From Made in China to Designed in China: Corporate Interests, Norm Compliance and China’s Intellectual Property Transition

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Abstract

As part of its national strategy to promote indigenous innovation and to develop an innovative economy, the Chinese government has adopted a series of policy initiatives since 2008 to strengthen intellectual property (IP) protection standards and enforcement at home. Some interpret such moves as evidence of norm diffusion; others see them reflecting the success of foreign pressures at work over the last few decades. In view of the variegated patterns of IP practices in China, this paper critiques the constructivist analytical framework of norm diffusion and international socialisation, and argues that more attention needs to be directed towards the dynamics of the global economy and various competing, capital-seeking imperatives that have informed China’s IP agenda and implementation. In particular, corporate interests (interest of different fractions of capital) have shaped and influenced the constitution and function of China’s recent IP strategies. I argue that firms, which are highly driven by rational calculus in a competitive environment, play important roles in the diffusion of IP norms and practices internationally and domestically – a process that is politically conditioned. This analysis raises important questions regarding notions of state authority in relation to IP policy in China.

Introduction

China is well-known as the world’s factory – thanks to its abundant supply of relatively cheap labour to support massive manufacturing production on a massive scale since the country opened its market to the world in 1979. Competitive, “made in China” products soon venture into a variety of industries and made their way to overseas markets, culminating in the achievement of China being the world’s second largest exporter. Yet, the country is also notoriously branded as the world’s most pirated country, as Chinese manufacturers produce
and sell large amount of “made in China” goods which entail imitating designs and adopting technological processes that are not legitimately owned by them. By the mid-noughties, China began to unravel a series of ambitious plans that aimed at promoting indigenous innovation and alongside with it, strengthening intellectual property (IP) standards and its protection at home. Essentially, the Chinese leadership envisaged a new phase of economic modernisation centred on active promotion and nurturing of untapped innovative capacity. Results are evident. In terms of application of invention patents, China overtook Germany and South Korea as the world’s third most active patenting country after the United States (US) and Japan (WIPO 2016). Chinese firms have made their way to the world’s patent league with two giant telecom firms – Huawei Technologies (Huawei) and ZTE Corporation (ZTE) – leading in first and third place respectively (WIPO 2016). The late developer has also become the most litigious country in the world with regard to IP with skyrocketing number of patent, trademark and copyright cases handled by Chinese courts. The world’s most pirated country is shifting its development approach towards nurturing and protecting indigenous innovation. How can we understand and explain the processes and imperatives behind this phenomenal shift of strategy from “made in China” to “designed in China”? What does the evolution of China’s IP strategy and policies inform us about powerful forces and key interests, which have interacted to shape China’s development?

This paper first explores the constructivist literature on norm diffusion and the framework of international socialisation, which have been used to explain why and how novice state actors embrace particular international norms and standards of behaviour. Using China’s national IP strategy and its implementation as a case study, I challenge the applicability of the constructivist approach in understanding policy shifts in China. I highlight how norm diffusion, as preached by constructivists, has led to variegated patterns in China’s national IP
strategy and several inconsistencies in policy implementation. These varied outcomes are barely addressed in the constructivist and socialisation literature. I then draw upon macro-historical materialist approaches to examine ongoing, evolving structural forces in the global economy which have empowered several fractions of interests and whose changing and competing needs have, in many ways, conditioned the Chinese state in formulating and implementing its national IP policy. I conclude by suggesting that home-grown Chinese enterprises, with their important roles in the Chinese economy, have emerged as key influencers of national IP policies. From local imitators to global innovators, they have somehow, by coincidence, become IP norm entrepreneurs and socialisation agents through a highly politically-conditioned and capital-interest-driven process.

International relations scholars and political scientists have long been seeking systematic explanations that aim at better understanding state behavior in terms of the decisions made by national governments and the policies pursued by them in relation to security, economic, political issues and others. At the crust of the various interpretations often lies the questions – what shapes state interests, what informs actions and what mediates outcomes. An understanding of these factors also necessarily entails examining how these factors contribute to or intervene with the consequences. How do we understand the drivers and catalysts behind the promulgation of IP policies and their implementation in China, which is closely associated with its latest grand plan to construct an innovative economy?

**Normative explanations: norms and compliance**

One of the explanations offered by the constructivist school of international relations is the ways normative tendencies such as ideas, beliefs, norms and rules affect the identity, interests and behaviour of a state. How a state sees or positions itself affects what it wants and how it
acts. State interests evolve with changes in state identity and as such, states are not necessarily utility maximisers as what the rationalists have assumed. These claims arise from the belief that the so-called ‘real’ world is in fact, a ‘world of our own making’ (Onuf 1989) – one where actors create ideas, establish identities and organise relationships with each other through repeated interaction. Ideas, identities and relationships, instead of being treated as given and pre-determined, are social constructs which shape the interests of a given state actor and hence, determine the course of actions to be taken (Wendt 1994, Finnemore 1996). Actors may appeal to normative concerns, despite knowing such responses would have incurred more costs than benefits. It follows that in explaining what motivate states in their actions, ideational imperatives, in addition to pure material incentives, should be considered as possible causes of any observed phenomena (Finnemore and Sikkink 1998). In the words of March and Olsen (2005, 3), actors can be influenced by “a logic of appropriateness” as much as “a logic of reason”.

Norms are broadly defined as socially and morally acceptable behavior and practices. In contemporary societies, some widely recognised international norms include human rights protection, observation of international law, humanitarian relief, and others. Scholars interested in norm diffusion have developed several models to explain the creation, transmission and diffusion of norms and their effects on states. These include the norm life-cycle model by Finnemore and Sikkink (1998) and the five-stage compliance model of human rights by Risse (1999, 2013).²

¹ Rationalists regard states as rational actors who have "consistent, ordered preferences" and they "calculate the costs and benefits of all alternative policies in order to maximise their utility in light of both of those preferences and of their perceptions of the nature of reality." (Keohane 1986:11)

² The norm life-cycle by Finnemore and Sikkink (1998) sets out general, necessary conditions and stages for a new norm to be advanced by certain entrepreneurs and subsequently being cascaded in the international
If international norms are important in explaining state behaviour, through what processes and mechanisms are they channeled and diffused to their recipients? Why do states accept norms that are alien to them? One of the often-studied avenue of norm activities is international organisations. State actors are found to be gradually socialised into international norms through their engagement with intergovernmental organisations ((Johnston 2001, Checkel 2005, Bearce and Bondanella 2007). Drawing heavily on constructivist claims, theorists of international socialisation\(^3\) posit the international system as a social environment – one that is highly institutionalised and is embedded with particular beliefs, norms and practices (Schimmelfennig 2000, Johnston 2001). The various ideational and institutional elements that constitute the international environment influence how state actors identify themselves classify their relationships with others and pursue their interests. The rigid and pre-deterministic approach of the realists and liberals who claim that anarchy is the fundamental, distinctive structural feature of the ‘self-help’ international system (Waltz 1979) is rejected. For socialisation theorists, since “anarchy is what state makes of it” (Wendt 1994), other social forms and patterns of interaction, such as relationships that are formed around rules of international institutions, are also possible in inter-state relations (Johnston 2001, 487).

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\(^3\) The approach of international socialisation is generally classified as part of the constructivist tradition. Its emphasis on institutional effects on state behaviour has also prompted scholars to label it under sociological institutionalism as part of the broader school of new institutionalism. See Hall and Taylor (1997) on the three variants of new institutionalism.
For norms and values created and cultivated over time to have any impact on state actors, they have to be promoted by norm agents and diffused through particular institutional arrangements. A novice actor, through participating in rule-based international organisations, will learn about new norms, gradually internalise them and display sustained compliant behavior deemed socially acceptable by the community (Johnston 2001). During the process of socialisation, a state actor experiences a transition from following a “logic of consequences” to a “logic of appropriateness”. In other words, on some occasions, state actors will choose to take norm-compliant actions at the expense of material gains. The final stage of the social learning process involves new states internalising constitutive beliefs and practices, for example compliance with international law, which are institutionalised in the international environment (Schimmelfennig 2000).

**Socialising China into International norms?**

Scholarly interest in the study of norm dissemination emerged against the backdrop of a rapid expansion of international organisations (both in number and in scope of activities) which took place since the 1980s. United Nations (UN) affiliated agencies as well as non-governmental organisations charged with implementing development strategies and promoting humanitarian values mushroomed. The creation of the European Union (EU) as a supranational institution (in 1993) which exercises certain authority over its member-states generated further interest in studying the various ways that member-states are integrated into EU norms and practices. Socialisation scholars also turn their attention to China, with several studies which focus on the changing strategies of the Chinese government in disarmament, human rights and peacekeeping missions, following China's broader and deeper engagement with the UN and its affiliated agencies. There seems to be optimism that China – an authoritarian state and for some – can be moderated and changed by having it tied to the
myriad of international institutions that have been purposely set up to promote neoliberal ideas and maintain the liberal international order. In fact, fervent enthusiasm to support China’s integration into the world is underscored by triumph of US policymakers under the Clinton administration, who advocated "constructive engagement", as opposed to "containment", as the desired strategy to deal with a rising China.

Among the various attempts to analyse China's foreign policy using the international socialisation framework is Ann Kent's (2002) examination of China's participation in international organisations including the Conference on Disarmament (CD), the International Labour Organisation (ILO), the United Nations Environment Programme (UNEP) and other UN human rights bodies. Kent proposed three criteria – redefinition of interests, renegotiation of sovereignty and acceptance of costs – to assess the degree and extent of socialisation effects on China (Kent 2002). The author argues that consequential to its involvement in these organisations as a novice, China has redefined its national interests in several policy areas. For example, the change in interest orientation is reflected in China's acceptance of and commitment to nuclear non-proliferation, the introduction of new domestic legislation in human rights and the construction of bureaucracies to facilitate capital inflows as part of its broader commitment to free trade (Kent 2002, 350-352). Furthermore, China shows readiness to renegotiate its sovereignty over humanitarian intervention and is willing to accept costs and burdens associated with joining international organisations. Such costs include intrusive monitoring of its nuclear facilities by the International Atomic Energy Association (IAEA) and exposing its domestic economy to international competition following the reduction of trade barriers (Kent 2002, 354-357). That said, Kent concludes that
given China's concern about regime legitimacy and other domestic problems, its compliance with international norms will remain selective and unpredictable (Kent 2002, 358).

Another major work on the socialisation of China is Alastair Johnston's (2007) research on China's participation in the international security regime – an area which is worthy of investigation as security cooperation is generally understood to incur higher costs and risks when compared to other policy domains. Johnston identifies three micro-processes that occur in stages during the process of socialisation, namely mimicking, social influence and persuasion. These processes further explain how a novice state, in this case China, learns new norms, copies role-models, evaluates self-image and eventually, accepts the value of norms and willingly adopts cooperative and norm-conforming behaviour. Johnston (2007, 146) argues that as China aims to become a responsible major power, it is confronted with "new trade-offs between security and image". He concludes that China's agreement to a host of arms control treaties and its changed security policies from 1980 to 2000 is a reflection of a learning process that has taken place through international organisations.

If we apply the framework of international socialisation to understand and account for the changing IP regime in China, it is possible to observe some basic forms of compliance in terms of treaty commitment, as well as efforts to harmonise domestic legislation with international IP standards. China was acceded to the Berne Convention in 1992 – an international agreement which covers the protection of artistic work – and the Geneva Phonograms Convention in 1993 which protects the rights of foreign phonogram producers. China, however, did not become signatories to these agreements solely out of its own will. Instead, it succumbed to tremendous US pressures to step up domestic protection of foreign
literary works in exchange for a temporary, conditional suspension of trade sanctions. In
1980, China joined the World Intellectual Property Organisation (WIPO), the world's
international body in charge of promoting IP protection and development, and the provision
of IP registration and dispute management services to its member states. The most significant
development in the history of IP in modern China came in 2001 when China joined the World
Trade Organisation (WTO), which automatically made it a signatory to the WTO's
Agreement of Trade-related Aspects of Intellectual Property Rights (TRIPS). On the
domestic front, China has proven itself as a "quick learner". The government rushed to
promulgate its first national, modern IP laws on patent, trademark and copyright between
1984 and 1991. They are subsequently amended for a few times to bring specific regulations
more in line with international standards. Alongside the passage of new laws, the Chinese
government institutionalises IP by establishing and restructuring corresponding ministries
and bureaux which are in charge of administering and enforcing IP. Civil courts are
strengthened to settle disputes; penalties are heightened to punish infringements; significant
resources are invested in training legal professionals (judges, lawyers and IP attorneys).
However, most of these developments do not take place naturally. Essentially, they culminate
swift responses from the Chinese government to ameliorate persistent pressures from the US
who, at various times during China's economic reform, made China's access to the US market
conditional upon stronger IP protection.

Does China's national interests in relation to IP change as a result of its deeper engagement
with international organisations and broader commitment to international treaties? To what
extent can we ascribe Chinese government's new push of IP to the workings of the "logic of
appropriateness"? Here, I identify three major drawbacks of the attempt to explain China's IP
evolution using the framework of international socialisation. In brief, each phase of China's
IP policy formation and execution exhibits intense processes of competition and negotiations among various segments of interests at both domestic and international levels. The interactions between these interests, taken place in a global economy that is primarily driven by the "logic of the market", result in complex power relationships that shape the function and nature of the Chinese state and actual policy outcomes.

**International socialisation and its limits**

The first deficiency of the literature of norms, compliance and international socialisation lies in its general neglect of the underlying motives and catalysts of specific norms, and how they serve as drivers and variables to mediate outcomes. Supporters of international socialisation have concluded that international institutions, in particular but not limited to international governmental organisations, exert influence on member states and, over time, will lead to a convergence of state interests (Bearce and Bondanella 2007). It follows that as a result of the subtle power and influence of international organisations, extended compliant behaviour of states is anticipated as novice states "learn" to embrace international norms and rules. Such a proposition contradicts with certain observed behavioural traits. China has constantly been criticised of its failure to adequately meet treaty obligations, despite its membership in various international organisations. Beyond the formalities of joining the WIPO, the WTO and the signing of TRIPS, the production of counterfeit products, violation of trademarks and infringement of copyright remain rampant in most parts of China. In fact, since China's economic reform in the late 1970s, piracy in China has never been kept under control, despite deliberate efforts to strengthen legislation and occasional crackdown campaigns to increase deterrence. Technological advancement has created and facilitated new channels of infringements, with software piracy and online counterfeiting identified as the most serious forms of IP violations in China at present. The discrepancies between legal provisions and
enforcement need to be addressed more seriously. No doubt, the international socialisation literature is more interested in the initial, if not superficial, stage of state compliance at the international level than the realities at the domestic level. More attention needs to be directed to explaining the intervening variables that lead to variations of compliance. The action-identity gap (Davis 2013) in the context of China’s IP landscape requires more in-depth explanations not readily offered by the framework of international socialisation. The primarily top-down approach of the theory needs to be supplemented with a bottom-up analysis to solve the puzzle of how and why norms are accepted, resisted or negotiated by various actors. A thorough understanding of norm diffusion should not be limited to analysing behavior at the state level, but also requires comprehension of how well these norms are observed and internalised by some but ignored or rejected by others. In short, the conditions for norm diffusion require not only a better understanding of international normative pressures and institutional effects, but also sensitivity to the domestic environment which facilitates or hinders such process.

The fact that the framework of international socialisation falls short of accounting for the variegated pattern of compliance is highly linked to the second deficiency in the literature, which is – a simplistic treatment of the norm under study. The emphasis on the outcome of socialisation, that is compliance, has overshadowed the need to attend to the intrinsic complexity of the norm in question. The creation, rationalisation and promotion of a particular norm are strongly linked to specific agendas of distinct interest-bearers/stakeholders at particular times and space. Parties who enjoy broader human rights protection may be different from those who reap benefits from stronger safeguards in IP. More importantly, some norms are more controversial than others, featuring more contentious relationships between state and society and hence, require more intense
negotiations and balances of power during the process of institutionalisation. IP protection is one of the examples, given its inherent function to distribute resources that could lead to capital accumulation. As May (May 2010, 53) points out, “ownership of property is held against other claimants.” The protection of IP confers exclusive ownership of property in things and ideas to the few. As such, the institutionalisation of property simply serves to advance the interests of specific groups in society (May 2010, 46). Understanding the norm itself and the respective motives of norm stakeholders is as important as assessing the outcome of compliance.

Thirdly, taking states, representatives of states and intergovernmental organisations as the basic units of analysis, the theory suffers from a unit of analysis deficiency in which it overlooks the likely presence of divergent goals and interests within a government or a state. As far as emerging powers and late developers are concerned, changes in the global economy have resulted in the development of modern, outward-facing states whose highly disaggregated and decentralised character reflects, among other things, the retreat of control and power of the central authority, hence making them distinct from their predecessors (Hameiri and Jones 2015). These rising powers, China in particular, can hardly be conceived as coherent, unitary entities (Breslin 2007, Dimitrov 2009, Hameiri and Jones 2015). Instead, different segments of the state (sub-national governments, bureaucracies, enforcement units), non-state domestic economic agents, transnational capitalists, technical experts and non-private social actors form specific and sometimes overlapping networks of interests whose relative power could influence political and economic outcomes. Attending to this plethora of interest-bearers is much needed to understand the development trajectories of China’s IP regime.
An alternative analytical framework: State, corporate interests and power

In this section, I will begin with a brief account of the contentious nature of IP protection as a norm by highlight the incompatibility of certain elements of IP with socialist ideology and broader Confucian values. In the light of successive attempts by the Chinese government to establish an IP regime, apprehending such tensions is important as they provide the basis for understanding how culture and values can be accommodated or even forsaken in the pursuit of other more pressing, material-linked priorities. Following this, I will identify several landmark events that occurred in the history of China’s IP development and, against this backdrop, analyse the various forces and interests in play that have triggered varied national responses. Drawing from historical-materialist approaches, I will explore the effects of macro-structural forces emanated from a neoliberal, global economy on the Chinese state and its trading partners. An emphasis will be placed on examining how one specific set of material interest – corporate interest – has been particularly successful in permeating a state's decision-making process as far as promotion, legislation and enforcement of IP is concerned.

IP, Confucian values and socialist ideology

When China began its 'Open Door' economic policy in 1979, it only had limited, piecemeal IP regulations which barely sufficed to service a primitive, backward economy. The absence of an established system of legal protection for IP, as argued by some (Alford 1995), is attributed to the incompatibility of IP (strongly defined in a 'Western' context) with certain Confucian values and practices which are embedded in Chinese societies.
In his seminal text titled *To Steal a Book Is an Elegant Offense: Intellectual Property Law in Chinese Civilisation* (1995), William Alford argued that Chinese culture plays a role in hindering IP applicability and enforcement in China. In particular, the lack of a legal tradition of private property rights in Chinese legal ideology made any attempts to protect IP futile. Alford ascribed the failure of the late Qing Dynasty (from 1880s to 1911) in developing a sustained copyright system to inherent elements in the Chinese culture and the lack of legal ideology in China (Alford 1995, 2). The Chinese culture, which is largely a manifestation of Confucian values, permits and even encourages copying and imitation of art and scholarship (e.g. in Chinese calligraphy). It is an integral learning process for a student to copy the master's work. Furthermore, the Confucian disdain for the profit motive also prevails over the capitalist drive which has stimulated IP reform in the West.

In China's history, IP bears an imprint of "Western", "imperialist" domination. Before the establishment of Republic of China in 1911, IP was highly associated with foreign aggression and unfair treatment. Repeated, humiliating defeats of the Qing Dynasty at the hands of Western imperialist powers since the mid-1880s allowed great powers such as Britain and the US to demand concessions from the Qing government to impose protection on foreign works, in addition to land cession and indemnity payment, as part of a series of post-war settlement. With the United Kingdom (UK) and US at the forefront, Western powers demanded legal protection over their citizens’ rights over copyright, trademark and patent protection on Chinese soil, in return for reciprocal protection to the Chinese (Yu 2013). Such demands were made with considerable force. Hence, for the Chinese, the exercise of IP was an imperialist tool to impose Western values and dominance on China, reinforcing inequality and asymmetrical power relationships. The anti-foreign, anti-imperialist sentiment is still
vivid in the present day and is often invoked by Chinese enterprises and the Chinese leadership to defend corporate and national interests when foreign firms accuse Chinese companies of infringing their patent rights.

As a form of property, IP requires codified laws for protection – something which does not exist in Communist China until the government launched its economic reform in the late 1970s. During the first four decades of Communist rule, Chinese Communist leaders institutionalised a body of law consistent with Marxist-Leninist ideology which advocates collectivisation of property as a means to advance primary political goals of elimination of class inequalities and capitalist tendencies (Sgambati 1992, 142). As opposed to the law serving as safeguards against potential abuses of power and as guarantors of personal freedom in a liberal democracy, the law in Communist China serves the interests of the state and maintains social harmony. China's IP laws and their enforcement highly reflect such an ideology.

**IP protection as an international norm**

The controversy of IP centres on the manner in which IP structures social relations and by extension, its (arguable) potential benefits to the economy and the society. IP refers to intangible assets including new ideas and knowledge whose owners do not only possess them, but can also distribute them for returns. Intellectual property rights (IPRs), as codified in laws, grant a creator certain exclusive rights over an original idea he/she owns, allowing the creator to enjoy rewards from the commercialisation of such an idea. Common types of IP protection include patents (ideas and knowledge), trademarks (brands and names), copyright (artistic, literary and intellectual works) and trade secrets. In the classical and neoliberal
tradition, property law safeguards private property against public/government expropriation. For people to invest in a production or an activity, there needs to be certain appropriate institutional arrangements in place for them to have the freedom to use and profit from the IP they own. IPRs are expected to raise the “private rate of return from developing new technologies” and therefore, will contribute to the growth of an economy (North 1981, 164). Yet, the potential economic and social benefits of IP protection are subject to debate. As pointed out by Braga and Fink (1998, 164), “IP creates a static distortion in an economy as application of IP rules often limit availability of existing knowledge and restrict their current consumption by strengthening the market power and even monopolistic positions of certain rights holders.” The institutionalisation of IP further facilitates the process of capital accumulation through the exploitation of intangible assets. The exclusive nature of IPRs has proven to bear high social costs, for example in public health where monopolistic control by pharmaceutical companies over life-saving drugs has hindered public access to essential, affordable medicine.

Despite its controversy, IP protection has consciously been pushed by specific interest groups at particular historical junctures for wider and deeper application. The Paris Convention for Protection of Industrial Property and the Berne Convention governing the protection of literary and artistic work, which were signed by some European countries in the 1880s, were initial attempts to establish an international intellectual property regime.4 Further efforts to extend and deepen the institutionalisation of IP protection and its governance resulted in the establishment of the WIPO in 1967. Yet, for the US and Western European countries, these

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initiatives were inadequate in protecting their IP in other countries as the exclusions contained in the legal provisions exempted certain industries (including pharmaceuticals, biotechnology and agricultural chemicals) from basic protection. By the 1980s, major transformations in the global economy have provided the necessary momentum to advance a global IP agenda. First, US companies were troubled by declining competitiveness in manufacturing with the rise of Japanese and European multinational firms. Second, the rise of technological industries and growing importance of technological innovation in a knowledge economy has rendered IP protection more important than ever. An international campaign began to emerge in the 1980s by a coalition of interest-bearers to rationalise IP protection as an international norm. By doing so, these actors, who represent particular “fractions of capital” in specific “spatial” territories, began to campaign for stronger IP standards, legislation and enforcement on a global scale. In defining “fraction of capital”, Clarke (1978, 35) stressed its political character and explained it as the "product of some forms of political organisation of a number of individual capitals who have an interest or interests in common". These interests have "pertinent effects at the political level" and are "represented by the parties to various political conflicts" (Clarke 1978, 35). Global IP protection has been driven by a “fraction of capital” which is highly innovation-linked (for example pharmaceuticals, automotive and information technology industries) and whose success hinges upon the ability to create and commercialise new ideas and cutting-edge knowledge. Such fraction of capital is transnational in nature as its markets and production go beyond the home turf; and is monopolistic in character by measures of market dominance. To further advance market-driven interests, coalitions are often formed between various fractions of capital across different industries. Notable examples are the Intellectual Property Committee (IPC) – a cross-industry organisation comprising large multinational corporations (MNCs), as well as and the Pharmaceutical Manufacturers' Association (PMA) formed by leading global drugs
companies. Throughout the 1980s and 1990s, these organisations sought to construe IP as a
trade issue by citing poor IP protection overseas as the cause of diminishing competitiveness
of US and European firms (Bird 2006, 5). IP as an international norm was framed and
rationalised by the US and the more developed European countries as key to safeguarding
national interests. As noted by May (2010), changes in property rights configurations do not
respond automatically to changed economic circumstances, but are essentially outcomes of
conscious, deliberate acts of interest groups.

The lobbying effort of profit-seeking, transnational capital finally culminated the landmark
passage of TRIPS in 1994, which marked the beginning of the construction of a global IP
regime. The agreement is the first global agreement to cover all forms of IP under a single set
of legal mechanisms. It is also strongly influenced by an Anglo-Saxon interpretation of IP as
it was largely drafted by lawyers and economists hired by a group of US multinational
corporations (May 2010, 47). For the first time in history, the protection and enforcement of
intellectual property rights are institutionalised on a global level where signatories to the
TRIPS agreement, currently standing at 188, agree to observe (at least on paper) minimum
terms of IP protection, follow enforcement and dispute settlement procedures and allow for
punitive trade sanctions in the event of non-compliance. TRIPS requires less developed
economies to harmonise their domestic IP legislation and enforcement procedures with a
given, set menu of global rules and standards, despite the diverse political, economic and
social contexts of the member countries.⁵ American corporate interests, working vigorously
with the US government, have succeeded in bringing to live the onset of a global IP regime.

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⁵ As part of the negotiations, less developed countries were given differential treatments in the form of transition
periods before they fully comply with all the specifications in the agreement.
In the words of Sell (1999, 170), the agreement would have been inconceivable “without the concerted efforts of US-based corporate executives.” Through TRIPS and repeated manoeuvres of US capital, the protection of intellectual property rights is formalised in legal stipulations, globalised through broad applicability to a large number of economies and most of all, universalised as a norm and a standard form of practice.

**Constructing a modern IP regime in China: drivers and rationale**

Understanding the ways in which the global IP regime was initially constructed and identifying the dominant interests involved is instructive for conceptualising China’s national IP development. The reason being – China, as a late developer which attempted an industrial catch-up with other advanced economies, was exposed to a host of hostile forces the moment it opened its door to the outside world. Its success to modernise requires a strong state to protect it and guide it through a gradual transition to Chinese-style capitalism. Among other things, China has to confront and battle with multifaceted forces emanated from world capitalism, demands from foreign (state and non-state) interests, and to respond tactically to the logic of competitiveness (largely defined in economic terms) and national survival. The guiding principle of China’s reform – to modernise through developing “socialism with Chinese characteristics” – embodies the rationale to attend to the interests of ideology and legitimacy and concomitantly, the aspiration to forge a new form of development model that would drive modernisation without undermining the political dominance of the ruling factions. The nature and evolution of China’s IP strategy does not reflect a simple, straightforward norm-diffusion-learning process, but a series of contentious political struggles fought on multiple fronts by state and non-state actors to pursue modernisation goals. It is an ongoing process of giving greater room to private capital without completely
losing control over its activity, scope and pace of development. Global forces are also
influential in shaping these battles. Successive phases in the development of Chinese IP and
their respective distinctiveness reflect how various interests of the capital, in many cases
working closely with or through states, further advance the neoliberal agenda of world
capitalism by preaching the merits of market mechanisms, international free trade and cross-
border investment. Over time, different forms, coalitions or networks of interests emerge and
eclipse, resulting in the variegated patterns of IP practices, legislation and enforcement in
China.

In the following section, I will identify three important phases in China’s IP development and
discuss the drivers behind policy orientation and measures.

**Phase One: IP reforms for market access (1979-2001)**

Three distinctive phases of IP development are discernible in China’s modern IP history. The
first phase began with China’s market reform in 1979 until its accession to the WTO in 2001.
This is a period marked by sharp asymmetrical power relationships between China and
industrialised countries (led by the US) in which China, under the threat of trade sanctions,
largely succumbed to US demands to improve domestic IP legislation and protection. The
sweeping passage of three major pieces of IP legislation – the Patent Law, the Trademark
Law and the Copyright Law – were essentially initiatives undertaken by the Chinese state out
of its desperate need to gain foreign market access and entry to the WTO in the early reform
period. It was only after having secured China’s consensus to reform IP policies at home and
its agreement to be abide by TRIPS then the negotiations over WTO admission, which lasted
for 15 years in China’s case, came to conclusion. During this period, the Chinese government
was able to construct a basic IP infrastructure, with the understanding that some forms of IP
safeguards are necessary for attracting foreign investors and securing some faith in them to form joint ventures with local, relatively technologically backward enterprises. Due to the territorial nature of IP, it has been suggested that firms may opt for locations which provide better IP protection when deciding where to invest (Dunning 1994). Important amendments entailing the strengthening of patent enforcement were made to the Patent Law (in 1992 and 2000) as an attempt to further harmonise domestic legislation with international standards. Efforts were also made to reform civil courts and procedures in handling IP disputes.

While the government was incentivised to implement IP laws and dispute handling procedures as part of its broader project to lure foreign direct investment, on another front, product counterfeiting, which had proliferated in many cities across China, emerged as a serious bilateral issue between China and the US. Underdeveloped IP institutions in China was seen by foreign countries as nothing less than constituting another form of non-tariff trade barrier. Foreign companies reported significant financial losses as Chinese manufacturers produced knockoffs for domestic sales and exports. The IP protection norm was ignored by counterfeit producers, consumers and to a certain extent, local officials and law enforcers who turned a blind eye to rampant product piracy in their localities as for them, securing local jobs or receiving side payments from counterfeiters took precedence over protecting the rights and financial interests of foreign brands. Responses from the central government also appeared lacklustre. On several occasions, just before US deadline of imposing trade sanctions approached, the central government organised a few campaign-style crackdowns on CD factories and cigarette manufacturing sites in order to demonstrate its “compliance” with the law and its “commitment” to enforce IP. This phase concluded with China’s admission to the WTO and with this, its obligation to adopt wider IP protection in conformity with TRIPS.
Phase Two: The search for alternative strategies to national survival (2001-2008)

The presence of foreign pressure continued to shape China’s IP landscape as the world entered the twenty-first century. During this second phase of development, China delivered its most phenomenal economic achievements with double-digit annual GDP growth. However, by 2007, signs were emerging that China had to cope with the challenges borne out from nearly three decades of successive market reforms. As various contradictions of capitalism unfolded – overproduction, property bubble, inequalities and environmental degradation – the Chinese government searched for new solutions to overcome challenges that would hinder sustainable economic growth. The previous development strategy of export- and investment-led industrialisation, which leveraged on the exploitation of relatively abundant factors of production, gradually failed to deliver. Rising costs of production also pointed to China’s relative decline in competitive advantage as a manufacturing and investment location vis-à-vis neighbouring Southeast Asian countries. In fact, the success of the export-led strategy is heavily contingent upon the presence of a robust world economy and its ability to absorb increasing volumes of Chinese exports. It further ties China’s growth with the performance of the world economy while at the same time, makes China’s progress susceptible to fluctuations in the global marketplace.

The inherent conflictual nature of capitalism and the economic and social instabilities it generated were contained by state-led initiatives to create necessary stable institutions – an IP regime in China’s case. As McDonough (2015, 61) put it, “for accumulation to proceed relatively smoothly (or sustain them), these sources of instability must be countered through the construction of a set of stable institutions at not only the economic but also the political and ideological levels.” In an attempt to overcome market instabilities and to rectify the ills
of “socialism with Chinese characteristics”, Chinese leaders announced plans to strengthen innovative capacity and technological standards in order to surpass Western industrialised powers and reduce China’s reliance on foreign technology. The fifteen-year Medium and Long Term Plan (MLP), announced in 2006, details the innovation policies to be pursued in order to make China an innovative country by year 2020. The plan includes quantitative targets for scientific and technological development with a key focus on constructing a national research and development (R&D) programme and in addition to that, through policy initiatives and incentives, to nurture "a culture of innovation in Chinese enterprises" (Suttmeier and Yao 2001, 7).

This second phase of development was also characterised by rapid expansion of several growing technology-based Chinese companies and the frustrations they experienced due to limited IP awareness and infrastructure at home. Government policies since the 1990s have facilitated the growth of a handful of “national champions” (in automotive, oil and gas, telecommunications, information technology, banking and finance industries) who have leveraged on the government’s “Go Global” initiative to venture into overseas markets. These companies, acting as key economic agents in the Chinese-style capitalism, have benefited from preferential national treatments including the formation of foreign-invested ventures, provision of tax exemptions and different forms of subsidies, which are tailored to upgrade their technological level and competitiveness. Some of them, such as Huawei and ZTE in telecommunications, Lenovo in information technology, Sinopec in oil and gas, have grown and developed a business of a transnational scale.
As a late developer, China’s path to catch up with the West is characterised by focusing on imitation and leveraging on low production costs to enhance competitiveness in mass production. Through successful imitation, Chinese national champions have excelled in developing second-generation innovation where new solutions to particular business contexts are created through combining established technologies with existing products (Breznitz and Murphree 2011, 4). One of them – Huawei - the world’s largest mobile equipment manufacturer, exemplifies the merits of such a strategy. The company’s initial products have been described as bearing a high resemblance to those of Cisco Systems, Inc., the leading American firm which provides network solutions. One scholar commented that what Huawei developed at the early stage looked like Cisco’s products "but with a Chinese menu" (Liang and Xue 2013, 308).

The product imitation strategy, however, poses several challenges. As foreign firms step up their effort to retain competitiveness, they increasingly employ IP litigation to defend their business interests. A series of IP disputes surfaced between Cisco and Huawei during the 2000s. The landmark case in 2003, in which Cisco accused Huawei of incorporating Cisco’s proprietary software in the operating system of its routing devices, ended with Huawei stopped selling the products based on Cisco’s software (Bose and Lyons 2010, 197). As Cisco filed the suit at the time when Huawei expanded its products to overseas markets, the significance of the Cisco vs Huawei case, it appears, lies in the deliberate attempt by Cisco to halt the company’s penetration into its home turf of high-end communication equipment market. If norm adoption takes place through a learning process as the constructivists envisage, the subject of such learning is about how norms can be exploited in one’s favour for material gains. IP litigation has become a strategic tool used for the intention to block market expansion of rivals. For growing Chinese companies, this is an important lesson.
Following the settlement and the agreement to change the specifics of its routers, Huawei accelerated the company’s filing of patent applications and redefined the importance and function of IP in its business expansion. In 2014, for the first time, the company overtook Japan's Panasonic and became the world's top patent filer (WIPO 2015).

**Phase three: Blueprint for an innovative economy (2009-present)**

The need to sustain long-term economic growth, the diverse interests of Chinese enterprises in the global economy and repeated setbacks of Chinese companies in IP litigation play key roles in informing the launch of the National Intellectual Property Strategy in 2008, which marked the beginning of the third phase of China’s IP development. The national strategy spells out the objective of raising China's IP rank "among the advanced countries of the world in terms of the annual number of patents for inventions granted to...domestic applicants” and thereby "improv[ing] China’s capacity to create, utilise, protect and administer intellectual property, making China an innovative country" by 2020 (State Council of China 2008).

Furthermore, in 2010, the Chinese government announced the National Patent Development Strategy which underlies specifically the importance of promoting patented technology as the "strategic resource for the core competitiveness of the country" in a global economy which is characterised by advances in knowledge and trends of globalisation (State Intellectual Property Office 2010, 1).

By linking innovation to growth and conceiving a functioning IP system as a condition of innovation, China’s latest IP initiatives develop less in response to foreign demands, but more to the need to sustain Chinese-style capitalism through active promotion of intangible capital accumulation. Furthermore, China needs to equip itself in the global competition of knowledge and ideas.
Instead of advocating strategies to stamp product piracy and copyright infringement, the strong “patent” focus in China’s latest IP reforms reflects a bias towards promoting and protecting indigenous innovation and in essence, supporting the development of technology-intensive enterprises. They primarily serve to facilitate the transition of Chinese companies from being imitators to innovators in an innovation-driven global economy. Meanwhile, other forms of IP infringement continue and even escalate as new types of piracy emerge (e.g. online counterfeiting). Custom data of the US showed that China was the source country for 45% of shipments seized at US border in 2014, and for 63% of total seizures in terms of manufacturers’ suggested retail price (US Customs and Border Protection 2014).

Advancement in information technology has extended pirated activities beyond the streets to cyber space. Alibaba.com, the world’s largest online store owned by one of China’s richest men, Jack Ma, openly offers a wide range of copied products of famous luxury brands, with Ma having been accused of nothing less than building the US$200 billion empire on the back of counterfeit goods (Schuman 2015). Interestingly, there is little evidence of IP norm diffusion at work in this case and the apparent lack of IP enforcement serves the material interests of, again, Chinese corporations against foreign brand-owners in a globalised, yet competitive market.

In sum, in less than four decades, China has managed to construct a domestic IP infrastructure with some levels of sophistication. The record, as it appears, is impressive. The policies, institutions and strategies tailored around IP enhancement do not arise naturally; instead, they are structures deliberately promoted by different agents (foreign and domestic) at various junctures of China’s reforms. As for the Chinese state, it cannot resist but respond to prevailing global forces, competing demands of fractions of capital and is strongly guided
by, in the words of Cammack (2016, 194) - the "logic of the world market, or of global competitiveness, or of global capital." The Chinese state, albeit its authoritarian nature, assumes the role of what Cox (1999, 12) argued – “adjusting the domestic political economy to the demands of mobile transnational capital.” China’s state-led project of constructing of IP regime is a vivid example of how state actors, and the entrenched interests they represent, work around policy initiatives and ideological attributes to create what Carroll (2012, 2014) described as “an enabling environment for capital accumulation” in the “deep marketisation” phase of development.

Conclusion
This paper begins with a discussion of the constructivist approach to norm diffusion and the associated literature of international socialisation in explaining changes in state behaviour. I argue that the approach neglects the ways in which power and politics underlie norm construction and application, hence rendering it deficient in accounting for policy shifts. Drawing on historical-materialist analyses, I propose an alternative framework to explain the variegated patterns of IP practices in China by attending to broader global structural dynamics and specific fractions of capital, as well as the processes through which they dictate national strategies, order state preferences and shape policy making. Using China’s IP transition as a case study, this research furthers understanding of how IP norms are constructed, framed, rationalised and promoted by state and non-state actors, both domestically and internationally. The “logic of appropriateness” concerning IP legal compliance is strategically applied by China. The relevance of IP is tempered with rational imperatives of growth, development and national competitiveness. Essentially, China needs to balance norm compliance with its other interests as a late developer – mainly to leverage global opportunities to catch up with the more advanced economies.
In order to enrich the proposed analytical framework with empirical evidence, further research will be conducted to examine and explain sectoral and geographical variations in IP application and practices in China. Case studies centring on Chinese home-grown technology-intensive companies who have made successful transitions from being imitators to innovators will be documented to build empirical bases for understanding the processes and impetuses driving their phenomenal shifts.
References


