

CULTURES, INSTITUTIONS, AND INTELLECTUAL PROPERTY RIGHTS

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**Drawing on papers coauthored with David Ahlstrom (CUHK),
Shawn Carraher (UT Dallas), and Weilei (Stone) Shi (CUNY): *JIBS*
(Peng et al. 2017) and *MOR* (Peng et al. 2017)—*BH* (Peng, 2013)**



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***QUIZ:* Name that country**

- Imagine some difficult IPR negotiations between a superpower and an emerging economy
- SUPERPOWER: Why don't you improve IPR protection?
- EMERGING ECONOMY: Well, we are still developing, but we need to promote education and facilitate learning



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QUIZ ANSWER

- In the 19th century, that offending developing economy was the United States—the leading IPR violator at that time
- In today’s U.S.-China debate over IPR, few have bothered to draw lessons from the earlier history of IPR disputes between Britain and the United States



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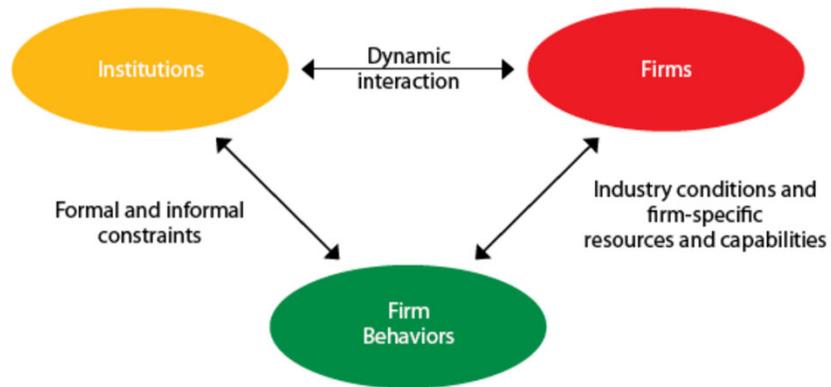
Using history to inform the future of the IPR debate

- According to the (mostly Western) media, the scale and scope of IPR violation in China are “unprecedented”
- What are the lessons from history?
 - How and why did the United States voluntarily turn from being a leading IPR violator to a leading champion?



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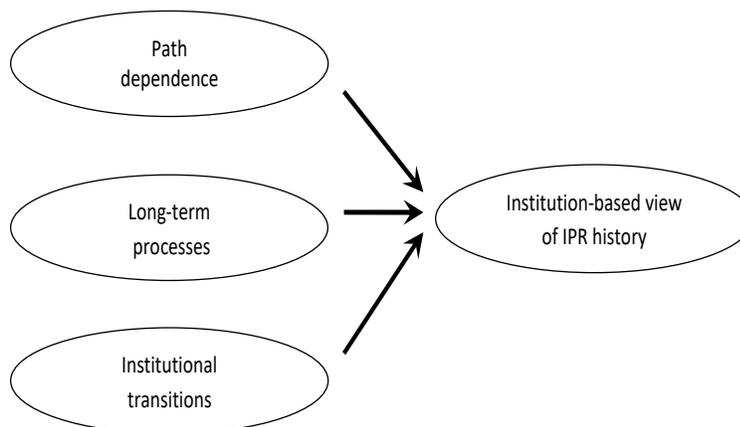
AN INSTITUTION-BASED VIEW



Source: M. W. Peng, *Global Business*, 3rd ed., p. 38
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IDENTIFYING THREE THEORETICAL MECHANISMS



© 2017 by M. W. Peng, D. Ahlstrom, S. Carraher, & W. Shi,
 An institution-based view of global IPR history, *Journal of International Business Studies*

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A puzzle: Why does China not pay sufficient attention to IPR protection?

- Strong evidence that strong IPR protection leads to innovation and growth
- Three leading explanations of the China puzzle
 - Culture
 - Politics
 - Institutions



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Cultural argument:
Alford (1995)

But, is the Chinese
culture the only
culture that breeds
IPR violation?

The answer is NO



*To Steal
a Book
is an
Elegant
Offense*

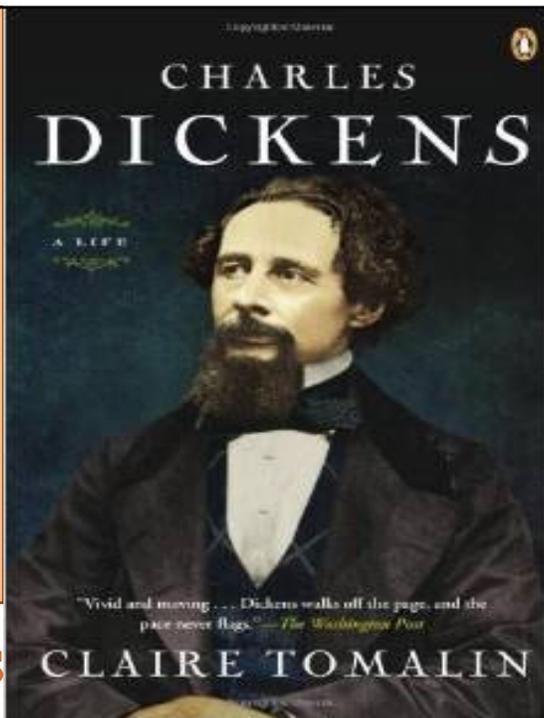
*Intellectual
Property Law
in Chinese
Civilization*



William P. Alford

Although one of the most popular authors in America, Dickens never made a penny of royalties in the United States

According to him, the Americans were “culturally hopeless”



Political argument: Chinese politics emphasizing public ownership is not compatible with (private) IPR

But why no IPR violations during Beijing Olympics?



Cost-benefit analysis

- When there is a will, there is a way
 - Beijing Olympics is a shining example
- At present, satisfying U.S. IPR demands will result in foreign (mostly U.S.) rights holders benefitting more from such protection
 - Costs do not outweigh benefits
- Then when will China become genuinely interested in improving IPR protection?



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The United States as a leading IPR violator

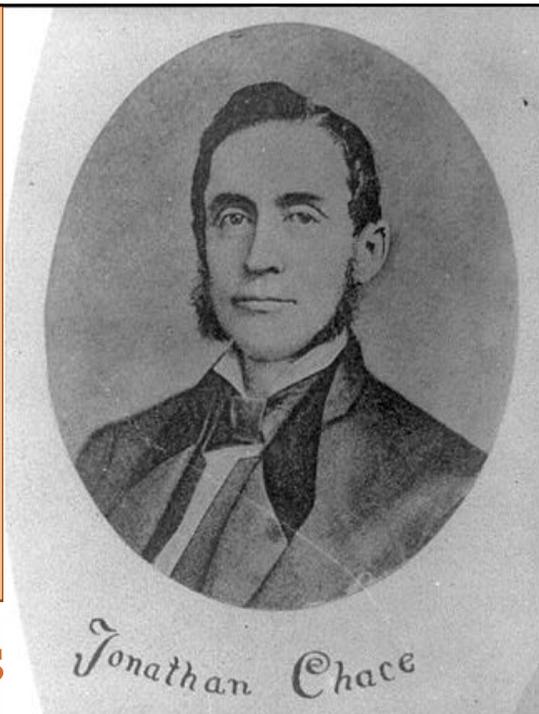
- Why was 19th century America full of IPR violation?
- Why did the U.S. government first support such IPR violation for over a century and then change its mind in 1891?



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International
Copyright Act
(Chace Act) of 1891:
Extending IPR
protection to foreign
works and authors for
the first time

What led to such a sea
change?



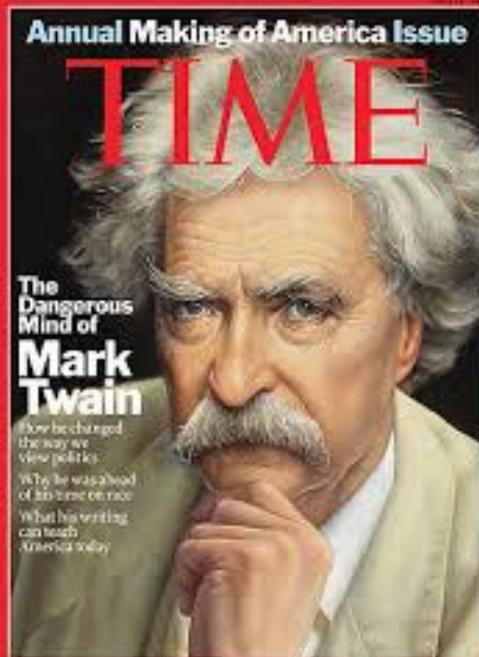
Again, a cost-benefit analysis

- Foreign (UK) political pressures played little role
- The U.S. turned from being a net consumer to a net producer of IP
 - Indigenous U.S. publishers, authors, and inventors demanded better IPR protection elsewhere
 - But in the absence of reciprocity, their IP was pirated elsewhere—most notably in Canada
- The benefits of protecting foreign IPR in the United States > the costs of doing so (+ the costs of having U.S. IPR violated abroad)



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An indigenous stakeholder, Mark Twain had to establish residency in Canada in order to protect the copyright of his novel *The Prince and the Pauper* in Canada



Two predictions based on history

- **DIRECTION:** Just like the United States, China will become respectful of IPR, including foreign IPR
- **TIMING:** China will become respectful of IPR when its IPR are widely pirated by foreign violators outside of China



A more generalizable framework (A)

- IPR history of DE: Britain, Denmark, Germany, Japan, Netherlands, Spain, and Switzerland
- IPR history of EE: Brazil, India, Russia, and S. Korea
- P1 (path dependence): In the early stage of economic development, most countries will choose to disrespect IPR, especially foreign IPR.
- P2a (long-term processes): In the long run, the trend is toward better protection of IPR, including foreign IPR.



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A more generalizable framework (B)

- P2b (long-term processes): In the short run, reverting back to IPR violation is likely to occur during certain periods of time and in certain industries and countries.
- P3 (institutional transitions): Institutional transitions in favor of better IPR protection will not take place until the perceived benefits to the adopting countries and firms outweigh the perceived costs.



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Two contributions

- Demonstrate how history can be directly relevant in informing a crucial debate with significant ramifications for the future by leveraging the three theoretical mechanisms to develop an institution-based view of IPR history
- Broaden the reach of the institution-based view



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To U.S. managers who complain

- Learn the rules of the game of China's IPR system
- Learn from how British managers dealt with counterfeiters in the United States over 100 yrs ago
 - Litigation was normally a last resort
 - Private agreements with offenders were cheaper and quicker



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In conclusion:

“Few of man’s
economic problems
are new—most have
recurred endlessly in
the past”

— Douglass North
(1974)

