

# **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)**



# *QUIZ:* Name that country

- Imagine some difficult IPR negotiations between a super power 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



# *QUIZ ANSWER*

- In the 19<sup>th</sup> 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



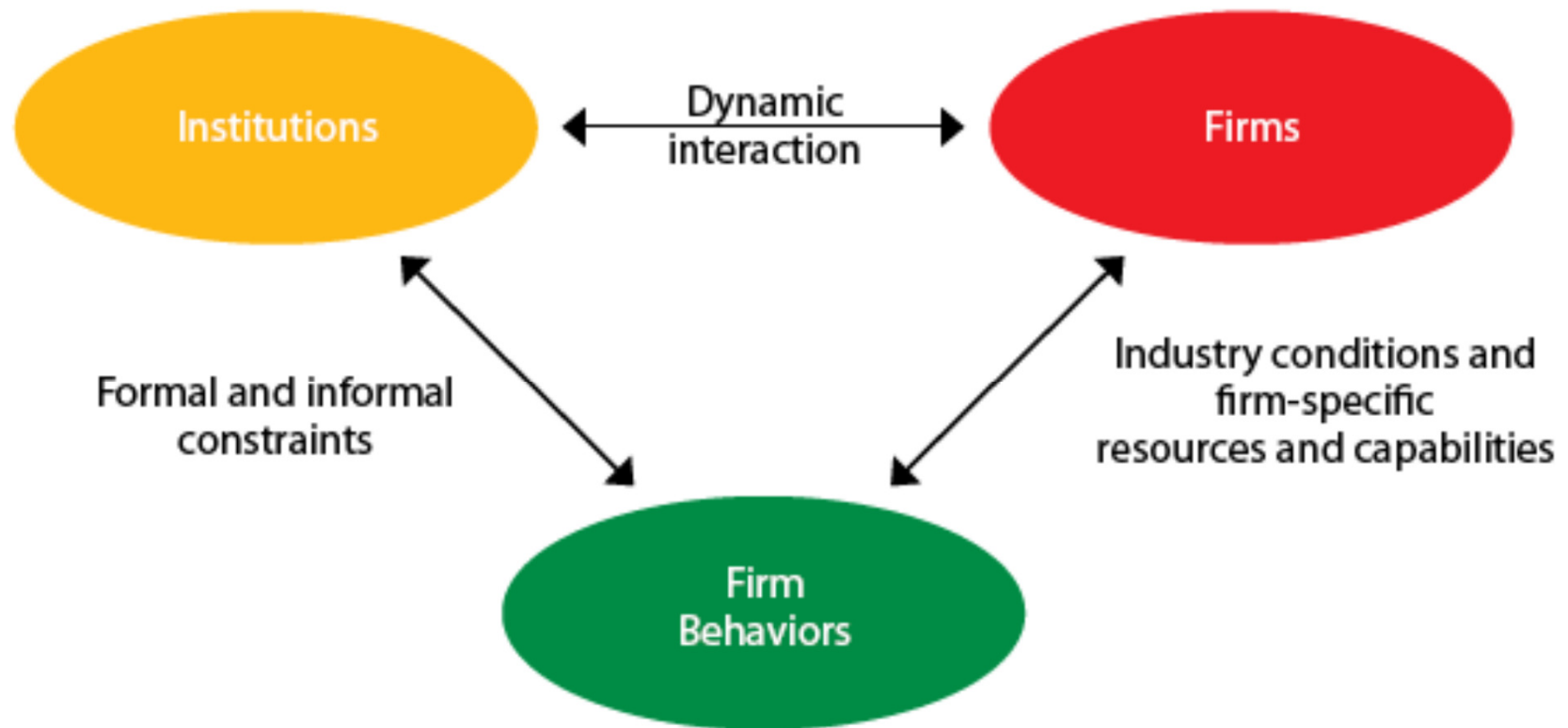
# Using history to inform the future of the IPR debate

- According to the (mostly Western) media, the future of IPR development in China is depressing
- 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?



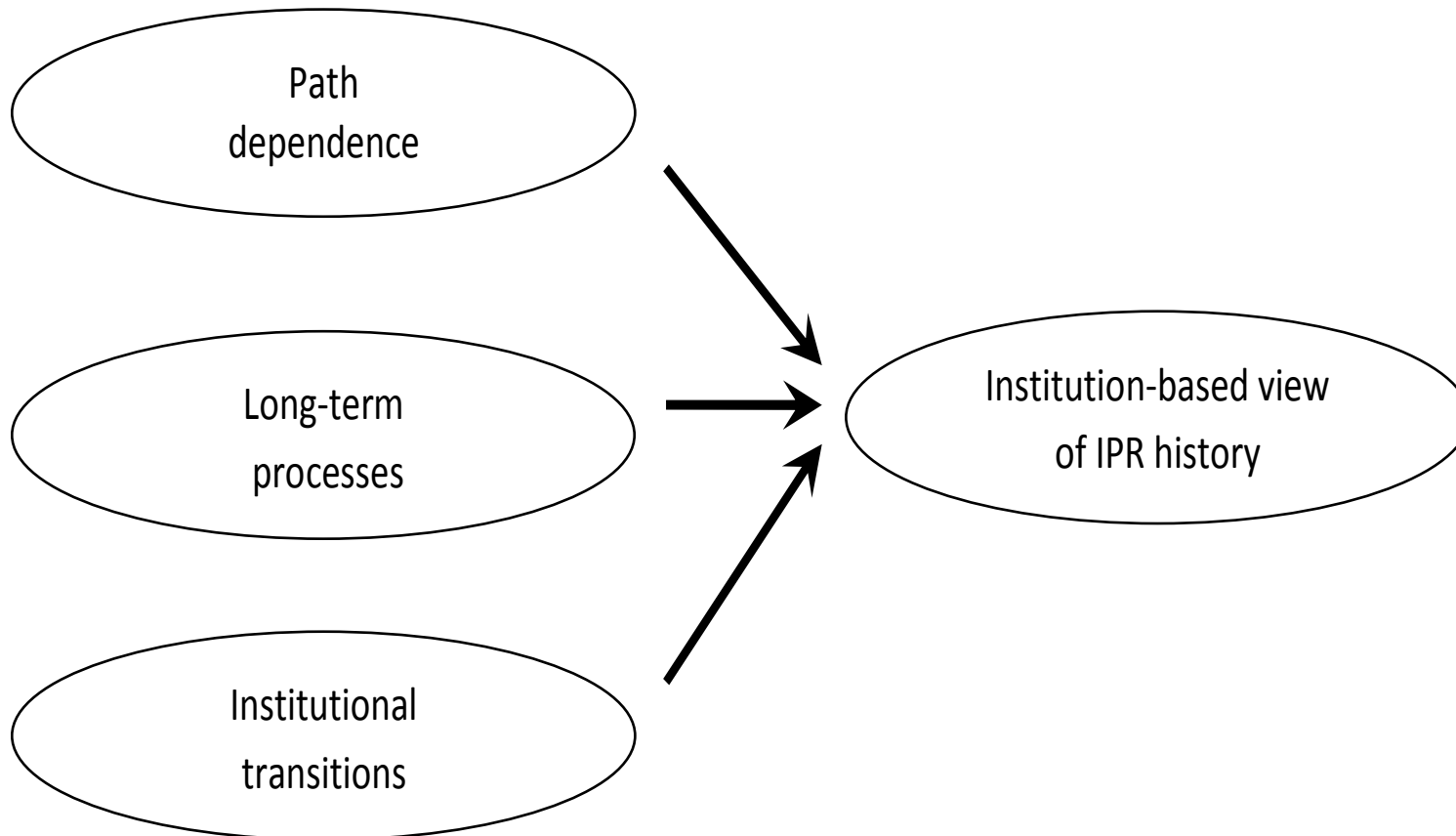
# AN INSTITUTION-BASED VIEW

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# IDENTIFYING THREE THEORETICAL MECHANISMS

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# A puzzle: Why China does 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



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*



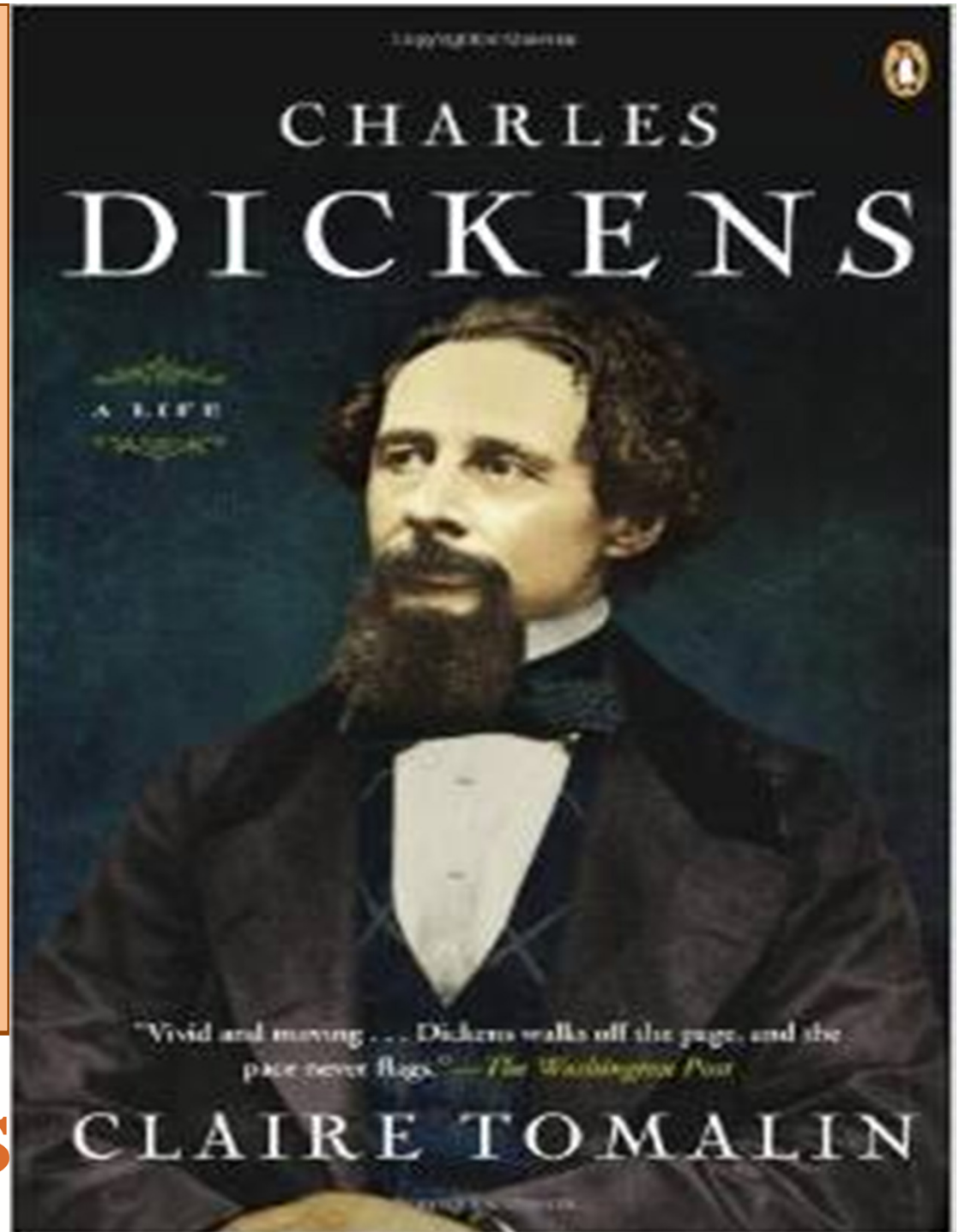
*William P. Alford*





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?



Beijing 2008  
TM&C



# 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?



# The United States as a leading IPR violator

- Why was 19<sup>th</sup> 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?



*Rejecting* cultural and political arguments:  
U.S. Constitution  
Article I Section 8:  
“The Congress shall have power...to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their writings and discoveries”





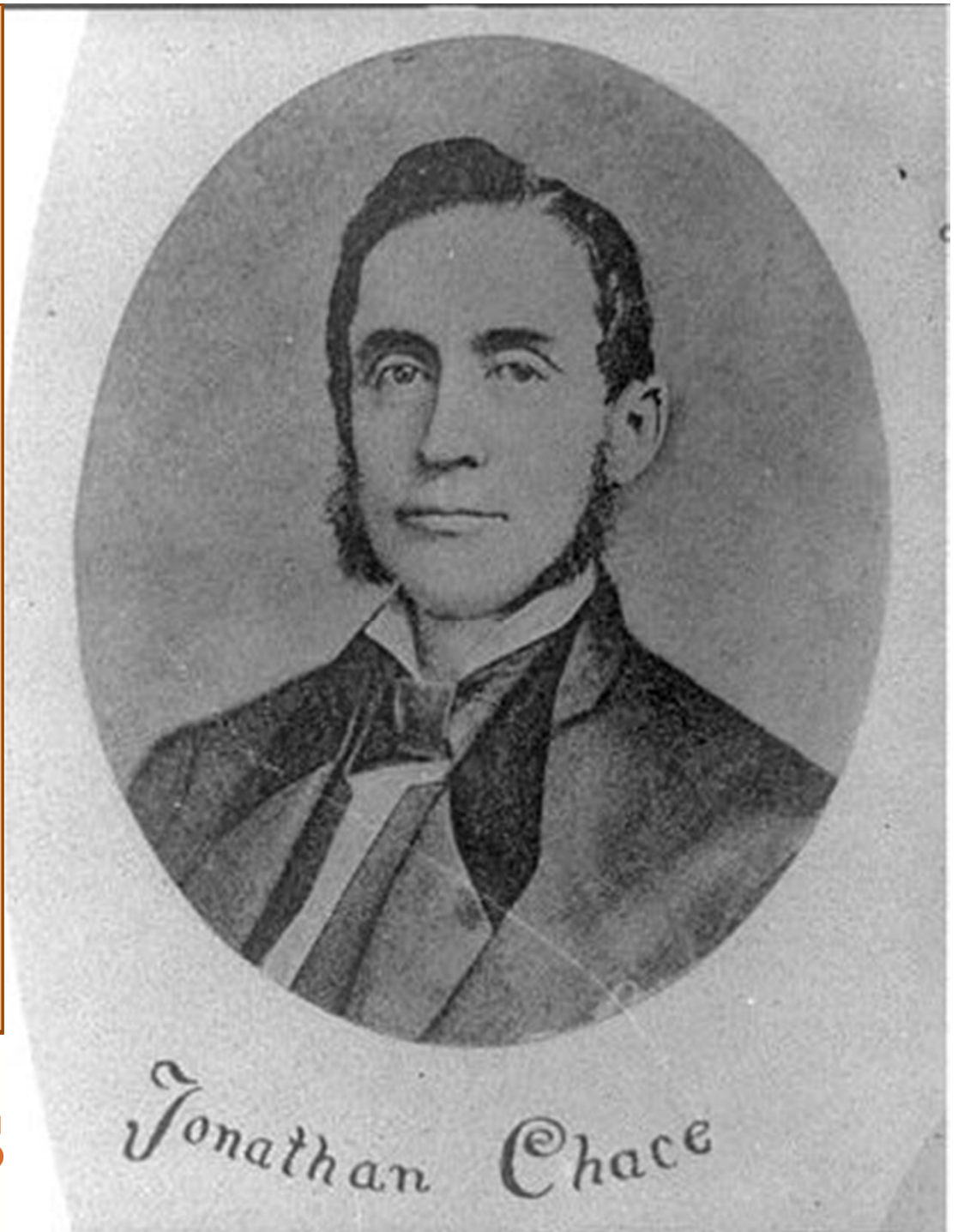
# Understanding institutional transitions

- “Fundamental and comprehensive changes introduced to the formal and informal rules of the game that affect organizations as players” (Peng, 2003)
- “Entrepreneurs in political and economic organizations believe that they can do better by altering the existing institutional framework at some margin” (North, 1990)



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?



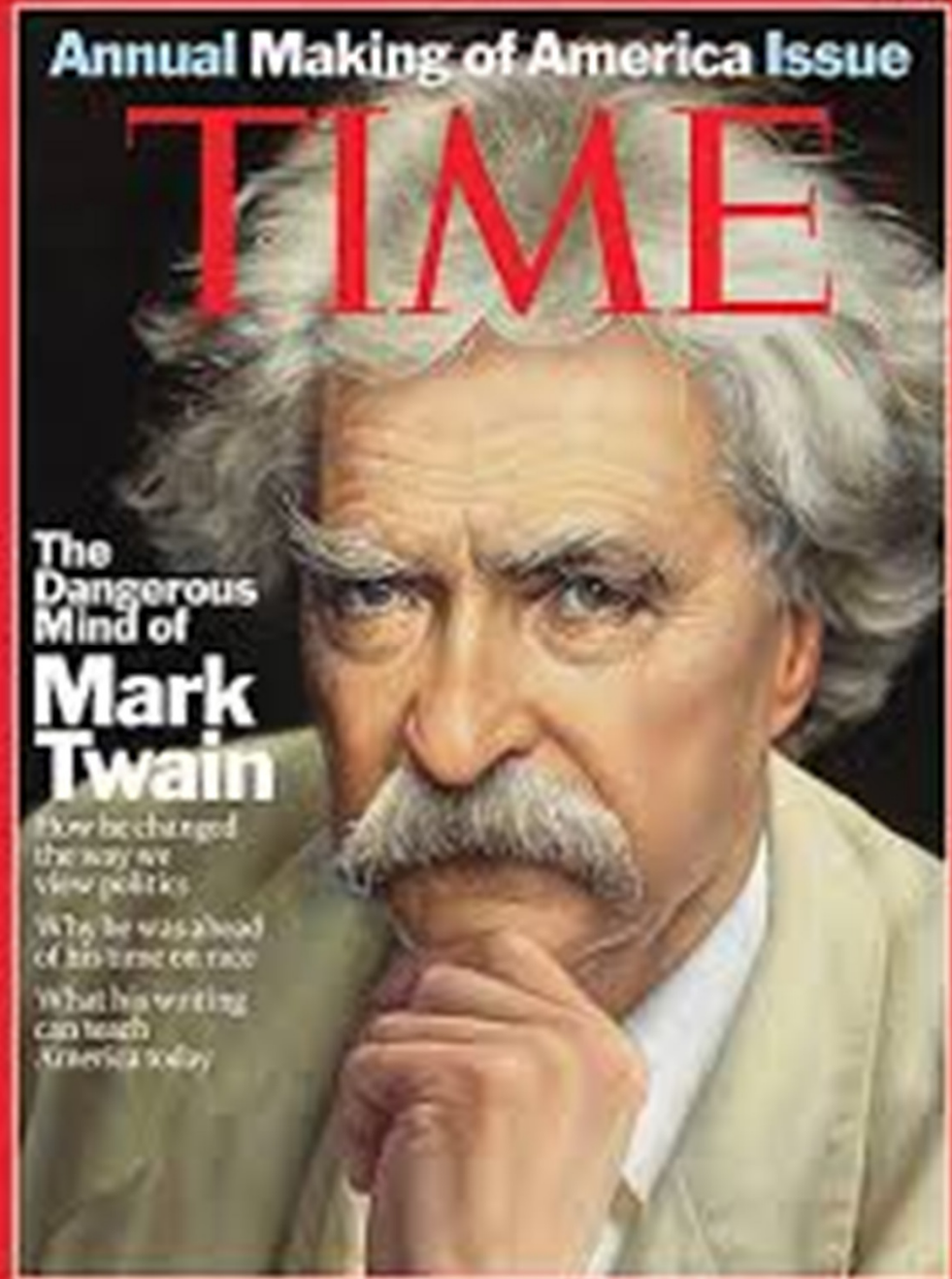


# Again, a cost-benefit analysis

- 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)



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



# IPR “backwater” no more

- Total patent applications in China jumped from less than ½ million in 2005 to over 1.2 million in 2010 and 2.6 million in 2013
  - The largest country in domestic applications (since 2011)
  - Also, third largest country in international applications (WIPO/PCT filing)



# Surprise: What is the world's most litigious country in IPR?

	Copyright cases	Trademark cases	Patent cases	Total IPR civil cases
China (2010)	24,700	8,460	5,785	38,945
China (2009)	19,298	6,906	4,422	30,626
United States (2009)	2,192	2,792	1,674	6,658

Source: Extracted from data in R. Suttmeier & X. Yao, 2011, China's IP transition: Rethinking intellectual property rights in a rising China (p. 13), Seattle: National Bureau of Asian Research

# 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.



# 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.



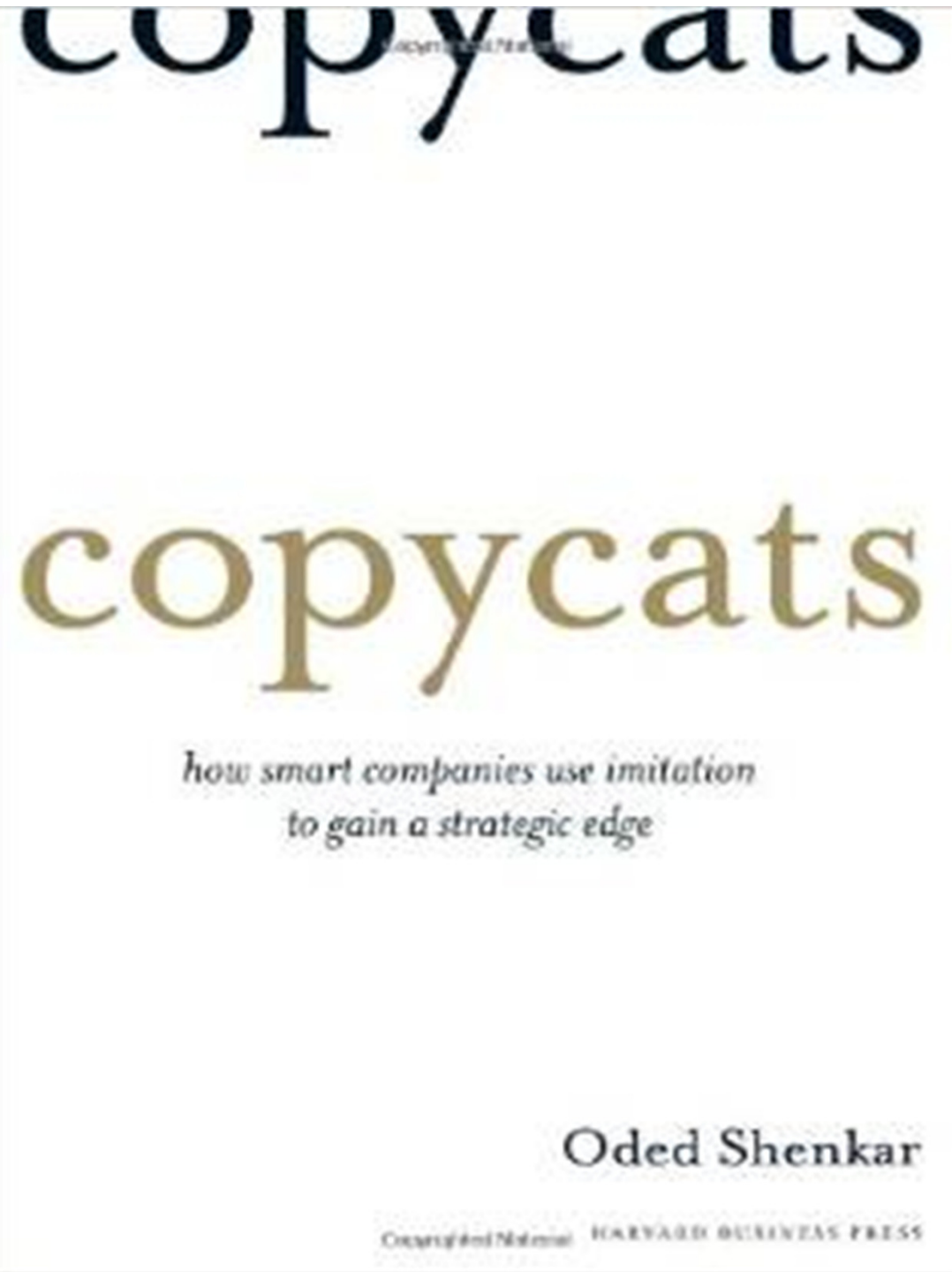
# Two contributions

- 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





Shenkar (2010):  
For Chinese managers,  
“copycat” is a strategy  
of how smart  
companies can gain a  
strategic edge



# 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



Peng (2003):

Be aware of the  
institutional  
transitions

Firms failing to  
realize the passing of  
their time will fall  
behind or go out of  
business

*Academy of Management Review*  
2003, Vol. 28, No. 1, 215-236.

## INSTITUTIONAL TRANSITIONS AND STRATEGIC CHOICES

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How do organizations make strategic choices during the time of fundamental institutional transitions such as those sweeping numerous emerging economies? To answer this question, a two-phase model of institutional transitions is developed in this article. I focus on the longitudinal process to move from a relationship-based, personalized transaction structure calling for a network-centered strategy to a rule-based, impersonal exchange regime suggesting a market-centered strategy. I then identify the points of inflection; predict strategic choices for incumbent, entrepreneurial, and foreign firms; and delineate their performance implications.

How do organizations make strategic choices during the time of fundamental and comprehensive institutional transitions? In three decades of research since the publication of Child's (1972) seminal paper, researchers have produced an impressive body of knowledge on how strategic choices are made (Child, 1997; Oliver, 1991). However, most of their studies focus on strategic choices in relatively stable institutional environments. Even when scholars study how organizations respond to institutional transitions, they typically concentrate on changes in one industry while the overall institutional framework of the country remains mostly unchanged. Such industry-specific changes, however, pale in comparison with the massive institutional transitions taking place in many emerging economies. Unfortunately, little is known about how organizations make strategic

choices when confronting such large-scale institutional transitions.

Since institutions are typically conceptualized as "the rules of the game in a society" (North, 1990: 3; Scott, 1995), *institutional transitions* can be defined as fundamental and comprehensive changes introduced to the formal and informal rules of the game that affect organizations as players. Institutional transitions in some emerging economies, especially those moving from central planning to market competition (e.g., China, Poland, Russia), are so pervasive that these economies are simply labeled *transition economies* (Peng, 2000). Yet, although institutional change has emerged as a central focus for organizational researchers (*Academy of Management Journal*, 2002), they have not paid adequate attention to these wide-ranging transitions, until recently (Hoskisson, Eden, Lau, & Wright, 2000). Compared with other fields (e.g., economics), in which substantial research on transition issues has visibly influenced international organizations, such as the World Bank (2002), in the long run, the organization and strategy field's tendency to eschew engagement with these major transitions around the world

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In conclusion:

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

— Douglass North  
(1974)

