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# Introduction

JULY 2007, Beijing. Just a few days after the long-anticipated finale of J. K. Rowling's *Harry Potter* series was officially released, bootleg softcover English-language copies of *Harry Potter and the Deathly Hallows* were appearing on street vendors' bookstalls; they were sold at only one-fifth the price of authentic ones.<sup>1</sup> By early August, while People's Literature Publishing House, which owns the mainland rights to this book, was still preparing for its Chinese version, cheap Chinese-language copies—put together by pirates, based on amateur translations from fan websites—had hit the marketplace.<sup>2</sup> Not to mention the series of “fake” Harry Potter books, such as *Hali Bote yu baozou long* (Harry Potter and the leopard walk-up-to dragon), that have been bootlegged in China by publishers who hoped to seize upon the young wizard's popularity to make a quick fortune.<sup>3</sup> These knockoff Harry Potter novels, along with the unlicensed Windows software found on the computers of China's universities and companies,<sup>4</sup> and the Chinese seed thieves caught stealing genetically modified

1. “Harry Potter's Magic Can't Beat Chinese Pirates,” Reuters, July 27, 2007, <https://www.reuters.com/article/industry-arts-potter-china-dc-idUSPEK29273520070727>.

2. “Cuzhi lanzao buhui maizhang Ha 7 jingxian zhongwen daoban” [Don't purchase poorly made copies; pirated editions of Harry Potter 7 in the Chinese language appeared in the market with surprise], *Renmin wang* [People's news online], August 13, 2007, <http://culture.people.com.cn/GB/22219/6103568.html>.

3. For the phenomena of China's “fake” Harry Potter novels, see Henningsen, “Harry Potter with Chinese Characteristics.” Other notable “fake” books compiled by Chinese pirates include Bill Clinton's autobiography, *My Life*; see “Bill Clinton's Fake Chinese Life,” *New York Times*, October 24, 2004, <https://www.nytimes.com/2004/10/24/opinion/bill-clintons-fake-chinese-life.html>.

4. For example, in 2017, about forty thousand institutions in China were hit by the WannaCry ransomware attack because the Windows systems installed on their computers were pirated

corn from the United States,<sup>5</sup> are just a few examples of China's current state of intellectual property piracy. Jurists, journalists, and policymakers outside China are convinced that the Chinese, even though they are now fully participating in the global economy, have not yet learned to appreciate the universally recognized intellectual property rights (IPR) doctrine.

While the Chinese government's lax enforcement against IPR piracy is often attributed to its administrative impediments and fragmentation, many further point the finger at the Chinese society's general lack of IPR awareness as the fundamental reason for its long-standing "addiction to counterfeiting."<sup>6</sup> This widely shared impression, if not myth, has shaped the general discussion on the past and the future of IPR in China: China has become the piracy haven it is today because, despite various attempts to transplant it, modern IPR doctrine did not strike root in China, but one day this will change when the Chinese are enlightened as to the true value of copyright. Or, in an alternative future, as one novelist imagines, the current IPR regime will eventually be ruined by the Chinese, since they "never liked 'intellectual property.'"<sup>7</sup>

Do the Chinese pirate because they don't *have* a sense of copyright? In spring 1911, when the first Sino-American copyright infringement lawsuit was brought to the International Mixed Court at Shanghai, an American lawyer tried to argue otherwise. To win the case for his client Ginn & Co., T. R. Jernigan (1847–1920), a renowned commercial lawyer and a former American consul general in Shanghai, wanted to prove that the Chinese pirates were also earnest practitioners of copyright in their own terms. He cited a petition that the defendants had submitted years earlier asking local officials to prohibit unauthorized reprinting of their publications, along with several similar prohibitions he had

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ones. "China, Addicted to Bootleg Software, Reels from Ransomware Attack," *New York Times*, May 15, 2017, <https://www.nytimes.com/2017/05/15/business/china-ransomware-wannacry-hacking.html>.

5. Ted Genoways, "Corn Wars," *New Republic*, August 16, 2015, <https://newrepublic.com/article/122441/corn-wars>.

6. For discussions of China's inability to enforce IPR protection, see Mertha, *The Politics of Piracy*; Massey, "The Emperor Is Far Away"; Chow, "Why China Does Not Take Commercial Piracy Seriously." For examples of more recent media discussion, see David Volodzko, "China's Addiction to Counterfeiting," *Diplomat*, October 17, 2015, <https://thediplomat.com/2015/10/chinas-addiction-to-counterfeiting/>. For a more recent US government take on China's current IPR environment, see "Protecting Your Intellectual Property Rights (IPR) in China," <https://2016.export.gov/china/doingbizinchina/riskmanagement/ipr/index.asp>.

7. Sterling, *Distraction*, 104.

handled as consul general in the 1890s,<sup>8</sup> as support for his argument that the defendants could and should be punished according to the local rules they themselves invoked.<sup>9</sup> When the defendants—Commercial Press (*Shangwu yinshuguan*), a leading Chinese publisher in town—reprinted his client’s history textbook, Jernigan stated, they were not only fully aware that the “literary piracy and theft” they committed was “universally condemned as wrong,” but they subscribed to this very idea.<sup>10</sup>

Jernigan made this paradoxical argument chiefly to overcome the legal obstacles he faced. As China’s recently promulgated copyright law did not apply to foreigners and the only applicable treaty clause was flawed, he resorted to local customs and practices as a sort of common law.<sup>11</sup> Although Jernigan’s bold statement didn’t persuade the Mixed Court judges to rule the case based on what he identified as a “general norm” of copyright, his intriguing remarks provide a revealing insight into the history of copyright in China. It provokes a rethinking of our conventional wisdom as to why the Chinese pirate.

Retrospectively analyzing the current piracy problem in China, scholars and commentators have comfortably declared that the development of IPR law, particularly copyright, in modern China has been a failure, if not a nonstarter, because Chinese tradition and political culture privilege imitation over innovation, community over the individual. The subsequent attempts to transplant Western IPR law in China throughout the long twentieth century were mostly made under foreign pressure and with minimal local resonance.<sup>12</sup> In the *Ginn & Co. v. Commercial Press* case, however, the alleged Chinese “pirates” freely admitted reprinting the American textbooks, but not because the Chinese cultural tradition or economic norms prevented them from comprehending

8. For the petitions and prohibitions he handled in the 1890s, see chapters 2 and 4 of this book.

9. “The Copyright Case,” newspaper clipping from *North China Daily News*; April 3, 1911; 893.544-G43; Box 10237; DF 1910–1929; RG 59; NACP.

10. “The Mixed Court Shanghai, March 29. Before Magistrate Pao and Mr. Jameson, American Assessor. Alleged Infringement of Copyright,” newspaper clipping from *North China Daily News*; March 30, 1911; 893.544-G43; Box 10237; DF 1910–1929; RG 59; NACP.

11. For further discussion on this case, see Fei-Hsien Wang, “Partnering with Your Pirate,” *Modern Asian Studies* (forthcoming 2020).

12. This cultural determinist argument is best articulated in Alford’s *To Steal a Book Is an Elegant Offense*. For examples of more recent variations of this argument, see Shi, “The Paradox of Confucian Determinism,” and Lehman, “Intellectual Property Rights and Chinese Tradition Section: Philosophical Foundations.”

modern copyright doctrine. In 1903, Commercial Press had published a pamphlet on European copyright law as part of their effort to urge the Chinese government to institutionalize domestic copyright.<sup>13</sup> The statements made by its general manager and attorneys during the 1911 trial indicated that the firm was well-informed about the relevant laws and their limitations before they reprinted Ginn & Co.'s textbooks.<sup>14</sup> The alleged Chinese pirates were not IPR savages but copyright-savvy economic actors. For them, pirating others' intellectual property and embracing copyright in their own interest were not mutually exclusive. This seemingly self-contradictory and bipolar disposition is the real face of Chinese copyright pirates.

This book uses a new conceptual framework to unveil this intertwined history of copyright and piracy in modern China that most scholars and commentators have so far neglected to see. While we may quickly take for granted that the law defines what constitutes copyright and piracy, they are never merely legal matters, but practices and concepts formed and evolved in the specific local nexus of cultural production and consumption. To uncover these practices, as well as the local nexus upholding them, I shift attention from the copyright legislations to their potential users. Authors, translators, publishers, and booksellers may not have the authority to make copyright law, but they hold dear the ownership of books and are more deeply concerned than the rest of society with the issues of piracy. This book explores how they received, appropriated, practiced, and contested the very concept of copyright—or *banquan* 版權 in Chinese, literally “right to printing blocks”—from the 1890s, when this term was first introduced in the Chinese cultural community, to the 1950s, when it gradually faded from public discussion.

Given the political circumstances of the long twentieth century in China, if we are to comprehend that country's history of intellectual property, it is particularly crucial, I believe, that we grasp this shifting of focus from “how copyright law was made” to “how the concept of copyright was practiced.” It is certainly true that China's track record on instituting copyright law was far from impressive. Most clauses of *Da Qing zhuzuoquan lü* (Copyright Law of the Great Qing) were borrowed indiscriminately from the 1899 Copyright Law of Japan. As the Qing government was overthrown by the revolutionaries a few months after it took effect, it is doubtful whether this first Chinese

13. Sikeluodun, *Banquan kao*.

14. “The Mixed Court Shanghai, March 29,” 893,544-G43; Box 10237; DF 1910–1929; RG 59; NACP.

copyright law was ever seriously enforced. In 1915, *Zhonghua Minguo zhuzuoquan fa* (Copyright Law of the Republic of China), almost identical to its predecessor, was passed by the ROC National Assembly. When it was to become effective, the then president, Yuan Shikai (1859–1916), installed himself as the emperor of the Chinese Empire. The decade of civil wars between regional military leaders following Yuan’s short-lived Chinese Empire further obstructed law and order in China. New copyright legislation was promulgated in 1928 by the Nationalist government of Chiang Kai-shek (1887–1975) after he nominally reunified the nation, but the escalating conflicts with the Communists and the intensified aggressions from Japan constrained the Nationalist government’s capacity and determination to attend to this less urgent matter of copyright. As the continuous political upheavals throughout the first half of the twentieth century hindered these legislations from realizing their potential, the new communist regime established in 1949 further removed the doctrine of copyright from its legal landscape. As a matter of fact, the People’s Republic did not issue its copyright law until 1990, when it was working toward joining the Berne Convention and the World Trade Organization (WTO). Given these twists and turns, it is understandable that the transplantation of copyright law in China has been so easily regarded as a failure. However, we must keep in mind what Jernigan stated in his intriguing defense: Chinese authors and publishers might not have relied solely on the state’s formal laws and courts to protect their literary creations and settle ownership disputes. They had many other means to regulate and protect what they believed to be “copyright.”

The most powerful testimony that the actual practices of copyright in China might be a more vibrant and more compelling subject to excavate than the copyright legislation resides in the language itself. There are two Chinese terms/translations for “copyright,” one more popular than the other.<sup>15</sup> *Zhuzuoquan* 著作權, literally “author’s right,”<sup>16</sup> which has been used to denote “copyright” in all the copyright laws in China since 1910, is less commonly used, except in legal documents, than the other term for copyright: *banquan*. Every proper book published in China is expected to have a *banquan ye* (copyright page) that provides basic identification information for the book. In it, readers will likely find the following convention: *banquan suoyou fanin bijiu* (copyright is reserved, and

15. I would like to thank Wang Taisheng and Chen Yunru for bringing up the issue of the different legal validity of the two Chinese terms for copyright.

16. This term is a loanword from the Japanese term *chosakuken*, which is a translation of the French term *droit d’auteur* (or *Urheberrecht* in German).

reprinting will be pursued and punished).<sup>17</sup> The same statement also appears on DVD covers, food wrappings, and other commercial products as a Chinese equivalent of “all rights reserved.” Artists and authors sign a *banquan qiyue* (copyright contract) with their publishers and are entitled to receive a *banquan fei* (copyright fee) or *banshui* (copyright royalty) for every reproduction or broadcast of their works. The state’s copyright law does not necessarily validate these practices that people employ to declare, protect, or trade *banquan*, because the subject of protection in the law is *zhuzuoquan*, not *banquan*. But that has not lessened their popularity in China’s cultural industry.<sup>18</sup>

Examining merely the state’s law and legal records is thus not adequate to unveil the whole picture. The understanding of copyright and the controversies that continue to surround the notion of IPR today in China requires study of the *social* history of *banquan*/copyright. To reconstruct and analyze the day-to-day, on-the-ground debates, conflicts, and negotiations between authors and publishers, publishers and publishers, and publishers, authors, and state agents, in the name of *banquan*/copyright, I consult a wide range of sources that have previously been underutilized by legal historians. The rich and complex everyday practices of *banquan*/copyright attested in company records, individual petitions, guild archives, diaries, correspondence, advertisements, bibliographies, book lists, and the actual books produced at the time allow me extend my inquiry into the history of copyright and piracy in China beyond the state’s legislation. Such an approach also offers the possibility of examining legal transplantation in a legally pluralistic setting, as merchants and civic organizations were leading agents in disseminating and practicing *banquan*/copyright in modern China through customs and community regulations. The booksellers’ and authors’ illuminating everyday struggle with piracy and enforcement of copyright reveals how business and culture converged, law and economic life intertwined, as the country underwent profound sociopolitical changes and transitioned from late imperial China to modern China.

By conceptualizing Chinese booksellers’ and authors’ nitty-gritty and sometimes nasty efforts to claim, regulate, and protect what they believed to be copyright, this book also tries to connect the everyday enforcement and practices they used to manage their economic life with the economic, political, and legal ideas upon which they depended. The statements on copyright pages, ownership registrations, publication contracts, and actions against pirates

17. For a discussion of the making of this convention, see chapter 1.

18. The PRC Copyright Law now recognizes *banquan* as a synonym for *zhuzuoquan*.

provide us a bottom-up view of how different commercial interests and practices, legal concepts, and cultural understandings of human intellectual creation converged in China, a society that had just been sucked into the vortex of globalization.

### Copyright/*Banquan*: Alien Doctrine and Local Practices

“Why couldn’t copyright law have a strong foothold in China?” This has been *the* focus of inquiry for scholars who look into the past of IP law in China since the 1990s. In his pioneering study, William Alford argues that the character of Chinese political culture and Confucian traditions prevented imperial China from developing an indigenous counterpart to Western copyright law. Without the pressures exerted by Western gunboats, he declares, China would never have adopted IPR doctrines. However, the lack of awareness and institutional support of private property rights and a market economy have hindered subsequent efforts to transplant modern IP law in China since the turn of the twentieth century. As a result, China has continued to be a piracy haven even after joining the WTO. This sort of cultural determinist explanation still dominates public discussion in the West regarding Chinese piracy.

On the other hand, we see waves of Chinese scholars, driven by both nationalist pride and state policies, contesting Alford’s contention.<sup>19</sup> In general, they present an alternative history of copyright in China that fits the reform era’s political agenda: the precondition of copyright is not the recognition of individual property rights or a free market economy, as Alford hints, but the technology of printing. It would thus be only natural that China, the “first inventor of printing,” developed “a concept of copyright” earlier than the rest of the world. Tender sprout though it might be, they state, there was undoubtedly a home-grown “copyright with Chinese characteristics” emerging as early as the tenth century, long before the Statute of Anne, the accredited first copyright law in Europe, was promulgated. For them, even though the initial attempts to introduce European and American IP law since the late Qing did “enrich” indigenous copyright protection, those efforts should still be seen as part of the

19. A few examples of Chinese scholars’ pushback: Zheng, “Zhongwai yinshua chuban wu banquan gainian de yenge”; Shao, “An Shoulian yu qu jie de zhong guo zhi shi chan quan shi”; Li, “Guanyu Zhongguo gudai yinhe wu banquan yanjiu de jidian fansi”; Li, *Qiangkou xia de falü*; Liu and Kong, “Zhongguo shi shijie shang zuizao shixing banquan baohu de guojia.”



Western imperialist aggression that interrupted the unique “developmental path” of Chinese law and economy.<sup>20</sup>

Despite the apparent contrasts in their arguments and the political economy agendas behind them, Alford and his Chinese counterparts share more conceptual presuppositions than they might realize. Taking “having the law” as a maker of modernity to assess the “progress” of a society, they both retroject modern IP doctrine into the past to determine *whether* China “had” something equivalent or similar to present-day IPR law. Borrowing concepts and categories from the modern Western legal system as analytic vocabularies and tools is not uncommon in the field of Chinese legal history. Such practices, however, might bring along the normative assumptions that reinforce the discourse of Western legal doctrines as universal, timeless, and civilized, and orientalize China as standing at odds with the liberal legal order and Enlightenment values.<sup>21</sup>

Furthermore, the modern conceptions of IPR, which Alford and his counterparts use as a priori criteria, are historical constructs themselves. As demonstrated in the works of Adrian Johns, Brad Sherman, Lionel Bently, and others, modern IPR doctrines were not invented according to certain abstract philosophical principles of innovation and property rights. They emerged from the complex dynamics of publishing business, lawmaking, and knowledge production in eighteenth- and nineteenth-century Western Europe.<sup>22</sup> The timeless, modern, and universal appearances of copyright, as well as the myth that the rise of IPR would lead to the elimination of piracy, are part of this historical construct, especially since the internationalization of IPR in the second half of the nineteenth century. Even within the “Western” world, the fundamental differences and tensions between the Continental and Anglo-American approaches to the nature of copyright have never been settled.<sup>23</sup>

20. In 1995, the PRC government sponsored a five-year research project on the history of copyright in China and based the research on Zhang’s vision. A series of monographs and articles, by the PIs Li Mingshan and Zhou Lin, resulted. For example, Li, ed., *Zhongguo jindai banquan shi* and *Zhongguo gudai banquan shi*; Li and Chang, *Zhongguo dangdai banquan shi*. This three-part series, though introducing several interesting new sources, often interpreted them in a casual and arbitrary fashion and made self-contradictory claims.

21. For a discussion of legal orientalism and the methodological problem of using modern, Western legal language to discuss Chinese legal history, see Riskola, *Legal Orientalism*, and Chen, *Chinese Law in Imperial Eyes*.

22. See Johns, *Piracy*; Sherman and Bently, *The Making of Modern Intellectual Property Law*; Seville, *The Internationalisation of Copyright Law*.

23. Baldwin, *The Copyright Wars*.

Building on this emerging scholarship that historicizes the development of piracy and IPR in Europe and North America, this study situates the equally rich and contingent case of modern China in this larger story of the internationalization of copyright doctrine. I will suspend judgment as to whether imperial China had its indigenous “copyright,” and attend instead to the practices and instruments the Chinese developed and employed in the name of *banquan*. Like many other Western locutions introduced into the Chinese language at the turn of the twentieth century, *banquan*/copyright was presented by its early advocates as a foreign, new, and thus progressive concept that the struggling empire needed to embrace so it could become modern. Indeed, such rhetoric might help copyright to gain legitimacy, but it could operate and be realized only within the local book-trade structure and the existing legal orders. While the attempts to establish new copyright procedures might pose challenges to the existing norms of literary ownership and their legality, native commercial customs and practices provided early Chinese advocates of *banquan*/copyright with the inspiration and apparatus to make it work on the ground. By starting the story from the moment of encounter and exchange, the book aims to tell a twofold tale of the transplantation of an alien legal concept in a society that has a long and sophisticated book culture and legal tradition.

Printed books played an essential role in shaping and sustaining culture and knowledge production in late imperial China. Woodblock printing, the dominant printing method in China before the early twentieth century, allowed a mobile, decentralized, less-capital-intensive book production to flourish. The standardized written language and the core textbooks for the civil service examination system also contributed to a surprisingly homogenous reading and textual reproduction tradition across times and spaces. Book learning was treasured, and the tastes of the literati were admired and mimicked by members of other social classes, who were inspired to join the educated elites’ club.<sup>24</sup> If the modern doctrine of copyright was emerging from and shaped by the early modern European publishing business, which required more substantial initial capital to set up and maintain the movable-type printing operation, in theory the xylographic print cultures in China might be likely to have yielded a different conception of literary and book ownership. Indeed, since Ye Dehui,

24. For an overview of the history of books and printing in China, see Brokaw, “On the History of the Book in China,” 3–54. For a comparison between the East Asian woodblock printing method and European movable-type printing, and how different printing methods might affect the structure of book trade, see McDermott and Burke, “Introduction.”

bibliographers of Chinese books have noticed random statements, seals, and colophons in late imperial imprints that warned against unauthorized reprinting.<sup>25</sup> The nature and effectiveness of such scattered proprietary declarations have been debated by scholars ever since. Quick to deny them as any equivalent of copyright, Alford considers them to be merely the by-product of the imperial state's press control;<sup>26</sup> on the other hand, his Chinese counterparts insist that these are firm evidence of Chinese local-grown copyright, because, in the modern IPR regime, unauthorized reproduction is also strictly banned.<sup>27</sup> Other bibliographers and cultural historians, such as Sören Edgren and Inoue Susumu, settle on the halfway term "pseudo-copyright."<sup>28</sup> As discussed earlier, using copyright or modern IPR terminology to label and discuss these proprietary declarations in traditional China might run the risk of ahistoricization and couldn't really yield productive discussions. That said, these anecdotal accounts and examples of proprietary declarations found in Chinese books clearly indicate that there were certain norms of literary ownership extant in China before the late Qing.

The introduction of copyright doctrine to China at the turn of the twentieth century, thus, should not be seen merely as another case of legal transplantation or legal modernization; it is also a point of encounter and exchange between two systems of textual reproduction and knowledge economy. Beginning in the second half of the nineteenth century, mechanical letterpress, lithography, and other Western printing technologies, along with new print media, such as newspapers, were brought by European missionaries and businessmen to China's treaty ports. The arrival of these new printing technologies has conventionally been treated as a sharp departure from the late imperial woodblock printing tradition, but the transition from woodblock printing to Western-style letterpress did not happen overnight. In the first half of the twentieth century, different modes of communication and printing technologies coexisted in China. This created a unique environment in which even

25. For example, Ye, *Ye Dehui shu hua*, 52–57; Tsien, *Paper and Print*; Poon, "The Printer's Colophon in Sung China, 960–1279."

26. Alford, *To Steal a Book Is an Elegant Offense*, 14.

27. For example, Zheng, "Zhongwai yinshua chuban wu banquan gainian de yenge," and Li, ed., *Zhongguo gudai banquan shi*. In *Zhongguo gudai banquan shi*, Li even traced the "origin of copyright" in China to the Warring States period.

28. Edgren, "The Fengmianye (Cover Page) as a Source for Chinese Publishing History"; Inoue, *Chūgoku shuppan bunkashi* and *Shorin no chōbō*. Also see chapter 1 in this book for further discussion.

publishers and printers themselves were unable to provide a consensual answer as to what constitutes “copying,” how a printed “book” should look, and who gets to declare “ownership” of particular imprints, as answers to these questions may vary depending on what kind of textual reproduction process is involved. Such uncertainty prompted publishers, printers, and booksellers in China to articulate the “old” norms in the late imperial book trade, as well as to work out “new” conventions and customs in the name of *banquan*/copyright, to accommodate this changing environment. As the first two chapters of this book will show, the early *banquan*/copyright advocates and practitioners in China neither imported European or American copyright practices nor invented something brand-new for this alien doctrine. They drew inspiration from earlier conventions and customs in the Ming-Qing book trade to develop a workable and sustainable *banquan*/copyright of their own. These local commercial practices, as well as norms and ideas of book ownership, conditioned copyright’s reception in China and profoundly reshaped the definition of owning the “right to copy.”

This book also situates the various practices and mechanisms that Chinese booksellers and authors developed to enforce what they believed to be *banquan*/copyright in China’s plural legal orders. It moves the focus away from the state’s legislative and formal apparatus and toward customary regulations and practices to grasp the substance of transcultural exchanges and negotiations of legal ideas.<sup>29</sup> As revisionist scholars of Chinese legal practice have pointed out, while serious cases, such as murder or robbery, were ruled according to formal codes at the state’s courts, guilds, lineage groups, and other communal organizations played an important role in regulating daily transactions and settling minor disputes.<sup>30</sup> And the various instruments and practices the ordinary Chinese employed to protect their interests in these nongovernmental institutions also acquired legality. Though the presence and popularity of these extra-legal mechanisms are well acknowledged and analyzed by legal historians

29. For a discussion of the methodological benefits of employing legal pluralism in the field of Chinese legal history, see the introduction to Cassel, *Grounds of Judgment*. Another good example of discussion of how seemingly foreign legal concepts and systems were received and realized in China by focusing on practices is Ng, *Legal Transplantation in Early Twentieth-Century China*.

30. For disputes related to family and gender relations, see, for instance, Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*; on contract and debt, see Zelin, Ocko, and Gardella, eds., *Contract and Property in Early Modern China*; on commercial dispute resolutions, see Qiu, *Dang falü yushang jingji*, and Dykstra, “Complicated Matters.”

of Ming-Qing China, their discussions generally do not extend into the Republican period, as if such mechanisms faded away at the dawn of the legal reform in the last decade of the Qing. These vibrant community regulations, however, did not disappear after the new Chinese nation-state declared itself as the supreme and exclusive legal authority. For instance, studies of civil justice from the late Qing to the Republic reveal that the courts had to consistently mediate between the code and the customs, and often departed from the letter of the law to accommodate the popularity of local customs.<sup>31</sup> When set in comparison with the formal codes, especially the modern civil and criminal laws, these customs are often presented as some sort of native and timeless entity (“Chinese tradition”). If they emerged organically from local settings to uphold certain community or market orders, as China engaged more and more intensively in global competition beginning in the second half of the nineteenth century, new customs and communal regulation were likely to evolve to deal with new issues arising from the changing economy and society.

In the name of *banquan*/copyright, Chinese booksellers and authors seem to have developed multiple mechanisms and remedies to declare and justify their exclusive ownership of their books, and managed to create a sense of order and legality in the absence of an adequate formal justice system. The archive of the Shanghai Booksellers’ Guild (*Shanghai shuye tongye gonghui*), held in the Shanghai Municipal Archives, is essential to my reconstruction of how Chinese booksellers in Shanghai, China’s new publishing center, utilized the tradition of the trade guild to form a customary *banquan*/copyright regime. Dating from 1895 to 1958, this rich archive includes the guild administration records, its financial statements, ownership register, meeting minutes, and, most importantly, the detailed records of private prosecutions and member-to-member negotiations relative to piracy matters. These previously underused materials shed light on these booksellers’ daily operations to establish and maintain a *banquan*/copyright order in the marketplace of knowledge.

The illuminating case of Chinese booksellers’ and authors’ practices of *banquan*/copyright beyond or parallel to the state’s formal legal system is also part of a larger story of the internationalization of modern IPR. This nuanced picture of the encounter and cross-fertilization of Chinese and foreign ideas and institutions demonstrates how the internationalization of legal doctrine was always realized locally when transregional commercial and intellectual exchanges intensified during the past two centuries. By providing an extensive

31. For example, Huang, *Code, Custom, and Legal Practice in China*.

study of how a non-Western society with its own printing and legal cultures encountered and made use of copyright doctrine, this book also aims to enrich, if not complicate, the current Euro-American-centered discussion of “global copyright.”<sup>32</sup>

## Economic Life of the Culture

The popularization of *banquan*/copyright and the criminalization of unauthorized reprinting in the late Qing and early Republican period, I argue, are inseparable from the changing landscape of the Chinese knowledge economy. As new printing technologies and new intellectual trends from the West challenged the existing structures of the Chinese book trade, the interrelationship of creativity, commerce, and communication was unsettled and reconfigured. This further created uncertainty, anxiety, and conflicts regarding the ownership and value of printed books and the information they contained. By promoting *banquan*/copyright and discrediting *fanyin*/reprinting,<sup>33</sup> many early advocates of this position in China openly stated that they were searching for a sense of order in answer to the rapid and profound changes they experienced in the field of knowledge at the time.

The paradigm shift from traditional Chinese learning to a new system of Western knowledge in the late Qing and early Republican period may be the most extensively studied subject regarding the formation of Chinese modernity.<sup>34</sup> The intensified military and commercial aggressions from the Western imperialist powers, the demise of the imperial state as the absolute political and

32. For instance, Lionel Bently, Uma Suthersanen, and Paul Terremans edited a volume in 2010 to address the global history of copyright, but the cases included are all European and North American ones. See Bently, Suthersanen and Terremans, eds., *Global Copyright*.

33. In China's late imperial book culture, *fanyin*, literally “reprinting,” was considered a neutral practice. In the late Qing and early Republican period, it gradually came to refer to literary piracy. Interestingly, the Chinese did not coin a specific term for literary piracy until probably the 1940s. *Daoban* 盜版 (literally “stealing printing blocks”), the contemporary Chinese term denoting copyright and other IPR piracy, was not available to the Chinese booksellers and authors I study in this book. The metaphorical connection between high-seas piracy and literary piracy that appears in the European context did not exist in the Chinese context. I would like to thank Susan Burns, Fahad Ahmad Bishara, and Johan Mathew for raising the question about the term the Chinese used for piracy.

34. Here I use Yü Yingshi's borrowing of Thomas Kuhn's “paradigm shift” to discuss this radical transition from Chinese learning to Western knowledge. See Yü, *Zhongguo jindai sixiang shi shang di Hu Shi*.

knowledge authority, the abolishment of the centuries-old civil service examination system, and the sudden influx of new knowledge and technology from Europe, North America, and Japan triggered a fundamental crisis in China's world of learning. In the name of national survival, "Civilization," and "Enlightenment," learned Chinese avidly consumed, if not worshipped, anything "Western" and "new," as a way to respond to the challenges from the advancing Western powers. This shift in intellectual discourse led not only to the decline and eventual discredit of Chinese learning and its canons, but also to the withering away of the cultural institutions, the value systems, and the educated elites' identities that were deeply rooted in it. When the default path to officialdom through studying the classics was terminated at the turn of the century, the existential questions literate Chinese confronted were intellectual (Is the knowledge system I subscribe to wrong?), sociocultural (Will I lose my prestige?), and economic (How will I make a living from now on?).<sup>35</sup>

While some Chinese literati retooled themselves to avoid being marginalized in the changing knowledge landscape,<sup>36</sup> new types of men of letters emerged from this paradigm shift. Treaty-port literati, translators, journalists, political novelists, print capitalists, college academics, technical professionals, and other types of entrepreneurial figures who claimed to have access to the "new" knowledge were able to carve out alternative careers outside the old scholar-official route by producing, disseminating, and practicing the rising new paradigm of knowledge.<sup>37</sup> This redistribution of cultural and symbolic capital brought them concrete economic benefits, too. They would eventually become the first generation of modern intellectuals in China who did not need to rely on the state for employment or credentials. These cultural producers' economic independence came at a price: they would now be subject to market forces.

35. Levenson, *Liang Ch'i-ch'ao and the Mind in Modern China* and *Confucian China and Its Modern Fate*; Chang, *Chinese Intellectuals in Crisis*; Lin, *The Crisis of Chinese Consciousness*; Schwartz, *In Search of Wealth and Power*; Yü, *Zhongguo wenhua yu xiandai bianqian*.

36. For the marginalization of the Chinese intelligentsia after the abolishment of the civil service examination, see Yü, "Zhongguo zhishi fenzi de bianyuanhua." Also see Luo, *Quanshi Zhuanyi*. For the Chinese literati's effort to retool themselves, see Culp, "Mass Production of Knowledge and the Industrialization of Mental Labor."

37. A few examples of these new types of men of letters: Cohen, *Between Tradition and Modernity*; C. Yeh, *Shanghai Love*; W. Yeh, *The Alienated Academy*; Culp, U, and W. Yeh, eds., *Knowledge Acts in Modern China*; Hill, *Lin Shu, Inc.*; Rea and Volland, eds., *The Business of Culture*. Also see Li, *Wan Qing de xinshi chuanbo meiti yu zhishi fenzi*.

Reconstructing the Chinese authors' and publishers' daily dealings with copyright and piracy, this book is also an attempt to explore the impact of this paradigm shift on its participants' economic life.<sup>38</sup> As illustrated in chapters 2 and 3, the changing intellectual trends, together with the political and educational reforms between 1895 and 1905, turned "Western" knowledge into a desirable and valuable cultural commodity. At the same time, as the traditional classics, their annotations, and examination preps lost their commercial value, their publishers faced business crises. The sudden information boom brought about by learned Chinese's pursuit of "new" knowledge, together with the decline of "Chinese learning" publishing, profoundly reshaped the Chinese book world and turned it into an exciting, expanding, yet chaotic mess. As no one was able to keep track of all the new information, and the old bibliographical knowledge with which a learned Chinese reader was equipped would fall short when it came to evaluating new publications in strange subjects, the authenticity and credibility of any given new title became ever more ambiguous and questionable. It was in this context that unauthorized reprinting was increasingly regarded as a threat to both the stability of the book trade and the order of knowledge. The general uncertainty and commercial potential in this new cultural market prompted these cultural figures to utilize *banquan*/copyright to justify their exclusive ownership of their works, request payment or royalty, and settle disputes over profit, as now producing and selling "new" books and knowledge were becoming their livelihood.

Many individuals who appear in this book are the leading public intellectuals and literary figures contributing to this paradigm shift or making their careers during this intellectual watershed and its aftermath, such as Liang Qichao (1873–1929), Lin Shu (1852–1924), Yan Fu (1854–1921), and Lu Xun (1881–1936). Because of their importance in modern Chinese history and literature, their writings, even the most minor and obscure ones, have been diligently collected, published, and thoroughly studied by intellectual historians and literary scholars. Seeing these well-known cultural figures as economic actors, I take advantage of the trivial details recorded in their diaries, correspondence, and personal writings to reconstruct their everyday practice of *banquan*/copyright. Such details might not excite scholars interested in these cultural figures' intellectual development, but they are vital resources for understanding how the modern

38. In this book I use William Swell's definition of "economic life." According to Swell, "economic life" is "human participation in production, exchange, and consumption of goods." Swell, "A Strange Career," 146.



Chinese knowledge economy *actually* worked: how translations and novels were produced, how books were printed and consumed, how authors negotiated and received payments, how publishers dealt with demanding authors and devious pirates, how cultural figures, now under the spell of the market, justified and maintained a stable living when the intellectual and literary orders had been turned upside down.

Along the same lines, books are examined and discussed in this study primarily as goods that these cultural figures/economic actors participated in producing, circulating, and consuming. They are treated as tangible containers of information. Actual copies of books (both the authentic and the pirated ones) published in China between the 1890s and the 1950s constitute another body of primary sources I consult to reconstruct the everyday enforcement and declaration of *banquan*/copyright.<sup>39</sup> The title page, copyright page, appendixes, advertisements, and petitions that are inserted before or after the main text have been used by bibliographers to identify a book's publication information, edition, previous owners, and the like. The information provided and displayed on the physical copies of books, as well as how it was presented, also offers hints about the production process, marketing strategies, and bookmen's self-identification; these hints are particularly valuable for us in studying Chinese publishing culture, as most publishers did not leave personal records or archives.<sup>40</sup> Borrowing some traditional Chinese bibliographical techniques, I analyze the changing appearance of the title page and the copyright page (as a default part of the Chinese book since the turn of the twentieth century) to reconstruct how booksellers and authors used seals, stamps, and fixed conventions to declare and certify their ownership and the authenticity of particular copies.

These Chinese cultural figures' daily dealings with *banquan*/copyright and piracy, together with the Shanghai Booksellers' Guild's rich records of their customary "copyright" regime, and the actual copies of books published in the first half of the twentieth century, further offer unique insights into the ideas

39. For this book, I consulted the collections of Shanghai Library, Regenstein Library at the University of Chicago, National Taiwan University Library, Fu Sinian Library and Guo Tingyi Library at Academia Sinica (Taiwan), Tōyō Bunko Library (Tokyo, Japan), Keio University Library, Waseda University Library, Yale University Library, Harvard Yanjing Library, Cambridge University Library, and Indiana University Wells Library.

40. For a discussion of the title pages of Chinese books as primary sources, see Edgren, "The Fengmianye (Cover Page) as a Source for Chinese Publishing History."

of these cultural figures/economic actors regarding labor, property, ownership, value, authenticity, and counterfeiting. What is *banquan*/copyright? Is it a kind of property or a privilege? On what basis could one claim a manuscript he wrote or a book he published as his property? Is it the content or the physical imprint that makes a book a book? How can one know whether a book is original and authentic? These cultural figures might not be political economists developing their original or sophisticated economic theories, but when they employed the doctrine of *banquan*/copyright and tried to make it work, they were forced to engage with these questions. At the core of the frequent disputes and contestations revolving around *banquan*/copyright throughout the first half of the twentieth century, what Chinese publishers, authors, and state agents were consistently wrestling over was the relationship between the good (book) and its producers (author or publisher).

However, articulating the correlation between human creative activities and the creator's exclusive rights—the fundamental principle of modern copyright—was particularly a challenge for these practitioners of *banquan*/copyright in China. The paradigm shift to Western learning resulted in the Chinese increasingly engaging in a globalizing field of knowledge as consumers rather than producers. Many of the early champions of *banquan*/copyright were essentially cultural brokers who translated and appropriated others' (mostly European and Japanese) works without proper authorization. They would technically all be pirates and plagiarists according to our contemporary IPR standard.<sup>41</sup> They thus emphasized their mental labor as translators, their capital investment in publishing, or their commitment to the enlightenment mission as the primary justification for *banquan*/copyright. As the second half of this book illustrates, such deviation from the conventional creativity-ownership argument made booksellers and publishers the more powerful advocates for *banquan*/copyright and left authors subordinated to the booksellers' customary *banquan*/copyright regime. The emphasis on mental labor in their *banquan*/copyright discourse further became a major setback for authors after 1949 when the new communist government introduced its system to reward authors according to their "labor output."

41. For example, Liang Qichao had a habit of appropriating his Japanese contemporaries' works as his own. See Bastid-Bruguère, "The Japanese-Induced German Connection on Modern Chinese Ideas of the State."

## Under the Shadow of the State

Throughout this book, I trace the same group of Chinese cultural actors, mostly Shanghai- and Beijing-based booksellers and authors, who employed various tactics and practices of *banquan*/copyright to tackle the same issue of piracy from the late Qing to the early People's Republic. Regarding the state-society dynamic in modern China, this book, breaking the conventional periodization, illustrates how these rule-savvy individuals negotiated with the changing shape and forms of state power and its law to secure and advance their economic interests.

Since the late Qing's legal reform, the Chinese state(s) presented itself as having a monopoly on law, but in reality continual wars and revolutions limited its capacity to enforce its laws effectively and impeded its becoming the exclusive legal authority. While civil law and criminal law did have a noticeable impact on cities in this period,<sup>42</sup> the development of less urgent (or secondary) legislation, like copyright law, was lax and unimpressive. However, as discussed earlier, vibrant customary *banquan*/copyright mechanisms were also available to Chinese authors, publishers, and booksellers. In this pluralist legal environment, they got to choose and navigate between the two legal regimes (the state's law and the cultural circle's customs). The second half of the book focuses on the extralegal *banquan*/copyright regime Chinese booksellers in Shanghai established through their guild between 1905 and 1958. Drawing from the rich but underused guild archives, chapters 5 through 7 reveal how the Shanghai booksellers established and enforced their own private *banquan*/copyright regulations when the Chinese central state and its law were unable or unwilling to do so. From the 1900s to the 1920s, in China's new publishing center, Shanghai, the guild operated its *banquan*/copyright regime efficiently in parallel to the state's law to accommodate the weak state's limited legal capacity. The limitations of this local community self-regulation became apparent when the guild attempted to extend it nationwide in the 1930s by setting up China's first private antipiracy policing force. Though Shanghai booksellers dominated the domestic book industry, their customs were deemed by the state to be not legally grounded, and their territorial peer pressure could not really be applied to

42. On the establishment and enforcement of civil law and criminal law in the early Republic, see Bernhardt and Huang, eds., *Civil Law in Qing and Republican China*; Mühlhahn, *Criminal Justice in China*; Ma, *Runaway Wives, Urban Crimes, and Survival Tactics in Wartime Beijing*; Ransmeier, *Sold People*.

booksellers outside Shanghai. Shanghai booksellers had to resort to the state's power to crack down on pirates in northern China. When the ROC Copyright Law failed to help them attain the desirable outcome, they cleverly manipulated the Nationalist government's symbolic authority and its obsession with controlling/censoring the press to further the guild's specific interests in protecting its members' copyright.

How the guild "used" the Nationalist state's obsession with information control, at the same time, is one of the many cases in this book that illuminate the continuous and intensified efforts of the Chinese state to maintain its status as the ultimate cultural authority in the aftermath of the intellectual paradigm shift. Compared to their European counterparts, the Chinese imperial governments between the sixteenth and nineteenth centuries had played a more active role in publishing. They printed the government-approved standardized editions of essential texts, legal codes, and calendars to maintain a certain level of educational orthodoxy; they established an official order of knowledge via their ambitious encyclopedia, dictionary, and literary collections projects; and they removed the "scandalous," "licentious," and potentially "treasonous" texts via censorship and literary inquisitions.<sup>43</sup> At the turn of the twentieth century, the Qing state's supreme intellectual authority was undermined as the Confucian learning and the meritocratic civil service examination that upheld it lost their currency. For a while, as shown in chapter 4, Chinese authors and publishers counted on the state, as China's supreme intellectual authority, to create a new knowledge order via *banquan*/copyright regulation. Copyright and censorship were bundled together as a result, but late Qing cultural producers and readers did not oppose this arrangement. The Qing state's inability to produce higher-quality books on Western knowledge, as it turned a blind eye to the pirating of private publishers' textbooks, and its delayed promulgation of a domestic copyright law, however, quickly sabotaged its credibility as an authority suitable to issue the seal of approval to books and other publications.

Self-identification as *the* intellectual and cultural authority, as well as consistent anxiety about information control, was inherited by the Republican governments and later the communist regime.<sup>44</sup> As the expansion of print media made possible text-centered political mobilizations, both the Guomindang (Nationalist party, GMD) and the Chinese Communist Party (CCP), who

43. For a discussion of the late imperial Chinese state's censorship and literary inquisitions, see Guy, *The Emperor's Four Treasuries*, and Spence, *Treason by the Book*.

44. See Volland, "The Control of the Media in the People's Republic of China."

benefited directly from the power of the printed texts in their revolution, saw the necessity to establish firm control over the publishing sector.<sup>45</sup> From the late 1920s to the late 1950s, as the last two chapters of this book illustrate, the state devoted increasing resources to censoring unwanted texts in the name of rectifying cultural production. Such policies offered the possibility for the Shanghai Booksellers' Guild to manipulate the state's obsession with information control to assist its customary copyright regime in the 1930s. But these same policies would eventually suffocate the guild's entrepreneurial autonomy in the 1940s and 1950s, when the cultural market was under the state's intensified control. Spaces left for them to negotiate with the state and its law shrank over time as now the production and distribution of books were subsumed into the state's machine. Hu Yuzhi (1896–1986), Mao Dun (1896–1981), and Ye Shengtao (1894–1988), who suffered from piracy in the Republican era as authors and publishers, were the top cultural officials of the People's Republic now. These veterans of the Shanghai publishing world proposed a bold solution to their former colleagues and bosses to square away the issue of piracy for good: When the market was entirely under the shadow of the state, the knowledge economy would be reconfigured. When authors were no longer creators, but laborers, and books were “intellectual foods” rather than commodities, *banquan*/copyright would become irrelevant, and literary piracy would eventually vanish on its own.

45. For a discussion of the CCP (and, to a certain extent, the GMD as well) as the text-centered party, see van de Ven, “The Emergence of the Text-Centered Party.” Also see Reed, “Advancing the (Gutenberg) Revolution.”

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