny w Krakowie w 2018 roku*, Kraków 2019, p. 17

18 Ethnologue, English, available [online] <https://www.ethnologue.com/language/eng> (accessed 10 March 2020)



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# *MIANZI AND GUANXI* FROM A CHINESE AND EUROPEAN PERSPECTIVE IN THE 21<sup>ST</sup> CENTURY

## INTRODUCTION

In the Chinese Empire, normative law was mostly based on local customs and rites<sup>1</sup>. As Henry C.K. Liu points out “civilized people are expected to observe proper rites” and “law is a methodical standard for behavior in society<sup>2</sup>”. Any attempt to mitigate certain habits and beliefs by law was not possible. The Chinese people’s attachment to the custom, tradition and morality known from neo-Confucianism remains almost

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1 Z. Kopania, *Proces powstawania Kodeksu Qing (1646 – 1912) i jego dziedzictwo* [in:] *Rozważania nad procesem stanowienia prawa w Polsce i Chinach na przestrzeni wieków Wybrane zagadnienia*, I. Szpotakowski (Ed.), Łódź – Kraków 2020, p. 178.

2 H.C.K. Liu, *The abduction of modernity. Part 3: Rule of law vs Confucianism*, [http://www2.law.columbia.edu/course\\_00S\\_L9436\\_001/2005/rule%20of%20law%20china%20confusican.pdf](http://www2.law.columbia.edu/course_00S_L9436_001/2005/rule%20of%20law%20china%20confusican.pdf), (accessed: 27.07.2020).





unchanged even in the 21st century. This is why people selling real estate on the secondary market in China are obliged to inform the potential buyer before signing the contract that a murder happened at the estate. This is due to the fact that living in a house where someone died is for a person attached to tradition and old Chinese beliefs (spirit, as “what returns” was very important and dangerous for the living) a heavy burden on the psyche, and the property itself can be considered haunted<sup>3</sup>.

As can be seen from the example above, in the People’s Republic of China, tradition and customs remain extremely important. Also for representatives of the youngest generations. Awareness of this is key to understanding what to every Chinese person, irrespective of whether he or she is the president of a company operating in the international arena or manager of a small cafe in Beijing, to which we want our goods to go, are *mianzi* and *guanxi*.

This paper aims to introduce the reader to some of the most important socio-cultural concepts in China, as well as to show him how deeply embedded these concepts are.

## MIANZI IN THE EYES OF THE OLD CONTINENT

Europeans associate saving face mainly with pride, dignity or avoiding humiliation, and no one associates it with Asia or - more importantly - with China. But they should. Phil Benson, analyzing English-language written sources, came to the conclusion that the term to lose face or to save face to English passed directly from Chinese in the second half of the nineteenth century and gradually began to be used also without Chinese or

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3 S. Novaretti, *Law and Tradition in a Socialist Market Economy: Haunted House Litigation in China*, Asian Journal of Comparative Law, Volume 10, Issue 1, 2015, p. 137-151.



generally speaking of the Asian context<sup>4</sup>. The Chinese expression 丢脸 (*diulian*), which means literally losing face, despite its origin, and understanding this phrase in a similar way as in China, has lost its roots in English language over the years and has become a permanent part of it on its own<sup>5</sup>.

The analysis of literature and the press shows that in European self-esteem the discussed “saving face” in difficult and embarrassing, even humiliating situations is extremely important. Some, like Andrzejewski in his letters to Milosz, complain that it is difficult to save a face with low circulation and sales of publications<sup>6</sup>. Others talk about the importance of allowing the interlocutor or colleague to save face in a difficult situation, so that they do not feel uncomfortable with us and want to remain in this relationship. And even - how one should maneuver, lie and manipulate in order to come out of awkward situations “with face”<sup>7</sup>.

Some researchers equate “face” with the public image that we work for and maintain for the sake of our position and reputation. Erwin Goffman defined the face as our public image that we want to build for the purposes of social relations. Others, like Macgowan, analyze the “face” in Asian culture,

4 P. Benson, *Ethnocentrism and the English Dictionary*, Londyn, New York 2001, [https://books.google.pl/books?id=yDiCAgAAQBAJ&pg=PT288&lp-g=PT288&dq=%22Each+wishes+to+concede+only+what+can+be+conceded+without+loss+of+%27face%27.%22&redir\\_esc=y&hl=pl#v=onepage&q=%22Each%20wishes%20to%20concede%20only%20what%20can%20be%20conceded%20without%20loss%20of%20'face'.%22&f=false](https://books.google.pl/books?id=yDiCAgAAQBAJ&pg=PT288&lp-g=PT288&dq=%22Each+wishes+to+concede+only+what+can+be+conceded+without+loss+of+%27face%27.%22&redir_esc=y&hl=pl#v=onepage&q=%22Each%20wishes%20to%20concede%20only%20what%20can%20be%20conceded%20without%20loss%20of%20'face'.%22&f=false), (accessed: 01.07.2020).

5 Ibidem.

6 J. Andrzejewski, *Czesław, Czesław – jak okropnie trudno zachować twarz*, <http://wiedz.com.pl/2017/08/18/czeslaw-czeslaw-jak-okropnie-trudno-zachowac-twarz/>, (accessed: 24.07.2020).

7 A. Robin, G. Kavet, *Zachowaj twarz. Jak kłamać, oszukiwać i manewrować w trudnych sytuacjach*, Onepress 2006, <https://onepress.pl/ksiazki/zachowaj-twarz-jak-klamac-oszukiwac-i-manewrowac-w-trudnych-sytuacjach-andy-robin-gregg-kavet,twarz.htm#format/d> (accessed: 24.07.2020).



forgetting that they also have a deeply rooted concept in their own culture<sup>8</sup>. It is rooted in a slightly different form and understood differently, but as already discussed - it would not exist without the Asian one.

St. Amant defines *mianzi* as “an individual’s external public appearance<sup>9</sup>” while Cardon and Scott believe that “face relates to a person’s image and status within a social structure<sup>10</sup>”.

## MIANZI IN THE EYES OF THE MIDDLE KINGDOM

*Mianzi* is a Chinese expression for face, actually face-saving. Behind it is an extremely important social and cultural concept, on which interpersonal relations, and thus business relations, are based. This socio-cultural construct is also defined as “externalized social image<sup>11</sup>”, “the respect, pride, and dignity of an individual as a consequence of his/her social achievement and the practice of it<sup>12</sup>” and even “one’s reputation, social status, and the power to influence other in *guanxi* relationships<sup>13</sup>”.

Taking care of the “face” of a business partner is common and the donor usually expects a gesture of reciprocity from the receiver. The appropriate way to give a face to the other person

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8 M. V. Redmond, *Face and Politeness Theories*, [https://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=1006&context=engl\\_reports](https://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=1006&context=engl_reports), (accessed: 26.07.2020).

9 K. St. Amant, *Considering China: a Perspective for Technical Communicators*, Technical Communication 2001, p. 387.

10 P.W. Cardon, J.C. Scott, *Chinese Business Face: Communication Behaviors and Teaching Approaches*, Business Communication Quarterly 2003, p. 10.

11 X. Wang, G.J. Walker, *The Effect of Face Concerns on University Students' Leisure Travel: A Cross-Cultural Comparison*, Journal of Leisure Research 2011, Vol. 43, p. 134.

12 T.K.P. Leung, R. Chan, *Face, Favour and Positioning—a Chinese Power Game*, European Journal of Marketing 2001, p. 1575.

13 Z. Chi, H. Seock-Jin, *Guanxi Culture: How it affects the Business model of Chinese firms* [in:] *The China Business Model: Originality and Limits*, E. Paulet, C. Rowley (Eds.), Cambridge-Kidlington 2017, p. 30.



requires, among others, frequently mentioning your partner's achievements, not talking about business problems in public, treating the person with appropriate etiquette. Giving gifts is also welcome.

A perfect example of not saving face, lack of care for the face of a partner in a relationship and frightening ignorance of the essence of the *mianzi*, which has already been repeatedly emphasized - is a socio-cultural concept that is an inseparable element of social coexistence, is the misidentification of the anthem of the People's Republic of China during the ceremony in The White House under President Bush. Before playing, the anthem was presented as the anthem of the Republic of China, thus identifying Taiwan, which China considers a province<sup>14</sup>.

Another time, during Hu Jintao's visit to the United States of America, his speech was interrupted by a protest from the Falun Gong sect. It was a welcome ceremony at the White House in 2006. The Americans did not consider it a scandal because freedom of speech is one of the highest values there. Regardless of whether it is used in a difficult political and diplomatic situation. However, for the Chinese it was an exceptional neglect on the part of the President's cabinet and an expression of disrespect for the incoming head of state and country, represented by Hu Jintao. The next day Jintao was reportedly not willing to negotiate delicate matters. The incident had a big impact on the US – PRC relations at the time<sup>15</sup>. *Guanxi* also strongly affects whether or not China will prioritize cooperation with a state<sup>16</sup>.

14 Q. Dong, Y.-F. L. Lee, *The Chinese Concept Of Face: A Perspective For Business Communicators*, p. 402-403, [http://www.swdsi.org/swdsi07/2007\\_proceedings/papers/401.pdf](http://www.swdsi.org/swdsi07/2007_proceedings/papers/401.pdf) (accessed: 26.07.2020).

15 Ibidem.

16 M. Lubina, *Russia and China. A political marriage of convenience – stable and successful*, Opladen-Berlin-Toronto 2017, p.87.



Over 16 million gay men in People's Republic of China are married to straight women<sup>17</sup>. According to Ren's, Howe's and Zhang's research, they, as well as gay men entering marriages with lesbian women (a social phenomenon known as *xingshi*, a "formality marriage"), enter those marriages in order to maintain their *mianzi*. Not only their *mianzi*, but also their entire families'<sup>18</sup>.

Some Chinese scientists believe that *mianzi* is inseparably connected to *guanxi*, just as *renqing*. And is even considered "characteristically indigenous Chinese socio-cultural phenomena" since their unique roots in Chinese history<sup>19</sup>. But it should be noted that a large consideration of "face" is universal but should be perceived through its Chinese roots<sup>20</sup>.

## THE CONCEPT OF GUANXI AND HOW IT AFFECTS EVERYDAY LIFE OF EVERY CHINESE

Understanding *guanxi* is key to understanding China, its people and social relations. Many Chinese scientists believe that social connections in China are so contextualized that *guanxi* is not a term that can adequately translated by any "English-

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17 Z. Ren, C.Q. Howe, W. Zhang, *Maintaining "mianzi" and "lizi": Understanding the reasons for formality marriages between gay men and lesbians in China*, *Transcultural Psychiatry* 2019, Vol. 56 (1), p. 215.

18 *Ibidem*, p. 219.

19 X. Qi, *Face: A Chinese Concept in a Global Sociology*, *Journal of Sociology* 2011, p. 279; X. Wang, G.J. Walker, *op.cit.*, p. 133.

20 *Ibidem*.



language equivalent of one word” because this entire concept “is too culture specific”<sup>21</sup>.

According to Yanjie Bian *guanxi* “refers to a dyadic, particular, and sentimental tie that has potential of facilitating favor exchange between the parties connected by the tie<sup>22</sup>”. Edward Yiu-chung Lee and Alistair R. Anderson conducted a survey that tested how Chinese entrepreneurs perceive *guanxi* and their answers varied from “networking among people” and “get the benefit that I could not get” to “*guanxi* decides everything and your future” and “every business comes from business”. Every respondent said that *guanxi* is important when starting a new business with 51% of the respondents considering it very important and 27% quite important<sup>23</sup>. All of their respondents were young and well-educated<sup>24</sup>.

Jin Guan suggests that *guanxi* “implies preferential treatment given to the parties included in an exchange, in the form of easy access to limited resources, increased access to controlled information, credit grants, and protection from external competitors”<sup>25</sup> and that it is actually a system of favors (*renqing*). But the role of favors or gifts on their own should

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21 Y. Bian, *The Increasing Significance of Guanxi in China's Transitional Economy*, 2010, <https://artsandscience.usask.ca/sociology/documents/41st%20Annual%20Sorokin%20Lecture.pdf> (accessed: 20.07.2020); M. Parnell, *Chinese Business Guanxi: An Organization or Non-organization?*, Journal of Organisational Transformation and Social Change 2005, Vol. 2, p. 35; E. Trojnar, *Guanxi a inwestycje zagraniczne w Chinach*, Problemy Zarządzania 2009, Issue 7 (3 (25)), p. 120

22 Y. Bian, *Guanxi* [in:], International Encyclopedia of Economic Sociology, J. Beckert, M. Zafirovski (Eds.), London 2006, p. 312.

23 E. Yiu-chung Lee, A.R. Anderson, *The Role Of Guanxi In Chinese Entrepreneurship*, Journal of Asia Entrepreneurship and Sustainability 2007, Vol. III, Issue 3, <http://www.asiaentrepreneurshipjournal.com/AJESIII3Anderson.pdf> (accessed: 20.07.2020).

24 Ibidem.

25 J. Guan, *Guanxi: The Key to Achieving Success in China*, Sino-Platonic Papers 2011, p. 1.



not be overestimated because the clue is to answer the needs of the potential gift or favor receiver. One can always decline an invitation to a banquet or not accept a gift but a tailored gesture can go a long way in creating such a relationship<sup>26</sup>. Considering that Chinese consider it highly important to return any *renqing* and they expect other parties of the social system to do the same, *guanxi* can actually be considered a system that is cultivated by the exchange of the currency that is *renqing*<sup>27</sup>.

Yuanqing Li, Ngoc Pham and Hongxin Wang, following into footsteps of Park and Luo, Leung, Szeto, Wright and Cheng, define *guanxi* as a “special type of personal relationship” or as informal interpersonal ties that rely on the exchange of gifts, favors and banquets, reciprocal expectations and obligations<sup>28</sup>. Each tie opens a new road ahead of you<sup>29</sup>.

## CONCLUSIONS

Understanding the role of *mianzi* and *guanxi* in the everyday life in People’s Republic of China is crucial in travelling there, emigrating, starting a business or creating a business or personal relationships. Creating deeply-rooted and favor-based, in-depth relationships is key to creating one’s own “network” of “roads to take<sup>30</sup>” or in other words – possibilities and opportunities that are created by having personal relationships with people of different backgrounds and “networks” of their own.

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26 Ibidem, p. 8.

27 Ibidem, p. 1; E. Trojnar, *op.cit.*, p. 121.

28 Y. Li, N. Pham, H. Wang, *Keeping or Losing Face? How Mianzi Effects Direct Selling Under Chinese Culture*, <https://decisionciences.org/wp-content/uploads/2017/11/p1292129.pdf>, (accessed: 27.07.2020).

29 J. Guan, *op.cit.*, p. 10.

30 Ibidem.



To some Western people understanding those socio-cultural concepts may be difficult<sup>31</sup>. After all, it is a complex phenomena that is deeply rooted into Chinese culture. But, as Lau and Wong point out – “concern for face is not solely an “Asian” phenomenon, as it is found in individuals from all societies and ethnic groups”<sup>32</sup>. Brown and Levinson also argue that understating someone’s “public self-image or face” knows no borders and is something that is somehow universal to all social interactions<sup>33</sup>.

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31 X. Qi, *op.cit.*, p. 289.

32 Y. Lau, D. Wong, *Are Concern for Face and Willingness to Seek Help Correlated to Early Postnatal Depressive Symptoms among Hong Kong Chinese women? A Cross-sectional Questionnaire Survey*, International Journal of Nursing Studies 2008, p. 52.

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## PART II

# CHINESE LAW AND LEGAL LANGUAGE





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**IN SEARCH OF  
HONORIFICATIVITY IN CHINESE  
ADMINISTRATIVE AND LEGAL  
DOCUMENTS – HONORIFIC  
PREFIXES IN LEGAL NOTES (通知书), APPLICATIONS (申请书) AND APPLIES (上诉状)**

In recent years, the Chinese for special purposes has become one of the major foci in studies of Chinese language use and translation. Communication is a social process influenced by the orientations of interpersonal relationships and



philosophical foundations<sup>1</sup>. Politeness in China is deep-rooted in cultural values and ideology. It also concerns the perception of power relations, concept of self and other, and understanding of relationships<sup>2</sup>. Courtesy serves to achieve harmony and results from 礼 *li* – the respect expressed by words and deeds. The meaning of *li* covers rituals and etiquette, civil rights and customs, norms of moral conduct and ethics in thinking, feeling and acting<sup>3</sup>. It can be traced back to Confucius, whose teaching has become part of the Chinese language and way of thinking. One must speak properly and appropriately<sup>4</sup>. Etiquette and formality can be expressed verbally, for instance by honorifics.

The language politeness shows the relationships between participants of language situations<sup>5</sup>. Power sharing is highly respected and visible in relations between authorities and people. This kind of hierarchical politeness system may be widely recognized among government and educational organizations and business entities, in which the speakers resort to different politeness strategies<sup>6</sup>. Honorifics convey important information on people and their relationships in written text as well<sup>7</sup>. According to Huszcza<sup>8</sup> among the East Asian languages, that had been formed in the Confucian tradition, Chinese (a language

1 M. Hui, M. Meng, Y. Hui, *A Cross-Cultural Analysis of Honorifics in Modern Chinese and American English*, "Across-Cultural Communication" Vol. 12, No. 11, 2016, p. 7.

2 Y. Pan, *Politeness in Chinese Face-to-Face Interaction*, Stanford 2000.

3 X. Yao, *Konfucjanizm. Wprowadzenie*. Kraków 2009, p. 193.

4 Vide: D. Cao, *Chinese Language in Law. Code Red*, Lanham 2018, p. 3.

5 R. Huszcza, *Honoryfikatywność. Gramatyka. Pragmatyka. Typologia*, Warszawa 1996, p. 51.

6 G. Liang, J. Han, *A Contrastive Study of Disagreement Strategies for Politenees Between American English and Mandarin Chinese*, "Asian EFL Journal" Vol. 7, No. 1, March 2005, p. 1.

7 D. Xiong, J. Xu, Q. Lu, F. Lo, *Recognition and Extraction of Honorifics in Chinese Diachronic Corpora*, In: H. Su, T. He (Eds.), CLSW 2014, LNAI 8922, 2014, p. 306.

8 R. Huszcza, *Honoryfikatywność...*, p. 242.



that started this tradition) has the least-developed grammatical and lexical categories of honorificativity.

This work is an attempt to investigate honorific prefixes in address titles, which occur in Chinese administrative and legal texts. In order to know more about Chinese language for special purposes the study was intended to investigate if there is the inequality of communication roles resulting from the authority whose courts and offices are representatives<sup>9</sup>.

## THE RESEARCH CORPORA

The research corpora encompassed Chinese administrative and legal texts. The study aimed to investigate personalized and personal communication situations, documented in statements addressed to someone<sup>10</sup>. Statements addressed by the personalized sender to the administrative institutions or court were also analyzed. The authors analyzed around 200 texts written in language for special purposes – different types of administrative and legal notes, applications, applies (通知书 *tongzhishu*, 申请书 *shenqingshu*, 上诉状 *shangsuzhuang*).

Administrative language is the language of official documents, related to the activity of offices or other administrative bodies and issued by an office or by a person that communicates with another office, or between two administrative institutions (or: two offices). The main features of administrative language are: rigidity and formality. The term „administrative language” (公文 *gongwen*) refers to the entire extended<sup>11</sup> yet open group

9 Vide: M. Hadryan, *Demokratyzacja języka urzędowego. Współczesne tendencje polityki językowej w Szwecji i w Polsce*, Poznań 2015, p. 162.

10 T. Gizbert-Studnicki, *Język prawny z perspektywy socjolingwistycznej*, Kraków 1986, p. 54.

11 X. Shu舒雪冬 (Ed.), *Gongwen xiezuo fanlie daquan 公文写作反列大全*, Beijing 2016, p. 2.





of statements related to the sphere of lawmaking and its application, administrative activities and various institutions with function based on legal principles<sup>12</sup>. Legal language (法律语言 *falüyuyan*) is the language of legal authors, legislators, judges, administrators, advocates, professionals who are not lawyers properly so-called (jury-members, lay judges, administrators) and citizens who write their own wills or other documents following a model form<sup>13</sup>. It is considered as a formal variant of the ordinary Chinese language<sup>14</sup> and authoritative and restraining medium of law<sup>15</sup>.

## HONORIFIC PREFIXES IN CHINESE ADMINISTRATIVE AND LEGAL TEXTS

Honorific is an expression or title used for the purpose of establishing and maintaining various interpersonal relationships<sup>16</sup>. From ancient times to the modern age, many honorifics have changed alongside the transformation of political systems and development of economy and culture. The complexity of the administrative systems and the variety of the honorifics used throughout history make it difficult to identify honorifics<sup>17</sup>.

Chinese legal and administrative language contains honorifics, which convey formality and politeness. Courtesy means,

12 M. Wojtak, *Gatunki urzędowe na tle innych typów piśmiennictwa użytkowego – zarys problematyki*, In: E. Malinowska (Ed.), *Język, prawo, społeczeństwo*, Opole 2004, p. 131.

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16 M. Hui, M. Meng, Y. Hui, (2016), *A Cross-Cultural...*, p. 7.

17 D. Xiong, J. Xu, Q. Lu, F. Lo, *Recognition ...*, pp. 305-306.



*inter alia*, modesty and respect<sup>18</sup>. Gu formulated the principles of courtesy, i.e. the principle of self-denigration, addressing, tact and generosity. The self-denigration maxim consists of two submaxims:

- i. denigrate self and
- ii. elevate other<sup>19</sup>.

The principle of self-denigration may be observed in statements addressed to courts and offices.

The principle of addressing is to address an addressee using the appropriate title. The term "title" refers to names of professions, clerical positions or proper names and surnames, as well as terms describing relations, as well as the so-called address politeness markers<sup>20</sup>. Forms of addressing depend also on the attitude towards an addressee. The author of a statement can depreciate his own value in relation to the addressee of the statement, to show him full respect. The language etiquette observed in contemporary official texts shapes relations between an addresser (sender) of a statement and an addressee (receiver). The language courtesy applied in citizen's statements to courts or offices shows that addressers accept inferiority in relation to addressees and thus show them respect.

Different honorific prefixes used in official texts provide addressees with a sense of superiority over citizens. Honorific prefixes take the form of both honorificative, address vocabulary and personal pronoun<sup>21</sup>. The noun appellative honorifics include general appellative honorifics, kinship appellative

18 Y. Gu, Politeness Phenomena in Modern Chinese [in:] *Journal of Pragmatics* 1990/14, 1990, pp. 248-249.

19 Y. Ma, The Study of the Chinese Speech Act, [in:] *Intercultural Communication Studies* XVII: 1, 2008, p. 211.

20 Y. Gu, Politeness..., pp. 248-249.

21 Vide: R. Huszcza, *Honoryfikatywność...*, p. 28. Honorific forms also take adjectives and verbs, which are enriched with prefixes and suffixes (vide: ibidem, p. 74).



honorifics, sub-kinship appellative honorifics, rank appellative honorifics, aged appellative honorifics, professional appellative honorifics, and diplomatic appellative honorifics. They are addressed to persons<sup>22</sup>. There are also expressive honorific morphemes, which are used to modify things or actions<sup>23</sup>.

The honorific modifiers observed in research corpora include:

- the prefix 贵 *gui* and
- the prefix 本 *ben*.

The honorific prefix 贵 *gui* (honorable) is related to the concept of 贵贱 *guijian* (worthy, honorable people with power and money). This prefix is used for persons and other things such as 贵国 *guiguo* and 贵报 *guibao* affiliated to the addressee for the purposes of formality and respect, as well. The pronoun 贵 replaces the pronoun ‘your’. The honorific prefix 本 *ben*, rooted in imperial bureaucracy, occurs in contemporary documents for the purpose of formality and respect. It refers to oneself with the third-person descriptor, or for things affiliated to oneself, i.e. 本公司 *bengongsi* (our company). The prefix 本 occurs also with the abbreviated form of the noun, i.e. 法院 *benyuan*<sup>24</sup> means ‘a court’ and functions as the address name of the addressee of a document<sup>25</sup>. What is interesting the name of the citizen as the addressee is formulated with the regular second-person pronoun 你 *ni*, not replaced by the honorific second-person pronoun 您 *nin*. The hierarchy of an authority

22 M. Hui, M. Meng, Y. Hui, (2016), *A Cross-Cultural...*, p. 7-8.

23 Ibidem. n. 9.

24 S. Zhu 朱深远, *Shangshi shenpan shiwu jineng* 商事审判实务技能, Beijing 2013, p.179.

25 In legal texts the prefix 本 functions very often as a demonstrative pronoun, vide: H. Wang 王还. *Hanyu xuci cidian* 汉语虚词词典, Beijing 1992, p. 15, i.e. 所签运单作为本协议的附件与本协议具有同等的法律效力 Y. Sun, Y. Han 孙瑛, 韩杨, *Guoji huowu yunshu shiwu yu anli* 国际货物运输实务与案例, Beijing 2009, p. 300.



above a citizen is reflected in language.

### HONORIFIC PREFIXES IN CHINESE NOTICES (通知书)

The Chinese term „notice” (通知书 *tongzhishu*, 通知单 *tongzhidan*) refers to a document that contains relevant information. The content of the notice generally include the object of notification, the main message, the payee – if necessary, and the date. In everyday life, common notices include various types. In this paper, authors have analysed different types of ‘Notice of Termination of the Administrative Reconsideration’ (行政复议终止通知书), ‘Suspension of Business Notice’ (停业整顿通知书), ‘Notice of Dunning’ (催款通知书), ‘Notice of Arrears of Property Fees’ (欠物业费通知书), ‘Notice of Payment of Arrears of Property Fees’ (催缴欠物业费通知书), ‘Notice of Suspension of Production and Rectification’ (企业停产整顿通知书 (存根)), ‘Notice of Disciplinary Warning to Employees’ (员工违纪告诫通知书) and ‘Notice of Bids Winning’ 中标通知书 and different types of notices written in a court during civil procedure.

The honorific prefix 本 occurs in the address name of the addressee of a document, when referring to:

i. ‘the man’ 本人 *benren*, i.e.:

恳请上级领导考虑本人的实际情况，解决我的工作难题。（调换工作岗位通知书）

ii. ‘the court’ 本院 *benyuan*, i.e.:

(...) (写明申请再审人的姓名或名称) 因于你 (你单位) (...) (案由) 解纷一案，不服 (...) 人民法院于 (...) 年 (...) 月 (...) 日作出的(...)号民事判决 (裁定或调解书)，向本院申请再审，本院已立案审查 (人民法院受理通知书)，



or

iii. 'the authority, the institution' 本机关 *benjiguan*, i.e.: 诉讼期限仍不履行本通知, 本机关将申请人民法院强制执行。(罚款催缴通知书)

However, most of the analysed documents contain the regular second person pronoun 你 in the address name of the addressee. i.e. 你单位 *nidanwei* (your unit), which corresponds with the first person pronoun 我 *wo*, i.e.: 我中心, 我局, 我们, 我场, i.e.:

我中心因受被上诉人的错误行政处罚, 使信誉及经营活动受到很大影响。(机械服务中心行政上诉状)

根据《电信业务经营许可管理办法》第三十九条规定, 未按规定参加年检的单位, 我局可依法责令改正, 并给予相应的行政处罚;按时改正的, 为经整改年检合格;拒不改正的, 为年检不合格。(酒店停业整顿通知书)

我们认为, 这种处罚是错误的。(机械服务中心行政上诉状)

你(你单位)不服\_\_\_\_\_ (被申请人的具体行政行为)提出的行政复议申请, 我们依法已予受理。(行政复议终止通知书范本)

你与被告xxx \_\_\_\_\_ (写明案由)纠纷, 本院与xxxx年xx月xx日裁定(。。。)(补交诉讼费通知书)

你应在收到本通知书后七日内向本院补交案件受理费xxx元。(补交诉讼费通知书)

因你在我场创办的漳州市汇盛包装制品有限公司企业存在重大安全隐患, 限你自接到本通知之日, 立即停产整顿, 落实相关措施, 经验收合格后方可恢复生产。(企业停产整顿通知书(存根))



The honorific 贵 *gui* occurred only in administrative notices when referring to ‘a company’ (贵司) (literally: ‘your honourable company’), ‘a factory’ (我厂), or ‘a unit’ (贵单元) as the addressee of a document. The person pronoun 我 *wo* is often used when referring to sender of a notice, i.e.: 我司 (literally: ‘my company’).

如贵司仍不能按期支付, 我司将按有关规定(或约定)向贵司追索欠款利息, 甚至采取相关法律措施, 届时, 贵公司可能要承担诉讼而带来的更大损失。 篇八 : 装修催款通知书范本) .

感谢贵司对我司的支持, 选择我司产品, 与我司建立友好合作关系。(篇一: 催款通知书)

如恶意欠费, 我司将保留追究法律责任的权利。(欠物业费通知书)

请贵公司收到此通知书后 \_\_\_\_\_天内将上述逾期未付的货款汇付我公司帐户(户名: xxxxx; 开户行: xxxxx; 帐号: xxxxx)。(篇一: 催款通知书)

如有特殊情况, 望及时和我厂财务部xxx联系。(催款通知书)

至 年月止, 贵单元的物业费共计人民币 元(大写: )尚未缴交。(篇五: 催缴通知书1)

(...) 阁下, 贵账户之款项已经过期而仍未清付, 请以人民币\_\_\_\_\_元支票支付, 交回本公司。(催缴通知书(二))

根据《电信业务经营许可管理办法》第三十九条规定, 未按规定参加年检的单位, 我局可依法责令改正, 并给予相应的行政处罚; 按时改正的, 为经整改年检合格; 拒不改正的, 为年检不合格。(酒店停业整顿通知书)

如恶意欠费, 我司将保留追究法律责任的权利。(欠物业费通知书)



至今尚未支付给我厂，影响了我厂资金周转。（催款通知书）

However, the person pronoun 你 occurred as well in a context marked by formality, i.e.:

你（你单位）不服\_\_\_\_\_（被申请人的具体行政行为）提出的行政复议申请，我们依法已予受理。（行政复议终止通知书范本）

因你在我场创办的漳州市汇盛包装制品有限公司企业存在重大安全隐患，限你自接到本通知之日，立即停产整顿，落实相关措施，经验收合格后方可恢复生产。（企业停产整顿通知书）

### HONORIFIC PREFIXES IN CHINESE APPLICATIONS (申请书)

The Chinese term 申请书 *shenqingshu* (an application) refers to a type of document, used by individuals or groups to express their wishes and make requests to courts, organizations, agencies, enterprises, institutions or social organizations. The application form has a wide range of uses. The application form is also a special type of correspondence. It is also a tool for expressing expressions like ordinary correspondence. The application requires discussion on a case-by-case basis and the content must be simple. There are many types of different applications, and the common ones are applications for membership and party membership.

The honorific prefix 本 is used in some applications when referring to a court 本院 to rank its authority, i.e.:

申请人于\_\_\_\_\_年\_\_\_\_\_月\_\_\_\_\_日向\_\_\_\_\_本院提出申请，请求对已达成的调解协议予以司法确认。

However, the use of prefix 本 is not regular. The prefix 你 is also used when referring to a court (你院).



你院起诉，你院已立案受理 (民事撤诉申请书)

The person pronoun 我 is often used when referring to sender of a notice, i.e.:

让我们能早日过上正常的生活，我们全家万分：困难户建房补助申请书

感谢：“让我们能早日过上正常的生活，我们全家万分感谢”。困难户建房补助申请书

我公司于被告购销合同拖欠货款一案，你院已于\_\_\_\_年10月10日受理。

### HONORIFIC PREFIXES IN CHINESE APPEALS (上诉, 申诉)

The Chinese term *shangsu* 上诉 (appeal), also known as 申诉<sup>26</sup> refers to appeal filed with the People's Court at the next higher level in two different situations: i. if a party refuses to accept judgment (*panjue* 判决) of the first-instance People's Court awarded in either contentious or non-contentious civil procedure; ii. if a party refuses to accept a ruling (*caiding* 裁定) of the first-instance People's Court awarded during contentious or non-contentious civil procedure.

The administrative appeal *xingzheng shangsu zhuang* 行政上诉状 means, that the parties of the administrative lawsuit are dissatisfied with the administrative judgment or ruling of the first instance of the local people's courts at all levels, and within the statutory appeal period, the parties appeal to the people's court at the next higher level, requesting the revocation or change of the original written judgment. Article 85 of the "Administrative Procedural Law" stipulates: "A party who refuses to accept the judgment of the first instance of the people's

26 J. Grzybek, X. Fu, *Contrastive Parametric Study of Legal Terminology in Polish and Chinese Application of Parametric Approach to Comparison of Legal Terminology between Polish and Chinese for Translation Purposes*, Poznań 2017, p. 94.





court shall have the right to appeal to the people's court at the next higher level within 15 days from the date of service of the judgment. A ruling has the right to appeal to the people's court at the next higher level within ten days from the date of service of the ruling. If the appeal is not filed within the time limit, the first judgment or ruling of the people's court has legal effect". The parties must exercise the right of appeal and file an appeal without the object of the appeal, that is, the judgments and rulings of the first instance of local people's courts that have no legal effect. The appeal shall be filed through the people's court of the first instance. If the parties appeal directly to the court of second instance, the court of second instance shall transfer the appeal to the court of first instance within 5 days according to law. After the appeal is accepted, the case enters the second instance proceedings.

The honorific 贵 occurs when referring to a court, i.e.:

贵法院：请求：贵法院判决撤销xx市人民法院(2xx3)宁行初字第000xx号行政判决书判决，撤销被上诉人宁公（西）行决字(2xx3)第342号《公安行政处罚决定书》的决定，以支持上诉人的一审行政上诉请求。（原告行政上诉状范本1）。

贵：我诚恳地希望您能提出宝贵意见意见或建议（各种升职加薪申请书范文）

However the prefix 你 occurs also in a context marked by asymmetrical role-relationships and formality, i.e.:

向你院上诉：为了维护上诉人的合法权益，依法追究被上诉人及其工作人员的行政侵权赔偿赔偿责任，纠正其错误，特依《行政诉讼法》第58条之规定，向你院上诉，请求依法公正地审理此案，撤销原判决，并改判，责成被上诉人赔偿所造成的经济损失。（行政上诉状范文）



## SUMMARY

When addressing one's superiors, Chinese have traditionally used language that is more respectful than that used for people of "lower status". The analysis of selected documents leads to the conclusion that honorific prefixes, which occur in Chinese official texts serve to express hierarchy and courtesy. The language etiquette observed in contemporary official texts shapes relations between an addresser (sender) of a statement and an addressee (receiver). The language courtesy applied in some citizen's statements to courts or offices shows that addressers accept inferiority in relation to addressees and thus show them respect. In turn, the directive features of notes addressed to the citizens by administrative offices or courts testify to the superiority of authority over subordinates reflected in the language of the documents.

The data and analysis of selected administrative and legal documents were to focus on the way Chinese employ honorific prefixes 贵 *gui* and 本 *ben* as politeness strategies in official communication, by using prefixes. Although Chinese has evolved a complex system of honorifics to designate relationships<sup>27</sup> administrative and legal notes, applications and applies do not contain many honorifics. However the research corpora contain other types of expressive honorific words and phrases, and sentences, such as: 特此申请, 特此通知; 敬启者; 尊敬的; 顺颂安祺, etc. Indeed the study of honorificativity in Chinese language for special purposes, especially in administrative and legal documents, is a valid and fertile field of further research. Understanding the Chinese notion of politeness can provide guidance in the observation and study of Chinese legal language

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<sup>27</sup> Vide: M. Hui, M. Meng, Y. Hui, (2016), *A Cross-Cultural...*



and administrative language. One of the factors that influence language use such as the authority whose courts and offices are representatives need to be considered in further study.

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## CHINESE AND WESTERN LEGAL TRADITIONS – A LEGILINGUISTIC COMPARISON

Law is considered by many the main factor serving to regulate human relations. Ever since deep antiquity, legal norms have enabled people to put their lives into order. It is the ultimate tool through which the ideas that a society has, concerning its internal organization, are realized. That is why it is usually one of the first cultural tools to be created by society<sup>2</sup>. Thus, it is not surprising that the rich history of Western and Chinese civilizations have led to the development of complex and abundant legal heritage. This work aims at comparing this vast legacy

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2 J.W. Simonton, On the Origin and Nature of Law, *The Yale Law Journal*, Vol. 11, No. 4, pp. 198.



and showing the often astonishing similarity, as well as serious differences, often neglected in many discussions.

In over 3000 years of its culture's and history's existence, China has developed many profound and insightful concepts, in philosophy, as well as other branches. What is particularly worth mentioning, is the extraordinary abundance of terms in the Chinese language that refer to what in the west is generally understood as 'law'. This is especially interesting, since usually, as Deborah Cao mentions, quoting Yan Fu "[...] the Chinese language has the most instances in which several ideas are expressed by one word, but in this particular case the Chinese language has an advantage over Western languages."<sup>3</sup>

In Chinese, the concept of law can be realized through at least four distinct notions: 理, 礼, 法, 制. However, even more denominations can be distinguished, such as a very primal 刑, and a quite modern 律. It is vital to explain the subtle differences present in those concepts.

理, broadly explored by Confucianism, stands for order, a natural law of source that links all of the people together and is unchangeable, usually divine. These are the rules of nature, the most primal ones that govern the flows of rivers, rising of the sun and, according to some, they should also govern human relations<sup>4</sup>. The concept is quite similar to that of the western *ius naturale*, the law of nature. This idea will be further explored later.

礼 stands for rites, not only in a religious sense but also as a guidebook of sorts as to how a human being should function in a society. Those are the rules of conduct, of what should be

3 Deborah Cao, *Chinese Law: a Language Perspective*, Routledge, 2016.

4 Kyung-Hee-Nam, Li (理), or Ritual Propriety: A Preface to a Confucian Philosophy of Human Action, *Diogenes*, 2015, Vol. 62(2), p. 80.



considered as a behaviour in accordance with what is considered right by the society and which behaviour would violate it.

法 can be seen as the opposite of 理 to some extent, as the human-made positive law<sup>5</sup>. It stands for the legal norm, the binding force of the law, its authority, in other words, the “standard of what’s right and wrong” as mentioned in the ‘Annals of Lü Buwei’ when the story of Deng Xi, a governor of the State of Zheng is being brought up:

[Deng Xi] made an agreement with people who were involved in criminal cases...[Subsequently] wrong was taken to be right and right was taken to be wrong. There was no standard for what was right and what was wrong...For those Deng Xi wanted to win, they would win and for those he wanted to be found guilty, they would be found guilty. Zi Chan [the Prime Minister of Zheng] had Deng Xi executed. Following that, people were made obedient, right and wrong were made certain and the laws (法律) were enforced.<sup>6</sup>

We can read from this excerpt the importance of clearly regulated laws, it shows that sometimes knowing what’s wrong and right according to the 礼 is not enough, people need guidance as to it. This was the very essence of the argument between the Legist and Confucian schools of legal thought, which will be covered in more detail later. Quite interesting is the history of this character. In very ancient Chinese the character took the following shape:

灋

<sup>5</sup> Chad Hansen, Fa (Standards: Laws) and Meaning Changes in Chinese Philosophy, *Philosophy East and West*, Vol. 44, No. 3 (1994), p. 452.

<sup>6</sup> Deborah Cao, *Chinese Law...*



As is usually typical of Chinese characters, it conveys an impressive amount of information. It is necessary to show it in a slightly bigger font to distinctly discuss all of its elements. The water key of the character traditional depicts order and harmony, the most vital values in Chinese society. The main element of the old character consists of 廌, the old realization of 獬豸 meaning an ancient unicorn-like animal in Chinese mythology considered the guardian of order and justice, the servant of 皋陶, the semi-mythical creator of the judicial system in ancient China<sup>7</sup>. This solidified the concept in the world of the divine. Underneath, the commonly used character 去 can be seen, which means “to go” in present-day Chinese. However, scholars speculate that in ancient China it also had the meaning of flexibility, much needed in legal order, as well as that of “getting rid of someone”, which gave it the more down-to-earth element of imposing justice by punishments. The meaning of art and method is important as well, as it shows the necessity for lawyers to be experts and artisans of their art of legislature<sup>8</sup>.

律 means the written law, the statute, that is the form through which the 法 is realized and made known to people. That is why in modern Chinese the word for law, for ‘the methods of correct legislature’ and the legislature itself is the combination of those two characters:法律.

制 is the word denominating control, a system of regulations, governance. It is associated with administrative norms.

Finally, the character 刑. Lawrence J. Howell, in his Etymological Dictionary of Han Chinese Characters, writes that the radicals of this character depict, respectively a handcuffed

7 Huang Weijia, Liu Jue, On the Character 法, *The World of Chinese: China Dispatch – Law*, 2015(4), access (31.08.2020), <http://www.theworldofchinese.com/2015/07/on-the-character-法/>

8 Huang Weijia, Liu Jue, On the Character 法...



person (开) and the radical of a knife (刀), well depicting the meaning of punishment.<sup>9</sup> The knife is not a mere simplification, it is strictly connected with the fact that the early understanding of law in China was strongly focused on harsh corporal punishments.

When it comes to European understanding of the law, the main contribution came from the heritage of ancient Greek and Roman civilizations. The dispute about the shape of the law was already prevalent in VII century B.C. when a newly elected Archont of the city of Athens ordered the old customary law to be written down and enacted<sup>10</sup>. Similarly to what has been observed in case of ancient Chinese tradition, the primitive customs of the Greek were also extremely harsh and brutal, so far as to the term 'draconian laws' becoming the metaphor for harsh regulations in English and most European languages. However, the perception of law quickly shifted towards more complex regulations, steering away, but by no means abandoning the old harsh punishments of old. After Dracon came Solon, who took these laws and ordered into a solid, much more mature corpus of laws. What is worth mentioning about these reforms is the abolition of slavery and the cancellation of debts. Also, the judiciary system was quite developed and can be considered the earliest institution that resembles present day-judiciary system. Ancient Greece is also known for creating the first premises of democracy, much more direct and straightforward than we know today but with a huge influence on modern western civilization. The institution of Ostracism, the process in which it has been decided in a public vote that a certain

9 Lawrence J. Howell: *Etymological Dictionary of Han/Chinese Characters*, 2016

10 F. Carugati, G. K. Hadfield, B. R. Weingast, Building Legal Order in Athens, *Journal of Legal Analysis*, 2015, 7(2), p. 297-298.



citizen should be banished from the city for ten years. This was a political mechanism aimed at controlling outstanding personalities deemed too dangerous for the stability of society<sup>11</sup>. This pursue of stability and harmonious society is a thought close to the general idea prevalent in Confucianism, an ideology that influenced the Chinese thought for ages and which will be discussed later.

Next came the heritage of the Roman Empire, one that constitutes the heritage of present-day legal civilization in Western Europe. The level of sophistication achieved in those times was unprecedented. What is especially important and considerably different from Chinese tradition is the vast development of civil law. Not many cultures of that time put so much attention to organizing mutual human relations without direct relation to the interest of the governing power. The function of law has broadened to one that is exposed today as one of the most dominating – that of regulating the life of people from a much broader perspective than merely that of the criminal law. Before, the legislative power, in whatever form, felt mostly the need to penalize behaviour that would directly violate the order imposed in the society. The penalties were harsh and borne the deterrent function, that is that of harsh and brutal punishments aimed at scaring people away from breaking the law. Opening the legal thought for more complex and sophisticated institutions can be considered a huge breakthrough. Nowadays, many provisions of the Civil Law are almost the same as those developed by the Romans.

Taking language under the scope, Roman legal thought also introduced a linguistic distinction of law, however not so multi-layered as the Chinese one. The most known division in

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11 Sara Forsdyke, Exile, Ostracism and the Athenian Democracy, *Classical Antiquity*, 2000, 19 (2), p. 235.



Roman law is the one suggested by the Jurists, a group of legal scholars. They define *ius* as *ars boni et aequi* (Ulpian), that is “art of good and fair”. It is the source of justice, that what is appropriate and right. In fact, ‘right’ is often the word that is suggested to be a more suitable translation of this concept than ‘law’<sup>12</sup>. By this, it seems similar to the meaning of both 理 and 礼. *Lex*, on the other hand, is said to mean the legal regulations put forth by the people, the ‘law in action’ and law in the statutes, the realization of the *ius*. Interestingly, Cicero, a famous Roman scholar, twists those meanings and sets *lex* as the highest reason, inherent in nature, which orders what ought to be done and forbids the contrary. It’s the principle of practical thinking in law. He continues that *ius*, as an art, a way of using and understanding law should be always derived from *lex*<sup>13</sup>. A very interesting angle is contributed by Thomas Hobbes, who writes “*ius* consists in liberty to do or forebear whereas law determines and refers to one of them; so that law and right differ as much as obligation and liberty”<sup>14</sup>. This distinction into *ius* and *lex* as *right* and *law* is consistent with the division present nowadays in other European languages: French *droit* and *loi*, German *Recht* and *Gesetz*, Italian *diritto* and *legge*<sup>15</sup>. This division has been the prevalent basis for the development of what is known today as legal naturalism and legal positivism, a discussion which dominated the legal dispute in Europe for years. It bears resemblance with the discussion that took place in China starting from the 3<sup>rd</sup> Century B.C. Confucianism (儒家) and Legalism (法家) were the schools of thought that shaped

12 Roscoe Pound, Theories of Law, *The Yale Law Journal*, 1912, 22(2), 115-116.

13 Eric Engle, Law as Lex v Ius, *The Journal Jurisprudence*, 2008, p. 33.

14 <https://www.iep.utm.edu/natlaw/>, access 31.08.2020

15 Fletcher, George (2001) “In honour of ‘Ius et Lex’. Some thoughts on speaking about law”.





the discussion concerning the form of law and legal thought in China. They are of special importance for the shape of Chinese law, as the philosophy of those schools extended to underline the very fabric of the legal culture in present-day China.

## CONFUCIANISM AND LEGALISM VS NATURALISM AND POSITIVISM

Confucius was born in 551 BC, in times of war and great political unrest. Most that we know about him has been put together and written down by his students after his death in 479 BC. The most renown out of this legacy are “The Analects” (论语). It is a compilation of Confucius’ sayings and ideas composed during the Warring States Period (475-221 BC). The main concept that can be drawn out of this book is that of human being inherently good and they merely have to discover and cultivate their virtues which are realized in the form of 仁, the benevolence and altruism. Human’s desires should not be suppressed or limited, but rather formed into the correct, moral way. This should be possible by following the “3 rules and 5 virtues” (三纲五常). Those rules, crucial for the understanding of Chinese political system and culture even today, are as follows: “the lord rules the retainer (君为臣)”, “the father rules his son” (父为子), “the husband rules his wife (夫为妻)”<sup>16</sup>. Those rules were, however, not understood as mere proceedings, they were meant to depict the heavenly order of things, “natural expressions of the cosmological principles of yin and yang”, as the philosopher Dong Zhongshu stated. As the ruler, father and husband all represent the element yang (阳), the retainer,

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<sup>16</sup> W. H. Chai, Traditional Confucianism in Modern China: Ma Yifu’s ethical thought, *Frontiers of Philosophy in China*, 1(3), 2006, p. 380.



son, and wife represent yin (阴), respectively<sup>17</sup>. For Confucians, those were the most important social relationships that constituted society, thus no vastly developed civil law was needed to solidify social relations. Confucius believed that a superior man thinks of his virtue (德), the small man thinks of comfort. The superior man thinks of the sanctions of law (刑), whereas the small man thinks of the favours which he may receive. This also shows the intended function of law, which was aimed at enticing people to be good and holding them on the right track. The ideal of a Confucian society would be one in which no laws were necessary. thus, the law should be used only as a means of achieving this ultimate goal<sup>18</sup>.

The other crucial aspect of Confucian thought were the ‘Five Constant Virtues’: benevolence (仁), righteousness (义), propriety (礼), wisdom (智), and fidelity (信). The ideal ruler should possess all of them and let them resonate to the whole society. Their meaning is clearly corroborated by the ‘Bai Hutong’, a treatise written presumably by Ban Gu around 1<sup>st</sup> century AD that interpreted the Analects:

What are the Five Constant Virtues? They are benevolence, righteousness, propriety, wisdom, and trustworthiness. Benevolence means not being able to endure (seeing others suffer), loving others, and aiding all living things. Righteousness means doing what is proper. In making judgments one hits the mark. Propriety means to enact. That is, to realize the way and perfect the refined. Wisdom means knowledge. One has a special understanding and can know things before hearing about them. He is not befuddled by matters and

17 J. Chen, *Chinese Law: Context and Transformation*, Martinus Nijhoff Publishers, Leiden/Boston, 2008, p. 10.

18 M. Mohrenz, *Konfuzianismus: Philosophie, Ethik, Geschichte und Gegenwart*, LIT, 2012.



can discern the subtle. Trustworthiness means sincerity. One cannot be deterred from his purpose<sup>19</sup>.

It is important to mention that those virtues were considered to be an inherent part of human nature, they exist in every human being. However, in order to fully uncover their potential and pursue the correct way of embracing them one needs to truly understand and foster them. And here, indeed, the function of law should be searched for.

On the other side of the legal spectrum there emerged a policy inherently different from Confucianism, however, in no way less influential. It is called “Legalism” or literally “House of the administrative methods” (法家) and was formulated around 4<sup>th</sup> century BC in a tumultuous time of distress, similarly to Confucianism, to find order in those chaotic times. Usually, Shang Yang is agreed to be the first one to formulate the main premises of Legalism and put it into action. As a minister of the Qin court, he introduced many reforms aimed at making the law harsh and clear, the power centralized and the authoritarian ruler strong. Those reforms allowed for the Qin to rise to power as one of the greatest military powers of that time and produce the first emperor of China. For putting a strong focus on administrative power, legalism is often considered to be the first fundament of the theory of administration and political science as such<sup>20</sup>.

While Shang Yang was the first to put such a way of political thinking into action, Han Fei is considered to be the father of legalism as a political doctrine. According to his famous treaty, “Han Feizi”, legalism is much different from

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19 <http://chinaconnectu.com/wp-content/pdf/ThreeFundamentalBondsandFiveConstantVirtues.pdf>, accessed: 31.08.2020.

20 J. Chen, *Chinese Law: Context and Transformation...p. 28.*



Confucianism in its strictly practical approach that put success and power above moral and ethical merits. The merited, highly educated aristocracy of Confucianism, which was allowed to rule according to its own merits and moral values should, according to legalists, be replaced by loyal bureaucrats, strictly abiding by the laws and regulations (法), and undergoing strict control from the central government. The most important values for the ruler are the use of 法 in order to exercise his power, surrounding himself with an aura of 威, that is majesty and prestige, and show 势 (power, influence). The 法家 rejected their Confucian contemporaries' espousal of a regime based solely on the charisma of the aristocrats, much of their doctrines seeking self-regulating and mechanically reliable, if not foolproof means to control or otherwise dispense with officials administering the state, thus reducing the faulty human element, the most important of those means being the universally applicable 法. From this, the main, underlying difference between those two systems can be interpreted, namely that of the approach towards human nature. According to legalists, the human nature is inherently evil and egoistic, focused on self-interest. Though not exceptional in such thinking, Sinologist Yuri Pines considers this selfish view of human nature to be a pillar of the 法家<sup>21</sup>. The 法家 are therefore distinct from the Confucians in dismissing the possibility of reforming the elite, that being the ruler and ministers, or driving them by moral commitment. Every member of the elite pursues his own interests. Preserving and strengthening the ruler's authority against these may be considered the legalists "singularly pronounced

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21 *Ibidem*



political commitment<sup>22</sup>. Considering the power struggle between the ruler and the minister irreconcilable, and focusing on the prevention of evil rather than the promotion of good, the 法家 largely rejected the utility of both virtue and the Confucian rule of man, insisting on impersonal norms and regulations in their relations. Their approach was therefore primarily at the institutional level, aiming for a clear power structure, consistently enforced rules and regulations. That is why legalism is often considered the beginning of administration understood in contemporary measures.

Another point in which legalism is considerably different from Confucianism is its striving to achieve justice through equality and impartiality. Confucianists believed that true order and justice lies in hierarchical structure and partiality. The well-educated ministers were supposed to rule according to their own merit and to what they felt was right, the system encouraged people to be good and to foster their good nature. Legalism, on the other hand, rather than doing that preferred to deter people from doing wrong and succumbing to their evil nature. Law, realized through 法 should be equal to everyone, leading to often harsh situations, yet one's that were not arbitrary. During his reforms, Shang Yang deliberately produced equality of conditions amongst the ruled, a tight control of the economy, and encouraged total loyalty to the state, including censorship and reward for denunciation. Law was what the sovereign commanded, and this meant absolutism, but it was absolutism of law that was impartial and impersonal. Shang Yang discouraged arbitrary tyranny or terror as something that destroys the law. That is why, in a quite revolutionary way, for

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22 Pines, Yuri, "Legalism in Chinese Philosophy", The Stanford Encyclopedia of Philosophy (Winter 2014 Edition), Edward N. Zalta (ed.), access (31.08.2020), <https://plato.stanford.edu/entries/chinese-legalism/>



the first time the monarch was also bound by the law he himself has enacted<sup>23</sup>.

Another aspect was, what we would today call the prototype of Realpolitik. What is meant by this is the doctrine of 术 introduced by another theoretician of the 法家, Shen Buhai. It underlined the importance of all the methods necessary to control the bureaucracy by the ruler such as the selection and control of the ministers, monopolization of power, or the enforcement of accountability. It can be compared to the thoughts of the famous European political scholar Niccolo Machiavelli and his principle that “Ends justify the means”. In that theory Machiavelli introduced this kind of political realism to the West, however, it wasn't nearly so broadly accepted there.

Legalism was undoubtedly one of the foundations for the success of the Qin, however, it was finally taken over by Confucianism during the Tang Dynasty in 7<sup>th</sup> century AD. It became important ones more in recent times when Mao Zedong needed a counter for the overwhelming crisis of the Confucian political thought. Legalism came in handy as an equally traditional, inherently Chinese doctrine that perfectly suited the needs of the newly emerging political power of the Communist Party of China.

The difference of approaches between Confucianism and Legalism can be summarized by quoting two prominent scholars and showing their radically different approach towards governing the country. The Analects say:

He who exercises government by means of his virtue may be compared to the north polar star, which keeps its place and all the stars turn towards it<sup>24</sup>.

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23 J. Chen, *Chinese Law: Context and Transformation*..., p. 30.

24 The Analects, Chapter 2, translated by James Legge, 1901, access (01.09.2020) <https://china.usc.edu/confucius-analects-2>.



and:

To govern means to rectify. If you lead on the people with correctness, who will dare not to be correct?<sup>25</sup>

Han Feizi, on the other hand, writes the following on the necessity of using 法 and legal standards to rule:

Though a skilled carpenter is capable of judging a straight line with his eye alone, he will always take his measurements with a rule; though a man of superior wisdom is capable of handling affairs by native wit alone, he will always look to the laws (法) of the former kings for guidance. Stretch the plumb line, and crooked wood can be lamed straight; apply the level, and bumps and hollows can be shaved away; balance the scales, and heavy and light can be adjusted... in the same way one should use laws to govern the state (依法治国) disposing of all matters on their basis alone.<sup>26</sup>

The principle of ruling the state by law will be discussed later in detail, as it is crucial for present-day China as well.

When it comes to Europe, two ideologies that shaped the dialogue on the nature and function of the law were the concepts of natural law and the concept of positive law. The discussion will also be enhanced with an analysis of Niccolò Machiavelli's principle of realism which is, as mentioned earlier, comparable to Chinese legalism in some way.

The main difference between the western and the Chinese way of thinking about the law was the detachment from practical problems for the former. Western philosophers, traditionally always seemed to deal with the question of "what is law"

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<sup>25</sup> *Ibidem*, Chapter 12

<sup>26</sup> Deborah Cao, *Chinese Law: a Language Perspective*, Routledge, 2016.



or “what is justice”, whereas in China the approach was rather focused on the practical side. dealing with questions of “how to use law in a good way?” or “what do we need law for?”. That is why law became of interest to the Greek philosophers like Plato and Aristotle, not as a mechanism of social relations but rather as a philosophical notion, another phenomenon they wanted to scrutinize and explain. And so Plato discussed law as a means of achieving Justice. However, as Justice was understood as one of the ideals that, according to Plato, humanity should strive to it gave it a practical sense of sorts. Those ideals could only be approximated in earthly lives but those who can cultivate their minds philosophically can at least perceive it as an ideal concept<sup>27</sup>. In the beginning, Plato tried to implement his ideals in a similar way to the Confucianists. Thus, as we see, this though was quite similar to the Confucian understanding of social rules and virtues as it saw every human’s soul as the ideal of good, the place wherefrom all the good ideals come from. At the same time, the body, all the earthly desires where the source of evil and in order to overcome those temptations the power of reason was needed. This is very similar to the idea of “discovering” one’s own virtues promoted by the Confucianists.

For Plato, justice is the fundamental virtue, mother of the virtues belonging to each of the three virtues into which he divided the human soul. Intelligence is realized through the correctness of thought. Wisdom is the justice of the mind; courage, the justice of the heart; temperance, the justice of the senses. Piety is justice in our relation with the Deity; it is synonymous with justice in general. Man must be educated in order to reach justice and through it to become like God. Justice is realized only in the collective man or in the state. So that the

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27 Eric A. Havelock, *The Greek Concept of Justice. From its Shadow in Homer to Its Substance in Plato*, pp. 111-113.





collective man or the state may form a real unity or an individual on the large scale, particular interests must be merged in the general interest, the family must be absorbed in the state, the individual must cease to be a proprietor<sup>28</sup>. Henceforth, the children belong to the state only, and together they form one large family. The state is the father of the children; the state also educates them.

This approach is quite similar to that of the Confucian ideas, it was Aristotle who shifted the western focus from the “What one should do” to “what one should have”, that is from the duties of a citizen to the rights of a citizen. He denied the concept of Ideal Forms but acknowledged that everything is run by a higher reason, the so-called *nomos*. And *nomos* is what every law should ultimately aspire to and which is the fundament of all things<sup>29</sup>. Here we can see the main difference between the European and the Chinese approach. In western culture, the whole discussion after Plato was shifted to seek the main principle and legalisation of law. In China, it was not so important where the law came from but rather its practical utilisation in consolidating the power or making the citizen’s life better.

The main premise of legal naturalism consists of two concepts One is that there is some kind of standard to which law should aspire and the other that this standard is the source from which all moral norms should be taken and implemented into the legal norms. As mentioned above, first such norm was Reason, the Greek *nomos* which can be also understood as the pervading law of nature, according to which the world is organized. It governs the life of human beings and animals alike is universal and does not depend on the political views or even

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28 *Ibidem*.

29 Internet Encyclopedia of Philosophy: <https://iep.utm.edu/aristotl/>, accessed: 31.08.2020.



morals of people at power. Aristotle explains it the following way:

Universal law is the law of Nature. For there really is, as everyone to some extent divines, a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other. It is this that Sophocles' *Antigone* clearly means when she says that the burial of Polyneices was a just act in spite of the prohibition: she means that it was just by nature<sup>30</sup>

The conflict shown in Sophocles' "Antigone" in which the protagonist buries her brother despite him being banished from the city (and thus denied the funeral ceremony) is a great example of what is understood by this statement. She denies the laws set by the authority, the positive law (which would be discussed in detail later) and argues that she is allowed to do it as this is what the gods would want. By this, she underlines the superiority of natural (or in this case divine) law over any other norms.

This right of the citizens to stand against human-made law if it contradicts the divine, a higher instance has been fully embraced by Thomas Aquinas. On his view, a human law (that is, that which is promulgated by human beings) is valid only insofar as its content conforms to the content of the natural law; as Aquinas puts the point:

Every human law has just so much of the nature of law as is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of law<sup>31</sup>

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30 Aristotle, *Rhetoric*, translated by W. Rhys Roberts.

31 Raymond Bradley, *The Relation Between Natural Law and Human Law in Thomas Aquinas*, 1975, *Cath. Law.* 42, p. 44.



The most important premise in this theory is that there exists an objective truth and morality according to which law should be measured. That is why Aquinas and many other legal naturalists subscribed to the thesis that there are at least some laws that depend for their “authority” not on some pre-existing human convention, but on the logical relationship in which they stand to moral standards. In other words, some norms are authoritative in virtue of their moral content, even when there is no convention that makes moral merit a criterion of legal validity<sup>32</sup>. The first precept of the natural law, according to Aquinas, is the somewhat vacuous imperative to do good and avoid evil. Here it is worth noting that Aquinas holds a natural law theory of morality: what is good and evil, according to Aquinas, is derived from the rational nature of human beings. Good and evil are thus both objective and universal.

The idea that a norm that does not conform to the natural law cannot be legally valid is the defining thesis of conceptual naturalism. As William Blackstone describes the thesis,

This law of nature, being co-eval with mankind and dictated by God himself, is, of course, superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this, and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.<sup>33</sup>

In this passage, Blackstone articulates the two claims that constitute the theoretical core of conceptual naturalism:

1) there can be no legally valid standards that conflict with the natural law; and

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32 [https://www.iep.utm.edu/natlaw/...](https://www.iep.utm.edu/natlaw/)

33 *Ibidem*.



2) all valid laws derive what force and authority they have from the natural law.

As an answer to this kind of reasoning, the theory of legal positivism has been created. It focused on a much more practical aspect of the law, namely that it is a social fact. Positivists quickly realized that the idea according to which any law quite arbitrarily considered unjust could be disobeyed would create immense chaos and is simply unrealistic. They coined a definition in which any rule is legally valid and binding if only it was commanded by a sovereign in a formal way and is supported by a sanction. In such a system, the lawmaker cannot really be limited in any way. However, as in modern societies, it is quite common to consider the Constitution as the framework for the legislator, one that he cannot violate, theoreticians such as Austin argued that Constitution should, in fact, not be considered law but rather a “positive morality” framework<sup>34</sup>. Quickly, however, it has been realized that law cannot just function completely unrestricted, there must be some kind of criterion that would serve to assess whether the law is just or valid. Since the positivists renounce the concept of a universal moral standard, they formulated rules of recognition and validity. The first one is a rule that requires a given society to consider the law as binding and enforceable. In that way, it is to some extent connected with the “instincts” of human nature. The law does not have to follow any higher or universal rules of morality, it should, however, be rational enough for people to understand and acknowledge it. The rule of validity requires criteria to be set that formulate clear rules of enacting, changing and adjudicating the law. Thus, the binding power of law lies in it being enacted according to clear rules of validity, in a formally correct

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<sup>34</sup> *Ibidem*.



way that involves the right sovereign organs and procedures.<sup>35</sup>

One of the most influential scholars for the development of legal positivism was, undoubtedly Hans Kelsen. In the 20<sup>th</sup> Century, he put forth the so-called “Pure theory of law” in which he tried to analyse the law as a sole entity, free of any other influences such as politics or morality and ethics. The law according to Kelsen is a hierarchical system of norms. He maintained that legal norms are created by acts of will or in other words, products of deliberate human action, as opposed to moral norms which are created by God. In relation to this, the pure law theory takes only into consideration only the norms created by the acts of human beings, not norms which come from other superhuman authorities. However, even in such a theory, something had to be situated at the very top of the legal hierarchy that Kelsen introduced. This has been often put up by legal naturalists that argued that there precisely should lie the natural reason, giving content to all other norms. Kelsen, however, tried to situate the “Grundnorm” at the very top, the most important of all norms<sup>36</sup>. He denied its divine origin and rather saw it as

Grand unchallengeable norm, or simply the grand norm, which is “not a product of free invention nor is it presupposed arbitrarily.” This grand norm came from the collective will, competence, and capacity of the people. Kelsen used this term to denote the basic norm, order, or rule that forms an underlying basis for a legal system.<sup>37</sup>

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35 B. Rüthers, Ch. Fischer, A. Birk, *Rechtstheorie mit Juristischer Methodenlehre*, C.H. Beck, 2020, pp. 311.

36 *Ibidem*.

37 Lars Vinx, Carl Schmitt, *Stanford Encyclopedia of Philosophy*, access (01.09.2020), <https://plato.stanford.edu/entries/kelsen/>



Legal positivism, in a similar way to legalism, requires a sovereign who could enact and interpret the law. This made some theoreticians, most notably Carl Schmidt go so far as to extend positivistic logic to support totalitarian regimes. He argues that no matter what moral foundation we assume, law cannot function without the arbitrary sovereign ultimately deciding about its shape. He argues:

General legal norms often fail to provide determinate guidance without considerable interpretation and interstitial legislation. In order for the law to become effective, there needs to be an authority that decides how to apply general legal rules to concrete cases and how to deal with problems of contested interpretation or under-determination. However, the material content of the law does not itself determine who is to interpret and to apply it. Hence, a sovereign authority prior to the law is needed to decide how to apply general legal norms to particular cases.<sup>38</sup>

Such an approach led to horrible atrocities during the World War II as it allowed the III Reich under the leadership of Adolf Hitler and the Nazi regime to grant validity to any norm enacted by the regime, no matter its moral or ethical content. Political totalitarianism, war crimes, death camps and ethnic cleansings were all made possible by enacting laws with the single premise that the formal procedure has been upheld and thus no other adjudication of its validity is needed.<sup>39</sup>

It was Gustav Radbruch, a German professor who in 1946 offered a solution to this major fault of the positive law.

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<sup>38</sup> *Ibidem*, access (01.09.2020), <https://plato.stanford.edu/entries/schmitt/>  
<sup>39</sup> B. Rütters, Ch. Fischer, A. Birk, *Rechtstheorie...*p. 312.



In his influential work “Statutory Injustice and Above-Statutory Law”, he introduced the “Radbruch Formula” which was aimed at amending the radical legal positivism while not totally renouncing its main ideas. It reaches back to a thought formulated already by Thomas Aquinas *Ius iniustissima non est lex*, that is “law that is unbearably unjust should not be considered law at all”. His formula was directed towards the judges who should decide against applying the statute if - and only if - the legal concept behind the statute in question seems either “unbearably unjust” or in “deliberate disregard” of human equality before the law. He explains it in the following words in his essay from 1946:

The conflict between justice and the reliability of the law should be solved in favour of the positive law, law enacted by proper authority and power, even in cases where it is unjust in terms of content and purpose, except for cases where the discrepancy between the positive law and justice reaches a level so unbearable that the statute has to make way for justice because it has to be considered “erroneous law”. It is impossible to draw a sharper line of demarcation between cases of legal injustice and statutes that are applicable despite their improper content; however, another line of demarcation can be drawn with rigidity: Where justice is not even strived for, where equality, which is the core of justice, is renounced in the process of legislation, there a statute is not just ‘erroneous law’, it is, in fact, not of a legal nature at all. That is because law, even positive law, cannot be defined otherwise than as a rule, that is precisely intended to serve justice<sup>40</sup>.

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40 J. Rankin, Defining Rule of Law, in: *TBA Briefings*, 2015, s. 2-8.



## PRESENT-DAY INFLUENCE

All the ideologies discussed above have a major influence on the shape of law nowadays. In China, Confucianism blossomed during the Tang Dynasty and has led the country to a crisis during the Qing Dynasty in the 20<sup>th</sup> century, as its focus on upholding harmony and ruling by merit stopped necessary reforms from happening. After the colonial regimes have been cast away and first the Republic and then the Communist Party emerged, there was a need to find an ideology that would allow for a sudden development while not standing in the way of a strong political regime. Furthermore, it was crucial to reach for instruments that were considered inherently Chinese and so legalism came in handy. However, it turned out that Confucian values were still strong in the society. The sudden legal development required also reaching for some western solutions and so the present-day system was created in which a western-inspired corpus of laws functions in a highly politicized authoritarian system with a lot of Confucian values still being implemented in the process of interpretation of law. This has been merged with new communist ideologies and created a system never seen before. At the Fourth Plenary Session of the Eighteenth Party Congress in October 2014, Xi Jinping made the development of the rule of law a centrepiece of his political agenda. However, the line between ruling by law, a concept already introduced by the legists, and the rule of law, or the rule of law with Chinese characteristics needs to still be discovered.

In the west, the Radbruch's formula has generally been broadly accepted. The legitimacy and validity of the law is generally sought for on the formal grounds. However, most of the core moral and ethical values have been solidified





in the Constitutions of most of the countries, thus becoming tied with the “pure law” itself, as Kelsen would put it.

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# POLISH AND CHINESE CIVIL LAW PERSPECTIVES ON THE PRINCIPLE OF GOOD FAITH

## INTRODUCTION

Comparative legal studies on civil law from different cultural backgrounds and countries give us the opportunity to better understand what connects us and what divides us. The general principles, that is, principles intentionally not specified by the legislator, may be particularly difficult to understand. Hart noted that the legal text is characterized by its potential blurriness - its meaning may vary depending on the context in which it is examined<sup>1</sup>. Legal norms, expressed in natural language, abounding in out of focus, ambiguous expressions, as well as evaluative expressions or general principles, are characterized by

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1 K. Doliwa, A. Doliwa, *Zasada słuszności i dobra wiara a prawo pozytywne (na przykładzie polskiego prawa cywilnego)*, Studia Prawnoustrojowe, 2015, no. 30, p. 86.



“open textuality” - immanent property of all-natural languages, referring to general terms<sup>2</sup>. Regardless of how complicated the definitions of concepts are, it is impossible to construct them in such a way that they “definitively decide for each particular case, whether the considered concept applies to it or not”<sup>3</sup>. Due to the “openness” or “porosity” of language expressions, the existence of definitive and comprehensive definitions in legal science is precluded<sup>4</sup>. According to Katarzyna Doliwa and Adam Doliwa general principles refer to non-legal reality, other than the law of normative patterns and assessments of proceedings<sup>5</sup>.

The main purpose of introducing general principles in the legal system is to give the law the necessary “flexibility”<sup>6</sup>. They are the result of centuries-long searching for the idea of law, which will allow entities using law to adapt *ius strictum* to the needs of each particular case<sup>7</sup>. The use of general principles allows us to “keep up” with the law in force, which is often a rapidly changing social reality, without the need for formal change. The role of general principles is particularly useful in the case of codified laws that “are inherently inauspicious to rapid changes in the relationship of social relations”<sup>8</sup>.

This chapter has been written with the thought of Teemu Ruskola, who wrote that even regarding the comparative legal method it should be remembered that nowadays neither

2 F. Waismann, *The principles of linguistic philosophy*, London 1997 (as cited in *Ibidem*).

3 H.L.A. Hart, *Niebo pojęć Iheringa i współczesna analityczna filozofia prawa*, [in:] *Eseje z filozofii prawa*, Warsaw 2001, p. 278-279.

4 *Ibidem*.

5 K. Doliwa, A. Doliwa, *op. cit.*, p. 90.

6 *Ibidem*.

7 J. Gajda, *Pojęcie dobrej wiary w przepisach Kodeksu cywilnego*, *Studia Prawnicze* 1997, no. 2, p. 45.

8 T. Zieliński, *Klauzule generalne w nowym porządku konstytucyjnym*, *Państwo i Prawo* 1997, z. 11-12, p. 134.



Western nor Chinese law exists separately from the other, and both are part of the global discourse of so-called “legal modernity”<sup>9</sup>. Especially that, according to Łukasz Gacek, China is currently striving to rebuild its position in the world, trying to use both the achievements of Chinese civilization and those adapted from the West<sup>10</sup>. Therefore the scope of this chapter is to compare how the principle of good faith is interpreted on the basis of Polish and Chinese civil law, to try to find resemblances and alterations in the meaning of this principle in different, though at first glance similar legal systems. Moreover, this chapter is also an extension and supplementary to the topics discussed in the book written in Polish, under the title: *Zarys chińskiego prawa cywilnego w dobie kodyfikacji* [An Outline of Chinese Civil Law in the Age of Codification] in 2019<sup>11</sup>.

## ROMAN LAW CONTRIBUTION

At the very beginning, we should know that the term *bona fides* was first introduced into Roman law no later than in the second century BC<sup>12</sup>. Officials, primarily praetors, when announcing how they will exercise jurisdictional power, have introduced into the formulas of some complaints a principle, authorizing the judge to award „as much as it deserves according to good faith” (*ex fide bona oportet*)<sup>13</sup>. An important area of application of *bona fides* was the assessment of the binding

9 T. Ruskola, *Legal Orientalism – China, The United States and Modern World*, London 2013, p. 35.

10 Ł. Gacek, *Rola konfucjanizmu w kształtowaniu ideologii państwowej w Chinach w XX w.*, „Krakowskie Studia Międzynarodowe” 12, no. 3 (2015), p. 41.

11 G. Lebedowicz, I. Szpotakowski, B. Wiśniewski, *Zarys chińskiego prawa cywilnego w dobie kodyfikacji*, Toruń 2019, p. 112-114.

12 W. Dajczak, *Zasady współżycia społecznego czy dobra wiara?*, Rejent, no. 1 (117), January 2001, p. 41.

13 Ibidem.



power of the contract. In this respect, the *bona fides* could fulfil the corrective function of the content of the activity determined by the parties, also it could constitute a law justifying the binding force of a contractual provision<sup>14</sup>. In ancient Rome, as well as in most of today's continental legal systems, we can indicate the function of *bona fides* as a criterion for interpretation, an instrument for correcting the contents of a legal action or supplementing it<sup>15</sup>.

## POLISH CIVIL LAW PERSPECTIVE

According to Article 7 of the Polish Civil Code: "Where the statute makes legal consequences contingent on good or bad faith, the existence of good faith shall be presumed"<sup>16</sup>. This legal provision deserves special attention, because it refers to the whole system of Polish private law, or more strictly - to all cases in which legal provisions bind some legal consequences with good or bad faith of a person<sup>17</sup>. In the past, the good faith principle was present as a general rule in the Polish civil law system, like in General Provisions of Civil Law from 1946: "Private law should be exercised in accordance with their content in a way that suits their social purpose and the requirements of good faith"<sup>18</sup>.

It is worth noting that there is a good faith in subjective meaning and good faith in objective meaning in Polish civil

14 Ibidem, p. 43.

15 M. Hesselink, *Good Faith*, [in:] *Towards a European Civil Code*, A. S. Hartkamp (Ed.), Nijmegen 1998, p. 292.

16 Article 7 of the Polish Civil Code of 23 April 1964 - the Polish Civil Code (Journal of Laws of the Republic of Poland, No. 16, item 93).

17 Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, Warsaw 2017, p. 63.

18 Article 8 of the General Provisions of Civil Law - The Decree of 12 November 1946 - General Provisions of Civil Law (Journal of Laws of the Republic of Poland, No. 67, item 369).



law regulations in force today and in the past. Generally speaking, both normative solutions and their support theoretical concepts serve to reconstruct the norm of behaviour in a given civil law relation by referring to what is right, on the basis of objective (positive) law and normative rules beyond the written law<sup>19</sup>. The division into good and bad faith is exhaustive and at the same time separable - so it is a logical division in the strict sense of the word. Consequently, a person can only be in good or bad faith, and the legal system does not recognize any intermediate forms with which legal effects would be connected<sup>20</sup>. But the principle of good faith is applied in an objective, not in a subjective sense (which means that it does not refer to the knowledge of specific participants in legal acts)<sup>21</sup>. Thus, in good faith in an objective sense, remains a person whose behaviour is impeccable (at least acceptable) from the point of view of ethical and moral rules<sup>22</sup>.

This is about the mental states of a person referring to his/her knowledge of the existence of some legal relationship or the subjective right resulting from it. Good faith therefore consists in the erroneous, but justified, conviction of someone about his/her rights (e.g. ownership). On the other hand, the person in bad faith is one who either knows that a certain right is not due to him/her or he/she does not know but should know<sup>23</sup>.

However, the question of what measure of duty of care should be taken into account when assessing whether the person concerned fulfilled the obligation to determine the actual legal status, cannot be uniformly determined for all cases

19 K. Doliwa, A. Doliwa, *op. cit.*, p. 85.

20 Z. Radwański, A. Olejniczak, *op. cit.*, p. 63

21 J. Mojak, *Dobre obyczaje w polskim prawie kontraktowym – wybrane zagadnienia*, Studia Iuridica Lublinensia, 2016, vol XXV no. 2, p. 164.

22 K. Doliwa, A. Doliwa, *op. cit.*, p. 88.

23 Z. Radwański, A. Olejniczak, *op. cit.*, p. 64.





provided for by law, in which legal consequences are connected with good or bad faith<sup>24</sup>.

## CHINESE CIVIL LAW PERSPECTIVE

Good faith or *bona fide* is considered by many as the highest principle in continental civil law systems family<sup>25</sup>. Also, in Chinese law scholars argue that this principle under Chinese civil law is the “emperor’s provision”<sup>26</sup> or known as the “imperial principle”<sup>27</sup> (帝王条款). It means that the principle can be effectively applied to all areas of private law, plays a guiding role within the civil parties, establishes that the parties must exercise their rights and obligations in good faith, if the parties violate the principle of good faith in exercising their rights, it is considered as an abuse of rights<sup>28</sup>.

Chinese civil law understanding of the good faith concept were inspired by the German model, filtering from the Japanese experience, since the beginning of the XX century<sup>29</sup>. In romanistic legal systems (like in Italy or France) the term “good faith” is used to indicate both the concept in an objective or subjective sense, while the German legislation distinguish the two notions using two different terms: the good faith intended as the legitimate belief, typical of the right of property, has been called “*guter Glaube*”, that correspond to the literary definition of good faith, while the good faith intended as loyalty is called

24 Ibidem, p. 64.

25 X. Qiu, *Contract Law*, [in:] *Perspectives on Chinese Business and Law*, Ł. Gołota, J. Hu, K. Van der Borght, S. Wang (Eds.), Cambridge 2018, p. 161.

26 Bu Yi, *Chinese Civil law*, Portland 2013, p. 6.

27 Y. Zhu, *China’s Civil Law*, Guangzhou 2003 p. 8.

28 S. Simonetti, *The principle of good faith in Italy and China*, Venice 2017, p. 79, <http://hdl.handle.net/10579/11695> (accessed: 11 May 2020).

29 I. Szpotakowski, *Suwerenność państwa i rządu prawa: kodyfikacja prawa prywatnego w Chinach* [State sovereignty and the rule of law: the codification of private law in China], *Świat Idei i Polityki*, Issue XVII, p. 165.



“*Treu und Glauben*”, in which *Treu* means faith and *Glauben* which means as well belief faith or loyalty<sup>30</sup>.

Chinese jurists distinguish between *shanyi* (善意), that is the good faith intended in a subjective sense with the meaning of “good intention”, and “*chengshi xinyong*” (诚实信用), that is the good faith intended in an objective sense<sup>31</sup>. The new Civil Code of the People’s Republic of China which will take effect on 1 January 2021 instead of “*chengshi xinyong*” (诚实信用) will describe the principle of good faith as *chengxin* (诚信)<sup>32</sup>.

According to Article 4 of the General Principles of the Civil Law of the People’s Republic of China from 1986<sup>33</sup>, civil activities should follow the principle of good faith (诚实信用)<sup>34</sup>.

Article 6 of the Chinese Contract Law<sup>35</sup> provides that the parties shall abide by the principle of good faith (诚实信用) in exercising their rights and performing their obligations<sup>36</sup>. This principle requires that the contracting parties conduct themselves honestly and responsibly. This means that parties to a contract should perform their duties in responsible manner, avoid abusing their rights, avoid intentionally and maliciously harming the other party’s interest, follow the law and common

30 Ibidem, p. 58.

31 Ibidem.

32 The Civil Code of the People’s Republic of China adopted at the Third Session of the Thirteenth National People’s Congress on May 28, 2020 (中华人民共和国民法典), [http://www.xinhuanet.com/politics/2020-06/01/c\\_1126061072.htm](http://www.xinhuanet.com/politics/2020-06/01/c_1126061072.htm) (accessed: 01.09.2020).

33 General Principles of the Civil Law of the People’s Republic of China (Adopted at the Fourth Session of the Sixth National People’s Congress on April 12, 1986 and promulgated by Order No. 37 of the President of the People’s Republic of China on April 12, 1986).

34 In Chinese: 第四条 民事活动应当遵循自愿、公平、等价有偿、诚实信用的原则。

35 Contract Law of the People’s Republic of China, March 15, 1999.

36 In Chinese: 第六条 当事人行使权利、履行义务应当遵循诚实信用原则。



business practice<sup>37</sup>. The principle of good faith is embodied in major provisions of the Chinese Contract Law with the respect to every major stage of the contract law, but also to preliminary negotiations and post-contractual rights and duties<sup>38</sup>. Article 42 of the Contract Law provides that “party shall be liable for damages in the following circumstances if it negotiates a contract that causes damage to the other party: (III) committing other acts which violate the principle of good faith (诚实信用)”<sup>39</sup>.

Additionally, article 7 of General Part of Chinese Civil Code from 2017<sup>40</sup> provides that: “The parties to civil legal relations shall conduct civil activities under the principle of good faith (诚信), adhere to honesty, and fulfil their promises”<sup>41</sup>.

In the article 142 of the new Civil Code of the People’s Republic of China we can find that the meaning of an expression of intent that is made to a certain party shall be interpreted according to the literal meaning of words used and in combination with the relevant articles, nature and purpose of the act, usual practices, and the principle of good faith (诚信原则)<sup>42</sup>.

This principle consists in always telling the truth to the other party and in not violating or cheating the principle of good faith. This means to maintain the word given and to fulfil

37 X. Qiu, *op. cit.*, p. 161.

38 *Ibidem*, p. 162.

39 In Chinese: 第四十二条 当事人在订立合同过程中有下列情形之一, 给对方造成损失的, 应当承担损害赔偿责任: (三) 有其他违背诚实信用原则的行为.

40 General Provisions of the Civil Law of the People’s Republic of China (Adopted at the Fifth Session of the Twelfth National People’s Congress on March 15, 2017) – now known as General Part of Chinese Civil Code, <http://www.npc.gov.cn/englishnpc/laws/thepcr/202001/c983fc8d-3782438fa775a9d67d6e82d8.shtml> (accessed: 01.09.2020).

41 In Chinese: 第七条 民事主体从事民事活动, 应当遵循诚信原则, 秉持诚实, 恪守承诺.

42 In Chinese: 第一百四十二条有相对人的意思表示的解释, 应当按照所使用的词句, 结合相关条款、行为的性质和目的、习惯以及诚信原则, 确定意思表示的含义.

all the civil duties. If a damage occurs all the parties have to try to find a remedy, all the civil subjects within the relation must be loyal, keep their promises, must be careful and safeguard the interests of the other party and meet their general expectation. One party has to also provide other parties that are involved with all the necessary information in order to seek personal interests and social public interests. Since modern society is increasingly becoming a commercial society, to maintain an efficient and secure market environment, it is necessary to establish sufficient trust among different subjects.

Article 4 of the general principles of civil law stipulates that civil activities shall follow the principle of good faith<sup>43</sup>. The parties shall exercise civil rights and perform civil obligation honestly and with good faith<sup>44</sup>. The courts may undertake creative judicial acts with fairness and justice in their minds. Due to its extensive and comprehensive functions, it is also known as “imperial principle” in the civil law<sup>45</sup>. It goes without saying that application of such principle in judicial practice is subject to restrictions. Else it may result in abuse of discretionary power and soften the specific rules of the civil law<sup>46</sup>.

Nevertheless, the term *chengxin* may very well be interpreted by Chinese court in ways that are unfamiliar to foreign lawyers. Naturally, specific application and interpretation of *chengxin* and other contract law terms may require reference to existing Chinese practices and law, which also raises the prospect of interpretations different from international conventions and laws related to contract<sup>47</sup>.

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43 S. Simonetti, *op. cit.*, p. 79.

44 Ibidem.

45 Ibidem.

46 Y. Zhu, *op. cit.*, p. 8.

47 D. Cao, *Chinese Law: A Language Perspective*, New York 2017, p. 168



## LEGAL LANGUAGE PERSPECTIVES

When analysing how to understand general principles, dependent on moral access, it is necessary to eliminate arbitrariness. It is also necessary to admit the need to respect in the process of applying the law in the basic and lasting values rooted in the culture and tradition of a given society<sup>48</sup>. In the PRC, how civil law concepts are perceived deeply depends on cultural and historical conditions, also bearing in mind the perception of civil law in imperial China<sup>49</sup>.

According to Deborah Cao concept of *chengshi xinyong* (诚实信用) or *chengxin* (诚信) is rooted in the Chinese cultural tradition<sup>50</sup>. *Chengxin* (诚信) is found in all of the Chinese traditional philosophical doctrines: Confucianism, Mohism, Taoism, Legalism and Buddhism, but according to D. Cao is predominantly a Confucian concept<sup>51</sup>. The character *xin* (信) in *chengxin* (诚信) is one of the most important word in the Analects<sup>52</sup>. *Xin* (信) is often translated as “trustworthiness”, but can also be described as “making good on one’s word” or living up to the one’s word”, as 信 consists of the radical 亻 *ren* – “a person” standing to the left of the character 言 *yan* – “speaking or words”<sup>53</sup>. Also regarding to Polish law and the understanding of the concept of “dobra wiara”, determinants related to

48 W. Dajczak, *op. cit.*, p. 54

49 See: I. Szpotakowski, Z. Kopania, *Między prawdą, a mitem – o kontrowersjach co do istnienia prawa cywilnego w Chinach dynastycznych*, [in:] *Rozważania nad procesem stanowienia prawa w Polsce i Chinach na przestrzeni wieków. Wybrane zagadnienia*, I. Szpotakowski (Ed.), Łódź – Kraków 2020, p. 117-133; I. Szpotakowski, *Geneza i rola zwyczaju w nowej części ogólnej kodeksu cywilnego Chińskiej Republiki Ludowej [The genesis and role of custom in China’s General Provisions of Civil Law]*, *Warsaw University Law Review*, Volume XVIII, no. 1/2019, p. 173-186.

50 D. Cao, *op. cit.*, p.168.

51 Ibidem.

52 Ibidem.

53 Ibidem.



European civilization values are important. More specifically, according to professor M. Safjan, in Polish civil law the values of Christian culture should be regarded as fundamental to recognise how to apply good faith principle in practice<sup>54</sup>.

## CONCLUSIONS

Presented here comparative analysis shows, that from the Polish perspective the term “good faith” is understood from both an objective and subjective perspective, so using Polish word “dobra wiara”(good faith) we should understand the equal meaning of both Chinese words *shanyi* (善意), that is the good faith intended in a subjective sense with the meaning of “good intention”, and “*chengshi xinyong/chengxin*” (诚实信用/诚信), which is considered as the good faith intended in an objective sense. It is worth noting, that for a Polish lawyer it would be deceptive to understand the principle of good faith in Chinese law in the same way as it is interpreted by Polish civil law doctrine, without using the division into subjective sense *shanyi* (善意) and objective sense *chengshi xinyong/chengxin*” (诚实信用/诚信). Also, a Chinese lawyer should understand that in Polish civil law both Chinese concepts are included in the term “dobra wiara”.

To sum up this chapter, it should be emphasized that although at first glance, both Chinese and Polish civil law derives from Roman law and was strongly influenced by the concept of German law in the past, the understanding of general principles, like good faith principle, is not the same. To notice these differences, the best way is the comparative analysis that has been presented in this paper. Regarding Chinese law, it is also necessary

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54 W. Dajczak, *op. cit.*, p. 55.; M. Safjan, *Klauzule generalne w prawie cywilnym (przyczynek do dyskusji)*, Państwo i Prawo 1990, no 11, p. 54.



to have a good understanding of the cultural-historical and linguistic relationships between the current situation and the past.

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# THE PRC'S GOVERNMENT'S EFFORTS TO END GENDER DISCRIMINATION IN THE WORKPLACE

## INTRODUCTION

For thousands of years of a patriarchal society, where women have never had any real economic power and depended on their fathers, husbands, uncles and sons for day-to-day life and survival<sup>1</sup>. Their life roles were perceived as and limited to “husband’s assistant and son’s teacher”. The patrilineal wealth distribution and sayings like “an incapable man is better than a capable woman” only maintained, preserved, upheld and fostered society’s approach to women and limitations for their

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1 S. Deng, X. Wang, I. Alon, *Framework for female entrepreneurship in China*, Journal of Business and Emerging Markets 2011, Vol. 3, No.1, p. 8.



development in various areas<sup>2</sup>. In 1949, when the People's Republic of China was founded, the Communist Party has dramatically changed women's situation through: the PRC Women's Rights Protection Law<sup>3</sup>, the PRC Labor Law<sup>4</sup>, the Women's Work Protection Regulations<sup>5</sup>. Chinese government implemented multiple programs and campaigns advocating legal, economic, administrative and educational gender equality<sup>6</sup>. In 1988 the private sector gained legal status and the Private Enterprises Temporary Regulations in China was issued. Because of that in 1989 private enterprises could be registered and in the first year alone 90 581 of them did<sup>7</sup>. Since then this number only grew bigger. In 2018 there were 34.7 million registered companies in China<sup>8</sup>.

Since women are still considered primary caregivers in China<sup>9</sup> and Chinese culture and society still highly reflect

2 J. Burnett, *Women's Employment Rights in China: Creating Harmony for Women in the Workplace*, Indiana Journal of Global Legal Studies, Vol. 17, Issue 2, p. 292 – 293.

3 *Law on the Protection of Women's Rights and Interests of the People's Republic of China*, UNHCR, <https://www.justice.gov/sites/default/files/coir/legacy/2013/11/08/Protection%20of%20Women%27s%20Rights.pdf> (accessed: 08.08.2020).

4 *Labour Law Of The People's Republic Of China*, International Labour Organization, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/37357/108026/>, (accessed: 08.08.2020).

5 *Regulations Concerning The Labor Protection Of Female Staff And Workers*, Ministry of Commerce People's Republic of China, <http://english.mofcom.gov.cn/aarticle/lawsdata/chineselaw/200211/20021100050536.html>, (accessed: 08.08.2020).

6 J. Burnett, *op.cit.*

7 *Ibidem*, p. 9.

8 *Number of registered enterprises in China 2016-2018*, Statista, <https://www.statista.com/statistics/1008055/china-number-of-registered-companies/> (accessed: 27.07.2020).

9 Z. Erdenebileg, *Holding up Half the Sky? Assessing the Current State of Female Employment in China*, China Briefing 2016, <https://www.china-briefing.com/news/china-female-employment/>, (accessed: 27.07.2020).



Confucian doctrine<sup>10</sup>, that emphasized men over women, parents over children, older siblings over younger siblings, collective over an individual<sup>11</sup> and harmony over confrontation, no wonder that there is a social paradigm of managerial positions as a rather masculine domain<sup>12</sup>. It should be also noted that Chinese women spend 2.1 hours a day on housework (which is about three times more time than men do) and spend one-sixth of their lives unpaid<sup>13</sup> (due to maternity leaves that have to be at least 98-days-long, mandatory retirement ages that are lower than men's etc.<sup>14</sup>). Despite of that, women (that were once called by Mao Zedong the ones that "hold up the sky"<sup>15</sup>) are considered "half the sky" or "holding up the sky together with men" because of their equal contribution to the society<sup>16</sup>.

According to International Labour Organization's 2015 statistics only 16.8% of the management positions in the

10 A.W. Jelonek, *Confucianism-Asian values and liberal democracy* [in:] A.W. Jelonek, B.S. Zemanek (Eds.), *Confucian Tradition. Towards the New Century*, Kraków 2008, p. 55.

11 M. Lubina, *Wspólnotowe kultury polityczne Rosji i Chin. Podobieństwa i różnice*, *Politeja* 2013, Vol. 10(26), p. 664; Ł. Gacek, *The communist system in China – inspirations from the past* [in:] A.W. Jelonek, B.S. Zemanek (Eds.), *Confucian Tradition. Towards the New Century*, Kraków 2008, p. 66.

12 I. Alatio, J. Huang, *Women managers' careers in information technology in China: high flyers with emotional costs?*, *Journal of Organizational Change Management* 2007, Vol. 20, No. 2, p. 231.

13 *Being a Woman in China Means Working a Sixth of Your Life Unpaid*, Bloomberg News 2019, <https://www.bloomberg.com/news/articles/2019-01-25/being-a-woman-in-china-means-working-a-sixth-of-your-life-unpaid>, (accessed 30.07.2020).

14 Z. Erdenebileg, *op.cit.*

15 J. Li, *How Chinese women 'hold up half the sky' but earn far less than men*, *South China Morning Post* 2018, <https://www.scmp.com/business/china-business/article/2136228/job-convenience-cited-factor-why-women-earn-less-china> (accessed: 30.07.2020).

16 I. Alatio, J. Huang, *op.cit.*; J. Li, *op.cit.*



People's Republic of China are held by women<sup>17</sup>. The European Union's statistics when it comes to women managers are twice as high (36.9%) and are considered low and in need of improvement<sup>18</sup>. In 2018 the same Organization reported that in a survey of 401 companies, only 20.1% of them claimed that they had a woman CEO<sup>19</sup>. World Economic Forum in its "The Global Gender Gap Report 2020" states that in 2019 only 9.7% of board directors from listed companies in PRC were women<sup>20</sup>, in the EU women account for 28% of them<sup>21</sup>.

## CHINA NATIONAL PROGRAM FOR WOMEN'S DEVELOPMENT (2011–2020)

In order to assess the effectiveness of this program, the National Bureau of Statistics has created a comprehensive analysis. The program has been divided into seven areas: health, education, economy, social security, environment and law. The health and environment segments will not be discussed any

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17 *Women in business and management: Gaining momentum*, International Labour Organization 2015, [https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_316450/lang--en/index.htm](https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_316450/lang--en/index.htm) (accessed: 12.08.2020).

18 *8 March 2020: International Women's Day*, Eurostat 2020, <https://ec.europa.eu/eurostat/documents/2995521/10474926/3-06032020-AP-EN.pdf/763901be-81b7-ecd6-534e-8a2b83e82934>, (accessed: 10.08.2020).

19 *Women in Business and Management: The Business Case for Change: Country Snapshots*, International Labour Organization 2019, p. 4, [https://www.ilo.org/global/publications/WCMS\\_702188/lang--en/index.htm](https://www.ilo.org/global/publications/WCMS_702188/lang--en/index.htm) (accessed: 08.08.2020).

20 *The Global Gender Gap Report 2020*, World Economic Forum 2020, <http://reports.weforum.org/global-gender-gap-report-2020/dataexplorer/#economy=CHN> (accessed: 08.08.2020).

21 *8 March 2020: International Women's Day*, op.cit.



further in this chapter, as they are not directly related to its subject<sup>22</sup>.

When it comes to education, the China National Program for Women's Development eliminated the gender gap when it comes to compulsory nine-year education has been eliminated. Girls' survival rate of the compulsory education increased from 91.1% in 2010 to 94.2% in 2018. The proportion of girls that receive pre-primary education noted an increase of 1.3 percentage points from 2010. The proportion of girls attending institutions of senior secondary education stage (this stage includes: regular senior secondary schools, senior secondary schools for adults, regular and adult specialized secondary education, senior secondary vocational schools, vocational-technical schools) slightly increased (by 0.3 percentage points) from 2010, when girls accounted for 47.1% of all students in those institutions. The number and proportion of female students in colleges and universities in PRC has also risen (as shown in Figure 1). In 2018 there were 14.87 million female students in colleges and universities and they accounted for 52.5% of all students (with an increase of 1.5 percentage points from 2010)<sup>23</sup>.

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22 2018 Statistical Monitoring Report on the Implementation of China National Program for Women's Development (2011–2020), National Bureau of Statistics 2019, [http://www.stats.gov.cn/english/PressRelease/202001/t20200103\\_1721237.html](http://www.stats.gov.cn/english/PressRelease/202001/t20200103_1721237.html), (accessed: 27.07.2020).

23 Ibidem.



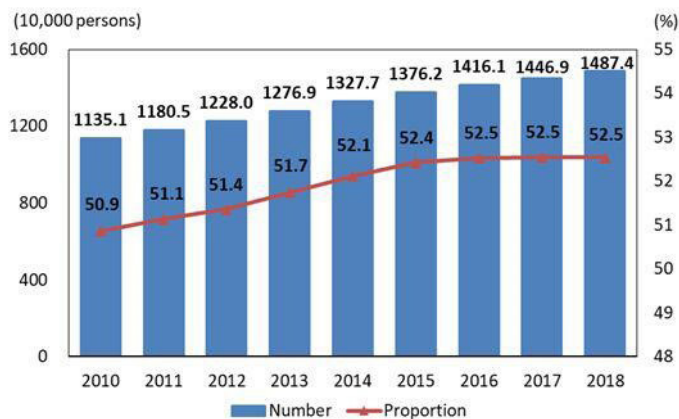


Figure 1 source: 2018 Statistical Monitoring Report on the Implementation of China National Program for Women's Development (2011–2020) by the National Bureau of Statistics

According to the NBS, in 2018 women accounted for 43.7% of the total employed population. This proportion of women in the total PRC's workforce has not changed much in the previous years. Yet, the employment rate has changed.

According to the National Bureau of Statistics of China women account for 43.7% of the employed population and 39.9% of directors on the boards of directors of enterprises<sup>24</sup>. The Bureau also pointed out in its analysis that female delegates of the National People's Congress during the 13<sup>th</sup> session of the NPC accounted for 24.9% of all delegates which was the highest number in NPC's history. Additionally, during 13<sup>th</sup> session of the National Committee of the Chinese People's Political Consultative Conference female delegates accounted for 20.4% of all delegates (which is 2.6 percentage points more

<sup>24</sup> Ibidem.



than during the previous session)<sup>25</sup>. Ha Fei, one of the female delegates, said in one interview that she perceives treating women more fairly in political elections as a proof of progress in gender equality in People's Republic of China<sup>26</sup>.

One of the Program's goals was to support women's development through social security. Medical, maternity, basic pension and unemployment insurance have been improved to better fulfil Chinese women's needs<sup>27</sup>. Chinese government also continuously improves the legal system in order to better protect women's rights and interests. So far, a gender equality review mechanism has been established for law and regulations among all the provinces, autonomous regions and municipalities to help embed gender equality into the process of creation, implementation and supervision of regulations and policies<sup>28</sup>. According to the National Bureau of Statistics of China, in 2018 there were 3 389 government legal aid institutions at all Chinese administrative levels (provincial and prefecture as well as county)<sup>29</sup>.

## DISCRIMINATION AGAINST WOMEN IN JOB ADS

The most noticeable discrimination against women in China is in hiring. In 2017 13% of job postings in national civil service job lists specified that the posting is addressed strictly to men by "men only", "men preferred" or "suitable for man". In

25 C. Siqi, *More Chinese women elected to seats at NPC, CPPCC*, People's Daily Online 2019, <http://en.people.cn/n3/2019/0311/c90000-9554914.html>, (accessed: 08.08.2020).

26 Ibidem.

27 *China National Program for Women's Development (2011-2020)*, All-China Women's Federation 2015, <http://www.womenofchina.cn/womenofchina/html1/Sources/1502/998-1.htm>, (accessed: 08.08.2020).

28 *2018 Statistical Monitoring Report on the Implementation of China National Program for Women's Development (2011-2020)*, op.cit.

29 Ibidem.





2018 these kinds of postings accounted for 19% of all postings. Both in 2017 and 2018 no postings specified a preference for a woman. When women were not excluded from the hiring process, there were often information that a female applicant should be already married with children. Human Rights Watch claims it analyzed more than 36 000 job postings<sup>30</sup>.

In 2013, a woman called Cao Ju has filed what is believed to be the first gender discrimination lawsuit in China. Cao sued the Juren Academy in Beijing because they refused to consider her application for an administrative assistant's position. The job posting included a notion that only men are invited to apply for the job. Firstly, the court did not even respond to her lawsuit within its seven-day limit. Then, multiple other courts followed its' steps. The Labour Inspectorate in Haidian after being notified by Cao about the discrimination, responded to her that since the Juren Academy changed the job posting and it no longer excludes women from applying, there were no longer any legal grounds for her case. She then applied to the Beijing Human Resources and Social Security Bureau for an administrative review and it upheld The Labour Inspectorate's decision. After that Cao has decided to appeal to the Haidian District Court. She accused the Bureau of failing to fulfil its' statutory duty. Her administrative appeal failed but after all her efforts and thanks to the help she received from civil society organizations and activists, her civil case against the Juren Academy was finally accepted. Cao first tried to file her lawsuit on July 11<sup>th</sup> 2012 and it was finally accepted by court on September 13<sup>th</sup> 2013, which means that for more than a year

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30 "Only Men Need Apply" *Gender Discrimination in Job Advertisements in China*, Human Rights Watch 2018, <https://www.hrw.org/report/2018/04/23/only-men-need-apply/gender-discrimination-job-advertisements-china>, (accessed: 08.08.2020).



a system that issues and implements regulations that are supposed to prevent those situations from ever happening, impeded her fight for gender equality in the workplace for more than a year. After another year the case has been settled out of court and Cao Jun has accepted 30 000 RMB in damages<sup>31</sup> and an apology from the Academy.

In 2014, a 23-year-old woman named Guo Jing<sup>32</sup>, sued the New Oriental Cooking School for discrimination on the basis of sex. The plaintiff first noticed that the job posting specified that only male candidates were considered only after applying. She had a perfectly suitable education for the job but was told that it involved carrying boss's suitcases and they believed that only men were capable of doing that. Woman disagreed and decided to sue the school. The court agreed with her and ruled that the New Oriental Cooking School violated a job applicant's right to equal employment and committed employment discrimination by excluding women from the application process. It was a first gender discrimination court case in Zhejiang province<sup>33</sup>. The plaintiff was awarded 2 000 RMB<sup>34</sup>.

In 2015 Beijing Postal Service has been sued for not only posting an ad that specified that they will recruit only men but also for not hiring a woman that did apply because "they did not hire women as frontline operatives". The plaintiff, 25 years old Ma Hu won and was awarded 2 000 RMB, which is much

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31 *Plaintiff obtains 30,000 yuan in China's first gender discrimination lawsuit*, China Labour Bulletin 2014, <https://clb.org.hk/content/plaintiff-obtains-30000-yuan-china%E2%80%99s-first-gender-discrimination-lawsuit>, (accessed: 08.08.2020).

32 *"Only Men Need Apply" Gender Discrimination in Job Advertisements in China*, op.cit.

33 *Plaintiff awarded 2,000 yuan by court in Hangzhou gender discrimination case*, China Labour Bulletin 2014, <https://www.clb.org.hk/content/plaintiff-awarded-2000-yuan-court-hangzhou-gender-discrimination-case>, (accessed: 08.08.2020).

34 *Ibidem*.



less than she demanded in her lawsuit<sup>35</sup>.

Another case of gender discrimination on an employment platform came to light in 2017 after a student named Xiao Zhou visited a recruitment office of a biggest employment platform in China called Zhaopin. During her visit she came across multiple job postings specified as “men only”, despite the fact that the company claims to fight this kind of advertisements. The employers trying to recruit an employee on that platform bypassed their rules about gender discrimination by writing the word “male” in *pinyin*, instead of using Chinese characters<sup>36</sup>.

### 任职要求:

1. nan, 年龄33~48岁。
2. 全日制大专及以上学历, 8年以上旅
3. 沟通能力强, 良好的谈判能力, 工作

Figure 2 source: China’s women fight back against workplace discrimination, China Labour Bulletin 2017, <https://clb.org.hk/content/chinas-women-fight-back-against-workplace-discrimination> (accessed: 08.08.2020).

Even though article 33 of the Constitution of the People’s Republic of China<sup>37</sup> clearly states that:

35 *Woman successfully sues Beijing postal service in gender discrimination case*, China Labour Bulletin 2015, <https://www.clb.org.hk/content/woman-successfully-sues-beijing-postal-service-gender-discrimination-case> (accessed: 08.08.2020).

36 *China’s women fight back against workplace discrimination*, China Labour Bulletin 2017, <https://clb.org.hk/content/chinas-women-fight-back-against-workplace-discrimination>, (accessed: 08.08.2020).

37 The Constitution law of People’s Republic of China, WIPO, <https://www.wipo.int/edocs/lexdocs/laws/en/cn/cn147en.pdf>, (accessed: 08.08.2020).



(1) All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China.

(2) All citizens of the People's Republic of China are equal before the law. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.

(3) The State respects and preserves human rights.

Which means all its citizens are equal and as has been stated above – PRC has multiple laws and policies created and implemented to protect women's rights and employment equality, the discrimination in workforce is widely tolerated and in a tremendous need of improvement<sup>38</sup>. Especially since it is also practiced by government institutions like the Postal Service<sup>39</sup>. Human Rights Watch in its report stressed that in 2017 and 2018 companies like Alibaba and Huawei still had numerous job postings that specified that only men were being recruited for this job. When ads do specify women, they also specify that they have to be “fashionable and beautiful”, weigh below 65 kilograms or have “a sweet voice” or be “married with children”, “aesthetically pleasing”. Sometimes ads also specify age: “18-25 years old”, “18-30 years old”, “between 28 and 35 years old”. Both Huawei and Alibaba have created events or videos promoting working for them as a great opportunity to work and look at “beautiful girls”.

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38 *Workplace Discrimination*, China Labour Bulletin 2020, <https://www.clb.org.hk/content/workplace-discrimination#gender>, (accessed: 08.08.2020).

39 *Woman successfully sues Beijing postal service in gender discrimination case*, op.cit.



## CONCLUSIONS

Since 1949 a lot has changed in Chinese law, not only when it comes to women's rights and gender equality<sup>40</sup>. In May 2020, during the Third Session of the Thirteenth National People's Congress, the first Civil Code of the People's Republic of China has been adopted and will take effect on January 1<sup>st</sup> 2021<sup>41</sup>. It is impossible to predict how the new, innovative solutions will be effective in reality, but the new civil code could be "a new era" regarding to the anti-discriminatory law. First time in the history of the PRC's legal framework, there will be provided a definition of sexual harassment, which will possibly strengthen protection of women's rights and interests in China<sup>42</sup>. Article 1010 of the Civil Code provides that: "Where a person acts sexually harassing another person in speech, text, images, physical behaviours or otherwise against the will of the person, the victim has the right to request the harasser to bear civil liability according to the law. Agencies, enterprises, schools and others shall adopt reasonable prevention, acceptance and handling of complaints, investigation and other handling measures to prevent and curb sexual harassment by making use of

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40 See: I. Szpotakowski, *Suwerenność państwa i rzędy prawa: kodyfikacja prawa prywatnego w Chinach*, Świat Idei i Polityki, Issue XVII 2018, p. 158-171.

41 *The Civil Code of the People's Republic of China adopted at the Third Session of the Thirteenth National People's Congress on May 28, 2020* (中华人民共和国民法典), [http://www.xinhuanet.com/politics/2020-06/01/c\\_1126061072.htm](http://www.xinhuanet.com/politics/2020-06/01/c_1126061072.htm), (accessed: 08.08.2020); I. Szpotakowski, *Geneza i rola zwyczaju w nowej części ogólnej kodeksu cywilnego Chińskiej Republiki Ludowej*, Warsaw University Law Review, Volume XVIII, No. 1/2019, p. 185.

42 C. Yin, *Civil code defines, bans sexual harassment*, June 01, 2020, <https://www.chinadailyhk.com/article/132331> (accessed: 01.09.2020).



official powers and affiliation”<sup>43</sup> This provision gives high hopes for the future of the fight for gender equality in the PRC, but a deeper analysis of these new legal solutions will be required when the new civil code will take effect.

To sum up, as Human Rights Watch report shows, there is still a lot to be done when it comes to providing women with safe and equal work environment. Now, the discrimination of women starts right when they enter the labour force – when they look for a job and over and over again come across ads that tell them they are not “preferred” at a certain job post<sup>44</sup>. Since women account for almost half of the labour force in China<sup>45</sup>, they should not be excluded from one in five recruitment processes<sup>46</sup>.

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43 In Chinese: 第一千零一十条 违背他人意愿，以言语、文字、图像、肢体行为等方式对他人实施性骚扰的，受害人有权依法请求行为人承担民事责任。机关、企业、学校等单位应当采取合理的预防、受理投诉、调查处置等措施，防止和制止利用职权、从属关系等实施性骚扰。

44 “Only Men Need Apply” *Gender Discrimination in Job Advertisements in China*, op.cit.

45 2018 *Statistical Monitoring Report on the Implementation of China National Program for Women’s Development (2011–2020)*, op.cit.

46 “Only Men Need Apply” *Gender Discrimination in Job Advertisements in China*, op.cit.



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- 14 Li J., *How Chinese women 'hold up half the sky' but earn far less than men*, *South China Morning Post* 2018, <https://www.scmp.com/business/china-business/article/2136228/job-convenience-cited-factor-why-women-earn-less-china> (accessed: 30.07.2020).





- 15 Lubina M., *Wspólnotowe kultury polityczne Rosji i Chin. Podobieństwa i różnice*, Politeja 2013, Vol. 10(26), p. 659 – 672.
- 16 *Number of registered enterprises in China 2016-2018*, Statista, <https://www.statista.com/statistics/1008055/china-number-of-registered-companies/> (accessed: 27.07.2020).
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- 22 Szpotakowski I., *Geneza i rola zwyczaju w nowej części ogólnej kodeksu cywilnego Chińskiej Republiki Ludowej*, Warsaw University Law Review, Volume XVIII, No. 1/2019, p. 173 – 186.
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- 26 *Women in Business and Management: The Business Case for Change: Country Snapshots*, International Labour Organization 2019, [https://www.ilo.org/global/publications/WCMS\\_702188/lang--en/index.htm](https://www.ilo.org/global/publications/WCMS_702188/lang--en/index.htm), (accessed: 08.08.2020).
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29 The Constitution law of People's Republic of China, WIPO, <https://www.wipo.int/edocs/lexdocs/laws/en/cn/cn147en.pdf>, (accessed: 08.08.2020).

30 The Global Gender Gap Report 2020, World Economic Forum 2020, <http://reports.weforum.org/global-gender-gap-report-2020/dataexplorer/#economy=CHN> (accessed: 08.08.2020).

31 Yin C., *Civil code defines, bans sexual harassment*, June 01, 2020, <https://www.chinadailyhk.com/article/132331> (accessed: 01.09.2020).

32 Zhang L.X., *Agricultural And Rural Development In China*, p. 1-2, [http://pubs.iclarm.net/Pubs/china/pdf/china\\_agricultural.pdf](http://pubs.iclarm.net/Pubs/china/pdf/china_agricultural.pdf) (accessed: 27.07.2020).



## FINAL REMARKS

At the time of writing this monograph, world events and the international situation were changing rapidly. What seemed unthinkable a decade ago then became reality. Coronavirus, the trade and technological war between China and the United States of America, recession, significant limitation of social mobility. Writing anything regarding contemporaneity is always followed by a big risk. A risk of the research to become obsolete or to lose its validity. That is why in this monograph the authors have based their considerations on contemporary China on culture, history and Chinese specificity. Because although the future is changeable and there are no imminent prospects of stability, the analysis of the present with history, cultural patterns, society, language, cultural legacy makes this view richer and more valuable, and more resistant to the test of time. All of the chapters presented in this book have fulfilled that goal and aimed to do just that – creating a longstanding, valuable research through understanding how the country's cultural legacy affects the present day China.

At the end it is worth mentioning that the problems presented at this book are only a part of the bigger picture and there is still a lot to analyse. Therefore the editors hope that this monograph will contribute to making further research and the next steps easier in better understanding and researching modern China and the Chinese for Polish academics.



**THIS MONOGRAPH IS A COLLECTION OF CHAPTERS DEVOTED TO MODERN CHINA ON VARIOUS APPROACHES. THERE IS NO FUTURE WITHOUT A PAST AND A MODERN CHINA IS A COUNTRY THAT SKILLFULLY COMBINES THE NEW WITH THE OLD AND THE AUTHORS HAVE ATTEMPTED TO PRESENT THIS PHENOMENON IN THIS BOOK.**

**IT BRINGS TO LIGHT ISSUES SUCH AS A HONORIFICATIVITY IN CHINESE ADMINISTRATIVE AND LEGAL DOCUMENTS, A COMPARISON OF CHINESE AND WESTERN LEGAL TRADITIONS IN THE PAST AND NOW, MODERN POLISH AND CHINESE CIVIL LAW PERSPECTIVES ON THE PRINCIPLE OF GOOD FAITH AND FINALLY, THE CHINESE GOVERNMENT'S EFFORTS TO END GENDER DISCRIMINATION IN THE WORKPLACE, DISCOVERING THE ROOTS OF THE HANFU MOVEMENT DEVELOPMENT, A BRIEF OVERVIEW OF CONSTRUCTING SINO-POLISH BRIDGES AND LAST BUT NOT LEAST THE PERSPECTIVE OF CHINESE AND EUROPEAN ABOUT MIANZI AND GUANXI CONCEPTS IN THE 21ST CENTURY.**

**THE INTERDISCIPLINARY RESEARCH FIELD THUS MARKED OUT ENABLED AUTHORS TO PRESENT CONTEMPORARY CHINA AND ITS INHABITANTS IN A DIFFERENTIATED WAY. THE THEMATIC SCOPE OF EACH CHAPTER IS AN INSPIRING REFLECTION ON THE UNIQUE VARIETY OF CHINA.**

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