



Comparative
Law and
Language

2026

Vol.5 No.1



UNIVERSITY
OF TRENTO



Comparative Law and Language

Open access six-monthly scientific journal

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Published by

Università degli Studi di Trento

via Calepina, 14 – 38122 Trento

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www.unitn.it

ISSN: 2785-7417

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Emojis in law: consent, context and interpretative reasoning

When law adapts to and embraces new forms of language

Anne-Sophie Milard*

ABSTRACT: The rapid development of digital technologies is reshaping the ways in which people communicate, requiring legal systems to adapt accordingly. Among the most notable developments is the increasing use of emojis as a means of conveying meaning, intention, and emotion in digital interactions. Although the idea that courts may need to interpret emojis can appear surprising, it is ultimately a logical consequence of changing forms of communication. Law has never been static; throughout history, it has continuously adapted to technological and social transformations. The emergence of emojis therefore represents not a departure from established legal practice, but a new manifestation of an enduring challenge: ensuring that legal interpretation remains responsive to contemporary modes of expression. However, such adaptation is not without difficulties. The interpretation of emojis is often context-dependent and may vary across cultures, platforms, and individuals, creating uncertainty for legal analysis. Moreover, the absence of a uniform approach to emoji interpretation among courts and jurisdictions worldwide further complicates their legal treatment. This paper examines the growing legal significance of emojis and argues that, despite these challenges, their consideration within legal analysis reflects the broader capacity of law to evolve alongside technological innovation and societal change. Particular attention is given to such developments in Canada and the United States, whose case law provides valuable insight into the emerging legal treatment of emojis in contemporary communication.

KEYWORDS: emoji; thumb-up; 👍; contract; acceptance; signature.

SUMMARY: 1. Introduction; 2. Law confronted with digital language: a pragmatic adaptation; 2.1. Concrete and contextual assessment of new digital elements; 2.2. Legal characterisation based on established categories; 3. Our challenges raised by the legal translation of digital communication; 3.1. The difficulty of interpreting emojis; 3.2. A gradation of normative intensity: contract law in Canada, the United States and Israel; 4. Conclusion.

1. Introduction

Mastery of a language necessarily involves knowledge of its conjugation and grammar, but also—just as fundamentally and obviously—of its writing system, which makes it possible to externalise¹ speech. Writing may thus be understood as a “system of symbols”, leaving behind a material trace in which the information of oral language lies “encoded”, awaiting to be “decoded”². This material trace requires the use of a set of signs arranged sequentially, forming either ideograms—such as the hieroglyphs of ancient Egypt or the sinograms of the Chinese language—or letters, as in the Latin alphabet on which the English language is based.

Languages, however, evolve. Some words disappear while others emerge; rules of conjugation and grammar adapt to societal change. Modes of written expression have similarly undergone profound

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¹ M. VITALI-ROSATI, *Qu'est-ce que l'écriture numérique?*, in *Corela* [En ligne], HS-33, 2020. URL: <https://journals.openedition.org/corela/11759>; DOI: <https://doi.org/10.4000/corela.11759>, p. 2, § 8.

² R. PERRON, M. AUZIAS, *L'évolution de l'écriture et de la motricité graphique*, in *Bulletin de psychologie*, tome 19 n°247, numéro thématique : Aspects du langage, 1966, pp. 516-524., p. 516. DOI: <https://doi.org/10.3406/bupsy.1966.7636>; www.persee.fr/doc/bupsy_0007-4403_1966_num_19_247_7636.

transformations: from cave paintings to printed characters on paper, they are now increasingly dematerialised through electronic writing. Electronic writing refers to all forms of written communication produced and disseminated *via* the Internet, word-processing software, emails, instant messaging services or social media platforms³.

More recently still, single-character ideograms—generally colourful and representing a wide range of expressions—have begun to appear, primarily used in short written messages such as SMS, WhatsApp or Instagram communications. Referred to variously as smileys, emojis⁴ or emoticons⁵, this new element of written language—seemingly simple to understand—has become virtually unavoidable. Emojis now have their own World Emoji Day (17 July)⁶, their own repositories⁷, statistics⁸ and awards⁹. With approximately five billion emojis used daily on social media¹⁰, it is highly likely that readers are familiar with some of the most commonly used ones: those expressing laughter 😂, affection 🥰, emotion 😭, celebration 🎉, encouragement 🙌, or approval—the well-known “thumbs-up” 👍.

While emojis may be seen as facilitating written communication, serving marketing purposes or making written exchanges more convivial, they were not traditionally perceived as a form of acceptance or signature within the meaning of contract law. Lord Denning or Earl Warren would no doubt have been surprised to see that these now commonplace “signs of intention”¹¹ require legal scrutiny to determine their binding force, despite their unconventional nature. A Canadian decision recognising genuine legal effect in an emoji has generated extensive doctrinal commentary. Far from being an isolated case, this development more broadly raises the question of how law and justice adapt to transformations brought about by digital technologies. Although law is often perceived as a stable institution, its history reveals a continuous process of adaptation to social and technological developments. As Roger Brownsword observes, lawyers must increasingly “re-imagine law as a part of a much broader regulatory environment”¹², one that encompasses not only traditional legal rules but also technological forms of regulation. The growing use of emojis in digital communication should be understood within this broader context. Although the legal significance of pictographic symbols may initially appear unconventional, it reflects a familiar challenge for legal systems: ensuring that legal interpretation remains capable of capturing meaning as forms of communication evolve alongside technological progress. However, such adaptation is not without difficulties. Emojis do not convey a fixed or universally accepted meaning; their interpretation may vary depending on the surrounding context, the cultural environment, the platform used, and the individual receiving the message. As courts and jurisdictions around the world have yet to adopt a uniform interpretative framework, the legal treatment of emojis remains particularly complex.

This brief overview of several emblematic judicial decisions—primarily North American—illustrates how the law approaches contemporary technological change, particularly in contract law, between pragmatic adaptation (2) and unresolved challenges (3).

³ S. WACHS, *Écriture numérique spontanée et variabilité : un écrit/oral à exploiter en Français Langue Étrangère (sensibiliser aux styles et à la prononciation)*. Henry Tyne, Mireille Bilger, Paul Cappeau, Emmanuelle Guerin. *La variation en question(s) - Hommages à Françoise Gadet*, 36, Bristol, pp.237-254, 2017, Gramm-R, 978-2-8076-0296-0. <halshs-02960042>, p.1.

⁴ Officially, the terms are not interchangeable. Created in 1996 by Shigetaka Kurita, smileys and emojis are pictograms: ☺ ☹ etc.

⁵ While emoticons, attributed to Professor Scott Fahlman of Carnegie Mellon University in the United States (1982), are typographic in nature: :) = happy - :(= sad, etc.

⁶ <https://worldemojiday.com/>.

⁷ <https://www.unicode.org/emoji/charts-13.1/emoji-list.html>.

⁸ <https://worldemojiday.com/statistics>.

⁹ <https://worldemojiawards.com/2020>.

¹⁰ M. KEJRIWAL, Q. WANG, H. LI, L. WANG, *An empirical Study of emoji usage on Twitter in Linguistic and national contexts, in Online Social Networks and Media*, vol. 24, 202 (DOI 10.1016/j.osnem.2021.100149).

¹¹ E. Dresner et S. C. Herring, “Functions of the Nonverbal in CMC: Emoticons and Illocutionary Force”, 2010, 20 *Communication Theory* 249.

¹² R. BROWNSWORD, *Law, technology, and society: Re-imagining the Regulatory Environment*, London, 2020, p. 199.

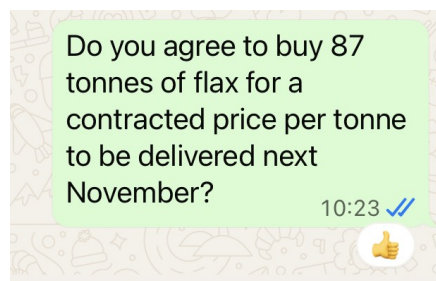
2. Law confronted with digital language: a pragmatic adaptation

The rise of digital communications disrupts traditional modes of contract formation by introducing novel forms of expressing consent, such as emojis or instant messaging exchanges. These new media call into question how the law apprehends manifestations of intent that may be extremely concise, yet nonetheless meaningful. The originality of such situations does not, however, justify calling into question the foundational principles of contract law.

Actually, judges have adopted a pragmatic approach, undertaking a concrete and contextual assessment of these new digital elements (2.1) in order to determine their true legal significance. At the same time, courts remain anchored in traditional solutions, relying on well-established legal categories (2.2), thereby ensuring the stability and coherence of contract law in the face of technological change.

2.1. Concrete and contextual assessment of new digital elements

Although emojis have been present in everyday digital written exchanges since 1996—initially sporadically and later more extensively—they only began to attract sustained legal and judicial attention in the 2010s. Two decisions in particular, one American and one Canadian, have addressed the interpretation of a 😊 emoji and a 👍 emoji appended to written messages, one posted on Twitter, the other *via* WhatsApp.



In the first case¹³, Ryan Cohen, CEO of GameStop, acquired approximately 10% of the shares of Bed Bath & Beyond (BBY) in March 2022. This investment generated considerable enthusiasm among retail investors, which did not go unnoticed by the American media outlet CNBC. The channel commented that “BBY’s stock price is disconnected from its fundamental value” and accompanied its analysis with a photograph depicting a woman pushing a shopping cart filled with BBY products¹⁴. Cohen retweeted the article, adding the comment: “At least her cart is full 😊”.

This tweet was interpreted by investors as “a rallying cry to buy BBY stock”¹⁵, the use of the emoji suggesting that the stock would soar—what investors colloquially refer to as “going to the moon”. On the same day, BBY’s share price surged, reaching USD 16¹⁶ three days later. Cohen subsequently

¹³ *Bratya SPRL v. Bed Bath & Beyond Corporation*, No. 1:22-cv-02541 (TNM) (2024).

¹⁴ K. MONEKE, *The New Language: Contractual Interpretation in the Age of Emojis*, in *Bates College Undergraduate Law Review*, vol. 2: Iss. 1, Article 8, 2025, p. 76. Available at: <https://scarab.bates.edu/bulr/vol2/iss1/8>.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

sold his entire stake in the company, generating a substantial profit, while the share price collapsed shortly thereafter¹⁷, ultimately leading to the liquidation of BBY in March of the following year.

Brought before the United States District Court for the District of Columbia, the case raised complex issues, including the question of “market efficiency for stocks subjected to extreme and temporary periods of volatility”¹⁸ and, *inter alia*, how reasonable individuals react to a tweet considered in its entirety. Although the issue was novel and the court did not dwell on it at length, it nevertheless took care to state that “fraudsters may not escape liability simply because they used an emoji. Just like with words, liability will turn on the emoji’s particular meaning in context.”¹⁹

A few months later, the issue reappeared before the courts, this time focusing squarely on the legal significance of an emoji. In the Canadian decision *South West Terminal Ltd. v. Achter Land & Cattle Ltd.*²⁰, dated 8 June 2023, the claimant (the alleged buyer) argued that a contract had been concluded with the defendant (the alleged seller) for the purchase of 87 metric tonnes of flax at an agreed price per tonne, with delivery scheduled for November. When the defendant failed to deliver the goods, the claimant brought an action for breach of contract and sought damages.

The negotiations had been conducted entirely in writing, *via* text messages exchanged on the parties’ respective mobile phones. The claimant inferred from the “thumbs-up” emoji sent by the defendant in response to its own message that this emoji constituted acceptance of the offer. The judge of the King’s Bench Court of the province of Saskatchewan therefore had to rule on the unprecedented question of whether a “thumbs-up” emoji sent by SMS in response to a written and signed contract transmitted by text message could constitute a valid contract.

Not only did the court answer this question in the affirmative, but its decision was upheld on appeal. The Court of Appeal found that the lower court had not erred in its analysis of the parties’ intention to enter into a contract²¹ or in its assessment of their agreement on the essential terms of the contract²².

2.2. Legal characterisation based on established categories

An emoji may therefore be interpreted as expressing consent to the conclusion of a contract. As novel as this may appear, is the situation truly so innovative from the perspective of contract law? In the Canadian decision of particular relevance here, *South West Terminal Ltd. v. Achter Land & Cattle Ltd.*²³, although the judge of the King’s Bench Court of the province of Saskatchewan answered in the affirmative the unprecedented question of whether a “thumbs-up” emoji sent by SMS in response to a signed contract transmitted by text message could constitute a valid contract, the reasoning relied on legal principles that were, in reality, entirely classical.

In the first place, and in a traditional manner, the Common Law judge examined the criteria required for a contract to be validly formed, namely capacity²⁴, intention to create legal relations²⁵, consideration²⁶, and, most crucially in the present context, consent. On the one hand, an offeror makes an offer to an offeree, who in turn communicates acceptance. This involves expressing “a manifestation of willingness to enter into a contract on specified terms, made with the intention that it is to be binding upon acceptance by the person to whom it is addressed”²⁷. The offer must therefore be brought to the attention of the offeree, which in Common Law requires not only that it be addressed to a particular

¹⁷ *Ibid.*, p. 11.

¹⁸ *Ibid.*, § 21 p. 25.

¹⁹ K. MONEKE, *op. cit.*, p. 78: “fraudsters may not escape liability simply because he used an emoji. Just like with words, liability will turn on the emoji’s particular meaning in context”.

²⁰ *South West Terminal Ltd. v. Achter Land & Cattle Ltd.*, 2023 SKKB 116 (CanLII), <<https://canlii.ca/t/jxq15>>.

²¹ *Achter Land & Cattle Ltd. v. South West Terminal Ltd.*, 2024 SKCA 115, § 67.

²² *Ibid.*, § 82.

²³ *Op. cit. South West Terminal Ltd. v. Achter Land & Cattle Ltd.*, 2023.

²⁴ *Pitt v Smith* (1811) 3 Camp 33.

²⁵ *Balfour v Balfour* (1919) 2 KB 571.

²⁶ *Currie v Misa* (1874) LR 10 Ex 153.

²⁷ *Stover v Manchester City Council* (1974) 1 WLR 1403.



person, a group of persons, or even the world at large, but also that the existence of the offer be effectively communicated so that the offeree is aware of it. In return, the offeree must demonstrate an intention to accept the offer by expressing acceptance, defined as “the final and unequivocal expression of assent to the terms of the offer”²⁸. Such acceptance may be expressed orally, in writing, or even through conduct—for instance, by shaking the offeror’s hand. Once these elements are established, a contract may be declared binding upon the parties.²⁹

To ensure that all these criteria had indeed been satisfied, the Canadian court relied on the existence of a *consensus ad idem*—a meeting of the minds—and on the certainty of terms, making use of the *officious bystander test*. This test is commonly applied “to determine whether an unstated condition was originally implied at the time the contract was drafted”³⁰. The court concluded that an objective and impartial observer would have inferred that the parties had reached an agreement, as had occurred on numerous previous occasions.

To that end, the court examined the parties’ prior course of business³¹ and found that it was common practice for the claimant to transmit contracts by email or SMS. Prior to the disputed transaction, four contracts³² had been concluded between the parties through text messaging. Each time the claimant appended to the contractual offer the statement “Please confirm terms of the durum wheat contract”, the defendant replied with brief messages such as “looks good”, “ok”, or “yup”³³. The court observed that, in each instance, the parties clearly understood these succinct responses to constitute confirmation of the contract rather than a mere acknowledgment of receipt from the defendant³⁴.

Accordingly, the court considered that these exchanges reflected a well-established commercial practice known to and accepted by both parties as constituting a valid and binding forward purchase contract. This practice provided indisputable evidence of their business habits. On the balance of probabilities, the judge therefore concluded that the defendant had accepted or approved the contract in the same manner as before, except that on this occasion he used a “thumbs-up” emoji³⁵. Taking all the circumstances into account, the emoji was found to signify acceptance, rather than merely indicating receipt of the contract or an intention to consider it at a later stage. In these circumstances, the “thumbs-up” emoji constituted an “action in electronic form” capable of expressing acceptance within the meaning of section 18 of the 2000 *Electronic Information and Documents Act*³⁶.

The court also addressed the issue of electronic signature. Referring to section 6 of the *Sale of Goods Act*³⁷ of the province of Saskatchewan (*SGA*), it recalled existing case law allowing the use of

²⁸ H.G. BEALE, J. CHITTY, *on Contracts*, London, 2025, chap. 2, § 027.

²⁹ *Scotsburn Co-Op. Services v. W. T. Goodwin Ltd.*, [1985] 1 S.C.R. 54.; *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v Aga*, 2021 SCC 22 35, 459 DLR (4th) 425.

³⁰ The Law Dictionary, *Featuring Black’s Law Dictionary*, 2nd Ed. <https://thelawdictionary.org/officious-bystander-test/>: “A test used to determine if an unstated condition was originally implied at the time of writing the contract.” – as well as *op. cit. Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v Aga* § 37.

³¹ *Op. Cit. South West Terminal Ltd. v Achter Land & Cattle Ltd.*, §19.

³² *Ibid.*

³³ *Ibid.*, § 21.

³⁴ *Ibid.*: “The parties clearly understood these curt words were meant to be confirmation of the contract and not a mere acknowledgement of the receipt of the contract by Chris”.

³⁵ *Ibid.*, § 36: “on the balance of probabilities that Chris okayed or approved the contract just like he had done before except this time he used a 👍 emoji”.

³⁶ *Ibid.*, § 37: “Under these circumstances a 👍 emoji is “an action in electronic form” that can be used to allow to express acceptance as contemplated under The Electronic Information and Documents Act, 2000, SS 2000, c E-7.22 [EIDA] as per s. 18: 18(1) Unless the parties agree otherwise, an offer or the acceptance of an offer, or any other matter that is material to the formation or operation of a contract, may be expressed: (a) by means of information or a document in an electronic form; or (b) by an action in an electronic form, including touching or clicking on an appropriately designated icon or place on a computer screen or otherwise communicating electronically in a manner that is intended to express the offer, acceptance or other matter. (2) A contract shall not be denied legal effect or enforceability solely by reason that information or a document in an electronic form was used in its formation”.

³⁷ *Sale of Goods Act*, RSS 1978, c S-1, S.6 : “When contract enforceable by action 6(1) A contract for the sale of goods of the value of \$50 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold and actually receive the same or give something in earnest to bind the contract or in part payment or



electronic communications and non-handwritten electronic signatures to identify the signatory and establish approval of the document's contents³⁸. The question, therefore, was whether the “thumbs-up” emoji was sufficient to meet the statutory requirements of the *Sale of Goods Act* in the specific circumstances of the case³⁹. The court held that the contract was “in writing” and had been “signed” by both parties for the purposes of the Act⁴⁰. It further concluded that the defendant's use of the “thumbs-up” emoji constituted a valid signature in those circumstances, as the defendant could be identified through his unique mobile phone number⁴¹.

A 👍 emoji may thus constitute not only a response by an offeree to a contractual proposal, but also a legally valid—albeit unconventional—means of signing a document. While the case may appear unprecedented, it was nonetheless resolved by applying long-established principles of contract law to a contemporary factual situation. As the court observed, one cannot—and should not—“attempt to stem the tide of technological and common usage; this appears to be the new reality in Canadian society, and courts will have to be ready to meet the new challenges that may arise from the use of emojis and the like”⁴².

The Supreme Court of Canada declined in 2025 to grant leave to appeal⁴³, thereby allowing the Saskatchewan Court of Appeal to uphold the first-instance judgment⁴⁴ by a majority (two judges to one⁴⁵). The appellate court confirmed that there had been a meeting of minds and a sufficiently valid “signature” on the disputed contract for the purposes of the *Sale of Goods Act*⁴⁶.

With respect to the meaning of the “thumbs-up” emoji used by the seller, the majority on appeal rejected the argument that an emoji could have only one fixed meaning, thereby reaffirming the importance of factual context in determining contractual intent⁴⁷. More specifically, the court emphasised that while it may be difficult to ascertain contractual intent solely by reference to words—since words do not possess an immutable or absolute meaning⁴⁸—the fact that a symbol has no universal meaning does not imply that it is incapable of being assigned a specific meaning in a particular set of circumstances⁴⁹.

unless some note or 2023 SKKB 116 (CanLII) – 26 – memorandum in writing of the contract is made and signed by the party to be charged or his agent in that behalf. (2) This section applies to every such contract notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of the contract be actually made, procured or provided or fit or ready for delivery or that some act may be requisite for the making or completing thereof or rendering the same fit for delivery. (3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale whether there be an acceptance in performance of the contract or not”.

³⁸ *Op. Cit. South West Terminal Ltd. v Achter Land & Cattle Ltd.*, § 59.

³⁹ *Ibid.*, § 60 “is a 👍 emoji good enough to meet the requirements of the SGA in the unique circumstances of this case?”.

⁴⁰ *Ibid.*, § 61 “I find that the flax contract was “in writing” and was “signed” by both parties for the purposes of the SGA. There is no dispute that Kent electronically signed on behalf of SWT”.

⁴¹ *Ibid.*, § 62. “In my opinion the signature requirement was met by the 👍 emoji originating from Chris and his unique cell phone (agreed upon statement of facts para. 2; cross-examination of Chris T6.7-T6.10; T28.6-T28.20) which was used to receive the flax contract sent by Kent. There is no issue with the authenticity of the text message 2023 SKKB 116 (CanLII) – 29 – which is the underlying purpose of the written and signed requirement of s. 6 of the SGA. Again, based on the facts in this case – the texting of a contract and then the seeking and receipt of approval was consistent with the previous process between SWT and Achter to enter into grain contracts.”

⁴² *Ibid.*, § 40.

⁴³ Supreme Court of Canada File No. 41671, 25 juillet 2025: <https://www.scc-csc.ca/cases-dossiers/search-recherche/41671/>.

⁴⁴ *Achter Land & Cattle Ltd. v South West Terminal Ltd.*, 2024 SKCA 115 (CanLII), <<https://canlii.ca/t/k8d5k>>.

⁴⁵ *Achter Land & Cattle Ltd. v South West Terminal Ltd.*, 2024 SKCA 115 (CanLII), <<https://canlii.ca/t/k8d5k>>.

⁴⁶ *Ibid.*, § 94, 139.

⁴⁷ *Ibid.*, § 62.

⁴⁸ *Ibid.*, citing *Sattva Capital Corp v. Creston Moly Corp.*, 2014 SCC 53: “Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning”.

⁴⁹ *Ibid.*, § 49: “However, there is some distance between, on the one hand, saying that a communication – whether it be by word, gesture or symbol – does not bear a universal meaning and, on the other hand, asserting that it is

3. Our challenges raised by the legal translation of digital communication

Notwithstanding this pragmatic approach to digital elements, a number of challenges remain. These difficulties stem, on the one hand, from the inherent uncertainty surrounding the interpretation of emojis (3.1), and, on the other hand, from the current normative framework, which is characterised not by fundamental divergences from one country to another, but rather by differentiated applications of a shared legal standard, as illustrated by the North American approaches on the one hand and the Israeli approach on the other (3.2).

3.1. The difficulty of interpreting emojis

One of the primary challenges, even prior to judicial intervention, lies in determining the meaning to be attributed to emojis. Without delving into the technical details of Unicode⁵⁰—short for *Universal Character Encoding*, “a universal computer standard allowing text to be exchanged across different languages, alphabets, devices, platforms and software”⁵¹—it should be noted that this standard has now been adopted by web browsers and operating systems as a uniform format⁵².

The latest version, Unicode 17.0, comprised as of 9 September 2025 approximately 159,801 characters, while “leaving the visual rendering to each platform”⁵³. These renderings may be proprietary (as with Apple or Samsung) or open-source (as with Twitter or Emojidex)⁵⁴. The consequence is that although each emoji is assigned a distinct numerical code by Unicode—for instance, the emoji 🥰 “smiling face with heart-shaped eyes” corresponds to code U + 1F60D⁵⁵—the visual representation of that emoji is left entirely to the discretion of platform designers such as Apple, Samsung, Google or Microsoft. This virtually incoherent digital environment⁵⁶ can generate ambiguity, making it difficult at this stage to regard emojis as the digital age *lingua franca*⁵⁷.

The example of the “grinning face with smiling eyes” emoji (U + 1F601)⁵⁸ is particularly instructive:

incapable of having a particular meaning ascribed to it in a specific circumstance”.

⁵⁰ L. BICH-CARRIÈRE, 🗣️📖🔍: *que pensent les tribunaux des émojis, émoticônes et autres pictogrammes*, in *McGill Law Journal / Revue de droit de McGill*, 2018, 64(1), 43–108, § 19 et ss. <https://doi.org/10.7202/1067517ar>.

⁵¹ *Ibid.*, § 20.

⁵² <https://www.ionos.fr/digitalguide/sites-internet/creation-de-sites-internet/unicode/>

⁵³ L. BICH-CARRIÈRE, *op. cit.*, § 25.

⁵⁴ *Ibid.*

⁵⁵ K. MONEKE, *op. cit.*, p. 92.

⁵⁶ *Ibid.*

⁵⁷ K. MENSCHER, *Thank you, I Emoji Your Offer: Emojis Translating Acceptance in Contracts*, in *Law School Student Scholarship, Steon Hall Law*, 2021, pp. 1 à 31 – p. 21.

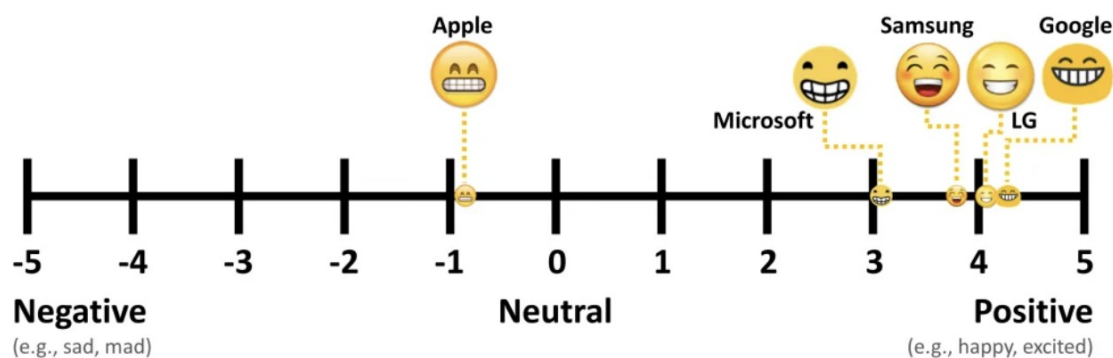
⁵⁸ S. GRIFFITHS, *Are YOU Using Emojis All Wrong? The Icons That Look So Different on iPhones and Android Handsets That Your Friends May Not Know What You Are Talking About*, in *DAILYMAIL* (Apr. 12, 2016), <https://www.dailymail.co.uk/sciencetech/article-3535858/Are-using-emoji-wrong-Grinning-face-icon-looks-different-iPhones-Android-handsets-people-don-t-know-actually-means.html>.



Although the code remains the same, the graphical design varies considerably depending on the platform. More importantly, interpretation itself is far from uniform. A study conducted in 2016⁵⁹ showed that users did not experience the same emotional response when viewing visually different versions of the same emoji. Samsung users tended to interpret the “grinning face with smiling eyes” as conveying a sense of “blissful happiness”⁶⁰, whereas Apple users perceived it as expressing a more aggressive attitude, described as “ready to fight”⁶¹.

Same Emoji + Different Smartphone Platform = Different Emotion

For example, if you send the Apple emoji to a Google Nexus, they'll see the Google emoji, and vice versa!



⁵⁹ E. PERALTA, *Lost in Translation: Study Finds Interpretation of Emojis Can Vary Widely*, in *The Two-Way*, NPR (Apr. 12, 2016) <https://www.npr.org/sections/thetwo-way/2016/04/12/473965971/lost-in-translation-study-finds-interpretation-ofemojis-can-vary-widely>.

⁶⁰ K. MONEKE, *op. cit.*, p. 31.

⁶¹ *Ibid.*

⁶² E. PERALTA, *op. cit.*

Perhaps the most striking illustration is that of the “pistol” emoji, whose design varied dramatically across platforms for several years, oscillating between a playful water gun and a realistic revolver. While this issue was resolved in 2018 through the universal replacement of firearm designs with a water gun, the example clearly demonstrates how the lack of graphic harmonisation can generate significant divergences in communication.

Apple iOS 7 (2013)	Apple iOS 10.0 (2016)	Microsoft Windows 10 (2015)	Microsoft Windows 10.0 (2016)
On va au parc, amène ton	On va au parc, amène ton	The Universe is under no obligation to make sense to you ¹²⁸	The Universe is under no obligation to make sense to you
			

63

Apple iOS 10.0 (2017)	Microsoft 10 (2017)
Tu vas passer un mauvais quart d'heure canaille	Tu vas passer un mauvais quart d'heure canaille
 	 

64

Beyond visual representation, certain emojis are inherently ambiguous. Should the symbol 🙏 - U+1F64F, “person with folded hands” - be interpreted as expressing gratitude, a prayer, a request, a gesture of victory, hope, respect, or even clear consent?

The difficulty of interpretation is further compounded in a globalised world by intercultural variation. The above mentioned “thumbs up” emoji 👍, widely used in Western countries as a sign of approval, may be perceived as vulgar or offensive in other regions⁶⁵. Similarly, the angel emoji 🍌 is associated in Western contexts with innocence or purity of intent, whereas in China it may carry threatening connotations⁶⁶. Applause 👏, commonly understood in Western cultures as conveying praise or

⁶³ L. BICH-CARRIÈRE, *op. cit.* § 84: “We’re going to the park, bring your ...”.

⁶⁴ *Ibid.*, § 85: “You’re in for a rough time, you rascal”.

⁶⁵ M. DANESI, *The Semiotics of Emoji: The Rise of Visual Language in the Age of the Internet* (2017): cited by K. Moneke, *op. cit.*, p.91.

⁶⁶ *Ibid.*



congratulations, is perceived in China as bearing sexual connotations⁶⁷, much like the peach 🍑 or the aubergine 🍆 emojis⁶⁸.

Technological variability, interpretative ambiguity and intercultural differences thus render emojis particularly resistant to uniform interpretation. Judicial engagement with these symbols is therefore both delicate and necessary, especially within normative environments that vary from one jurisdiction to another, as illustrated by the differing North American and Israeli approaches.

3.2. *A gradation of normative intensity: contract law in Canada, the United States and Israel*

In resolving issues relating to contract formation and the validity of signatures in the Canadian dispute between *South West Terminal Ltd.* and *Achter Land*, both the Canadian Court of first instance⁶⁹ and the Court of Appeal⁷⁰ applied traditional contract law principles while adapting them to modern technologies. Their position was facilitated by the ability of courts to recognise diverse forms of digital communication, grounded in the principles of technological neutrality and functional equivalence.

The principle of technological neutrality requires regulation to remain “impartial, refraining from privileging any particular medium—whether paper-based or digital—for the storage or transmission of information”⁷¹. First articulated in the UNCITRAL Model Law on Electronic Commerce⁷², this principle has since been adopted in many other jurisdictions, including the European Union⁷³, as part of a broader transnational effort to adapt established legal principles to evolving modes of communication. In Canada, the principle of technological neutrality has not been implemented at the federal level; it is therefore the various provinces of Canada that have done so⁷⁴. In Saskatchewan, it was incorporated through the *Electronic Information and Documents Act* (EIDA) of 2000⁷⁵. Section 18 of that Act provides that, “Unless the parties agree otherwise, an offer or the acceptance of an offer, or any other matter that is material to the formation or operation of a contract, may be expressed: (a) by means of information or a document in an electronic form; or (b) by an action in an electronic form, including touching or clicking on an appropriately designated icon or place on a computer screen or otherwise communicating electronically in a manner that is intended to express the offer, acceptance or other matter”⁷⁶.

This principle is complemented by that of functional equivalence, also originating in the UNCITRAL Model Law. Functional equivalence involves identifying the fundamental objectives of a legal requirement and determining whether new technological instruments can fulfil the same function⁷⁷. Where they do, those technologies may be accorded equivalent legal value⁷⁸.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, p. 92: Although visually innocuous and initially widely perceived as literal depictions of fruit and vegetables, they have come to carry sexual connotations in popular culture.

⁶⁹ *South West Terminal Ltd. v Achter Land*.

⁷⁰ *Achter Land & Cattle Ltd. v South West Terminal Ltd.*

⁷¹ C. RICHTER, P.-A. VIAU, *Les règles de preuve s'appliquant à la documentation électronique et aux technologies de l'information*, in *Service de la formation continue, Barreau du Québec*, Congrès annuel du Barreau du Québec, Montréal, 2007, p. 45, § 49.

⁷² UNCITRAL Model Law on Electronic Commerce adopted on June 12 1996. https://uncitral.un.org/fr/texts/ecommerce/modellaw/electronic_commerce.

⁷³ See especially the Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast): <https://eur-lex.europa.eu/eli/dir/2018/1972/oj/eng>.

⁷⁴ Quebec: *Loi concernant le cadre juridique des technologies de l'information* (2001) – Ontario: *Electronic Commerce Act* (2000) – British Columbia: *Electronic Transactions Act* (2001) – Alberta: *Electronic Transactions Act* (2001) – Manitoba: *Electronic Commerce and Information Act* (2000) – New Scotia: *Electronic Commerce Act* (2000).

⁷⁵ <https://www.canlii.org/en/sk/laws/stat/ss-2000-c-e-7.22/latest/ss-2000-c-e-7.22.html>.

⁷⁶ S. 18 EIDA.

⁷⁷ A.-A. TREMBLAY, *La décision South West Terminal Ltd. v Achter Land et le droit du commerce électronique*, in *Les Cahiers de propriété intellectuelle*, vol. 36, n° 1 & 2, pp. 103-126, p. 112.



On the basis of these two principles, the Canadian courts were able to recognise the validity of the contract between SWT and Achter not only as regards consent but also signature. They concluded that the use of the 👍 emoji satisfied the requirements of contract law under section 18 of the EIDA.

The United States has also embraced technological neutrality in contract law, notably through the *Uniform Electronic Transactions Act* (UETA), adopted in 1999⁷⁹. Section 7 of UETA provides that a record or signature may not be denied legal effect solely because it is in electronic form, nor may a contract be denied enforceability solely because an electronic record was used in its formation⁸⁰. Many states have enacted analogous legislation at state level, including New York, which adopted the *New York Electronic Signatures and Records Act* - commonly referred to as the *NYS Technology Law* - in 1999⁸¹.

The Supreme Court of the State of New York was thus called upon to address the validity of an emoji-based signature in *Lightstone RE LLC v. Zinntex LLC*⁸². In that case, two parties entered into contracts in April 2020 for the purchase of protective equipment, with the claimant paying over USD 2 million. After the defendant failed to deliver the goods, a subsequent agreement reached *via* text messages provided for partial reimbursement over several instalments. When only part of the amount was refunded, the claimant sought judicial recognition of the validity of this agreement.

The Court recalled that a binding agreement must be established in writing and signed by the party to be charged⁸³, and that “an electronic signature has the same validity and effect as a handwritten signature”⁸⁴. An electronic signature was defined as “an electronic sound, symbol or process, attached to or logically associated with an electronic record and executed or adopted with intent to sign”⁸⁵. Like its Canadian counterpart, the New York Court acknowledged that an emoji-based electronic signature could, in principle, give rise to a valid contract. However, unlike the Canadian case, the NY Court found that the facts did not establish a meeting of the minds or a clear intention to be bound⁸⁶. Given that the defendant had categorically stated only minutes earlier that no document would be signed, the American Court emphasised that intent could not be inferred from the emoji alone⁸⁷, underscoring once again the centrality of contextual analysis.

Context also lay at the heart of the Israeli decision in *Dahan v. Shacharoff*⁸⁸, but here the Court went significantly further than its North American counterparts, consequently raising numerous questions on a global scale, particularly with regard to international law.

Following the posting of an online advertisement, a couple of prospective tenants visited a flat twice before sending the landlord a text message containing multiple emojis expressing enthusiasm and interest, while indicating that details remained to be discussed : “Good morning 😊 We are interested in the home 🏠👨👩👧👦👉👈... We just need to settle on the details... When does it work for you ? ”⁸⁹. Upon sending this text message, the couple visited the flat again and discussed a number of repairs that needed to be made; after reaching an agreement, the landlord sent a copy of the lease, and the two parties spoke

⁷⁸ S. Hel, *Le formalisme du contrat électronique dans l'ASEAN : définition et interprétation des notions d'écrit et de signature*, thèse de doctorat, Montréal, Université de Montréal, Faculté de droit, 2013, p. 61.

⁷⁹ *Uniform Electronic Transactions Act*, 1999: https://www.uaipit.com/uploads/legislacion/files/0000004550_UNIFORM%20ELECTRONIC%20TRANSACTIONS%20ACT.pdf.

⁸⁰ *Ibid.*, § 7: “(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form. (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation”.

⁸¹ <https://its.ny.gov/nys-technology-law>.

⁸² *Lightstone RE LLC v. Zinntex LLC*, 2022 NY Slip Op 32931(U).

⁸³ *Frank Felix Associates Ltd., v. Austin Drugs Inc.*, 111 F3d 284 [2d Cir. 1997].

⁸⁴ *NYS Technology Law Statute*, §304 (2): “‘Electronic signature’ shall mean an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record”.

⁸⁵ *Ibid.*

⁸⁶ *Lightstone RE LLC v. Zinntex LLC*, p. 5: “there still must be a meeting of the minds and an intent to be so bound”.

⁸⁷ A.-A. TREMBLAY, op. cit., p. 119.

⁸⁸ *Dahan v. Shacharof* [2017] File No 30823-08-16. <https://digitalcommons.law.scu.edu/historical/1515/>

⁸⁹ *Ibid.*, p. 11.

on the phone several times. Then, the landlord removed the apartment listing from the website: to her, it was clear that the couple intended to go through with the transaction⁹⁰. When the couple abruptly ceased communication, the landlord brought an action for damages.

The Israeli Court held that the relationship had not matured into a contractual relationship⁹¹ and that the parties remained free to withdraw from negotiations. Nevertheless, it found the couple liable for the harm suffered by the landlord due to their bad faith during negotiations⁹². In reaching this conclusion, the court relied heavily on the sequence of emojis – “a dancing woman, a dancing couple, a ‘V- sign with fingers,’ a shooting star, a squirrel, and a bottle of champagne” - which conveyed “great optimism”⁹³ and induced legitimate reliance. Although the message did not itself constitute a binding contract, it nevertheless led the claimant to place significant trust in the defendants’ intention to rent the apartment⁹⁴.

The Israeli Court thus concluded that the combination of the solemn conduct displayed at the outset of negotiations and the optimistic emojis sent at the end sufficed to establish bad faith⁹⁵. Damages were awarded under Israeli contract law for pre-contractual liability⁹⁶, the amount of damages suffered by the owner being awarded at 7,250 NIS, or approximately €2,000/\$2,400.

The *Dahan* decision is often regarded as a step beyond North American approaches, insofar as it does not merely treat emojis as contextual indicators of intent but attributes to them autonomous legal effects capable of grounding pre-contractual liability, reflecting a broader concern for the protection of legitimate reliance. Whereas North American courts confine emojis to an evidentiary role in assessing intent, the Israeli judge adopts a more substantive approach, recognising their capacity to produce legal effects independently, in line with the principle of legitimate expectations.

4. Conclusion

In the same way that courts have adapted over time to telegrams, facsimiles, voicemail messages, emails and SMS communications, they will have no choice but to accommodate emojis and other emoticons, whose use is now firmly established and set to expand further, despite the fact that they are not words in the strict sense of the term⁹⁷. While judicial decisions involving emojis are multiplying—not only in contract law but across other fields, including criminal law and labour law—they continue, for the most part, to rely on traditional legal categories. Two major difficulties nevertheless emerge. The first relates to the absence of a uniform understanding of the meaning of emojis, stemming from their technological variability, interpretative ambiguity and intercultural dimensions. The second lies in the heterogeneity of judicial responses, not so much because of fundamentally different legal standards from one jurisdiction to another, but rather due to divergent applications of shared principles. In a legal world that is inherently wary of uncertainty, it is possible that a more homogeneous and therefore more effective normative framework may eventually prove necessary.

⁹⁰ *Ibid.*, p. 12 et 13.

⁹¹ *Ibid.*, p. 14: “Should the relationship between the parties be seen as having matured into contractual relations? After examining all the evidence before me, my opinion is that at the end of the day the answer to this is negative”.

⁹² *Ibid.*, p. 15: “In the circumstances of the case, the conduct of the defendants is sufficient to indicate that they did not act in good faith towards the plaintiff”.

⁹³ *Ibid.*, p. 16: “These figurines convey great optimism”.

⁹⁴ *Ibid.*: “Although this message did not constitute a binding contract between the parties, this message naturally led to the plaintiff’s great reliance on the defendants’ desire to rent his apartment”.

⁹⁵ *Ibid.*: “The combination of these - the solemn figurines at the beginning of the negotiations that created much reliance on the prosecutor, and those Smileys at the end of the negotiations that deceived the Plaintiff to think the Defendants were still interested in his apartment - support the conclusion that the Defendants acted in bad faith in the negotiations”.

⁹⁶ Under S. 12(B) Contract Law.

⁹⁷ M. BERLINER, *When a picture is not worth a thousand words: why emojis should not satisfy the statute of fraud writing requirement*, in *Cardozo Law Review*, vol. 41, pp. 2161-2201, p. 2193.

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Genealogies of the “rule of virtue” in Chinese law

Some linguistic remarks on the character 德 (*dé*)

Gianmatteo Sabatino *

ABSTRACT: This article examines the historical and contemporary meanings of the character 德 (*dé*) in Chinese legal and political thought, focusing on its role in the idea of 德治 (*dézhì*), or “rule of virtue.” Through linguistic, palaeographic, and conceptual analysis, it reconstructs the genealogy of 德 from its early appearances in Western Zhou bronze inscriptions to its development in classical Chinese philosophy and modern Chinese law. The article argues that 德 originally combined public, political, ritual, and moral dimensions, functioning as both a source of sovereign legitimacy and a practical standard of governance. In Confucian thought, 德 became a comprehensive ethical and pedagogical paradigm, closely linked to ritual order and social harmony. The article then explores how contemporary Chinese law, especially under Xi Jinping, has revived and transformed the rule of virtue by integrating moral standards into legal governance, Party supervision, civil law, company law, and oversight mechanisms. It suggests that this revival reflects both continuity with Chinese legal tradition and a politically oriented attempt to place morality under the interpretive authority of the Communist Party. Ultimately, the article shows how contemporary Chinese law challenges Western assumptions about the autonomy of law from morality and politics.

KEYWORDS: 德 (*dé*); rule of virtue; Chinese law; Confucianism; morality and governance.

SUMMARY: 1. Introduction; 2. Palaeography and etymology of 德; 3. 德 and classical Chinese political thought; 4. The revival of the rule by virtue and the mentions of 德 in contemporary Chinese law; 5. Conclusion.

1. Introduction

Since the rise to power of current CPC General Secretary Xi Jinping, Chinese law has been undergoing a profound moral turn¹. This trend is exemplified by the decisive emphasis placed by the Chinese political leadership on the combination of the “rule of law” (法治 – *fǎzhì*) with another concept seemingly derived from the earliest history of Chinese political thought: the concept of 德治 (*dézhì*), generally translated as the “rule of virtue”². The connection, when not the conflict, between law and virtue is certainly one of the most fascinating and unresolved issues in the history of Western legal thought.

As law emerged as an allegedly independent field of human knowledge – with the Roman *ius*³ – its link with virtue has always been at once desirable and connoted by an inevitable separateness. Such ambivalence is well portrayed by the famous definition of Celsus: *ius est ars boni et aequi*. Therefore, the “good” may very well be the object or the purpose of the “ars” of law⁴; however, it cannot be its functional equivalent.

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¹ ZHAO CHUANHAI, 习近平法治思想的道德底蕴 (*The moral connotation of Xi Jinping's thought on the rule of law*), in *Henan caijing zhengfa daxue xuebao*, 6, 2021, 1 ff.; DU YANLIN, HU XI, 现代法律德性转向及其中国启示 (*The moral turn of modern law and its revelation in China*), in *faxue*, 10, 2018, 65 ff.

² WU GUOPING, ZHANG SHUTONG, 习近平以德治国与依法治国思想相结合之实施路径研究 (*Research on the implementation path of Xi Jinping's thought about the integration of governing the country through law and through virtue*), in *Haixia faxue*, 2020, 27 ff.

³ A. SCHIAVONE, *Ius. L'invenzione del diritto in occidente*, Turin, 2017.

⁴ L.B. SOLUM, *Virtue as the End of Law: An Aretaic Theory of Legislation*, in *Jurisprudence*, 9, 2018, 6 ff.



Moral evaluations about law then deal essentially with the way the latter pursues virtuous aims. The idea that virtue itself can function as an autonomous (albeit complementary) standard of governance, in principle capable of enabling governance even in absence of the law, eschews, for the most part, the Western idea of legal science.

Eastern legal traditions developed different approaches, which reflect upon current narratives. Indeed, the simultaneous application of law and virtue as instruments of governance has been at the core of Chinese legal-ideological discourse both in its embryonal stage and in recent years. Multiple perspectives may be fruitfully employed to assess this phenomenon.

Undoubtedly, the incorporation of the “rule of virtue” into the official narrative of the CPC implies an appropriation, by the Party leadership, of ethical paradigms belonging to traditional Chinese culture, in order to shape their contemporary application by filtering them through the values and norms upheld by the Party itself⁵. It is, indeed, no surprise that one of the earliest uses of the character 德 in modern Chinese legislation appears in Article 11 of the Oversight Law, which empowers oversight commissions to evaluate the conduct of public officials on the basis of standards of moral integrity (道德操守 – *dàodé cāoshǒu*), in addition to standards related to compliance with laws and regulations.

On the other hand, “virtue” and the “rule of virtue” are also concepts traditionally associated with flexible approaches to governance, thus partially contradicting the appeal to certainty inherent in the strengthening of legalisation and codification trends in modern China⁶. The combination of *fǎzhì* and *dézhì* therefore constitutes an operation which, while ideologically appealing, displays several potential contradictions.

In light of the plurality of interpretative dimensions associated with this notion, one research perspective appears particularly suitable for attempting a comprehensive reconstruction of the overall meaning of 德 in the historical trajectory of Chinese law, namely that of linguistic analysis.

Indeed, 德 (*dé*) as a character has been associated with vastly different meanings belonging to distinct semantic fields, ranging from that of political legitimacy to that of individual self-cultivation and social governance. While analyses of historical sources, as well as reconstructions by Western scholars, have over the decades consolidated a conceptual image of traditional Chinese law as revolving around the opposition between “law” (*fǎ*, 法) and “rite” (*lǐ*, 礼), the dichotomy between *fǎ* and *dé* may be even more salient, especially given that rituality essentially functioned as the form through which virtue was expressed, thereby ensuring cosmic order.

Nowadays, the attempt to adapt the “rule of virtue” to the ideology of the CPC constitutes a powerful operation which, however, is deeply rooted in the cultural significance of the concept—and of its corresponding character—for the formation of the Chinese legal tradition. The purpose of this brief paper is to provide some general remarks on the role of *dézhì* in Chinese law by taking the analysis of the character 德 as a starting point, thereby reconnecting modern and ancient conceptions of rule through virtue.

2. Palaeography and etymology of 德

In modern Chinese, the character 德 is composed of three elements. The first is the radical 彳 (*chì*), indicating movement, specifically a step with the left foot. The second element, located at the top right of the character, is 直 (*zhí*), meaning “upright” or “straight”, thus conveying an idea of rectitude. The third element, at the bottom right, is the character 心 (*xīn*), representing the heart⁷.

Notably, some authors, including the Han dynasty philologist Xu Shen (58–148 CE), identified a slightly more ancient equivalent of 德 in the character 惠 (with the same pronunciation and meaning), the latter lacking the radical 彳. However, this thesis has been disputed by scholars who emphasise that while 惠 appears in several sources from the Warring States period (c. 475–221 BCE), 德 (with the

⁵ R. CREEMERS, S. TREVASKES (eds), *Law and the Party in China*, Cambridge, 2020.

⁶ On the notion of rule of law in China and its evolution see I. CASTELLUCCI, *Rule of Law and Legal Complexity in the People's Republic of China*, Trento, 2012.

⁷ S.A. BARNWELL, *The Evolution of the Concept of De 德 in Early China*, in *Sino-Platonic Papers*, 235, 2013.



radical 彳) has been attested in earlier sources from the Western Zhou dynasty (c. 1046–771 BCE). Therefore, 惠 cannot be regarded as a primordial form of 德⁸.

The meaning of 德 is consistently associated with moral goodness, indicating virtue, kindness, or morality. It appears in a relatively limited number of compound words, most of which belong to the same semantic field, such as 德育 (déyù, moral education), 德行 (déxíng, moral conduct), 道德 (dàodé, morality or ethics), 品德 (pǐndé, moral character), and 美德 (měidé, virtue or fine quality).

A notable exception is the word 德国 (Déguó, Germany), in which 德 is employed for purely phonetic reasons; it also forms part of a broader set of words containing 德 and relating to Germany or the German language.

From a historical perspective, and focusing on the alternative form 惠, it appears that the original meaning of *dé* derived from a combination of a proactive notion expressed by 直 (“being straight” or “setting things straight”) and a psychological motus represented by 心, which conveys the “inner” quality of such straightness. On this basis, Boodberg proposed the neologism “arrective” (and the corresponding nouns “arrectivity” and “arrectitude”) to convey the meaning of 直 within the notion of 德/惠, while the neologism “enrective” would express the combination of 直 and 心, with the sense of “possessing the inner capacity or quality to be straight”⁹.

As the same author further notes, an additional layer of complexity is introduced by the internal structure of 直, which consists of a cross — 十 (shí, indicating the number ten, but also connoting “perfection” or “completeness”) — and the character 目 (mù), meaning “eye”¹⁰. The earliest forms of 直, in fact, consisted of an eye surmounted by a straight line. Accordingly, 直 could also convey the meaning of “seeing straight”. From this perspective, the etymological background of 德/惠 may include references to acts of “direct inspection”, in the sense of “looking straight” at something¹¹.

This observation opens the way to interpretations that connect the earliest notions of “virtue” not only—or not primarily—with ethical or moral dispositions, but rather with a capacity for incisive discernment. Some scholars have attempted to trace a conceptual link between 德 and certain oracle-bone inscriptions from the Shang dynasty (c. 1200 BCE) depicting the pictograph of the eye. The proposed common semantic field is thus that of “seeing” or “observing”, as these primitive characters may have referred to military activities of reconnaissance or inspection¹². On the other hand, similar characters have also been associated with different semantic domains, including religious practices such as sacrifice¹³.

Furthermore, the character 直, which—through its association with the pictograph of the eye—would establish the link between 德 and the semantic field of “seeing”, is relatively uncommon in early sources such as oracle bones and bronze inscriptions. Where it does appear, it tends to refer more to straightness and moral rectitude than to the act of discernment.

The difficulties encountered by scholars in reconstructing ancient patterns of pictographic evolution are partly due to the fact that Shang dynasty materials—especially oracle-bone inscriptions—do not appear to contain the character 德. The earliest attestations of the character date to the Western Zhou dynasty (c. 1046–771 BCE) and are found in inscriptions on bronze ritual vessels¹⁴.

Scholars have emphasised that these inscriptions demonstrate the relevance of a notion of 德 in pre-Confucian times¹⁵. However, determining the precise meaning of this notion remains a particularly challenging task. The proximity of 德 to other characters associated with “seeing” or “brightness” has

⁸ *Ibid.*

⁹ P.A. BOODBERG, *The Semasiology of Some Primary Confucian Concepts*, in *Philosophy East and West*, 2, 1953, 317-332.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² S.A. BARNWELL, *op. cit.*

¹³ *Ibid.*

¹⁴ A.K. LEUNG CHAN, *Interpretations of virtue (de) in early China*, in *Journal of Chinese Philosophy*, 38, 2011, 134-150.

¹⁵ *Ibid.*



led some scholars to hypothesise a connection with the supervision of people's conduct, as well as with a sense of "enlightenment" enabling rulers to enforce virtue effectively within society¹⁶.

It has also been suggested that a primordial form of the character may have consisted solely of the "eye" signfic, combined with two crossing lines above it, together with a movement signfic (which later developed into the radical 攴). During the Western Zhou dynasty, the "heart" signfic (心) may have been added, although it is also possible that different forms of the character 德 coexisted¹⁷.

Interestingly enough, in Indo-European languages we do not seem to find, in terms indicating virtue, an etymology associated with the act of "seeing" or "discerning". The Greek word ἀρετή (*arete*), frequently employed in a wide array of literary sources and commonly translated as "virtue", originally indicated only a specific quality of things, that is the capability of fulfilling one thing's function or one's duties¹⁸.

The semantic field of the word was later expanded to include moral attitudes which we commonly associate with virtue, and it was through its association with ἀρετή that the Latin word *virtus* (deriving from *vir* – man) acquired its most common meaning.

Regardless of its specific etymology, the Chinese character displays a prominent relational significance, addressing both the inner disposition of men and their relation with the outer world.

The presence of both the "heart" and "movement" significs, even in early sources, appears to indicate that 德 already conveyed both a proactive dimension and an inner, psychological aspect.

Notwithstanding the extreme scarcity of information concerning these primordial uses of 德, the analysis of the inscriptions seems to highlight two relevant conceptual points: in the first place, 德 is a notion which has to do, first and foremost, with the public sphere. It is an attribute of sovereigns; an outstanding ability connected with the exercise of power¹⁹.

Secondly, 德 displays an exemplary meaning: it is not something theoretical, it is always functional to the enforcement of certain standards of conduct²⁰. "Virtue" therefore comes to represent both a concept and its application in the concrete reality.

3. 德 and classical Chinese political thought

According to Chinese leading scholar of political thought Liu Zehua, 德 originally expressed a religious concept which very soon, already during the Shang dynasty, also came to exert influence upon human affairs²¹. It thus turned into a mixed, hybrid concept combining instances of religious, political and social governance²².

Indeed, the materials we have at our disposal are solely ritual and religious ones. Both oracle bones and bronze vessels were employed in ritual ceremonies reserved to nobility. The ancient Chinese language that scholars study is therefore inherently connected with both a religious dimension and an aristocratic one. We are not able to know whether 德 possessed spiritual or secular meanings depending on the context in which it was employed.

¹⁶ *Ibid.*

¹⁷ S.A. BARNWELL, *op. cit.*

¹⁸ M. FINKELBERG, *Virtue and Circumstances: On the City-State Concept of Arete*, in *The American Journal of Philology*, 123, 2002, 35-49.

¹⁹ LIU ZEHUA, 中国政治思想史 (*History of Chinese Political Thought*), Hangzhou, 2020, 12 ff.

²⁰ A.K. LEUNG CHAN, *op. cit.*

²¹ LIU ZEHUA, *op. cit.*, 12.

²² *Id.*, 12 ff. and 22 ff.



On the other hand, it is widely known that rituality was a constitutive component of political governance in ancient China²³. The concept of “rite” (礼 – *lǐ*) has been regarded by some as a “constitutional” structure of Chinese politics, especially starting with the Zhou dynasty²⁴.

德 is deeply connected with a ritual dimension already in the Shang Dynasty²⁵. It is a quality of a proper rite (e.g. towards the ancestors); on the other hand, it is also a quality of those who properly perform rites²⁶. 德 seems to function, to a certain extent, as a criterion to affirm the nobility of a member of the society, as an indicator of a social status. From this perspective, 德 can be intended as a moral but also civic “virtue”.

The crystallisation of the equivalence between 德 and a comprehensive notion of virtue occurs with the Zhou Dynasty, when “virtue” is ingrained in the mechanism of legitimisation of royal power and becomes part of the doctrine of the Heavenly Mandate (天命 – *Tiānmìng*). That who is virtuous can be king; those who lack virtue are lost to the heaven. Subjects can lawfully revolt against a non-virtuous ruler.

As virtue becomes a key component in the process of legitimisation of rulers, 德 comes to signify not only a moral attitude, but also an approach to administration, which is reflected in the concepts of 保民 (*bǎo mǐn* – protecting the people) and 慎罚 (*shèn fá* – being cautious with penalties)²⁷. Both concepts are considered to be epiphanies of 德: the first one expresses the necessity of taking into account people’s sentiments when governing them, implying the capability of the ruler to restrain himself from taking actions which could hinder welfare and stability. The concept of 慎罚 mirrors a similar attitude, but focusing on the rationality in the governance of punishments (刑 – *xíng*): indeed, virtue demands that punishments are adjusted not merely according to the severity of the crime committed but also to the psychological attitude of the author: severe crimes committed without intention and without persevering can be punished more leniently than small crimes committed with intention and perseverance²⁸.

Overall, both these manifestations of virtue in the technique of administration represent, according to authors, a decisive change in the passage from the Shang to the Zhou dynasty. While it is recognized that 德 played a political function already under the Shang, it is also acknowledged that a notion of unrestrained royal power led Shang rulers to impose unfair and impious punishments, thus provoking instability and resentment among the people²⁹.

Virtue, in the Zhou dynasty, becomes a complex and comprehensive paradigm of governance: it keeps its ideal connection with light as far as it becomes 明德 (*míngdé* – “bright virtue”)³⁰ but at the same time and probably more interestingly, acquires a decisive psychological dimension which establishes a logical connection between public governance and individual moral and ethical stances.

This is the “virtue” that Confucian thought looks upon and takes as main criterion of social order.

In Confucianism, the notion of 德, while not wholly losing its original semantic roots, makes a leap forward toward the establishment of a comprehensive moral framework to give order to the society. “Virtue” and “rituality” become conceptually inseparable. In the Confucian texts, as well as in their commentaries and then in modern books and papers, the notion of 德治 (rule by virtue) is overshadowed, from a historical perspective, by the concept of 礼³¹.

²³ MA XIAOHONG, 中国古代法文明的模式 (*The Model of Ancient Chinese Legal Civilization*), Beijing, 2023, 89 ff. and 137 ff. On the same topic, and on the relation between rituality and law in ancient China see, among many, W. MENSKI, *Comparative Law in a Global Context*, Cambridge, 2006, 505 ff.; U. KISCHEL, *Comparative Law*, Oxford, 2019, 678 ff.; P. GLENN, *Legal Traditions of the World*, Oxford, 2014, 320 ff.

²⁴ MA XIAOHONG, *op. cit.* 142.

²⁵ LIU ZEHUA, *op. cit.*, 12.

²⁶ LI LANFEN, 当代中国德治研究 (*Research on the Rule of Virtue in Contemporary China*), Beijing, 2008, 28-29.

²⁷ LIU ZEHUA, *op. cit.*, 23 ff.

²⁸ *Id.*, 25.

²⁹ *Id.*, 24.

³⁰ *Ibid.*

³¹ YU RONGGEN, 儒家法思想通论 (*Introduction to Confucian Legal Thought*), Beijing, 2018.



On the other hand, with Confucius, 德 also undergoes a partial “democratisation”, in the sense that it becomes an ethical paradigm applicable not only and not necessarily to nobles, but potentially to everyone. The extensive and comprehensive nature of Confucian social designs – proceeding from the individuals to small social units like families to bigger ones up to the kingdom – makes 德 more universal than it had previously been. At the same time, its exemplary and pedagogical function is strengthened³². Acting according to virtue equals to carrying out acts of governance: this holds value for familial communities as well as for big polities.

In Confucianism, 德 reaches the apex of its theoretical and philosophical development. It brings together secularization and moralization of human conduct. 德 is generated by the supernatural force of heaven (天 – *tian*), the same force which confers the mandate to rule the world. On the other hand, however, 德, when embedded in humans, is a force to be developed, fostered through learning, practice, exemplary behaviour. Different degrees of 德 can apply to different groups of people, thus reflecting a moral dimension of social stratification³³.

Confucian 德, thus, becomes a doctrine of governance, filtered through rites as formal paradigms of social order, but also possessing a distinctive inward and pedagogical projection. The “rule of virtue” is what ultimately gives men the conceptual tools to “rectify the names” (正名 – *zhèngmíng*)³⁴, i.e. to recognize everyone’s place in society and to act accordingly, thus ensuring harmony and prosperity for the whole world.

It is clear how, from such perspective, the role of 德 in Confucianism is much more akin to a legal paradigm than it occurs with other cornerstones of traditional Chinese thought, such as with Taoism. In the Daodejing (道德经), i.e. one of the fundamental texts of Taoism, the use of 德, and the pursuit of virtue, are related with a psychological abstention from secular affairs.

Indeed, one of the most famous passages of the Daodejing (i.e. the beginning of Chapter 38) states that «[the person of] superior virtue does not act virtuously, therefore he/she/it is virtuous; [the person of] inferior virtue acts or tries not to lose virtue, therefore he/she/it has no virtue»³⁵. As it has been noted, the structure of such sentence expresses an apparent paradox which serves the function of putting into question the Confucian uses of 德. Here, the conscious pursuit of virtue (“acts of tries not to lose virtue”) may lead to a lack of virtue, whereas the apparent indifference to virtue is a manifestation of virtue itself.

Ultimately, after the establishment of the Imperial rule in 221 BCE and a brief stint with hardline legalism during the Qin dynasty (i.e. the dynasty that established the empire), Confucianism and the notion of ruling “by virtue” ascended to the status of official doctrine, already with the Han dynasty (206 BCE – 220 CE)³⁶.

However, with such development also came a decisive functionalization of 德 to necessity of consolidating imperial power. Virtue became part of official narratives which often cherry-picked selected concepts and paradigms of the Confucian tradition in order to uphold despotic rule³⁷.

“Virtue” was thus combined with “Law” (法 – *fǎ*) in the meaning developed by the Legalist school³⁸. Indeed, it is now acquired knowledge that the Chinese imperial legal system was far from the picturesque ritual-based Confucian landscape imagined by Western scholars in the 19th and early 20th century. Imperial law was often connoted by a process of codification and “juridification” of rituals.

³² YANG CHEN, 古典德治的依宪治国功能——有关“德法合治”论的补充性说明 (*The Constitutional Function of Classical Virtue-Based Governance—A Supplementary Explanation about the Theory of "Combined Rule of Virtue and Law"*), in *Zhongwai faxue*, 1, 2023, 106 ff.

³³ XINZHONG YAO, *De and Virtue in Early Confucian Texts: Introduction*, in *Journal of Chinese Philosophy*, 48, 2021, 5-12.

³⁴ CONFUCIUS, *Analects*, Book XIII Ch. 3.

³⁵ The translation used is that of H.K.T. YAN in *A Paradox of Virtue: The Daodejing on Virtue and Moral Philosophy*, in *Philosophy East and West*, 59, 2009, 173-187. The original passage written in simplified Chinese is as follows: 上德不德，是以有德；下德不失德，是以无德。

³⁶ LI RUOHUI, 久旷大仪——汉代儒学政制研究 (*Long-Abandoned Ceremonies – Research on the Confucian Political System in the Han Era*), Beijing, 2018.

³⁷ *Id.*, 214-218.

³⁸ YANG CHEN, *op. cit.*



Imperial bureaucracy – increasingly selected through exams based on Confucian classics – often acted without being bound by the will of the monarch, directly drawing its legitimacy from its selection processes³⁹; nevertheless, it was still part of the Imperial machine, and its virtue-based governance was balanced by the presence of Imperial codes which local magistrates, when adjudicating disputed, constantly applied.

Furthermore, it should be argued, ritual-based social institutions and orders were inevitably, anthropologically speaking, self-preserving, therefore using references to virtue and to rites to ensure their perpetuation throughout history and their power *vis-à-vis* the other components of the complex imperial society.

From such perspective, therefore, “virtue” in Chinese imperial law was not fully meritocratic, nor did it represent an absolutely coherent governance system⁴⁰.

The 德治 (rule by virtue) eventually underwent, in the last centuries of the Chinese empire, the same process of “crystallization” which led imperial institutions to be perceived, outside China, as backward, inherently conservative, inefficient and slow. Chinese legal reforms, for more than a century, were thought, attempted and construed on the basis of an implicit rejection of 德 as a formal criterion of social ordering. It surely survived, in both Nationalist and then Communist China, as a silent legal formant, a peculiar cryptotype too ingrained in the Chinese thought to be discarded. Its external manifestations, however, were often *contra legem*: for instance, “virtue” was assumed to govern relational networks able to operate decision-making processes and business on the basis of personal and moral hierarchies competing with the authority of the ruling party or at the very least forcing it to decentralize or “sub-contract” governance powers⁴¹.

4. The revival of the rule by virtue and the mentions of 德 in contemporary Chinese law

The ethics of government have become a key topic in the ideological discourse of Xi Jinping⁴². If, especially during his first term as general secretary of the Party, moral attitudes to law were mostly meant to support the anti-corruption campaign, starting from the constitutional reform of 2018 (when Oversight Commissions were established) the scope of moral governance has rapidly expanded.

The combination between rule of law and rule of virtue signifies the existence of an ideological scheme which, in principle, interprets Socialism with Chinese Characteristics not only (or not mainly) through a purely Marxist and “materialist” perspective, but rather through an ethics-driven one⁴³. Such ethics, fit for the “new era” stem from a mixture of nationalism and historical revisionism aiming at presenting moral paradigms of governance as typical of the Chinese tradition, and, at the same time, entrusting the Communist Party with the power of interpreting them⁴⁴.

The old trend of “legalization” of virtue thus enters into a new stage, supported by the theoretical tools of Leninism – i.e. the Party as the vanguard of the people – and by the operative instruments derived from the adjustments of foreign legal models.

So, references to morality (道德 – *dàodé*), direct and indirect, are found scattered in the civil code. In the general principles, morality underlies the construction of some general principles such as

³⁹ ZHANG XINGJIU, 儒家‘无为’思想的政治内涵与生产机制——兼论‘儒家自由主义’问题 (*The political connotation and production mechanism of Confucian “non-action” thought – also reflecting on the problem of “Confucian liberalism”*), in *Zhengzhixue yanjiu*, 2, 2002, 74 ff.

⁴⁰ YANG CHEN, *op. cit.*

⁴¹ LI-AN ZHOU, *Incentives and Governance: China's Local Governments*, Singapore, 2010; XUEGUANG ZHOU, HONG LIAN, *Modes of Governance in the Chinese Bureaucracy: A “Control Rights” Theory*, in *The China Journal*, 84, 2020, 51-75.

⁴² CHUANHAI ZHAO, *op. cit.*

⁴³ See, for instance, the Resolution of the CPC Central Committee on the Major Achievements and Historical Experience of the Party over the Past Century of 2021, on which see G. SABATINO, *Comparare (con) la Cina. Prospettive e spunti a partire dalla nuova Risoluzione storica del Partito Comunista Cinese*, in *Nomos*, 2, 2022.

⁴⁴ GUO ZHONG, 道德势能与德治秩序的生成机制 (*Moral potential and the generation mechanism of order through rule by virtue*), in *Ha'erbin gongye daxue xuebao*, 5, 2024, 24 ff.



that of good faith (诚信 – *chéngxìn*) and honesty (诚实 – *chéngshí*) in Article 7, where the use of 诚 can be, from a diachronic perspective, put in connection with the idea of unity among thought, word and action emphasized by Confucianism as the realization of the moral potential of men⁴⁵.

Furthermore, Article 9 of the Civil Code, outlining the so-called “green principle” (绿色原则 – *lǜsè yuánzé*) established a conceptual link between the saving of resources, the protection of the ecology and a pedagogical and moral attitude of the law⁴⁶.

Another notable example is Article 1131 of the code, which allows, in case of intestate succession, for the assignment of a part of the inheritance to a non-heir who has supported or has been supported by the deceased. When judges have applied this rule, they have sometimes qualified the behaviour of the non-heir supporting the deceased as morally sound and compliant with the “Socialist Core Values”, mentioned in Article 1 of the Civil Code⁴⁷.

The examples of ethical interferences in positive law are not limited to the civil code. Article 19 of the Company Law, after the last revision in 2023, provides that companies abide by social morality (社会公德 – *shèhuì gōngdé*) and business morality (工业道德 – *gōngyè dàodé*). The use of 德 in the text of this provision is political rather than cultural: the virtuous morality the law is referring to is the ensemble of values and principles that the political leadership selects and deems suitable to act as governance tools. Indeed, the same Article 19, after outlining the aforementioned clauses, states that companies are also required to accept supervision from the government and the public.

This legislative innovation is perfectly in line with recent developments of Chinese company and enterprise law, now deeply affected by the effort of the Chinese Communist Party to ensure coordination mechanisms with private economic operators, not limited to the presence of Party branches in companies (as mandated by Article 18 of the Company Law) but also including the establishment of a pedagogical environment seeking to reward entrepreneurs and businessmen that align with the priorities of the Party in terms of development⁴⁸.

The morality of the Chinese company law, ultimately, perfectly aligns with the “moral integrity” (道德操守) mentioned in Article 11 of the Oversight Law, where 德 also plays an essentially political role. The “rule of virtue” is still, culturally speaking, a connoting trait of traditional Chinese legal culture; yet, at the same time, it is now a politically-oriented paradigm of governance.

Indeed, the legitimacy of the Party itself partially rests upon its capability of developing its own inner legal system on the basis of both Party regulations and moral standards, which correspond to socially accepted values⁴⁹. However, the mechanism linking Party’s inner laws with the political use of virtue seems to be circular. The socially accepted values to which the Party submits itself, in absence of an external review, are those which the very same Party decides to uphold as acceptable standards.

What is significant, indeed, is the fact that oversight and supervisory functions have been devised, with the Oversight Law, as state functions separated both from the government and the judicial apparatus. Some Chinese scholars have tried to trace some historical connections between the

⁴⁵ *Id.*

⁴⁶ G. SABATINO, *Environmental sustainability and civil law in the “new era” of Chinese legal culture. The “green clauses” of the Chinese Civil Code*, in S. LANNI (ed), *Sostenibilità globale e culture giuridiche comparate. Atti del Convegno SIRD – Milano, 22 aprile 2022*, Torino, 2022, 157-170.

⁴⁷ See, for instance, People’s Court of the Zhen‘An District, Dandong (Liaoning Province), decision no. 504 of 31 May 2021.

⁴⁸ See, for instance, the Opinions on Strengthening the United Front Work in the Private Economy in the New Era (关于加强新时代民营经济统战工作意见), issued in 2020. See also G. SABATINO, *The Legal Dimension of the Relation Between the Chinese Communist Party and the Private Economy. A Perspective of the Article 19 of the Company Law*, in *Global Jurist*, 22, 2021, 351-373. Before the last revision in 2023, Article 19 of the Company Law corresponded to the current version of Article 18, thus regulating the presence of Party branches within companies. The current Article 19 is an addition of the latest revision of the law.

⁴⁹ WU XIAOCHUAN, 再论作为政党自治规范的党内法规——以自治、法治、德治关系为视角 (Further Discussion on Party Regulations as Norms of Political Party Autonomy—From the Perspective of the Relationship between Autonomy, Rule of Law, and Rule of Virtue), in *Dangnei fagui yanjiu*, 2, 2023, 47 ff.



supervisory function in contemporary China and past experiences and theories of “moral power”, including the *censura* in ancient Roman law and the *poder moral* in Bolivarian constitutional thought⁵⁰.

However, what ensures the logic coherence of oversight work within the framework of the Chinese constitutional system is, once again, the submission to the guiding role of the Party and of its ideology. Therefore, the “moral supervision” of the oversight commission inevitably reflects the narrative of governance upheld by the party leadership. Its operative effect is thus that of at least attempting to limit the procedural and bureaucratic autonomy of the other state structures and functions by setting up a distinct mechanism of control. Virtue, in this context, becomes a tool for the legalisation and codification of political supervision⁵¹.

5. Conclusion

The uses of 德 in contemporary Chinese law have apparently sought a balance between the “public/royal” and “private/human” epiphanies of such concept. Notwithstanding this, the public dimension of the “rule of virtue” has inevitably taken hold, as the moralization of private conduct has become part of an ideological manifesto.

Two different kinds of 德 may therefore coexist and clash with each other: on the one hand, the public 德, the rule of virtue which is functional to the legitimization of the ruling power; on the other hand, a private or quasi-private 德, embedded in relational networks and intermediate social bodies typical of the Chinese tradition, which today exist within the official bureaucratic and party structures, as well as in enterprises (both state-owned and private), in rural villages, in different social groups. This private 德 is not necessarily aligned with its public counterpart and, as such, becomes a liability for the official law. It is, in other words, an expression of bundles of relations (关系 – *guanxi*) capable of existing and operating in the shadow of official law, expressing autonomous poles of “morality”, which, from the perspective of positive law, are necessarily perceived as either corruption or faithlessness.

For centuries, if not millennia, Chinese legal tradition has hosted both elements, both lines of morality. The early development of the concept of 德 was maybe nothing more than a decisive attempt to make the public “rule of virtue” prevail. Today, once again, we are able to witness a historical phase where positive law, deploying all the technical instruments of modernity, explicitly seeks to incorporate 德, so to place it under its control and influence.

By reshaping and rejuvenating the connection between law and virtue the contemporary Chinese legal tradition essentially develops a fully original notion of “rule” in advanced and complex societal settings. The Western paradigm of the rule of law is challenged. At the same time, the logical autonomy of law from morality, politics and, in a broader sense, culture is decisively denied.

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⁵⁰ HUANG MEILING, 监察模式及其权力本质的历史解释 (*Historical explanation of the nature of the power of the models of supervision*), in *Peking University Law Journal*, 31, 2019, 984-1003.

⁵¹ G. SABATINO, *Gouverner selon la loi et gouverner selon la vertu dans le droit chinois contemporain*, in *Opinio Iuris in Comparatione*, 1, 2023, 317-338.

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