THE PROMOTION OF LEARNING IN CHINESE HISTORY: DISCOVERING THE LOST SOUL OF MODERN COPYRIGHT

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Abstract

This article examines for the first time the environment in which copyright was practiced in traditional China. It argues that while copyright was not an unusual practice in Chinese history, the lack of monopolistic control in China's publishing industry promoted the freedom of printing and in turn fostered education and literary creativity. In comparison, the European publishing industry in the sixteenth-eighteenth century was characterized by absolute guild monopoly. This directly, though unintentionally, molded our modern rhetoric of intellectual property, which in today's global context hinders the ultimate goal of copyright: the promotion of learning.

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INTRODUCTION

Over the course of the last twenty years, intellectual property issues have garnered an increasing amount of attention worldwide. The increased focus on the subject, however, has not necessarily pushed the field in a positive direction. In the early 1990s, scholars such as Lyman Ray Patterson and Stanley Lindberg began to argue that copyright rhetoric and practice are causing people to lose sight of "the fundamental purpose of copyright: the promotion of learning."[1] Today, this claim is endorsed by many leading experts, illustrating a global concern that intellectual property has developed into an international monopoly power that polices and suffocates the freedom of access to knowledge and continued creativity.

Much scholarship has been devoted to explaining the question of "why." One common argument is that theories of tangible property are misplaced in the intangible world of intellectual property. In particular, printing monopolists from sixteenth to eighteenth-century England, or Europe in a broader context, are seen as responsible for engrafting natural rights theory onto copyright practice.[2] The impact of this historical contingency is still pervasive today. As Peter Jaszi notes, a distorted understanding of intellectual property remains "what it was in eighteenth-century England."[3]

Conventionally labeled as a net pirate, China has rarely served as a positive model for studies on the historical underpinnings of contemporary criticisms on intellectual property. This negative perception of China owes its exclusive origin to Harvard law professor William Alford, who argued that Chinese culture is hostile to copyright.[4] For many years, few challenged Alford's view. In 2005, I published two papers on China's copyright and trademark history.[5] Analyzed from an interdisciplinary perspective, these new findings reveal some vivid historical accounts of China's copyright practice, fundamentally challenging our *idée fixe*.

Nevertheless, the conclusion that China engaged in copyright practice can also lead to an oversimplified narrative that depicts copyright as a universal value. This argument provides the needed support for the unreasonable

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[1] L. RAY PATTERSON & STANLEY W. LINDBERG, THE NATURE OF COPYRIGHT: A LAW OF USERS' RIGHTS 134-37 (1991).

[2] For a remarkable study on the historical origins of Anglo-American conceptions of authorship and copyright, see MARK ROSE, AUTHORS AND OWNERS: THE INVENTION OF COPYRIGHT (1993).

[3] Peter Jaszi, *Toward a Theory of Copyright: The Metamorphoses of "Authorship,"* 1991 DUKE L.J. 455, 500 (1991).

[4] WILLIAM P. ALFORD, TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION 19-21 (1995).

[5] Ke Shao, *Alien to Copyright? A Reconsideration of the Chinese Historical Episodes of Copyright*, 4 INTELL. PROP. Q. 400 (2005); Ke Shao, *Look at My Sign! - Trademarks in China from Antiquity to the Early Modern Times*, 87 J. PAT. & TRADEMARK OFF. SOC'Y 654 (2005).

expansion of intellectual property rights that we experience today. Viewing copyright as a universal value ignores the possible diverse patterns of copyright and the fact that copyright is not a unified phenomenon.[6] If we adopt a more nuanced approach to copyright, a crucial question arises: if modern copyright rhetoric, with its emphasis on monopoly, is a direct descendant of the English printing guild, what can be learned from China if monopoly was irrelevant to shaping the traditional Chinese perception of copyright?

This article examines the promotion of learning in the historical context of China's non-monopolistic practice of publishing and copyright. Part One differentiates the characteristics of European and Chinese monopoly. This provides a background for understanding the non-monopolistic nature of China's publishing history. Part Two describes briefly the strong monopoly power enjoyed by English and French printing guilds and their role in shaping modern perceptions of intellectual property. Part Three elaborates on the freedom of publishing that flourished in imperial China and its effect on the promotion of learning from multiple perspectives. Finally, this article concludes that the Chinese history of publishing is a firm testament to a widely accepted argument: the formation of our modern understanding of intellectual property is an unfortunate historical accident, and the promotion of learning can only be achieved by copyright models without monopolistic ingredients.

I. MONOPOLY IN EUROPE AND CHINA: THE DIFFERENCES

Before discussing the freedom of publishing in Chinese history, a comparative examination of the different roles of monopoly in China and Europe is necessary to understand why monopoly was not a focus of Chinese copyright practice. Monopoly can be defined as a privilege consisting of the exclusive right to carry on a particular business or trade, or to control the sale of the entire supply of a particular commodity.[7] Therefore, "exclusive control" of a particular economic sector is the essential earmark of monopoly. In this article, the term "monopoly" is generally understood in its economic sense. It does not have to be deconstructive, provided that a monopoly suits—even if it does not promote—the development level of an economy. This Part will now proceed by examining the scale of monopoly in Europe and China with a particular reference to guild monopoly.

A. General Differences Between Monopoly in Europe and China

Monopoly exists in all cultures, but in different varieties. In medieval and early modern Europe, monopoly widely served as a tool for attracting technology importation and maximizing taxes, wealth, trade barriers, and

[6] *See* DAVID SAUNDERS, AUTHORSHIP AND COPYRIGHT 235 (1992).

[7] BLACK'S LAW DICTIONARY 1158 (4th ed. 1951).

political control.[8] From the sixteenth century onwards, documents known as letters patent began to be issued for trade in various commodities.[9] As to intellectual property, printing patents were granted to individuals or firms for the exclusive right to print new and ancient books.[10] Patents were also available to those who, often at the risk of their lives, introduced technologies from overseas, regardless of whether they were new or old.[11] In addition, courtiers received patents on trade and inventions as a reward, even if they made no contribution on the subject of the patent.[12] The exclusive rights granted in the form of patents usually lasted for a few years.

Guild monopoly was another predominant phenomenon in medieval and early modern European economy. Guild practice inherited from the middle ages was characterized by a chartered monopoly by which a guild had the sole right to regulate trade, initially within a town. A guild could monopolize all trade, including both the sale of goods and their production. Gradually the town-based guild was replaced by separate craft guilds for specific trades and handicrafts. Free competition existed within a guild, but competition from outsiders was forestalled, reflecting strong monopoly power over daily economy.[13] As the economy evolved, regional guilds eventually transformed into national trade monopolies.[14] The omnipresence of European guilds is largely attributable to the rivalrous nature of feudal economy, which favored limited and territorial commercial activities.[15] Abuses of these territorial restrictions even led to early common-law concepts of unlawful restraint of trade.[16]

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[8] *See* Paul Edward Geller, *A Tale of Two Copyrights: Literary Property in Revolutionary France and America*, *in* OF AUTHORS AND ORIGINS: ESSAYS ON COPYRIGHT LAW 159, 162 (Brad Sherman & Alain Strowel eds., 1994).

[9] *See* PATTERSON, *supra* note 1, at 245.

[10] For a discussion on the French practice of granting exclusive printing rights, see generally ELIZABETH ARMSTRONG, BEFORE COPYRIGHT: THE FRENCH BOOK-PRIVILEGE SYSTEM 1498–1526, at 78–99 (1990).

[11] *See* M. Frumkin, *The Origin of Patents*, 27 J. PAT. OFF. SOC'Y 143, 144 (1945) ("the death penalty awaited Venetian glass-blowers who tried to practise their art abroad"); Edward C. Walterscheid, *Novelty in Historical Perspective (Part I)*, 75 J. PAT. & TRADEMARK OFF. SOC'Y 689, 691 (1993).

[12] *See* Frumkin, *supra* note 11, at 143–45.

[13] Ramon A. Klitzke, *Historical Background of the English Patent Law*, 41 J. PAT. & TRADEMARK OFF. SOC'Y 615, 621–23 (1959).

[14] Thomas B. Nachbar, *Monopoly, Mercantilism, and the Politics of Regulation*, 91 VA. L. REV. 1313, 1322 (2005).

[15] *See* Ida Madieha Azmi et al., *Distinctive Signs and Early Markets: Europe, Africa and Islam*, *in* THE PREHISTORY AND DEVELOPMENT OF INTELLECTUAL PROPERTY SYSTEMS 123, 138–39 (Alison Firth ed., 1997).

[16] *See* Sidney A. Diamond, *The Historical Development of Trademarks*, 65 TRADEMARK REP. 265, 277 (1975).

As far as printing is concerned, England and France, from the sixteenth to eighteenth centuries on, granted their capital-based printing guilds absolute monopoly power over *all* publishing, in the exchange for the ability to enforce rigorous political and religious censorship over heretical texts. This occasionally paralleled the monopoly of printing patent received by the privileged. The printing guild's monopolistic practice is widely perceived to be the direct cause of what we understand today as copyright.[17] Its differences from the Chinese traditional publishing industry will be explored in Parts Two and Three.

Overall, monopoly in China served a considerably different role. The key difference is that monopoly in China covered much smaller scopes of trade. From an economic perspective, this phenomenon is attributable to the fact that throughout much of its history, China had a vast domestic market that depended on economic freedom. It is arguably true that imperial China displayed some characteristics of modernity, such as a belief in the free market.[18] In contrast, such a united and vast market was not available to medieval and early modern Europe where separate and small states competed against each other.

The effect of economy on the scale of monopoly is illustrated by China's treatment of technology importation. Patents in China were rarely granted to technology innovations. The reasons were complicated. In general, considering China's strong history of innovation, there was possibly no need to use patent incentives to stimulate inventions and technology transmission. Most dynasties put in place various institutional efforts to encourage cross-regional technology transfer, publish technological books, and reward inventors.[19] By comparison, technology patents were pursued by European governments to attract foreign and profitable technologies, which would not have been brought in without substantial incentives. Today we think the purpose of patent law is to stimulate new technologies, yet history shows that the majority of patent grants in England in the sixteenth and much of the seventeenth centuries were for imported technologies.[20]

In addition, China generally had little in common with Europe in terms of granting patents to courtiers as a reward or an incentive. A known exception was in 1286, when the Mongol emperor Kublai Khan granted the right to paper money making to Chang Hsüan (张瑄) and Chu Ts'ing (朱清) for their remarkable service in sea-transportation. When Chang's and Chu's wealth

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[17] Many researchers have come to the same conclusion, but "direct" is a more straightforward description borrowed from Chartier. *See* Roger Chartier, *Figures of the Author*, *in* OF AUTHORS AND ORIGINS, *supra* note 8, at 12.

[18] *See* THE MODERNIZATION OF CHINA 107–08, 181–82 (Gilbert Rozman ed., 1982).

[19] For an example from the Qing dynasty, see generally Susan Mann, *Household Handicrafts and State Policy in Qing Times*, *in* TO ACHIEVE SECURITY AND WEALTH: THE QING STATE AND THE ECONOMY, 1644–1911, at 75 (Jane Kate Leonard & John R. Watt eds., 1992).

[20] Edward C. Walterscheid, *Novelty in Historical Perspective (Part II)*, 75 J. PAT. & TRADEMARK OFF. SOC'Y 777, 797 (1993).

rivaled that of the state, the government executed them out of fear that they were potentially threatening the state.[21]

Differences between China and Europe should not be overstated. In the salt industry, for instance, monopoly played a similar role in China and in European societies such as England, France, and Venice. Both China and the European states frequently controlled salt for reasons such as revenue and national defense.[22] While the Chinese state sometimes attempted different strategies such as increasing salt tax while relaxing government control,[23] it ultimately desired a tighter control. Because of the mass nationwide distribution of salt and the large number of producers involved, direct governmental engagement in production was not impracticable.[24] Therefore, a system similar to the English patent monopoly was applied by many Chinese dynasties. As Ping-ti Ho points out, under this model, the government usually issued licenses to salt merchants. More importantly, the right to sell salt was non-transferable for a common term of one to five years.[25]

B. The Insignificant Role of Guild Monopoly in China

Guild monopoly in Chinese history deserves a separate discussion. Guilds began to appear as early as in the Song dynasty (960–1279). Apprenticeship, price control, and market division spread swiftly to prevent potential surges of newcomers.[26] These forms were not inherently evil, because monopoly is often demanded by low-level productivity. However, unlike Europe's feudal economy, the existence of a giant united market and the freedom of the population to move across China made it difficult and unreasonable to maintain monopolistic controls over particular industries.[27] A statistical survey

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[21] CHEN HUAN-CHANG, THE ECONOMIC PRINCIPLES OF CONFUCIUS AND HIS SCHOOL 537 (1911).

[22] For discussions on Europe, see generally Edward Hughes, *The English Monopoly of Salt in the Years 1563–71*, 40 ENG. HIST. REV. 334 (1925). For China, see 聂鑫 [Nie Xin], 盐(铁)问题的困境—思想与制度的历史考辩 [*The Dilemmas of Salt and Iron: a Historical Inquiry of Thought and System*], 2007 法律科学—西北政法学院学报 [Sci. of Law — J. Northwest Univ. Poli. Sci. & Law], no. 1, at 161, 158–59 (stating that state revenue was a key reason of salt monopoly in China).

[23] 王赛时 [Wang Saishi], 宋金元时期山东盐业的生产与开发 [*The Production and Development of the Salt Industry in Shandong during the Song, Jin, and Yuan Dynasties*], 盐业研究 [SALT INDUS. STUD.], no. 4, 2005, at 3, 5.

[24] Tao-Chang Chiang, *The Salt Industry of Ming China*, 65 GEOGRAPHICAL REV., Jan. 1975, at 93, 100.

[25] Ping-ti Ho, *The Salt Merchants of Yang-Chou: A Study of Commercial Capitalism in Eighteenth-Century China*, 17 HARV. J. ASIATIC STUD. 130, 135–36 (1954).

[26] For an early study, see generally 全汉升 [QUAN HANSHENG], 中国行会制度史 [HISTORY OF THE CHINESE GUILD SYSTEM] (1934).

[27] 赵冈、陈钟毅 [ZHAO GANG & CHEN ZHONGYI], 中国经济制度史论 [HISTORY OF CHINA'S ECONOMIC SYSTEM] 320 (1991).

of guilds in Jiangnan, the most industrialized region along the lower Yangtze River, from the fifteenth to nineteenth centuries shows that guilds of small handicraft industries often favored monopoly power against newcomers from other regions due to their limited market availability.[28] In sharp contrast, free competition was welcomed by larger and economically powerful industries,[29] including the textile industry, where tens of thousands of weaving machines operated endlessly, supplying cloth to be distributed throughout China.[30]

Regional merchant associations based on fellow-regional ties mushroomed when early modern capitalism expanded, starting in the sixteenth century late Ming dynasty. Nonetheless, these associations were not monopolistic guilds. Instead, they sought to maintain a delicate balance between the pursuit of diverse personal goals and the need for group support when attaining these goals.[31] In addition, the overwhelming majority of those associations were independently organized in each locale without organizational connections with associations established elsewhere. Merchants and artisans understood that the role of their associations was to stabilize the marketplace, not to maintain closed networks.[32] As Part III will later demonstrate, guilds or merchant associations played little role in the publishing industry during Imperial China. In fact, China's first publishing association was established in 1671, some eight hundred years after printing technology was invented.[33]

C. Attitudes Towards Monopoly

The idea that monopoly functioned very differently in the economic history of China and Europe should be further examined by looking at their different attitudes towards monopoly. In some regards, the idea of monopoly is fundamentally incompatible with the Chinese way of thinking. As recorded by the ancient history *Guoyu* (国语) (Discourses of the States), when King Li of the Western Zhou dynasty (eleventh century B.C.–771 B.C.) attempted to

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[28] *See* 洪焕椿 [Hong Huanchun], 明清苏州地区资本主义萌芽初步考察—苏州工商业碑刻资料剖析 [*A Primary Investigation of the Emergence of Capitalism in Suzhou Area in the Ming and the Qing—An Analysis of Epigraphs of Industries and Commerce in Suzhou*], *in* 明清资本主义萌芽研究论文 [COLLECTIONS OF STUDIES ON THE EMERGENCE OF CAPITALISM IN THE MING AND THE QING] 399, 414 (南京大学历史系明清史研究室 [Institute of the Ming-Qing History Studies, History Department, Nanjing University] ed., 1981).

[29] *See id.* at 422–24.

[30] For a discussion of the textile industry, see generally 刘国良 [LIU GUOLIANG], 中国工业史 [CHINA'S INDUSTRIAL HISTORY] 453–56, 533–37 (1990).

[31] Gary G. Hamilton, *Regional Associations and the Chinese City: A Comparative Perspective*, 21 COMP. STUD. SOC'Y & HIST. 346, 351 (1979).

[32] Gary G. Hamilton, *Nineteenth Century Chinese Merchant Associations: Conspiracy or Combination?*, 3 LATE IMPERIAL CHINA, Dec. 1977, at 50, 62–67.

[33] 张秀民 [ZHANG XIUMIN], 中国印刷史 [CHINA'S PRINTING HISTORY] 553–54 (1989).

monopolize forests, he was exiled by his subjects: because forests shall be shared by all, their monopolization was no different from robbery.[34] The belief that resources existing in the public domain, such as mountains and rivers, ought to be shared by all is a unanimous Chinese attitude reflected in Confucian texts.[35] That King Li's story is presented as a serious lesson reflects the contempt held by the Chinese orthodox ideology against monopoly. Confucianism requires the government to take care of the people rather than gaining monopolistic profits or granting monopoly to a small group of people.[36]

The first nationwide public debate about monopoly took place in 81 B.C. during the Han dynasty (206 B.C.-A.D. 200).[37] Politicians and scholars gathered in the capital Chang'an to discuss whether government monopoly over commodities such as salt, iron, and wine could be justified.[38] Recorded in detail in a book titled *Yantie Lun* (盐铁论) (The Salt and Iron Debate), the debates were contentious and extensive.[39] Emperor Wu's primary intention for monopolizing the salt and iron industries was to raise money for national defense against the large-scale invasion of the Huns.[40] Confucian intellectuals, however, argued that state monopoly would cause problems such as unreasonable prices and fewer business opportunities for the common people.[41] Eventually state monopoly was restricted.[42]

Attitudes towards monopoly were very different in Europe. The idea that the common law opposed monopolies from the earliest time onward was largely invented by Sir Edward Coke (1552-1634),[43] who argued that it is improper or odious to take away a freedom or liberty that people have held before. As he wrote in 1644, monopolies are "against the ancient and fundamental laws of this kingdome."[44] Queen Elizabeth's abuse of the right to

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[34] 左丘明 [ZUOQIU MING], 国语 [DISCOURSES OF THE STATES] 12 (叶玉麟 [Ye Yulin] ed., 台湾商务印书馆 [Taiwan Commercial Press] 1967) (circa. 400 B.C.).

[35] CHEN, *supra* note 21, at 540.

[36] *See* THE MODERNIZATION OF CHINA, *supra* note 18, at 209.

[37] 宋治民 [SONG ZHIMIN], 汉代手工业 [HANDICRAFT INDUSTRIES IN THE HAN DYNASTY] 26 (1992).

[38] *Id.*

[39] Nie, *The Dilemmas of Salt and Iron: a Historical Inquiry of Thought and System*, *supra* note 22, at 158.

[40] *Id.* at 158.

[41] *Id.*

[42] For instance, monopolies in wine and iron were abolished in certain regions. 杜佑 [DU YOU], 通典 [COMPREHENSIVE STATUTES] 227-29 (中华书局 [China Bookstore] 1988) (801).

[43] William L. Letwin, *The English Common Law Concerning Monopolies*, 21 U. CHI. L. REV. 355, 356 (1954).

[44] Walterscheid, *supra* note 11, at 696 n.32.

issue letters patent provoked great political hostility towards state-created monopolies.[45] However, this abhorrence was probably driven more by the Parliament's need to compete with the Crown than a genuine disapproval of the patents themselves.[46] As a matter of fact, common law courts in England continued to uphold trade monopolies based on custom or statute until the early nineteenth century.[47]

Examining the different attitudes towards monopoly in China and Europe serves only to provide further support for the argument that monopoly was more limited in scope in China. This difference cannot be explained solely by a cultural explanation approach, which views a historical phenomenon as overwhelmingly, if not solely, the consequence of local beliefs, philosophies, or mindsets. Such an approach ignores other factors such as the extent to which a culture's economy was developed.[48] In this regard, English attitudes favoring monopoly, as the above sections have argued, can be viewed as necessary to maintaining, if not promoting, its level of economic development. After the economy boomed in Britain, monopoly was eventually replaced by economic liberalism.

A non-cultural perspective is better suited to explaining why monopolies in the salt, tea and iron industries survived in China for over two thousand years even though monopoly was generally disfavored in theory and limited in scope in practice. This discrepancy can be explained by looking at the judicial attitudes towards guild monopoly in late imperial China. Monopoly was almost unanimously described as imperious control (*bachi*), which means the behavior that "forces others to buy or sell, or prohibits others to buy or sell."[49] As a judgment issued in 1834 reads: "The *first* thing to be prohibited in *every* industry is monopoly ... [which] is extremely unjust and unfair."[50] From a cultural explanation perspective, this leads to the conclusion that Chinese culture abhorred monopoly. However, in practice, laws and policies did not

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[45] Herbert Hovenkamp, *Technology, Politics, and Regulated Monopoly: An American Historical Perspective*, 62 TEX. L. REV. 1263, 1264 (1984).

[46] JOSEPH LOEWENSTEIN, THE AUTHOR'S DUE: PRINTING AND THE PREHISTORY OF COPYRIGHT 122–123 (2002); JOHN FEATHER, PUBLISHING, PIRACY AND POLITICS: AN HISTORICAL STUDY OF COPYRIGHT IN BRITAIN 39–40 (1994).

[47] Nachbar, *supra* note 14, at 1334.

[48] The German sociologist Max Weber (1864–1920) can be viewed as the father of the modern cultural explanation approach. Weber argues that China failed to spontaneously generate modern capitalism because its culture was incompatible with modern capitalism. MAX WEBER, THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM (Talcott Parsons trans., Charles Scribner's Sons, 1958).

[49] 邱澎生 [QIU PENGSHENG], 十八、十九世纪苏州城的新兴工商业团体 [THE RISING INDUSTRIAL AND COMMERCIAL GROUPS IN EIGHTEENTH- AND NINETEENTH-CENTURY SUZHOU] 179 (1990).

[50] 明清苏州工商业碑刻集 [COLLECTION OF INDUSTRIAL AND COMMERCIAL EPIGRAPHS FROM SUZHOU IN THE MING AND QING DYNASTIES] 81 (苏州历史博物馆 [Suzhou History Museum] et al. eds., 1981) (emphasis added).

oppose mild monopoly in small industries where wholly free competition could threaten their subsistence.[51] In contrast, judgments issued in late imperial China in the Jiangnan region demonstrate that monopoly was heavily criticized and indeed prohibited where early modern capitalism flourished and free competition was a necessity.[52]

II. ENGLISH GUILD MONOPOLY AND COPYRIGHT

Part I provided a comparative analysis of the very different roles that monopoly played in European and Chinese economies. Monopoly was much more limited in scope in the vast, united Chinese market and virtually absent in China's publishing industry. But before we examine this, a brief discussion of the scale of European printing monopoly is necessary to see how it directly contributed to the making of our modern copyright law.

There was no urgent demand for a printing monopoly in the early European publishing industry. For instance, freedom of printing existed to a notable degree in early sixteenth century France. Ancient books such as the Bible were recognized to be something that should remain free for all to print. Copyright could be advertised and claimed without a fear of rigorous pre-publishing censorship.[53] However, from the mid-sixteenth century onward, publishing censorship became extremely prevalent for the purpose of religious and political control. In England, this desire for censorship resulted in the establishment of the London Stationers' Company by the Crown in 1557.[54] The Royal Charter granted to the Stationers' Company exemplifies the common practice of guild monopoly in Europe. Under the Charter, only members of the community of the aforementioned art or mystery of Stationery could practice publishing.[55] This banned printing activities outside London.[56] Within two to three generations, dozens of valuable copies had been concentrated within a handful of publishers.[57] It must be pointed out that the Stationers, with very

[51] QIU, *supra* note 49, at 176–78, 202–03.

[52] For some of the judgments, see generally 江苏省明清以来碑刻资料选集 [SELECTED COLLECTION OF EPIGRAPHS IN JIANGSU FROM THE MING AND THE QING DYNASTIES] (江苏省博物馆 [Jiangsu Museum] ed., 1959); COLLECTION OF INDUSTRIAL AND COMMERCIAL EPIGRAPHS FROM SUZHOU IN THE MING AND QING DYNASTIES, *supra* note 50; 上海碑刻资料选集 [Selected Collection of Epigraphs from Shanghai] (上海博物馆图书资料室 [Shanghai Museum Book Archives] ed., 1980). For comments, see QIU, *supra* note 49, at 106–09, 147, 163–65, 203.

[53] *See* ARMSTRONG, *supra* note 10, at 117–18, 140–41.

[54] JOHN FEATHER, A HISTORY OF BRITISH PUBLISHING 11 (1988); LOEWENSTEIN, *supra* note 46, at 13–14.

[55] LOEWENSTEIN, *supra* note 46, at 13–14; ROSE, *supra* note 2, at 11–12.

[56] FEATHER, *supra* note 54, at 14, 41.

[57] *Id.* at 14, 41–42; FEATHER, *supra* note 46, at 20–21; LYMAN RAY PATTERSON, COPYRIGHT IN HISTORICAL PERSPECTIVE 46–47 (1968).

limited membership, had power over publishing *every single* book including the Bible and other ancient books such as catechism, law books, and even dictionaries and almanacs.[58]

The French approach was more vigorous. By the 1680s, the Paris Book Guild had grown to an absolute monopoly power. Since 1686, Louis XIV fixed the number of the Paris printers at thirty-six. Successful entry into the guild required an apprenticeship and examination by both guild masters and Paris University. To become a printer, one had to wait until the death of one of the thirty-six members and had to have considerable savings at hand in order to buy a shop and pay the stiff entrance fees exacted by the guild.[59]

From a non-cultural perspective, it is hard to dismiss the political and religious control during this period as foolish. The religious struggle between England and Rome, which catalyzed pre-publishing censorship and guild monopoly,[60] could have easily threatened England's political and economic stability. However, monopolization led to sharp increases in book prices and a decline in printing quality. Paris publishers were limited to the reproduction of the pre-existing religious and literary works of the seventeenth century, showing complete inflexibility in the face of demand for new books and the knowledge in the reading market.[61] This scale of monopoly, as will be addressed later, had no counterpart in China's history.

The great liberal philosopher John Locke (1632–1704) heavily condemned the English printing monopoly. As he wrote at the end of the seventeenth century in the *Memorandum*, "That any person or company should have patents for the sole printing of *ancient* authors is very unreasonable and injurious to learning."[62] Locke himself possibly never came across any idea of intellectual property.[63] Yet ironically enough, his natural rights theory was adopted by the London publishing monopolists when their privileges were about to collapse.

The close of the seventeenth century witnessed a constant political battle between the British Parliament and the Crown, with each attempting to control propaganda. Inspired by great minds such as Coke and Locke, Parliament favored the abolishment of royal privileges granted to publishers. Through the defeat of the monopolists, Parliament hoped to advance itself in the ongoing political rivalry.[64]

As opposition against monopoly intensified, making fundamental changes seem inevitable, the publishers realized that in order to survive, they had to

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[58] FEATHER, *supra* note 46, at 11–13; FEATHER, *supra* note 56, at 17.

[59] *See* CARLA HESSE, PUBLISHING AND CULTURAL POLITICS IN REVOLUTIONARY PARIS, 1789–1810, at 8–12 (1991).

[60] PATTERSON, *supra* note 57, at 23–24.

[61] HESSE, *supra* note 59, at 17.

[62] ROSE, *supra* note 2, at 33.

[63] *Id.*

[64] LOEWENSTEIN, *supra* note 46, at 122–28.

make tough and quick decisions.[65] After a few unsuccessful theoretical attempts, the monopolists realized that the ideal rhetoric had to be John Locke's natural property theory. Locke's eloquent theory represented the spirit of his time: because a liberated person owns his body and in turn his labor, any fruits of the labor should be owned as property of that person.[66] When applied to copyright, this formula does not need much imagination. An author surely owns his brain and intellectual labor and thus also owns the product of his knowledge. The fundamental problem with this reasoning is that it focuses on maximizing strong property rights and provides no equal footing for the promotion of learning.[67]

Here, for the first time in European literary history, authors formed the center of copyright discourse. However, most authors would continue to sell books to the publishers, and once they were sold, the copyright became the property of the publishers, in accordance with the publishers' petitions to Parliament.[68] Such a hasty but plausible use of Locke's theory soon facilitated the making of the first modern copyright law, the *Statute of Anne* (1710), and inspired the French and the Americans to create their own versions in just a few decades.[69]

The anti-monopoly zeal of the British Parliament was, by all accounts, a very positive posture that fit in with the contemporary ethos of economic liberalization which led Britain to prosperity in the subsequent centuries. Yet the publishing monopolists' transplant of the Lockean theory was hastily implemented without clearly understanding the differences between tangible and intangible objects. The scale of commercial publishing in England by the late seventeenth century was so limited that a theory of intellectual property based on that market would fail to properly consider the relationships between copyright protection, authors, and the promotion of learning. As the article will discuss, a typical English publisher could easily have been ten times smaller than its Chinese counterpart from the same period. In London, most printers only had two presses, two or three journeymen, and an apprentice.[70] A theory developed under such market conditions fails to capture the real nature of intellectual property, and it is even more incompatible with today's vast publishing market. Unfortunately, by accident, the London publishing monopolists were placed at the forefront of the historical turning point of

[65] For a description of the language of the *Statute of Anne* that was focused on limiting monopoly, see generally PATTERSON, *supra* note 57, at 147.

[66] JOHN LOCKE, *Second Treatise of Government*, in TWO TREATISES OF GOVERNMENT 265, 287–88 (Peter Laslett ed., Cambridge University Press 1988) (1689).

[67] Ken Shao, *From Lockean Theory to Intellectual Property: Marriage by Mistake and Its Incompatibility with Knowledge Creativity and Dissemination*, 39 H.K. L.J. 401, 417–19 (2009).

[68] For a discussion of the viewpoints of publishers, see generally FEATHER, *supra* note 46, at 60–63.

[69] Shao, *supra* note 67, at 415–18.

[70] FEATHER, *supra* note 54, at 38–41.

copyright. They succeeded in instilling a preference for strong property rights such that our contemporary world often forgets the ultimate goal of intellectual property law: the promotion of learning.[71]

III. COPYRIGHT, FREE PRINTING, AND THE PROMOTION OF LEARNING IN CHINA

Part II described the formidable scale of monopoly enjoyed by English and French printing guilds from the sixteenth to eighteenth century and its direct contribution to molding our modern perception of intellectual property. A typical example of a monopolistic practice of the European economy at the time is a publishing monopoly, which cannot be oversimplified as a preposterous system. It is, however, a tragedy that ultimately becomes the fountainhead of modern issues afflicting intellectual property.

Now it is time to turn to an examination of China where, as Part I explained, the role of monopoly was of much less significance in a broad economic sense. The emergence of copyright in China has certain similarities with that of fifteenth-century France, where commercial investment played a crucial role in stimulating copyright protection.[72] However, there exists a fundamental difference: in China, publishing monopoly hardly existed. This is the key to understanding the dynamics between the promotion of learning and copyright in China's history.

A. Copyright Practice in China

Copyright protection emerged in China alongside the expansion of the commercial publishing industry in the eleventh century, possibly some two hundred years after the invention of printing technology that initially stimulated large-scale scholarly and state publishing enterprises. Complaints about violations of copyright can be found in the works of various distinguished Chinese scholars as early as the ninth century.[73] The earliest copyright lawsuit was mentioned in the early twelfth century by Fan Jun (范浚) (1102–1151), a distinguished scholar of the Song dynasty. Fan sued a publisher who had falsely attributed a book to him. Ultimately, the publisher's printing blocks were destroyed and his sales stopped.[74] The need for Chinese authors to resort to copyright enforcement illustrates that in the absence of copyright protection, publishers were not legally bound to respect the integrity of an author's work. Thus, the first factors that stimulated copyright protection in

[71] PATTERSON, *supra* note 1, at 138.

[72] For discussions on China, see Shao, *supra* note 5, at 400–31. For France, see ARMSTRONG, *supra* note 10, at 78–81.

[73] Shao, *supra* note 5, at 419.

[74] ZHANG, *supra* note 33, at 200.

China were moral rights and originality, values highly respected by the literati class and artists in the Chinese intellectual tradition.[75]

The second factor was economic interest. The commercial publishing industries in traditional China operated at a considerable scale. Scores of new books were printed every day across the country.[76] A publishing center like Jianyang in the Fujian province during the sixteenth century had over one hundred publishing houses and some four hundred individuals recorded as printers with one or more books produced. Yu Xiangdou (余象斗), one of the most famous Jianyang publishers, who was also an author, had about forty relatives owning or working for various publishing houses and some ten more as professional authors, editors, or collators. This number does not include employees not related to him.[77] As mentioned above, an enterprise like Yu's could be ten times larger than a typical London guild publisher from the same period. Without copyright, it would have been very difficult to safeguard the substantial investment put into publishing new books against pirated copies, which could sell at much cheaper prices without initial upfront costs. The lament of Yu Xiangdou is a familiar one:

> The novels I have published are all from careful compositions of my heart. . . . I have [also] invested so heavily that it is difficult to calculate! Those profiteering pirates . . . . [They] are impudent enough to be called scoundrels and knaves! How can they do nothing but only lap my orts?![78]

In China, copyright notices were usually made visible to readers by printing them in a visible area of a book as a deterrent to pirates.[79] Private printers could, in any given case, apply to local officials for protection, and many did.[80] As a matter of fact, the Chinese way of copyright practice was not abolished until 1910, when the nation's first modern copyright law was

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[75] Shao, *supra* note 5, at 413–19.

[76] ZHANG, *supra* note 33, at 57–58.

[77] LUCILLE CHIA, PRINTING FOR PROFIT: THE COMMERCIAL PUBLISHER OF JIANYANG, FUJIAN (11TH–17TH CENTURIES) 154–55 (2002).

[78] 朱传誉 [Zhu Chuanyu], 明代出版家—余象斗的傳奇 [*Ming Publishers: The Legend Yu Xiangdou*], 16 中外文学 [CHINESE & FOREIGN LITERATURE], Sept. 1987, at 150, 164 (quoting 八仙出处东游记 [The Eight Immortals' Journey to the East]); Shao, *supra* note 5, at 422 (English translation of quote cited). *See generally* 邱澎生 [Qiu Pengsheng], 明代苏州营利出版事业及其社会效应 [*Commercial Publishing and Its Social Impact in Suzhou during the Ming Period*], 5 九州学刊 [JIUZHOU ACADEMIC J.] Oct. 1992, at 139, 156–58 (discussing the frustrations of Song, Ming, and Qing publishers on pirating and their efforts to seek legal protection from the state).

[79] 中国版权史研究文献 [MATERIALS FOR HISTORICAL STUDIES OF CHINA'S COPYRIGHT HISTORY] 9 (周林、李明山 [ZHOU LIN & LI MINGSHAN] eds., 1999).

[80] K. T. Wu & Wu Kuang-Ch'ing, *Ming Printing and Printers*, 7 HARV. J. ASIATIC STUD. 203, 230 (1943).

enacted.[81] As the following will demonstrate, in China, copyright was practiced in an environment that had virtually nothing to do with monopoly. This was certainly not the case in sixteenth to eighteenth-century Europe, from which our modern copyright originates.

B. A Relaxed State Control

The state did attempt to control publishing. With the growing popularity of xylography, the initial zeal of printing an optimum number of ancient literatures resulted in many printing errors. This soon attracted the government's attention. However, the Chinese political interference was entirely different from the monopoly enjoyed by English and French printing guilds, if monopoly is understood as an exclusive right in trade. At the early stage of political supervision, the government simply required anyone who wished to print to obtain an official edition from the government.[82] Although by the mid-eleventh century all Confucian classics and official histories had to be printed by the state publisher, excessive pricing was forbidden,[83] and printing blocks carved by the government could still be freely rented by the public for reprinting at affordable prices.[84] In addition, it seems that the same control did not apply to many books other than the Confucian classics and official histories.[85]

Therefore, state control was more an exclusive right to generate authoritative canonical texts than a monopoly on the book trade. More importantly, in the Xining period (1067–1077) of the Song dynasty, the imperial government eventually relinquished its exclusive right to generate canonical texts as a response to criticisms of monopoly as well as operational difficulties. From this time forward, the Confucian Classics could be freely printed *and* reprinted.[86]

The Ming state (1368–1644) also attempted to regulate publishing in some printing centers, but without resorting to a printing monopoly. In 1532, after occasional partial measures of supervision failed, the government decided to enforce a strict policy on publishers supplying cheap and inferior books from Jianyang. Prior to publishing, printing blocks were required to be proofread in

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[81] For an analysis of sample copyright cases, see Shao, *supra* note 5, at 423–29.

[82] *Id.* at 409.

[83] 方厚枢 [FANG HOUSHU], 中國出版史話 [HISTORY OF PUBLISHING IN CHINA] 215 (1996); Susan Cherniack, *Book Culture and Textual Transmission in Sung China*, 54 HARV. J. ASIATIC STUD. 5, 42 (1994).

[84] Ming-Sun Poon, Books and Printing in Sung China, 960–1279 (1979) (Ph.D. dissertation, University of Chicago).

[85] Shao, *supra* note 5, at 409.

[86] 宋原放、李白坚 [SONG YUANFANG & LI BAIJIAN], 中国出版史 [CHINA'S PUBLISHING HISTORY] 233 (1991); Cherniack, *supra* note 83, at 28.

accordance with carefully collated versions that governmental institutions produced after many years of scholarly endeavor.[87] Poorly produced printing blocks were usually sequestrated and occasionally destroyed by the government.[88]

Pre-publishing, monopolistic censorship did exist in the Yuan dynasty (1271–1368), during which the Mongol state racially divided people into four degrees, with the Han Chinese at the lowest category. Pre-publishing censorship was carried out, and books had to be checked by the central government through a complex procedure, even if the local government had agreed to publish them.[89] However, there was still no guild involvement. After the fall of the Yuan dynasty, books could be published freely again under the Ming state.[90]

As to the relationship between the prosperity of commercial publishing and a relaxed government control, a key link to consider is the size of commercial publishing. As Part II has pointed out, the London-based printing guild was in charge of a very small trade. Most publishers only employed three to four workers. This made censorship and a single city-based monopoly practically administrable. In contrast, the Chinese book market was massive and needed a much larger number of publishers in various cities.

In addition to a reserve of literary heritage significantly larger than that of Europe,[91] the continued boosters of the Chinese book market also had a greater literate population due to civil service examinations. This system, which lasted from the seventh century until 1905, recruited talented individuals into the public service every three years.[92] The official calculation of examination candidates at a prefectural level was around 79,000 in the early twelfth century, and the number may have reached 400,000 in the mid-thirteenth century, when Chinese civilization reached its last peak.[93] This number possibly excludes those who prepared for but did not take the examination in a particular year,[94] and certainly does not include those who only had some basic but useful reading skills.

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[87] CHIA, *supra* note 77, at 35; Wu & Wu, *supra* note 80, at 229–30.

[88] CHIA, *supra* note 77, at 179.

[89] Shao, *supra* note 5, at 409–10.

[90] ZHANG, *supra* note 33, at 282, 339; Kai-wing Chow, *Writing for Success: Printing, Examinations, and Intellectual Change in Late Ming China*, 17 LATE IMPERIAL CHINA 120, 135 (1996).

[95] T. H. Tsien, *Paper and Printing*, *in* SCIENCE AND CIVILIZATION IN CHINA: CHEMISTRY AND CHEMICAL TECHNOLOGY 1, 283 (Joseph Needham ed., 1985).

[92] For a detailed discussion on the development of the civil service examination system, see generally THOMAS H.C. LEE, EDUCATION IN TRADITIONAL CHINA: A HISTORY 111–70 (2000).

[93] JOHN W. CHAFFEE, THE THORNY GATES OF LEARNING IN SUNG CHINA: A SOCIAL HISTORY OF EXAMINATIONS 35 (2d ed., Albany State Univ. of N.Y. Press 1995) (1985).

[94] CHIA, *supra* note 77, at 353.

William Alford argues that the literary population in China used to be small because in the early twentieth century, no more than twenty percent of the Chinese were literate.[95] However, the sharply declined Chinese civilization during the Qing (1644–1911) is not representative of the far more greatly developed literary achievements of the Song and the Ming. Even a mere twenty percent of China's 374 million population as per the 1909–1911 censuses[96] would have constituted a huge book market. After all, with such a robust, energetic, literary tradition combined with a large reading population, it is reasonable to say that publishing censorship and printing monopoly were practically unenforceable in China. Any attempt at enforcement, as demonstrated by the collapse of government supervision in the eleventh century, would have triggered wide objections.

C. The Free Printing of Ancient Books

In her landmark book on China's commercial publishing history, *Printing for Profit*,[97] Lucille Chia collected a long list of books printed from the Song to the Ming dynasties. This list supports the argument that in the absence of government monopoly, no one could claim an exclusive right to print ancient books such as the classics, dictionaries, histories, geographies, school primers, medical texts, encyclopedias, poetry anthologies, plays, and ballads.[98] These books had existed hundreds or even thousands of years before the advent of printing and belonged to society as a whole. Ancient books thus were frequently available in multiple editions. *Guangyun* (广韵), an authoritative phonologic work widely used by poets, had at least *six* editions published in one single city in fewer than a hundred years.[99] In sharp contrast, as discussed in Part II of this article, English and French printing guilds were granted absolute monopoly power by the Crown to print *all* ancient books, including those that Locke argued should belong to everyone.

The Ming and Qing period in particular saw more zealous efforts to compile and reprint older works for free. During that period, the existing knowledge had accumulated to the point where substantial compilation and reprinting became necessary.[100] The demand for top-quality reprints even created a specialized skill of facsimile that could replicate the calligraphic and layout aesthetics of earlier versions, often from hundreds of years ago.[101] This is

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[95] ALFORD, *supra* note 4, at 19.

[96] John D. Durand, *The Population Statistics of China, A.D. 2-1953*, 13 POPULATION STUD. 209, 247 (1960).

[97] CHIA, *supra* note 77.

[98] *Id.* at Appendix A. For a list of book catalogue genres, see *id.* at 5.

[99] *Id.* at 111.

[100] SONG & LI, *supra* note 86, at 109.

certainly not imitation but artistic, meritorious reproduction for the purpose of promoting learning.

D. Publishing Centers and Free Competition

In a non-monopolistic ecosystem, various publishing centers emerged and grew in China.[102] The rise of these publishing centers was fueled by the availability of natural resources crucial to paper, wooden block, and ink production,[103] which in turn determined book quality and prices. The decline of printing centers was often related to factors such as war and the rise of smaller and more competitive printing centers.[104] It was only under free competition that culturally and economically developed areas such as Jiangnan were able to create prosperous printing centers such as Suzhou, Hangzhou, Nanjing, and Huzhou.[105] Scholarly enthusiasm was also a contributing factor. Some highly reputed Neo-Confucian scholars in northern Fujian were credited for facilitating Jianyang's development into one of the greatest printing centers of the Sung and Yuan dynasties.[106]

The reputation of a printing center was determined by quality and price, not monopoly power. As the Song scholar Ye Mengde (叶梦德) (1077–1148) noted,

> Hangzhou printed the finest books, Sichuan the second, and Fujian the worst. Printing blocks carved in the Capital are equal to those of Hangzhou, but the papers are inferior. Fujian blocks are made from soft wood, making delicate inscriptions difficult. They are most popularly sold everywhere because they are easy to produce.[107]

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[101] Facsimile editions of earlier books were one of the four distinct achievements of the Ming printers. *See* Wu & Wu, *supra* note 80, at 223.

[102] For a list, see generally FANG, *supra* note 83, at 215.

[103] For a detailed analysis, see CHIA, *supra* note 77, at 100–41.

[104] *See generally id.* at 150–52.

[105] For the prevailing practices in learning, education, book collecting, and publishing in Jiangnan, see generally 江庆柏 [JIANG QINGBAI], 明清苏南望族文化研究 [STUDIES ON THE ELITE CULTURE OF SUNAN IN THE MING AND QING DYNASTIES] 72–124, 173–248 (1999) (focusing on the established families from the elite class in Jiangnan).

[106] CHIA, *supra* note 77, at 138, 141–42.

[107] 林正秋 [Lin Zhengqiu], 宋代城镇十大类商店初探 [*A Preliminary Study on the Ten Most Common Types of Shops in Cities and Townships in the Song Dynasty*], 商业经济与管理 [J. BUS. ECON.], no. 2, 1999, at 67, 72–73 (quoting 叶梦得 [Ye Mengde], 石林燕语 [Notes from Retirement in a Stone Forest]).

Affordable prices, a rarity for English readers under the guild monopoly system, were taken for granted by the Chinese. One could buy a commentary on the Classics of low printing quality in Nanjing in 1615 for only 0.5 tael.[108] A survey of printing costs indicates that it was possible to produce cheap books in the Qing.[109] This is why the Jesuit missionary Matteo Ricci (1552–1610), having come from a culture where printing had just been introduced, was amazed by "the exceedingly large numbers of books in circulation here and the ridiculously low prices at which they are sold."[110]

Free printing, however, resulted in intense competition. Publishers had no choice but to improve printing quality, reduce prices, and constantly make new, original books available to the fastidious reading population. Advertisements popularly employed a tone claiming that "customers are advised to recognize the *total* difference." [111] Publishers widely used descriptions such as "new edition," "definitively collated new edition," "expanded edition," "revised edition," and "expanded revised edition,"[112] who strove to distinguish their edition from others by appending private notes from renowned scholars.[113] From this point of view, freedom of publishing fostered creativity by promoting competition in the book market and a wide dissemination of knowledge. In such a cultural environment, it is not very difficult to understand why copyright claims in traditional China were almost inevitably associated with originality.[114]

E. The Question of Monopoly Revisited

As we have seen in Part I, no printing guild existed in imperial China, and the first publishing association was not established until 1671, some eight hundred years after the invention of printing technology.[115] However, it is reasonable to assume that in those flourishing printing centers, a small group of publishers may have at least attempted to monopolize the market. Interestingly, to regulate the intra-family competitions, some publishers' family rules prohibited the carving of printing blocks for books already

[108] Chow, *supra* note 90, at 124.

[109] EVELYN S. RAWSKI, EDUCATION AND POPULAR LITERACY IN CH'ING CHINA 123 (1979).

[110] CHINA IN THE SIXTEENTH CENTURY: THE JOURNALS OF MATTHEW RICCI, 1583–1610, at 21 (Louis Gallagher ed. & trans., Random House 1967) (1942); *see also* TIMOTHY BROOK, THE CONFUSIONS OF PLEASURE: COMMERCE AND CULTURE IN MING CHINA 169 (1998).

[111] 张传峰 [Zhang Chuanfeng], 明代刻书广告述略 [*A Brief Introduction to Publishing Advertisements in the Ming Dynasty*] 22 湖州师范学院学报 [J. HUZHOU TEACHERS COLLEGE] Feb. 2000, at 74, 76.

[112] Cherniack, *supra* note 83, at 80.

[113] CHIA, *supra* note 77, at 11–12.

[114] For the detailed records of those claims, see Shao, *supra* note 5, at 423–29.

[115] ZHANG, *supra* note 33, at 553–54.

"owned" by other family bookshops, regardless of whether the books were old or new. The head of the family clan could punish violators by imposing a fine of up to one thousand *wan*.[116] However, it appears that some books were still freely reprinted within the family-run businesses, probably because the demand for such books was so great that there was no pressing need to prohibit duplications.[117] Although this recognition of existing ownership of printing blocks of old and new works may appear similar to the European guild monopoly, the difference is that the Chinese intra-family regulation had no impact upon the nationwide book trade, which remained subject to free competition.

Fragmented evidence suggests that local publishers with the same surname could have worked together closely, and a number of publishers in the same region may have been related to one another or connected through social and intellectual ties.[118] Printing blocks were often inherited or transferred amongst different publishers through purchase[119] or sometimes marriage. The woodblocks of a collection of one of the greatest Tang poets, Du Fu (杜甫) (712-770), compiled by a Song scholar Xu Juren (徐居仁) and originally carved in 1312 by Yu Zhian's Qinyou Tang Press (余志安勤有书堂),[120] were transferred to Ye Rizeng (叶日增) of Guangqin Tang Press (广勤书堂) at least four decades later. It is not clear whether the transfer was made by purchase. However, the surname of the wife of Yu Zi (余资) (Yu Zhian's son) was Ye (叶), suggesting that those blocks might have been transferred to the Ye after the death of Yu Zi in 1358.[121] Another example is the distinguished Jianyang publisher Yu Xiangdou, who appeared to have received several printing blocks from his mother's natal family, which was also in the publishing industry.[122] These anecdotes remind us of the testament of a London bookseller who bequeathed his copies to his granddaughter upon the condition that she marry a man approved by her family.[123] But the difference here is that the latter was an intra-guild monopolistic transfer while the former, in the absence of guild, was most likely a normal commercial transaction.

These phenomena indicate that attempts at monopoly occur everywhere. However, in China, private efforts to maximize one's own business through monopoly practice neither prevented competitors from selling cheaper or

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[116] Cynthia J. Brokaw, *Commercial Publishing in Late Imperial China: The Zou and Ma Family Businesses of Sibao, Fujian*, 17 LATE IMPERIAL CHINA 49, 73-74 (1996).

[117] *Id.*

[118] CHIA, *supra* note 77, at 75.

[119] *Id.* at 32, 93, 332, 347.

[120] *Id.* at Table 1, no. 75 of Appendix A.

[121] For further detail of the transfer, see generally *id.* at 93, 347.

[122] *Id.* at 156-57.

[123] FEATHER, *supra* note 46, at 69.

better copies on the market nor monopolized the free reprinting of ancient books. If publishers were able to achieve actual dominance in the market either locally or nationwide, they normally would not have been blamed, because such success was most likely the result of diligence, reputation and workable commercial strategies.[124]

F. The Promotion of Learning

The prosperity of publishing in China dramatically promoted the development of education, book collection, and intellectual creativity. From cities to small villages, publishing fostered the establishment of schools and colleges by the government, individuals, and rich families.[125] Book collection served as an important vehicle in China's educational tradition. Governmental efforts aside, scholars were extremely active in establishing private libraries. These activities tremendously facilitated scholarly study and encouraged creativity.[126]

In addition to commercial publishing, the vigor of printing as a factor promoting learning was buoyed by various efforts of scholarly and governmental publishing. After the invention of printing technology, China's central and local governments during every dynasty were enthusiastic about printing various books crucial to education, medicine, science, and technology. These printing activities were often less commercial but large-scale. The most spectacular governmental publishing ventures were the early fifteenth-century *Yongle Dadian* (永乐大典) (the Encyclopedia of Yongle Emperor's Reign), which compiled 3461 different books and a list of 6793 uncollected books, and *Siku Quanshu* (四库全书) (Complete Library of the Four Branches of Literature), which compiled about 36,000 books and was partly carved into 149,782 blocks by 1834.[127] Although prices were sometimes high, books printed by the government often had no copyright restriction and were eligible for entirely free reprinting. The scholar-publishers also played very active roles. One of the most famous scholar-publishers, Jigu Ge Press (及古阁), established

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[124] For the nature of a largely free competition in imperial China, see generally Hamilton, *Regional Associations and the Chinese Society*, *supra* note 31, at 346–61; Hamilton, *supra* note 32, at 50–71.

[125] For a discussion on the link between the development of education and the expansion of printing, see 张秀民 [ZHANG XIUMIN], 张秀民印刷史论文集 [ACADEMIC ESSAYS OF ZHANG XIUMIN ON CHINA'S PRINTING HISTORY] 84–88 (印刷工业出版社 [Printing Industry Publishing House] 1988).

[126] TAAM CHEUK-WOON, THE DEVELOPMENT OF CHINESE LIBRARIES UNDER THE CH'ING DYNASTY, 1644–1911, at 3–4 (1935). For additional analysis, see generally BENJAMIN A. ELMAN, FROM PHILOSOPHY TO PHILOLOGY: INTELLECTUAL AND SOCIAL ASPECTS OF CHANGE IN LATE IMPERIAL CHINA 141–50 (1984).

[127] SONG & LI, *supra* note 86, at 107; ZHANG, *supra* note 34, at 549.

by Mao Jin (毛晋) (1599–1659) of Jiangsu Province, printed some 600 titles with over 100,000 blocks.[128]

This passion for printing, books, and knowledge was deeply rooted in the Chinese understanding that learning and education are for the sake of one's own self.[129] Because every individual is on the same footing when he or she is born, what a person can achieve is ultimately determined by his or her own efforts at learning.[130] Therefore, education should be accessible by all and learning, as argued by the distinguished Neo-Confucian scholar Tu Wei-ming, is indeed the center of the *Analects*.[131] Sharing knowledge was deemed to be so vital to learning and creativity that hoarding knowledge exclusively to broaden one's own vision was widely condemned.[132] This certainly applied to copyright and publishing. As the seventeen-century bibliophile Cao Ron put it, to hinder the sharing of ancient or rare works was to disrespect the forefathers of their literary heritage.[133]

The second millennium in China's history benefited tremendously from the invention of printing technology and the prosperity of publishing and education. The availability of a vast number of books expanded the knowledge realm of the literate population, allowing them to realize the talent of their predecessors and contemporaries and stimulating them to create more.[134] If printing during the Song and Ming dynasties was indeed suppressed by monopolistic controls that obstructed the transmission of knowledge and fossilized creativity, then how can we explain the robust development of philosophy, literature, art, and technology during this time period? In fact, the Song and Ming eras are viewed as a time when publishing flourished, marked with and a "brain storm"[135] taking place and the flowering of a "diversity of ideas."[136] Unfortunately, few people remember this today because this trend of

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[128] CHIA, *supra* note 77, at 187.

[129] LEE, *supra* note 92, 2–9.

[130] DONALD J. MUNRO, THE CONCEPT OF MAN IN EARLY CHINA 15 (1969).

[131] TU WEI-MING, CONFUCIAN THOUGHT – SELFHOOD AS CREATIVE TRANSFORMATION 67–78 (1996).

[132] 周少川 [ZHOU SHAOCHUAN], 藏书与文化：古代私家藏书文化研究 [BOOK-COLLECTING AND CULTURE: STUDIES OF PRIVATE BOOK-COLLECTING IN IMPERIAL CHINA] 281 (1999) (citing 归潜志 [Memories in Retirement] by Jing Dynasty writer Liu Qi [刘祁]). *See also* Nancy Lee Swan, *Seven Intimate Library Owners*, 1 HARV. J. ASIATIC STUD. 363 (1936) (discussing the sharing of learning promoted by seven bibliophiles in eighteenth-century Hangzhou).

[133] 黄建国、高跃新 [HUANG JIANGUO & GAO YUEXIN], 中国古代藏书楼研究 [STUDIES ON CHINESE BOOK-COLLECTING] 16 (1999).

[134] ELMAN, *supra* note 125, at 205–207.

[135] CHOW, *supra* note 90, at 145.

[136] THOMAS H. C. LEE, GOVERNMENT EDUCATION AND EXAMINATIONS IN SUNG CHINA 28–30 (1985); *see also* WM. THEODORE DE BARY, SELF AND SOCIETY IN MING THOUGHT 331–41 (1970).

modernity was abruptly ended in 1644, when China came under Manchu rule. In the subsequent two hundred years under this regime, many aspects of splendid Chinese creative talent stagnated.

CONCLUSION

This article examines for the very first time the environment in which copyright was practiced in traditional China. To do so, it comparatively examines the relationship between publishing and monopoly in traditional China and Europe, with particular reference to England. Monopoly, as opposite to freedom of trade, was hated but practiced in both China and Europe, but at considerably different levels. Within China's vast, united market, monopoly was very much limited in scope and had little to do with publishing. In comparison, monopoly in Europe was long needed by most aspects of commerce and constituted an absolute exclusive power in the field of publishing.

Copyright and the promotion of learning in early China were by no means perfect. However, there is no reason why that system should be judged against modern copyright regime. The key finding here is that the promotion of learning was better achieved under China's publishing practice, where copyright did not become a monopoly as it did in Europe. Unfortunately, modern intellectual property law stems from the experience of England's printing monopolists, which codified an early conception of intellectual property before the publishing industry understood the full impact of copyright. Thus, the global issues surrounding intellectual property we face today should be viewed as the result of historical circumstances rather than genuine necessity. This implication, as this article has demonstrated, can be better understood through a comparative historical lens that focuses on China. Ignoring history, as Christopher May and Susan Sell succinctly put it, "is not an option."[137]

[137] CHRISTOPHER MAY & SUSAN SELL, INTELLECTUAL PROPERTY RIGHTS: A CRITICAL HISTORY 203 (2006).