

The Doctrine of Good Faith in China: A Tool to Correct the Contractual Behavior or A Serious Restriction to the Freedom of the Contract and Individual Interests

Nadia Zayani*

Abstract

It is not a random coincidence that the term good faith is repeated and emphasized in every stage of the contractual process and in every type of contract. It appears like a constant limitation evoked in different versions, but though the good faith serves as an arbiter between contracting parties and provide mainly a protection from potential abuses- where its strength is based on its constancy and firmness- This principle remains incomplete parameter since it is dealing with abstract and intangible notions where it is really hard to check and make an impartial judgment. Nonetheless the freedom of the contract as a primordial pillar in contract law, happened to be bounded in so many cases by the doctrine of good faith which explain why contracting parties express their non-satisfaction towards this principle such as the case in the British law, in the same wavelength some scholars depicted that the good faith is not really defined as a legal rule it is rather conceived "as a form of behaviours, because of its vague aspect which, make it sounds like, a mere general idea. However this is implies that there will be a certain degree of ambiguity which might lead to the fact that ethical standards will likely control people's interest and restrict largely their freedom which is totally incompatible with the strategy of the liberal system and the open market. In China the doctrine of good faith was deemed as a primordial principle and it has given a large space for interpretation, in order to grant more rooms for the judge to intervene in terms of jurisprudence whenever he estimate that the case arises. It is considered as a fundamental concept of the modern contract law for its elasticity and adaptability, which allows courts sometimes, according to some scholars, to use the doctrine to fill in legislative and doctrinal gaps when necessary, moreover China has embraced the doctrine with enthusiasm, and has adopted it as a principle of civil law in general, and contract law in particular.

Keywords: Good Faith, Contractual Behavior, Serious Restriction, Chinese Contract Law

I. INTRODUCTION

The doctrine of good faith was often analysed and interpreted with a lot of prudence in western countries¹, it is supposed to govern the behaviour of parties in contractual matters and make sure that they are consistent with the same line of good morals and yet survey them in order to guarantee that their business won't offend public order. But there is a relevant question arises here in this area from the idea that the good faith should be existent before the contract itself is formed, in other words in the stage where the contract is still a mere will, not elaborated and conceived yet. So it is important to ask how this requirement can be verified with an objective and impartial parameters on the pre-contractual stage and how deep it is the impact on the principle of freedom of contract.

II. THE DOCTRINE OF GOOD FAITH IN CHINA

There is approach where some scholars stated that the doctrine of good faith is defined as a form of behaviour rather than a legal rule to be applied² because of its vague aspect which make it sounds like a mere general idea nevertheless this is implies that there will be a conflict in some level where ethical standards control people interest and restrict largely their freedom which is totally incompatible with the strategy of the liberal system and the open market. The principle of "good faith" stipulates that contracting parties are expected to act faithfully to the arranged purpose of the contract. Thus this principle has been implemented throughout the whole components of the Contract

The author is a Ph.D. Candidate in China University of Political sciences and Law, email: nadiazayani@live.fr

¹ Grace Coreil "Good Faith in English Contract Dealings" 2004, page 1 "Good faith in English law cannot be regarded as a legal justification for contractual dealings considering the grounds discussed earlier. However, it still resides so a progression of principles are still vindicated by the good faith principle even they have ratified in laws or integrated in a conventional way. (this part is quote by Zimmermann and Whittaker p.676 inserted in the article) Facts about good faith might seem to be vague and may contradict through the acts of good faith. The three aspects are somehow based on the good faith principle but there arises a conflict in a certain level. Good faith binds people in a way that ethical standards are taken consideration. It is only recognized by the English law as a form of behaviour and not as a legal system to be applied on the contract dealings. It is not legitimate enough to take responsibility on the interests of the contracting parties."

²Frederichlagreve "Human are good by nature" journal of philosophy and economics 2011 page 9

Law, starting by the Article 6 of CL³(china contract law), which invites the contracting parties explicitly to act in climate of honesty and good faith in exercising their rights and performing their obligations. Moreover, the Article 42 CL⁴ clarify and stress on the point that the party shall be responsible for the damage and deemed liable if its proved that the party started an agreement by a negotiation which doesn't respect society standards and ethics yet wantonly act in bad faith. For more emphasizing the principle of the good faith, the Article 60 CL⁵ oblige that the parties has to respect the principle of good faith and perform various obligations in accordance with the nature and the object of the agreement within the business ethics and practices. Also Article 92 CL set forth that after concluding rights and obligations under the contract, the parties shall observe the principle of honesty and good faith and perform different agreed duty according to business rules and customs, the principle of "good faith" could be in somewhat a latent motif of a breach. Article 108 CL⁶ indicates that where one party to a contract expresses explicitly or indicates through its acts that it will not perform the contract. The other party may demand it to bear the liability for the breach of contract before the performance period finish.

However, "good faith" prohibits one from delaying the performance without considerable reason or from stopping it in an early stage, to the contrary to what was agreed and written in the contract. The Article 125 CL⁷adopts the good faith as a primordial parameter when interpreting disputed clauses of the contract. Although it is worthy to notice that the good faith is in a direct contact with the freedom of contract because there are some inherent limitations strictly connected to it. Furthermore, it will impose significant demand on the judiciary's capability in interpreting contracts from this angle. I noticed that the Good faith in China: a tool to correct the contractual behaviour and sometimes a serious restriction to the freedom of the contract and individual interests here some areas whereby the principle of freedom is considered as an offense of public order and good morals from this point of view. The issue of the good faith sometimes cause a certain frustration the contracting parties when the occasion arises.

For example, contract of surrogacy or contract of marriage in order to get an advantage of the act of marriage, the case of illegal immigrants in Europe for example in sake of getting the residence permit with a lucrative counterpart. Sometimes it's an agreement fulfilled by the consent of both parties where they are both equally and voluntarily prevail from the deal in this case there is no harming or harmed part but still the contract is not doable and substantially rejected because of the bad faith and the offense embodied by this deal to good morals and standards of community. So parties are not expected to act in bad faith or to conduct a suspicious deal even when they are aware about it and totally conscious about consequences and risks hereinafter some cases of deals that lack of decency and conformity to community standards and good morals (contracts for tax evasion, unfair competition, profiteering, and gambling, surrogating, sale of human organs and others deals considered immoral)⁸, contracts for servitude, bad faith behaviour (such as entering into contracts by taking advantage of one's financial difficulties, and prenuptial agreement).In this context many studies and analysis were conducted to demonstrate that the good faith and the requirement not to offend public order and good morals is the rational adjustment to the principle of "freedom of contract". Some Chinese scholars even set that this term "freedom if it is in the absolute meaning might be understood as an invitation for anarchy so it has to be regulated according to collectives norms and customs in order to balance the social aspect with the economic in a way that economic ambitions and plans shouldn't influence and destabilize the social order which

³Article 6 CL, "Good Faiththe parties shall abide by the principle of good faith in exercising their rights and performing their obligations."

⁴Article 42 CL, "Where in the course of concluding a contract, a party engaged in any of the following conducts, thereby causing loss to the other party, it shall be liable for damages:negotiating in bad faith under the pretext of concluding a contract; intentionally concealing a material fact relating to the conclusion of the contract or supplying false information; any other conduct which violates the principle of good faith."

⁵Article 60 CL, "Performance in Good Faiththe parties shall fully perform their respective obligations in accordance with the contract.The parties shall abide by the principle of good faith, and perform obligations such as notification, assistance, and confidentiality, etc. in light of the nature and purpose of the contract and in accordance with the relevant usage."

⁶Article 108 CL, "Where one party expressly states or indicates by its conduct that it will not perform its obligations under a contract, the other party may hold it liable for breach of contract before the time of performance."

⁷Article 125 CL, " Contract Interpretation; Language VersionsIn case of any dispute between the parties concerning the construction of a contract term, the true meaning thereof shall be determined according to the words and sentences used in the contract, the relevant provisions and the purpose of the contract, and in accordance with the relevant usage and the principle of good faithWhere a contract was executed in two or more languages and it provides that all versions are equally authentic, the words and sentences in each version are construed to have the same meaning. In case of any discrepancy in the words or sentences used in the different language versions, they shall be interpreted in light of the purpose othe contract."

⁸Jun Zhao "The puzzle of freedom of contract in Chinese contract law", *ILSA Journal of International & Comparative Law*, 2010, page 8 {check the paragraph "freedom of contract" "the requirementnot to offend public order (examples of contracts that offend public orderinclude contracts for tax evasion, unfair competition, profiteering, andgambling, as sale of human organs, contractsfor servitude, bad faith behaviour).

sustain the point of view of some scholars who affirm that the requirement of good morals is made mainly to correct the freedom of the contract because this one seems to be so loose which needs to be adjusted in order to manage equivocal cases where principle of the freedom in the vague meaning might be juristically acceptable but undoable yet inadmissible from a moral point of view. Furthermore, it is a vast room reserved for jurisprudence for contracts interpreting. Thus the principle of good faith doesn't serve only to watch and guide the freedom of the contract. It is the milestone of the jurisprudence when it is the occasion of an equivocal case arise the vagueness of the principle of the freedom of the contract while some scholars take it from the pejorative sense. The others scholars conceive it differently, the vagueness is viewed as a tool to make the territory of the jurisprudence much more large in order to be consistent with the largeness of the notion of the freedom therefore the judge might face a case where the principle of the freedom contains implicitly or explicitly a harming aspect requiring a deep juristic interpretation from the judge..

There is also another point which I want to accentuate which is the variation of the term from culture to culture things which might causes a confusing reaction when dealing with foreign parties for instance in German law. For example, the good faith is based mainly on the principle of loyalty and fidelity "Treu and Glauben"⁹ known notion which is mainly the principle of honesty and don't harm the other party. It still has some particularity because the principle of fidelity put stress more on relationship between contracting parties whereby they are not only expected to not harm and act consistently with good morals and business ethics, moreover, they are bounded by the idea of loyalty which stipulate that during the contracting process the parties are strictly invited to not betray each other and cooperate in a climate of trust and faithfulness and reliability. Same as the German perspective of good faith, in the Islamic law (Shariaa law) the good faith is viewed through the idea of the enhancement of the principle of cooperation in a religious frame and not betray each other), which is not the same from other legal perspectives so consequently. "This principle varies from one civil law jurisdiction to another", which may also give way to the perplexities and put in question the degree of universality of the principle and its applicability. So the point is that the principle of good faith even though contains a relatively constant meaning and substantive aspect, it is still covered by a general characteristics depends from a legal system to another such as the American and the British law¹⁰.

As I've mentioned before, there is more uses for the term fair-dealing instead of good faith because the word fair dealing might refers to good faith in somewhat but it doesn't contain the sense of loyalty and the obligation of protecting each other's interests, don't betray each other and take action in good faith in a high degree of transparency, honesty and implicitly. It's an empty room for the harmed party to be more responsible and collect more information and investigate about the circumstance of the deal and the party with whom he chose to contract when he was exercising his freedom of contract in order not to be harmed or cheated in the next stages of the contract. So here the responsibility works as the regulator factor of the freedom but not the good faith. So parties are free to choose with whom to contract but they have to bear their responsibility towards the choice they have made. So in summary, the point is that the principle of good faith even though appears a concrete notion and a constant meaning embodied basically in the principle of avoiding any act which might harm either the other party or offend good morals. It has its own particularity acquired from a legal thinking deeply influenced by the culture as well, which involves that judge might consider different perspectives of this notion and the expectation of the concerned party. If he is a foreigner to be juristically treated according to his understanding of good faith based on his domestic law, which is itself based on a legal thinking shaped by the culture and the way the principle was conceived and evolved within the history.

⁹ Grace Coreil "good faith in English contract dealing" journal of law teacher 2004 page 1 "Primarily, good faith originated from the Roman law that contributed to the "strict law" permitting the court to take responsibilities for the situation, fortifications and considerations of being just. In other countries such as Germany, "good faith" is related to the idea of 'Treu und Glauben' which basically means 'fidelity and faith'. According to Whittaker et al (2000), 'Treue' depicts faithfulness, loyalty, fidelity, reliability; whilst 'Glaube' means conviction in the sense of faith or reliance. These terms are implying loyalty and honesty for each contracting parties. Consequently, it is not a legal rule with particular requirements to act as such that needs to be evaluated" since the idea of loyalty in German law comes from roman law it explain also why Tunisian law adopt the idea of loyalty as well since it comes from the French law which itself influenced by the roman law ."

¹⁰ Grace Coreil "good faith in English contract dealing" journal of law teacher 2004 page 1 "the term "fair dealing" is used more than the term "good faith" in many English literatures because it is more clear, whilst "good faith" appears unclear to the legal councils. The term "fair dealing" stands for the observance of fairness to common law legal councils in a profound manner. It is vital to emphasise that the definition of "good faith" as an objective test to lawyers is integrated with the principles of civil law. Thus, it is more acceptable in terms of contract dealings if the term "fair dealing" is used as it provides a clearer view of the proper acts that both the contracting parties should make (Steyn 1997). In United States, the Uniform Commercial Code or the UCC gives a statement that contracts entails an obligation of good faith in its implementation. In the UCC, good faith refers to as the truthfulness in dealing with contracts integrated with the commercial standards of fair dealing. Consequently, American and English law both agree that the obligation of good faith is not applicable to contractual dealings."

A. *Good faith, “the gate keeper”¹¹ of the contractual process and the guarantor of fairness*

When China promulgated its first comprehensive contract law a decade ago, a pivotal shift was achieved by this enactment. Whatever, the purpose of the studies above accentuated, is to put stress on the main features of this new contract law. Therefore the freedom of the contract was analyzed according to this basis and same for the good faith but from another angle since it's not a newly transplanted principle as it is the case for the principle of the freedom of the contract. But because within the new CL, the good faith was deemed as a primordial principle and it has given much more space for interpretation in order to grant more rooms for the judge to intervene in terms of jurisprudence whenever he estimate the case arises It is considered as a fundamental concept of modern the contract for its elasticity and adaptability, which allows courts to use the doctrine to fill in legislative and doctrinal gaps.¹²When necessary, China has embraced the doctrine with enthusiasm, and has adopted it as a principle of civil law in general, and contract law in particular. Chinese scholars and legal competences have generally welcomed the doctrine, and courts have applied the doctrine without any apparent constraints. To the contrary, to other law systems where the principle was recognized gradually or even not considered as a legal rule as it is the case with the British law, which accentuates the fact this principle even influenced by the Unidroit. It wouldn't be easily implemented and adopted if it was hostile to Chinese culture and business ethics which stipulates that the principle was used as tool to enhance principles of community standards and make them consistent with the requirement of the modern law principles.

From this angle China invested a lot of efforts on modernizing the CL, which is boosted by its will to adopt an economic transition based on the principle of the open market. Therefore the New Chinese Contract Law adopted on 15 March 1999 entered into force on October 1st of the same year. It is partly based on the principles set forth by the Institute UNIDROIT (International Institute for the Unification of Private Law). The Chinese law on contract has a visible Universalist spirit in loans made to the Vienna Convention on the International Sale of Goods of April 11th, 1980. (Which China ratified it on December 11th, 1986, noticing though insisting to have a law system responds to requirement of the Chinese culture? The Chinese perspective of law respected the universal character but with an adaptation to the cultural identity that explain why some Chinese scholars manifested their worries towards the modernization of a law system fear of neglecting China characteristics and the non-consideration of the particularity of China in all terms. Not surprisingly, the scope of the doctrine of good faith in reflects the reliance of CL on this principle in a way that explains why the new Chinese Contract Law imposes a duty of good faith on parties during all phases of a potential contractual relationship, including pre-contract formation, performance, and post-termination. Chinese courts use the doctrine in a broad manner to resolve all types of contract disputes. They have used the doctrine to fill in legislative and doctrinal gaps, apparently without any discernible limiting principles. Chinese courts also have relied on the doctrine to excuse contract performance. It appears that the Chinese duty of good faith is conceptually similar to a duty of care in contractual relationships.¹³

China firstly recognized the doctrine of good faith as a legal doctrine when it promulgated the General Principles of the Civil Law (“GPCL”) in 1987¹⁴. Article 4 of the GPCL provides that, “when conducting civil activities, the principles of voluntariness, fairness, compensation for equal value, honesty, and credibility shall be followed.” In 1999, the first comprehensive Chinese Contract Law explicitly adopted the doctrine of good faith as a general principle. Article 6 of the Chinese Contract Law states that, “parties should abide by the doctrine of good faith when exercising their rights or fulfilling their obligations. Chinese scholars and courts have generally embraced the doctrine of good faith as a necessary part of the Chinese Contract Law. They describe the doctrine as the highest guiding principle or the royal principle for the law of obligations. Chinese legal scholars describe the Chinese doctrine of good faith as having evolved from Chinese moral traditions and the doctrine of good faith adopted by other civil law countries. And they interpret the doctrine as requiring that parties act honestly and honourably to perform their duties as promised. Professor Xu, Guodong¹⁵ is one of the first Chinese scholars to have advocated the doctrine's adoption

¹¹ Jun Zhao “The puzzle of freedom of contract in Chinese contract law, , *ILSA Journal of International & Comparative Law*, 2010.page 6. “Gate keeper” it's an expression used by Jun Zhao” to describe the good faith and defend the government interference.

¹² Chunlin Leonhard “A Legal Chameleon: An Examination of the Doctrine of Good Faith in Chinese and American Contract Law, 2004.page7 “The Chinese Contract Law imposes a duty good faith on parties during all phases of the contractual process, including pre-contract formation, performance, and post-termination. Chinese courts use the doctrine in a broad manner to resolve all types of contract disputes. They have used the doctrine to fill in legislative and doctrinal gaps, apparently without any discernible limiting principles”.

¹³ Chunlin Leonhard “A Legal Chameleon: An Examination of the Doctrine of Good Faith in Chinese and American Contract Law, 2004.page9

¹⁴ See Article 4 PL supra note 11

¹⁵ Chunlin Leonhard “A Legal Chameleon: An Examination of the Doctrine of Good Faith in Chinese and American Contract Law, 2004.page9

in China. He believes that the doctrine of good faith reflects Chinese legislators' demand that civil actors balance interests between themselves, and balance their interests with those of society, so as to maintain social stability and harmonious development. At the same time, Professor Xu acknowledges, with apparent approval, the doctrine's vagueness. Professor Xu believes that, because of its vagueness, "the doctrine of good faith means an affirmation of the creativity and activism of judicial activities.

III. THE SCOPE OF FUNCTION OF THE DOCTRINE OF GOOD FAITH IN THE LAW OF CONTRACT IN CHINA

The doctrine of good faith in China is practically applicable in every stages of the contractual process. Moreover, the Chinese Contract Law requires that parties take action in good faith, starting from the pre-contractual stage and during the performance, and post-termination. Some scholars depict, the Chinese Contract law, at the contract formation stage the doctrine of good faith appears to be much more exigent than stages of the contract. Therefore it recognizes some additional duties such as the duty of loyalty, the duty of mutual care and assistance, and other requirements in order to enhance more a climate of trust and confidence where parties are both expected to act according to honesty and non-deception, keep a promise, and safeguard confidentiality. From this point worthy to notice that the duty of confidentiality is figure of the largeness of the principle of good faith. Therefore this duty normally intervenes in the period post-contract when the parties have already achieved their goal in terms of business. Parties are invited to keep business secrets learned during the contractual process.

Hence Chinese scholars conceive that the doctrine of good faith has played different roles and fulfill many functions in China's contract law scheme. For instance it emphasizes and enhances the traditional Chinese notions of morality and business ethics. They even go far with their expectations from this principle relying on this doctrine to be the milestone in contributing to the establishment of a normal transactional order in China. They believe that China needs the doctrine because too many unethical activities, such as counterfeiting, imitation and other corrupted activities¹⁶, have been recently cropped up in many forms within the Chinese market. The doctrine of good faith might serve to assist with the interpretation by parties or courts for better understanding of contract contents, especially when the contract contains a lot of areas on perplexity and ambiguity which explains why some Chinese legal scholars consider the doctrine of good faith a guarantor and the guide during the contractual process in order to make sure that the contract is respected and well performed in accordance with the agreed deal. Yet some specialists in contract law went far in their expectations in terms of reliance and confidence on the good faith depicting that the good faith regulates and controls people's behaviour whenever a party intends to skid from the context of the agreed clauses traced by both in the contract and also the doctrine of good faith gives the green light to jurisprudence to manage equivocal cases whereby the law abstains from affording a precise decision or opinion about some situations.

It assists them to resolve complicated cases by filling in legislative and doctrinal gaps whenever the possibility occurs. But this remains a very positive insight yet some other commentators think that the wide territory which the good faith was granted to intervene might be a bit exaggerated from the angle that giving much confidence to a vague notion. It is not safe from a legal point of view because after all the law is made to clarify and to manage cases according to precise rules made especially for the concerned situation in a way that the judge to apply the convenient law and his interpretation would be needed only if the case really requires it, which is supposed not to be so frequent. So the objection of some scholars comes from the fact that it is used as an often much-needed gap filler which is not really consistent with the principle that the law should not contain a lot of vagueness and areas of doubts and incertitude. Good faith in the pre-contractual stage and when excusing to perform the contract.¹⁷

The Chinese contract law used the doctrine of good faith as a parameter of verification of a potential violation or abuses in and yet a tool to keep an eye on people's behaviour in the following stages of the contractual process nevertheless from some other point of view of law system, the doctrine of good faith is hard to be applicable in the prior formation stage because this might be a sort of infringement vis-à-vis individuals' interests and plans. Controversially, the Chinese contract law manages the pre-contractual stage as well using the good faith as a vehicle to carry the idea of protection of the collective interests and the community standards. That's why the Chinese court had adopted the principle of liability even before a contract was formed. For instance the case of companies of

¹⁶Chunlin Leonhard "A Legal Chameleon: An Examination of the Doctrine of Good Faith in Chinese and American Contract Law, 2004, page 9

¹⁷ "Chunlin Leonhard "A Legal Chameleon: An Examination of the Doctrine of Good Faith in Chinese and American Contract Law, 2004, page 7
"Contract Law requires that parties comply with the duty of good faith prior to the formation of a contract, during performance, and post-termination".

insurance where parties sometimes are deemed liable even before the contract formation stage or in the backing field when makes a contract loan. In some cases the bank refuses to grant the borrower a loan based on his prior loan history that demonstrate his insolvency and ability to pay back the loan in time especially if the amount is so risky it gives the bank the right to refuse the borrower demand and its refusal is not considered a violation of its duty of good faith.

B. The good faith: a broad conception served as a protector of parties or the government's interest:

Whether if it is really in the interest of parties or not, the principle of good faith in China can overpasses its scope of function compared to the case in some western countries where the perspectives are merely stipulating that the doctrine of good faith should work as an assistant for contracting parties desiring fair-dealing. This term is considered from their point of view much more rational and acceptable from a legal point of view than the term good faith ,noticing that it should not disrupt the business operation and make parties feeling that they are bounded by a vague notion which might obstacle them in all steps of the contractual process and ruins their solicited business outcome; in this context there are some Chinese courts based on the doctrine of good faith exempted some parties from performing the agreed deal in order to protect the collective interest. Here after a case whereby the court excused a party from his duty to perform grounding on the good faith. In *Xin Yu Company, Feng, Yumei*¹⁸, the court, relying on the doctrine of good faith, cancelled a commercial store sales contract. The defendant had signed a contract with a real estate developer to buy a store in a shopping center located in NanjingCity's downtown commercial area. The shopping center initially consisted of over 150 stores selling individual proprietors, including the defendant.

The defendant complied with the terms of the sales contract and paid the purchase price. In late 1998, the developer delivered the premises to the defendant. Thereafter, the shopping center ran into financial difficulties and was unable to continue operating. The developer decided to change the business model of the shopping center and buy back all of the stores from the small proprietors, including the defendant. The developer succeeded in persuading most of the small proprietors to sell the stores back to him, with the exception of the defendant and a couple of other individual proprietors. When the parties failed to reach an agreement, the developer sued the defendant, asking the court to rescind the contract of sale. The court found that the contract between the defendant and the developer was valid, and that the defendant had complied with the terms of the contract. However, relying on the principle of fairness and the doctrine of good faith in Articles 5¹⁹ and 6²⁰ of the Chinese Contract Law, the lower court rescinded the contract. The court ordered the defendant to return the premises to the developer and ordered the developer to refund the purchase price with additional compensation for the appreciation in value.” in this case it is obvious that the judge based on the principle of good faith has aligned his position with the collective interest trying to balance it with individual. Therefore the court treated the case from a social point of view. Since the developer bought back all the store he sold because of the deterioration that had impacted the activities of the shops center which means that the continuity of exercising the same kind of business might cause more deterioration for the local economy and yet the national as well fear of affecting social resources and cause a harmful act for the city's economic development. The court decided that it would be more convenient to cancel the contract even though the contract was valid and try to satisfy the defendant by refunding the purchase price with additional compensation.

This case demonstrate how this principle can go far in protecting collective interests which is beneficial for the state in order not to disturb its economic welfare. But it shows as well how the principle of good faith might be a cause of a frustration which individual shall undergo to safeguard the public interest sometimes. Thus I would re say again here that law principles literally might look same but in reality they unveil their real meaning only within the political and social context. In other words, the doctrine of good faith as an universal principle depicted by the Unidroit, within the Chinese culture had to be harmonized with the cultural background and the public interests so the practical meaning of the principle of good faith vary depending on the variation of the culture and the political system which imposes its specific rules for better management according to its plans an conception, which involves that the same case in another country would be treated differently even though if the country has recognized the doctrine of good faith as a primordial principle as well. But because of its legal structure also shaped by its cultural and political strategy, the treatment of the case would be consequently deeply impacted by this difference. The decision made by the Chinese court is understood only if the observer take into consideration that it was treated so differently because the doctrine of good faith has evolved differently in China, due to the historical dominance of the moral ethics throughout different

¹⁸Chunlin Leonhard "A Legal Chameleon: An Examination of the Doctrine of Good Faith in Chinese and American Contract Law, 2004, page 9
"Feng Yumei see supra note footnote 121. *Xinyu Co. v. Feng Yumei (The Intermediate People's Ct. of Nanjing City, Jiangsu Province, Sept. 6, 2004)*,
¹⁹Article 4 CL, "A party is entitled to enter into a contract voluntarily under the law, and no entity or individual may unlawfully interfere with such right."

²⁰Article 5 CL, "The parties shall abide by the principle of fairness in prescribing their respective rights and obligations."

periods of China's history. We should bear in mind also that this principle is deemed gelatinous and vague hard to be evaluated from an objective point of view and according to an empirical parameters, it may causes perplexity and yet its uncertainty might create a state of divergence and conflicts within the understanding if the observer neglect the fact that the law in general is a sort of mirror of social values and community standards. So it is obligatory to know in which cadre the doctrine of good faith evolved ²¹ and how did it evolved that's why some scholars compare this principle because of its ambiguity and its non-constant character with the chameleon because it adapts with the environment it doesn't has a fix definition, and so in fact it doesn't have really a precise color that depends on the objects that surrounded it and influence on it.

Furthermore some commentators' thinks that this immense importance granted by Chinese legislators to the doctrine of good faith find its origins in its political traditions because the political structure of state since the antiquity didn't adopt the principle of separation of the powers. It was always based on a totalitarian regime where the emperor²² has the absolute freedom to govern all the governments organs and monopolize all governmental power sand even though after the communism comes to power the conception was modernized and more enhanced with the open market policy, the principle of separation of power remain limited still because in a socialist country, it is evident that the communist party strictly controls all branches of government which involves that China kept the paternalistic tradition from the antiquity where the king before and the communist party now has a boundless prerogative in managing all branches and focusing on the collective interests to the detriment of the individual one.

IV. CONCLUSION

There is no doubt that Chinese legal thinking is a result or a spirit of a sum of social ethics and customs, which becomes after strict rules. The paternalistic government seems to be a more suitable word to describe Chinese regime rather than the word totalitarian, which explain in somewhat why giving much rooms to a broad doctrine managed by judges who represents the governmental authority and allow them to interfere whenever they estimate it appropriate .In other words, this premises that government is like a father who's benevolently trying to do his best to well manage people's interests and take care of them. This might appears so particular and it might also explain why other law system like the British and the American didn't grant much importance and power to this principle, first because they have a legal system and a regime that is based on separation of powers which explain a historical aversion towards the monopolization of powers, moreover because they rather promote individual freedom and liberties. While in china social harmony is a virtue highly valued, appreciated and strongly present throughout China history.

²¹“In China, indivi²¹ChunlinLeonhard “A Legal Chameleon: An Examination of the Doctrine of Good Faith in Chinese and American Contract Law, 2004.page5 “duals do not matter as much asthe group. Confucian ideology has dominated the Chinese culture for thousands ofyears, Confucius advocated collectivism and a strong government.intervention ProfessorDaniel Chow describes the Confucian notion of relationships within society asthose of superior to inferior with a general duty of obedience owed by the inferiorto the superior and a reciprocal duty of caring, support, and guidance owed by thesuperior to the inferior.”

²² Jun Zhao “The puzzle of freedom of contract in Chinese contract law”, *ILSA Journal of International & Comparative Law*, 2010. Page 5 “this is hint to the paternalistic feature that qualified china's history where the emperors monopolize on the governmentsinstitutions and the citizens have to trust him as good father doing his best to manage their interests Paternalistic interventions may be classified according tovarious parameters.” The censure of paternalism within contract lawdirectly follows from the individualistic conceptions underlying theprinciple of “freedom of contract.” On the other hand, there are justifications for paternalism, and numerous rules and doctrines ground, atleast partly, in paternalism.” Some instances of paternalism in contract law do not entail a rejection of private autonomy, but may rather be viewed as enhancing free will”.