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Book Review [To Steal a Book is an Elegant Offense: Intellectual Property Law in Chinese Civilization]

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BOOK REVIEW

TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION. By William P. Alford. Stanford, Cal.: Stanford University Press. 1995. Pp. 222. Hardcover. \$39.50.

*Reviewed by Anna M. Han**

In his 1994 article titled "Intellectual Property in Asia,"¹ Professor Alford criticized various schools of scholars for not taking a comprehensive approach to the study of intellectual property law. In particular, Professor Alford argued that taking a single approach, be it economic, political, or cultural, to examine intellectual property law misses the opportunity to explore the issue completely. Unfortunately, in his most recent book, *To Steal a Book Is an Elegant Offense*, Professor Alford's study of Chinese intellectual property law does not adhere to his own admonishment. Professor Alford intends the book to be a study of why respect for intellectual property law has not "taken hold in China."² In particular, he argues that the reason intellectual property law never flourished in China is primarily due to its unique "political culture."³ He attributes the failure to develop intellectual property law to the Chinese Government's focus on control of information over the protection of property rights of the individual authors and inventors.

Chapter two, "Don't Stop Thinking About . . . Yesterday," analyzes the various laws promulgated during the imperial dynasties that might be deemed "intellectual property laws." Professor Alford persuasively argues that indeed, it was the control of ideas and not the protection of economic rights of

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1. William P. Alford, *Intellectual Property in Asia: How Theory Does — and Does Not — Matter: American Approaches to Intellectual Property Law in East Asia*, 13 UCLA PAC. BASIN L.J. 8 (1994).

2. WILLIAM P. ALFORD, *TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION* 1 (1995).

3. *Id.* at 119.

the authors that was the primary goal behind these various imperial decrees. Professor Alford's approach in this chapter is primarily cultural. He portrays the attitude of the Chinese intelligentsia towards the copying of their works as one of "tolerance" or indeed "receptivity."⁴

In chapter three, "Learning the Law at Gun Point," Professor Alford covers the period from the Qinq dynasty in the reign of Qienlong (1736-1796) to the early Republic (1911-1923), a period when China was forced, literally at gun point, to accept Western contact. This chapter furthers Professor Alford's thesis that ideas imposed by foreign powers upon the Chinese, and the legal reforms that result from these external pressures, will only be superficial because the culture has not developed these concepts of intellectual property on its own. However, his study focuses primarily on the dialogues between the Chinese Government and various foreign powers. While the discussion effectively points out the tension and conflict between the interests of the foreign parties trying to enforce their intellectual property rights, and those of the Chinese Government, the chapter makes no mention of the cultural attitudes of the populace during these exchanges. By framing the discussion on a state-to-state level, the promising theme of chapter one is not carried through. Similarly, the discussion ignores political struggles occurring at the time. Even without an in-depth knowledge of Chinese history, it should come as no surprise to anyone that the Chinese Government of both the late Qing and the early Republic were preoccupied with other more pressing issues. Neither the Empress Dowager of the Qing dynasty nor the Guomindang leaders of the Nationalist Government in Nanjing placed intellectual property at the top of their reform list, not when there were more important concerns such as keeping the dragon throne and fighting warlords.

In chapter four, "Squaring Circles," the author illustrates how the Communist Government, trying to adhere to Marxism and Leninism, not only perpetuated existing cultural attitudes, but actually further lowered the status of intellectual property laws. To the extent that any comparable laws existed in the early days of the People's Republic of China (P.R.C.), these laws continued to emphasize on political con-

4. *Id.* at 29.

trol of content over the authors' economic rights. His depiction of the conflicts between the notion of rewarding intellectuals for creative activities and the communist ideal of public ownership of property is particularly interesting. He chronicles the introduction of various intellectual property laws in recent P.R.C. history, starting with the amendment of the trademark law and ending with computer software protection rules.

Professor Alford does not, however, detail more recent developments since the signing of the Memorandum of Understanding (MOU) between U.S. and China in 1992.⁵ Since the MOU, China has amended its intellectual property laws to closely mirror those of the West. Some measures include the criminalization of copyright infringement, inclusion of pharmaceuticals and chemicals as patentable products, registration of service marks, and joining various international conventions on intellectual property.⁶ However, enforcement remains a problem. Adherence to these amended laws was so poor that the U.S. and China engaged in yet another round of threats and negotiations. The dispute was resolved with the signing of a new accord in 1995.⁷ Despite the improved laws and heightened period of enforcement in China after the 1995 accord, compliance with intellectual property laws remains low.⁸ This would suggest that while it is true that ideas imposed by and learned from foreign powers are not readily adopted by the Chinese people, the same could be said of top-down domestic legislation which is designed to serve the government's agenda. While legal reform by way of legislative changes imposed by foreign powers is untenable, legal reform by government imposed laws unsupported by the populace is equally superficial. Neither method of legal "reform" is likely

5. Memorandum of Understanding on Protection of Intellectual Property, U.S.-P.R.C., Jan. 17, 1992, 34 I.L.M. 676.

6. In 1992, China joined the Berne Convention, the Universal Copyright Convention, and the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.

7. The problems of infringement of pirated CDs and products bearing infringing trademarks continued until the U.S. threatened trade sanctions against China under a Special 301 action. Repeated threats and negotiations ultimately led to an accord. See Arthur Wineburg, *The Close of Round Two: Intellectual Property Rights in China*, CHINA BUS. REV., July 1995, at 20.

8. Maggie Farley & James Gerstenzang, *China Piracy of U.S. Products Surges Despite Accord*, L.A. TIMES, Oct. 10, 1995, at A1.

to alter the inherent distrust of the concepts being introduced.

In chapter five, "As Pirates Become Proprietors," Professor Alford tries to demonstrate that change is possible by focusing on Taiwan's record on the protection of intellectual property. In this chapter, the book shifts from a cultural and political focus and engages in extensive economic analysis. Beginning with the hypothesis that piracy in Taiwan continued as long as there was an economic incentive and a growing export market, the chapter then describes the tremendous economic strides that Taiwan has made and concludes that it has transformed itself from a piracy center to one that may indeed be a champion of intellectual property law enforcement. Unfortunately, none of the discussions on Taiwan illustrates any intrinsic change in the cultural attitudes of the Chinese living on Taiwan. Instead, the chapter could be used to support a theory that the changes in Taiwan were largely attributable to pressures from the United States Trade Representative Office in the form of sanctions. Repeatedly, the improvements in intellectual property law enforcement are described as a "response to intensifying U.S. pressure,"⁹ "threats,"¹⁰ and "spurred by the complaints of IIPA."¹¹ The Taiwan reaction to U.S. pressure is one of resistance and each concession is "wrung . . . painfully"¹² from the government. Inadvertently, the case of Taiwan proves that perhaps external pressures could bring about changes in the area of intellectual property protection.

If Professor Alford sets out to prove that economic development alone can bring acceptance of intellectual property rights, then the case of Taiwan is an excellent example. Unfortunately, the same transition may not be possible for a much poorer and larger country. Carrying the analysis to its logical conclusion, the answer seems to be to let China continue its piracy for as long as necessary until it develops its own industries which would demand enforcement of intellectual property laws. This is not a particularly satisfying solution.

9. ALFORD, *supra* note 2, at 97.

10. *Id.* at 107.

11. *Id.* at 104. The IIPA is the International Intellectual Property Association.

12. *Id.* at 103.

In his last chapter, "No Mickey Mouse Matter," Professor Alford again warns that any changes brought about by external political pressure is unlikely to generate true compliance with intellectual property laws. Though the premise is sound, the author does not provide any suggestions which would help the Chinese internalize these intellectual property concepts. While a reader understands why to steal a book is an elegant offense in China, she does not understand what it would take to stop the theft.

For anyone interested in a discussion of intellectual property law in China, Professor Alford's book is well worth reading. He presents some fascinating cultural concepts and helps readers gain an understanding of Chinese attitudes towards intellectual property laws. He succeeds, to a degree, in not imposing a Western notion of intellectual property on China. However, the "Chinese" attitude he analyzes remains primarily that of the Chinese Government, not the people. The readers would have benefited more if the cultural analysis was consistent throughout the entire book. By shifting the focus from cultural to political to economic analysis, Professor Alford uses each of the schools of thought that he criticized in his 1994 article, but he does not use all three approaches uniformly.

