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## CULTURAL CODES OF PLAGIARISM IN CHINA: CUSTOM, LAW AND MORALITY

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**CULTURAL CODES OF PLAGIARISM IN CHINA:  
CUSTOM, LAW AND MORALITY**

(Spine title: Cultural Codes of Plagiarism in China: Custom, Law and Morality)

(Thesis format: Monograph)

by

**Sheng Wu**

**Graduate Program in Comparative Literature**

**A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Master of Arts**

**School of Graduate and Postdoctoral Studies  
The University of Western Ontario  
London, Ontario, Canada**

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## **Abstract**

Comparative and interdisciplinary in nature, this thesis decodes the Chinese concept of plagiarism from the perspectives of China's 5000-year-old customs, its newly adopted copyright law, and its moral tradition, under the theoretical framework of Burton M. Leiser's philosophical interpretation of social behaviour.

Against the backdrop of globalization, this study adopts a new trans-cultural perspective to think about plagiarism in the context of a non-Western national literature and culture, in order to help break the silence in China's study of plagiarism. It aims to break new ground in approaching the disputes around this subject ignited by some recent plagiarism cases within China which have divided Chinese society between those who defend traditional values of imitation and those who call for modernization and conformity with transnational standards, and which have provoked concerns about intellectual property rights and academic integrity both in and outside of Chinese society.

**Keywords:** plagiarism; GuoJingming; globalization; Button M. Leiser; cultural relativity of plagiarism; plagiarism as social behavior; Chinese custom and plagiarism; originality; Chinese copyright law and plagiarism; Ownership of text in China; scale of tolerance for imitation; Chinese morality and plagiarism.

## **Acknowledgments**

Gratitude goes to a book *Pragmatic Plagiarism*, which stunned me by its claim that “plagiarism is power” and attracted me into a fascinating interest area by its own intellectual power.

Gratitude goes to the author of this book, my supervisor, Professor Marilyn Randall, who has a power to develop my interest into a genuine fascination with this subject and into a piece of “Graduate Thesis Research Award” –winning work. During a very enjoyable process of thesis-writing, Professor Randall showed me how an intelligent thinker works, and displayed a strong work ethic for me. Her unique style was certainly worth travelling around the world for. I can only hope that, in my future endeavors, I can reach the high intellectual standards she has set for me.

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## Introduction

### 1 Disputes Arising from Scandals

“I am not ready to apologize,”<sup>1</sup> said Guo Jingming 郭敬明, the most famous young commercial writer in today’s China, refusing to issue a court-ordered apology after *Never-Flowers in Never-Summer*, his best-selling novel, was convicted of plagiarism (“Plagiarism, Apology and Circulation Numbers”). *Never-Flowers*, published in December 2003, has sold more than 1 million copies, and won Guo a large degree of popularity. Shortly after its publication, the plaintiff Zhuang Yu 庄羽 filed a charge of plagiarism against Guo, saying that Guo’s book bore tremendous similarities to her novel *In and Out of the Circle*, which was published in 2002.

The court confirmed that *Never-Flowers* shared 15 major plot elements and 57 similarities of plot and language structure with *Circle* by more than mere chance, ruled that Guo violated Zhuang’s copyright, and ordered 21-year-old Guo and his publisher to stop publishing *Never-Flowers*, to make apology in the *China Youth Daily*, and to compensate Zhuang 200,000 yuan (US \$ 24,000). However, Zhuang’s contention that Guo violated her idea, language and character design did not gain support from the court (“Popular young writer”).

Rather than putting an end to Guo’s affair, the law suit triggered vigorous debate in Chinese society. “I’ll carry out the court’s verdict to pay compensation and halt publication out of my respect for the law. But I won’t apologize!” Guo

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<sup>1</sup> All the translation is mine except when it is specified.

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boldly declared (Guo). “Why is apology so difficult?” asked Zhuang Yu, the plaintiff, who had experience studying abroad, pointing out that in Western countries, more often than not, plagiarists will apologize as soon as the adjudications come. Numerous teenagers leave messages on the internet, clamoring that the Chinese saying goes “all writings involve copying” [天下文章一大抄], therefore, Guo need not apologize for copying; there is nothing wrong with plagiarism, as long as it can produce good books. Guo’s behaviour is also viewed as excusable by some media pundits. Zhao Changtian 赵长天, the chief editor of the *Meng Ya* magazine<sup>2</sup>, responded, “Since literary work has always involved imitation, it is inappropriate to say all imitations are plagiarism. It is a fact that *Never-Flowers* imitates *Circle*. However, imitation is the beginning writers’ only road” (Jiang, X).

Rather than accepting Chinese customs as justification of plagiarism, Zhuang’s supporters complain that China has been far behind the world in terms of intellectual property protection. *Youth Weekend* contrasts Guo’s refusal to apologize with the scenario of his American counterpart, Kaavya Viswanathan, the seventeen-year old “Harvard girl” whose debut novel was convicted of plagiarism in May 2006: “Guo denied, when Zhuang condemned him for plagiarism; The Harvard girl admitted it, when she was openly suspected of plagiarism. Guo plagiarized Zhuang, but Zhuang was blamed; The Harvard girl apologized, but neither the public nor her opponent accepted it. The publisher did not care whether

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<sup>2</sup> *Meng Ya* [萌芽] is a well-known magazine founded in 1956. It is the first literary magazine for youth in China.

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Guo plagiarized or not, while the Harvard girl's books were retracted by her publisher as soon as her plagiarism was confirmed" (Yan). Zhang Xin 张欣, the famous contemporary writer, commented, "The only thing I want to say about Guo's case is that we need the spirit of introspection" (Jin).

The necessity for China to catch up with the world in full respect of authorship and effective protection of intellectual property has been addressed along with the condemnation of Guo's behaviour. Thus, Guo's case has divided Chinese society between those who defend traditional values of imitation and those who call for modernization and conformity with transnational standards.

In fact, Guo's affair is just one "run-of-the-mill" incident of plagiarism in today's China. Shu Shu, a Beijing-based reporter has pointed out, "A storm of plagiarism is attacking the Chinese literary field" (Shu), and a large number of writers have drifted into the "storm". The quickly-growing list of plagiarists includes the best-selling author An Yiru 安易如, the literary veteran Zhang Yu 张宇, and the representative of "New Generation Writers" Han Han 韩寒, just to name a few. Ironically, even Ye Xin 叶辛, the vice-president of the Chinese Writers' Association, was accused of plagiarism recently for his novel *Shangjia jiangjun 商贾将军* [Merchant General] (2004). Furthermore, the plague of plagiarism has also hit the Chinese academy. Xie Youshun 谢有顺, the famous young critic, pointed out that "we should not only pay attention to Guo's case, but also notice that there are many plagiarists who haven't apologized in China. Those 'cut-n-paste' professors who plagiarize others' academic achievements are still



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teaching in Chinese universities” (quoted in Jin).

Several blatant plagiarism cases in China’s scientific field have been exposed since the 1990s, and have provoked concerns about plagiarism in China both within and outside of the Chinese society. In 1994, Pan Aihua 潘爱华, a Beijing University scientist, and five co-authors published a paper on genetic manipulation of tobacco’s heavy-metal tolerance in *Plant Molecular Biology (PMB)*, a Dutch-based journal. Later, *PMB*’s editor Robert Schilperoot heard from Santosh Misra, who reported a project in the 1989 issue of *Theoretical Applied Genetics*, informing that Pan had plagiarized from her article. Pan admitted that there was a significant amount of similarity in language between the two articles. However, he denied that he was a plagiarist, claiming that the data reported in his article was original. After investigation, Schilperoot concluded that although Pan’s data came from original work over several years, copying without reference was not acceptable, regardless of the extent of the copied passage.

A review of Pan’s case, “Chinese researchers’ debate rash of plagiarism cases” was published in *Science*, one of the most authoritative international scientific journals. In this article, the columns were framed by the title “On Being a Scientist: Responsible Conduct in Research,” which is the title of a pamphlet published by the U.S. National Academy of Science, aimed at both beginning researchers and all scientists. This format design implies that the importance of Pan’s case has drawn close attention from the international academy. Li Peishan, former deputy director of the CAS’s (the Chinese Academy of Sciences) Institute

for Natural Science History, and Xue Pangao, former senior engineer of the CAS's Bureau of Biological Science and Technology, were quoted in the article: "since the authors work in a national laboratory funded by the State High-Technology Program, the act of plagiarism has gone beyond an individual's responsibility and has damaged our country's scientific reputation" (Li and Xiong)

As a matter of fact, China has always been notorious for its attitude towards intellectual property protection in international society. Confrontations between China and the West<sup>3</sup> have become more and more frequent with the advent of globalization, and conflicts arise from two levels: on one hand, traditionally, the West has found the "Mysterious Orient" to be difficult on issues around copyright and has regarded intellectual property protection in China as ineffective, stereotyping China as a "copy cat." China's disputes about intellectual property protection with the Western countries, especially the United States, seem endless; on the other hand, traditional Eastern values of imitation collide with the imported Western standards within China.

## **I.2 Problems Emerging from Conflicts**

What causes the rise of plagiarism in modern China and what motivates so many writers to hurl themselves into plagiarism scandals? What determines the public response to plagiarism, whether condoning or condemning? Furthermore, why have the conflicts between China's traditional values and Western standards

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<sup>3</sup> "The West" in this discussion generally refers to European and Anglo-American culture.

intensified in recent times? Where did the conflicts originate and where will they lead modern China in terms of treating plagiarism?

The history of plagiarism is as old as literature itself. Over the course of its history, the heart of the disputes around the subject changes in each specific historical and cultural milieu. The backdrop of Guo and Pan's cases and modern China's questions on issues around plagiarism are stamped with the trend of our era — globalization, in which different cultural communities inevitably confront each other.

Due to globalization, Western culture is penetrating into China. On one hand, China is eager to learn from the West so as to catch up with the developed countries; on the other hand, the Chinese people are struggling to preserve their linguistic and cultural identity during their communication with the West. In Guo's and Pan's cases, people who agree with the adaptation of Western standards conflict with those who cling to traditional Chinese values, and thus unconsciously resist the transnational standard. Furthermore, the West's expectations of behaviour are not met by China's treatment of plagiarism, unsurprisingly, because behavioural expectations are based on concepts, while the concepts of plagiarism of the West and China differ due to different conventions.

The practice of taking someone else's work or ideas and passing them off as one's own is a behaviour that English-speaking people call “plagiarism” — a word borrowed from the ancient Greek, which literally means “to kidnap.” Chinese people call it *chaoxi* 抄袭 — a word which consists of two characters: the

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character *chao* 抄 literally means “to copy” and the character *xi* 袭 literally means “to attack.” But the conventions on which these two seemingly equivalent expressions are based are vastly different.

The concept of plagiarism can be examined either diachronically or synchronically. Diachronically, the enactment of copyright laws “apparently divides the concept of plagiarism into pre-and post-copyright notions, although plagiarism and the infringement of copyright are not synonymous” (Randall 14). The post-copyright notion of plagiarism is the least interesting for the purposes of solving the current conflict, since it is restricted to the terms of infringement of copyright and is obviously the aspect about which most countries are able to reach agreement, given that 99 countries joined the Universal Copyright Convention by 1993 and 149 countries joined the Berne Convention by 2002. In contrast, the pre-copyright notion of plagiarism is the iceberg under the water. It was during the pre-copyright phase that the concept of plagiarism originated and underwent changes. It was during this phase that the Western and Chinese conceptions of plagiarism each developed in its own way in different cultural context.

Synchronically, “the field of plagiarism can be divided into two distinct realms: the first depends on the symbolic or aesthetic value of a discourse, and the second is governed by its market value, today circumscribed by law” (Randall 14). The concept of plagiarism is formulated by the joint forces of tradition, ethics, law and economy. Any shift in the center of gravity makes the concept take on a different look.

In China, the earliest record of the concept of plagiarism appeared in *Liji* [礼记], a Confucian classic in the Wu Xuan Period, Xi Han Dynasty (206 BCE – 24 CE), as *chaoshuo* 剿说. The original text goes: “Do not copy. Do not be similar. [毋剿说，毋雷同。]” (“Chao”). *Chaoshuo* 剿说 is the equivalent of *chaoxi* 抄袭 in Classical Chinese, the written form of Chinese from about the fifth century BCE, to the end of the Han dynasty in A.D 220. *Ci Hai* 辞海 a comprehensive Chinese lexical-encyclopaedic dictionary, defines plagiarism (*chaoxi* 抄袭) as “窃取别人的文章以为己作 [stealing another’s article, and taking it as one’s own work].” Other authoritative Chinese dictionaries, including *Xiandai Hanyu Cidian* 现代汉语词典 [*The Contemporary Chinese Dictionary*], adopt the same definition for this term, which depicts the two features of plagiarism: first, it is unethical, because it is conducted in the form of “stealing”; secondly, it is fraudulent, because the plagiarist passes off another’s article as his own.

Although the Chinese concept of plagiarism in dictionaries consists of the two important properties of plagiarism, it differs strongly from the Western concept. Here is the definition of plagiarism in *Encyclopedia Britannica*: “Plagiarism is the act of taking the writings of another person and passing them off as one’s own. The fraudulence is closely related to forgery and piracy—practices generally in violation of copyright laws. If only thoughts are duplicated, expressed in different words, there is no breach of contract. Also, there is no breach if it can be proved that the duplicated wordage was arrived at independently” (“Plagiarism”). *The Melancholy Anatomy of Plagiarism* gives a more detailed definition: “Plagiarism

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is an intentional verbal fraud committed by the psychologically competent that consists of copying significant and substantial uncredited written materials for unearned advantages with no significant enhancement of the material copied” (St. Onge 101). The Western conception not only includes the fundamental characteristics of plagiarism, but also outlines the several essential elements: “author’s bad intention”, “breach of law”, “the distinction between plagiarism and proper writing.” It is at the point where these elements in the definition are missing that the Chinese and the Western concepts depart from each other.

Therefore, in the current transnational communication on issues around plagiarism, the concepts about which people are negotiating, arguing and quarreling are not necessarily the same. The conflicts will not end unless one principle is understood— *Plagiarism means different things to different people, because plagiarism means different things to different cultures.* Plagiarism “is not an immanent feature of texts, but rather the result of judgments involving, first of all, the presence of some kind of textual repetition, but also, and perhaps more important, a conjunction of social, political, aesthetic and cultural norms and presuppositions that motivate accusations or disculpations...” (Randall 4).

With the advent of globalization, we no longer live in an era in which there is a single clear answer for “right or wrong”. Each cultural community deserves a fair hearing. “The subject of plagiarism requires cool appraisal rather than fervid condemnation or simplistic apologetics” (Posner 108). In such conflicts, both the understanding of plagiarism by the Chinese and international standards need to be

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addressed in order to reach a fair judgment.

However, the gap in the study of plagiarism between China and the West is as immense as the apparent gap in the development of their copyright legislation development. The idea of “copyright” first appeared in Britain in 1701, and The Statute of Anne, the first copyright act, was passed in 1710. *Daqing zhuzuoquan lu* 大清著作权律 [*The Copyright Law of Great Qing*], was not been born until 1910; the modern Chinese Copyright Law was not enacted until 1991 (Zhou). Similarly, while the study of plagiarism in the West has become full-fledged after a series of recent and important publications in this field, the Chinese academy has barely taken its first step.

The study of plagiarism in the West is many-faceted. Generally speaking, the publications on this subject fall mainly into two categories: first, accounts of accusations of plagiarism against famous writers; secondly, studies exploring the subject from different perspectives. Both categories have reached a sophisticated stage.

One of the representative works of the first category is Roland de Chaudenay’s *Les plagiaires: le nouveau dictionnaire*, a dictionary of plagiarism. Chaudenay lists the French plagiarists and their “crimes” alphabetically, and creates a lexicon of synonyms and related terms. Chaudenay addresses the meaning of the compilation work as an “essential vehicle of culture” [‘La compilation est un vehicule essentiel de la culture’] (Randall viii).

The representative works of the second category study plagiarism from the

psychoanalytical (Schneider 1985), historical (Mallon 1989), scientific (LaFollette 1992), legal (Stearns 1992), pedagogical (Howard, 1999) and pragmatic (Randall 2001) points of view.

The first and the third, Michel Schneider's *Voleurs de mots* and Marcel LaFollette's *Stealing into Print: Fraud, Plagiarisms and Misconduct in Scientific Publishing*, are important publications, but are somewhat outside of the domain of my study. Schneider approaches the subject by examining Freud and the Vienna Circle's experience of plagiarism from a psychoanalytical perspective. The conclusion drawn from this insightful treatment of plagiarism does not directly influence my study, because the psychoanalytical argument is somehow closer to the Western cultural context than to the Chinese culture. Following Schneider, I refer to several psychological analysis of plagiarism. One of these, for example, is Joyce Armstrong Carroll's "The Language Game: Plagiarism: the Unfun Game", an examination of psychological factors in plagiarizing through the observation of a group of students' writing practices. LaFollette explores plagiarism-relevant issues in the scientific field. Since plagiarism conducted in the scientific research field in China has drawn much public attention recently, this book may satisfy the readers' curiosity in the scientific field, and thus allow me to constrain my discussion to the literary field.

The second work, Thomas Mallon's *Stolen Words*, provides a series of famous and obscure cases, including Jacob Epstein, Jayme Sokolow and Stephen Nissenbaum's plagiaristic experience. Mallon concludes that plagiarists are often



recidivist, and society usually does not do enough to stop their “crimes”. Although my study will not include those Western cases, the principle by which Mallon selected and looked into the cases will be helpful to my treatment of Chinese plagiarism cases.

The fourth study, Laurie Stearn’s journal paper “Copy Wrong: Plagiarism, Process, Property and the Law”, probes into the relationship between literary creation and the law. In addition to the traditional “property” metaphor, Stearn suggests a supplementary legal metaphor — “the creative contract” — to explore the issues around plagiarism. The contract principles introduced by her provide a framework in which the creative process is examined as a transaction between the writer and the reader, and enables the law to recognize that creation is a dynamic communication. Stearn’s supplementary metaphor is especially meaningful for the understanding of plagiarism in a society like China, where the idea of “property” has not fully penetrated people’s minds, and my study will be returning to it.

The fifth, Rebecca Moore Howard’s *Standing in the Shadow of Giants: Plagiarists, Authors, Collaborators*, is a study of plagiarism in the pedagogical field. Informing students about plagiarism has always been an important part of writing pedagogy. There are several recent publications on how to prevent students from committing plagiarism, including Ann Lathrop’s *Guiding Students from Cheating and Plagiarism to Honesty and Integrity: Strategies for Change* and Suzanne F. Carey’s *Combating Plagiarism*. What makes Howard’s argument stand out is her insight into how cultural background affects students’ citation

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practices. She briefly compares Asian, Middle Eastern and North-American students' different conceptions of citation, and points out that conceptions of authorship and plagiarism have been experiencing a rapid change in the American academy. Although Howard's analysis of the cultural influence on plagiarism is neither thorough nor does it exceed the scope of the classroom, her attempt to introduce a cultural explanation for the conflicts around plagiarism provides a good starting point for future research. Part of my argument will go more deeply into the cultural aspects of plagiarism in the pedagogical field, which has already been studied, but not been fully explored by Howard.

Last but most important, Marilyn Randall's *Pragmatic Plagiarism: Authorship, Profit and Power*, adopts a pragmatic way to identify plagiarism, bringing to this old subject a new look. Two aphorisms contributed by Randall — "plagiarism is in the eye of the beholder" and "plagiarism is power" — lead the reflection on today's dominant academic, judicial and common perceptions on plagiarism. The object of this book is not primarily the "plagiaristic text", but rather the socio-cultural conditions of the production of plagiarism as an aesthetic category, and the evolving discourse that constitutes this production. The overthrow of traditional conceptions of plagiarism is triggered by the central question: "Why do some instances of literary repetition become plagiarism, and others become great art?" (Randall i). Randall traces the literary-critical discourse about authorship in the context of the history of literary plagiarism, examines the functions of the reader in determining plagiarism, analyzes the relationship

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between the perception of unearned advantages and the motivation for plagiarism, and claims that “colonial plagiarism” can be a subversive and inherently powerful way of undermining the authority of the colonial oppressors, while “guerrilla plagiarism” can be a strategic way of subverting the dominant ideology.<sup>4</sup> Randall’s book enlightens my study in two ways: first, her aphorism “plagiarism is in the eye of the beholder” serves as the premise of my argument that “plagiarism means different things to people in different cultures,” and a study of the Chinese “beholder” will lead to the understanding of Chinese plagiarism. Secondly, my study follows her innovative perspective on plagiarism — not by repeating her pragmatic approach, but by taking the same unbiased stand, which is free of the previous easy moralizing or psychologizing, during the analysis of issues around plagiarism.<sup>5</sup>

Apart from the above, three works which concentrate on plagiarism in specific historical periods — Harold Ogden White’s *Plagiarism and Imitation during the English Renaissance; a Study in Critical Distinctions* (1935), Tilar J. Mazzeo’s *Plagiarism and Literary Property in the Romantic Period* (2007) and

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<sup>4</sup> Although contemporary studies on post-colonial imitation, mimicry and even plagiarism (see for example, Randall: 202-217, 2001) postulate a possible strategic and political purpose in the ironic repetition of colonial discourse (see for Bhabha 1994 on Mimicry), the colonial past in China is sufficiently distinct from the Western experience that we do not consider these post-colonial analyses to be of particular pertinence in the case of the China. In particular, because of the long tradition of indigenous literature in China, the question of writing in the language of the colonizer, which is an essential element of mimicry, is not an important literary trend, as it is in post-colonial Africa and India, for example.

<sup>5</sup> From “The first and the third, Michel Schneider’s *Voleurs de mots* and Marcel LaFollette’s *Stealing into Print...*”p.10 *infra* to here: This part is a piece of “plug-in” writing. Inserting writers’ own words and ideas in a template. Randall’s text is used as a linguistic template to present the new ideas in this article. As a Chinese, I did this unconsciously when I drafted this paper. This piece is kept in order to exemplify “plug-in” writing, a commonly adopted writing strategy in the Chinese linguistic usage system, which will be discussed in section 1.2.

Lise Buranen's *Perspectives on Plagiarism and Intellectual Property in a Postmodern World* (1999) — set good examples for my study, which is basically of a chronological nature.

In sharp contrast to the highly developed study of plagiarism in the West, the study of plagiarism in the Chinese literary academe remains virgin territory. With more attention being drawn to plagiarism in contemporary China, fragmentary analyses of some plagiarism cases have started to appear in a semi-academic, semi-informal form, including Wang Feng's 王锋 "*Chaoxi: Bu jinjin shi daode wenti, gengshi weifa xingwei* 抄袭：不仅仅是道德问题，更是违法行为" [*Plagiarism: Not Only An Ethical Matter, But An Illegal Act*] (1999), Yang Yushen 杨玉圣 "*Xueshu piaojie xianxiang: women yingyou de guanzhu yu fansi* 学术剽窃现象：我们应有的关注与反思" [*Plagiarism in Academia: Attention and Reflection It Deserves From Us*] (2002), and Zhu Tiezhi's 朱铁志 "*Yi chaoxi piaojie weichi* 以剽窃抄袭为耻" [*View Plagiarism as a Shame*] (2006), among others.<sup>6</sup> These publications share two characteristics: first, although some of them were written by scholars and appeared in academic journals, they are either too

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<sup>6</sup> Other articles and books consulted include Jiang Yongjun 姜勇军's "*Xunfang chaoxiren shilu* 寻访抄袭人实录" [*The Record of Searching for Plagiarists*] (1994), Li Xingming 李兴明's *Gujin shiwen mofangxiu* 古今诗文模仿秀 [*The Imitation of Poetry and Prose: From Ancient Time to Current Age*] (2002). Wang, Lanping 王兰萍's *Zhongguo jindai zhuzuoquanfa de fazhan: 1903-1910* 中国近代著作权法的发展: 1903-1910 [*The Development of Copyright Law in Modern China: 1903-1910*] (2006), to name a few.

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superficial or too theoretically slim to be academic; secondly, more often than not, those articles aim at informing the reader about recent cases or simply preach that plagiarism is bad, rather than providing insight into the subject. Up to now, there is no academic monograph on plagiarism in China.<sup>7</sup>

The lack of study of plagiarism in China results in and from the vague perceptions on the issues surrounding this subject. The unbalanced development of the study of plagiarism fails the requirement of globalization — every culture has its own say, and raises disputes as well as problems. A study of plagiarism in China is of significance in the current setting: first, it will break the silence of the study of plagiarism in Chinese academia, and make China's voice heard in the international academia dominated by the West; second, it will establish a balance between the Chinese concept of plagiarism and the Western standard.

### **I.3 The Task Ahead**

According to Gruter's study of the biological origins of human behaviour:

Individuals' legal behaviour is not only guided by their ability and willingness to engage in such behaviour, but what they actually do, whether they obey or break the law, is directed also by their own sense of justice and their response to the concept of justice held by the group to which they belong. When members of a group make value judgments about acceptable behaviour ...

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<sup>7</sup> It is worth noting that William P. Alford, Professor of Law at Harvard University, wrote *To Steal a Book Is an Elegant Offense: Intellectual Property Law in Chinese Civilization* (1996) to answer why intellectual property law, and in particular copyright, have never taken hold in China. Alford has an insight into the relationship between Chinese culture and copyright law, however, since "breach of copyright is a small and historically limited subset of the possible types of plagiarism" (Randall 16), I still claim that the study of plagiarism in the context of Chinese culture is a new area waiting to be explored.

these judgments often coalesce into rudimentary concepts of right and wrong, the basic concepts of any doctrine of justice (Gruter 64).

Guo and Pan's behaviour is, in fact, personally driven by their own will and socially guided their sense of justice, which is held by the group to which they belong, namely Chinese society. Therefore, in order to explore Chinese people's behaviour and attitudes around plagiarism, an insight into the "group", the Chinese cultural community<sup>8</sup>, which Guo, Pan and other plagiarists belong to, is necessary.

In the philosophical field, Burton M. Leiser approaches "the conflict and continuity in social behaviour" in an exemplary fashion by addressing three elements which are central in viewing a culture in terms of institutional structure and functions, namely, custom, law and morality. The customs, laws and morality of a culture are woven into the fabric of its members' social behaviour. They are the code to the puzzle of complex social behaviour of the members of a specific culture, plagiarism in Chinese culture in this case.

The controversial cases of plagiarism in China reveal that one of the characteristics of plagiarism worth focusing on in an era of globalization is, namely, the cultural relativity of plagiarism. A review of studies of plagiarism points to the fact that scholarly attention to plagiarism in Chinese culture is lacking. Responding to the present situation, this study will interpret plagiarism in

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<sup>8</sup> While Chinese society and values have never been unitary, there are some fundamental ideologies which exist in Chinese society. As will be the case throughout the thesis, Chinese values and ideology refer to those most influential in Chinese history.

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China in its socio-cultural and historical dimensions, and approach the complexity of plagiarism through the interaction of custom, law and morality.<sup>9</sup> Drawing several comparisons between the Chinese and the West, it aims at deepening the understanding of plagiarism in China, in order to make possible a balance between the Chinese concept of plagiarism and the Western standard in current disputes.

Posner defines the scope of his study in his newly published *The Little Book of Plagiarism*: “A typical dictionary definition is ‘literary theft.’ The definition is incomplete because there can be plagiarism of music, pictures, or ideas, as well as of verbal matter; though most of the time I’ll assume that the plagiarist is a writer” (Posner 11). My study adopts a similar scope, to explore the subject mainly in a literary frame where “all comes out of the books I read”.<sup>10</sup> If everyone has plagiarized in one form or another, this study can be categorized as, I do hope, another instance of “creative plagiarism” (Ray 3).

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<sup>9</sup> Leiser’s philosophical interpretation is the theory framework upon which I build my argument. I choose not to focus on some Chinese literature theory, because the complexity of plagiarism in the current era of globalization is my major concern. Stephen Owen’s *Readings in Chinese Literary Thought*, David Rolston’s *How to Read the Chinese Novel* are good references for the discussion of “imitation” in the Chinese literary domain. Despite the weight of the literary plagiarism examples I include, I adopt an interdisciplinary approach to the issues around plagiarism, which results in the fact that this thesis is not a Chinese literary theory approach to the subject.

<sup>10</sup> In *Literary Ethics*, Paul quoted from Dean Beech to illustrate the impossibility of being entirely original: “It all comes out of the books I read, and it all goes into the books I write.” See Paul 127.

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## Part I. Custom Code: the Root of Egregious Thievery

Custom has been recognized as an absolutely necessary element in the interpretation of social behaviour. Leslie A. White, an anthropologist, claims that “Socio-cultural systems, like other kinds of systems, must have means of self-regulation and control in order to persist and function [...] Custom is a general term that embraces all these mechanisms of regulation and control and even more. Custom is the name given to uniformities in socio-cultural systems. Uniformities are important because they make anticipation and prediction possible” (quoted in “Culture”). Burton M. Leiser, a philosopher, titles his book *Custom, Law and Morality: the Conflict and Continuity in Social Behaviour* and sets up custom as a framework for analyzing action.

This study will start with an exploration of some important features in Chinese custom which have had a profound influence on Chinese people’s understanding and treatment of plagiarism, and examine several revealing comparisons between Chinese conventions and those of the West, in order to probe into the root of egregious “thievery”, and furthermore, the root of the disputes around plagiarism in today’s Chinese society.

In *Custom, Law and Morality*, Leiser lists the types of custom as habits<sup>11</sup>, maxims or principles, practices, style or linguistic usage, regulations, rules of etiquette and rituals, constitutive rules, etc. (Leiser 10). Among these types of custom, this study is particularly interested in maxims or principles and regulation,

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<sup>11</sup> The term “custom” could be applied only to those habits consisting of actions regularly, but also deliberately and voluntarily performed.



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which reflect the ideology and the form of a society, and style or linguistic usage, which relate directly to plagiarism as a literary phenomenon. We will discuss “habits” and “practices” in chapter three, while laying other types of custom aside, considering them less directly relevant to the subject.

### 1.1 Chinese Maxims or Principles Foster Imitation

According to Leiser,

when one says that a given person, M, has the principle X, or that he acts upon the Maxim X, he means that: (1) M regularly does X under certain specifiable circumstances. (2) M might choose not to do X, and not do X, under those circumstance. (3) M is conscious of doing X when he does it. (4) M does X deliberately. (5) M believes that he ought to do X under those conditions. (Leiser 20)

In modern China, why would a number of people consciously choose to copy?<sup>12</sup>

What kind of “specifiable circumstance” determines people’s conscious choice to copy? Or is there such a “specifiable circumstance” for the justification of wide-spread copying at all? And at what point and under what circumstances does

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<sup>12</sup> Stuart P. Green, professor of law in Louisiana State University, points out that the line between plagiarism and “mere influence” is fuzzy. “We all work within a cultural tradition, and, to some degree, we all absorb those cultural traditions by copying... Virtually every creative artist and scholar suffers from what Harold Bloom has called (in a somewhat different context) the ‘anxiety of influence’. Many influences are unconscious. An idea, phrase, argument, melody, or insight read or heard long ago can lodge in the unconscious. Writers with an unusually retentive mind, such as those with a photographic memory, are particularly at risk of failing to attribute” (Green 180). Guo, Pan and several plagiarism cases mentioned above do not belong to this so called “unconscious plagiarism”. According to their own statement, they are conscious of copying.

innocent, unconscious or culturally condoned imitation or copying fall into plagiarism?

When it comes to social circumstance, China differs from most Western countries by three characteristics: a long history of imperial era; underdeveloped capitalism, and communism,<sup>13</sup> each of which marks the ideology of Chinese society.<sup>14</sup>

China went through a long imperial period from 475 B.C. till the end of the 19th century. The ideology advocated by the ruler in each dynasty was Confucianism<sup>15</sup>, which became the orthodox theory in traditional society: “Although it is an exaggeration to characterize traditional Chinese life and culture as Confucian, Confucian ethical values have for well over 2,000 years served as the source of inspiration as well as the court of appeal for human interaction between individuals, communities, and nations in the Sinitic world”

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<sup>13</sup> Contemporary China is undergoing a series of political and economic changes. Capitalism is used as a reference point for economic development during China's Socialist Construction. This change in “social circumstance” affects people’s perception of property, which certainly leads to changes in their views on plagiarism. However, at this stage, it is too early to discuss this “social circumstance” in the section of “custom”, since this social circumstance is still unformed, and China is still “Crossing a river by feeling the stones”. The theory of “Crossing a river by feeling the stones” is a part of Deng Xiaoping Theory, a series of political and economic ideologies first developed by Chinese leader Deng Xiaoping, which leads China's phenomenal economic growth. The theory of “Crossing a river by feeling the stones” claims that there is no ready-made path for reformation, exploration is only way to progress. For more information on Deng Xiaoping Theory, see Tian.

<sup>14</sup> As will be the case throughout the thesis, information considered to be within the realm of “common knowledge” of the average educated Chinese will not be referred to a source.

<sup>15</sup> Confucianism is the “scholarly tradition and way of life propagated by Confucius in the 6th–5th century BC and followed by the Chinese for more than two millennia. Though not organized as a religion, it has deeply influenced East Asian spiritual and political life in a comparable manner. The core idea is *ren* (“humaneness,” “benevolence”), signifying excellent character in accord with *li* (ritual norms), *zhong* (loyalty to one's true nature), *shu* (reciprocity), and *xiao* (filial piety). Together these constitute *de* (virtue)”. See “Confucianism”.

(“Confucianism”). It “became the national curriculum, moreover, it became the subject for the civil service examination, people had to learn and practice what Confucius said” (Lee 84).

In the era before the Qin dynasty (221-206 BCE), Confucius had set the principle of learning as “haogu, mingerqiuzhi 好古，敏以求之” [loving antiquity and seeking antiquity] (Zhu). Mencius (372-289 BCE), another Confucian philosopher, also advocated that the sages were the examples for later generations. In *An Outline of Confucianism*, Don Y. Lee points out that “Confucianism does not assert creativity” by quoting and interpreting the following widely known passage from *The Analects of Confucius*: “子曰，述而不作，信而好古，窃比于我老彭。 [Tr. Confucius says, propagate the ancients and do not create. Trust and love the ancients. Calmly compare myself with Lao P’eng] ” (Lee 86).<sup>16</sup>

As a result of the edification of these Confucian maxims, the Chinese people have long held the belief that the right way to get intellectual achievement was to follow their predecessors, while being original was a waste of time, producing half the result with twice the effort. Imitation is encouraged and highly valued by Confucian tradition. No wonder similarities have widely existed among writers’ works in both their structural and rhetorical dimensions in the history of Chinese

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<sup>16</sup> Lee’s interpretation: “Confucius says, learn and propagate what the Ancients said because past civilization is the cumulation of human wisdom, and don’t create anything because creation is any sort of one’s own doing. But to learn Ancients does not mean to learn everything in the past, it means to trust trustful things and appreciate the ancient civilization. This is my attitude, however it is not only in my case. There was Lao P’eng, a famous Yin dynasty official who thought this way also” (Lee 86).

For another translation of this sentence see, for example, Wing-Tsit Chan’s version: “I transmit but do not innovate; I am truthful in what I say and devoted to antiquity. I venture to compare my self to our Old P’eng” (Chan 31)

literature. Take the Chinese novel for example: when it formally appeared as a literary genre *chuanqi* 传奇 in the Tang Dynasty, similarities of characters and plots could be seen among many classic works. The same story might even appear in different novelists' florilegia. For instance, the Volume IV "Xu Fu 徐福" in *Taiping Guang Ji* 太平广记 [*Extensive Records of the Era Taiping*] could be seen in *Guang Yi Ji* 广异记 [*The Records of Broad Fantasticality Records of Guang Yi*] (Yang 31). When the novel form climaxed in the Yuan, Ming, and Qing Dynasties, noticeable similarities existed among a large number of famous works. In the beginning of *Hong Lou Meng* 红楼梦 [*A Dream of Red Mansions*], Cao Xueqin 曹雪芹 (1724—1764), commented that all the characters fall into the same mould. At the end of *Lian Xiang Ban* 怜香伴 [*Showing Tender Affection for Delicate Partner*], Li Yu 李渔 (1611—1680), wrote that "among the remnants, nine out of ten have the same theme — lovesickness" (quoted in Guo, X. 234).

Apart from Confucianism, Communism, another character of social circumstance, reinforces the collectivist nature of Chinese culture. Although China has not fully established a communist society, the party in power, the only party, is referred to as the "Communist Party" and the official doctrines are called "Communist". The Chinese Communist Party claims its long-term and final goal to be to realize the Communist ideal, namely to establish a system of political and economic organization in which property is owned by the state or community and all citizens share in the common wealth, more or less according to their need. Bearing this social ideal in mind, Chinese people care little about borrowed,

imitated discourse, because writing is considered to be an expression of what “we” think, rather than what an individual thinks, a manifestation of the wisdom of “us,” rather than of individual intelligence, and the manifestation of this wisdom should be shared by all citizens. This mindset is vividly demonstrated in Heidi Ross’s quotation of a Chinese homeroom teacher: “knowledge belongs to society, not to ourselves. If you have knowledge, it is your duty to give it to others. Students [...] cannot view their talent as private property. You don’t lose any of your knowledge if you share it with others” (Ross 145).

The Communist ideal makes imitation of others’ work a just conduct; the several “Communist” cultural movements, furthermore, made imitation and repetition a must. In 1942, when China was in the Anti-Japanese War, Mao Zedong, the leader of the Communist Party, delivered the famous *Talks at the Yan’an Conference on Literature and Art*.<sup>17</sup> After the Yan’an Talk, socialist realism became the uniform style of the Chinese government and the writers. After the founding of People's Republic of China, another movement, the Cultural Revolution, imposed “models” for literary works: “This ten-year catastrophe cut the throat of literary creativity, only permitting the existence of a few ‘model’ operas and heroic stories” (Wertz).

Therefore, due to the principles set by Confucianism and Communism, in Chinese society, people regularly imitate and repeat others’ words. They imitate and repeat consciously and deliberately, and they believe that there is nothing

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<sup>17</sup> For more information on *Talks at the Yan’an Conference on Literature and Art*, see McDougall.

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wrong with copying. Confucian and Communist principles which foster imitation are among the origins of the ubiquitous cases of plagiarism allegations emerging in Chinese society today.

The above argument might be questioned by those who see a similar imitative tradition in Western literary history. The classical theory of literary production “encourages imitation, avoids independent fabrication, and holds the subject-matter of literature as common property”, although it insists that “imitation is not enough” and the borrowed text should be bettered (White 19). Admittedly, for a long time, Western literary tradition also highly valued imitation, which can be seen in Brander Matthews’ comments “in literature as in life there is no spontaneous generation. There can be no flowers without a seed; and the seedlings of even the most individual genius must have been grown in the gardens of those who toiled before he began to till the soil” (Lindey 62). However, in the last quarter of the eighteenth century, there arose the Romantic notion of creative production, which overthrew the belief that the ancients necessarily excelled the moderns. According to the Romantic ideology, an author is the source of original ideas; he transforms the world around him through his genius. This Romantic cult of originality is absent in Chinese literary history.<sup>18</sup> The absence of this value of transformation in the Chinese literary field is manifested in the lack of the great figures that were able to lead a thorough change, such as Edward Young and William Wordsworth.

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<sup>18</sup> Although the concerns about imitation and originality were present in Chinese literary field, there is no revolutionary turning point or unified movement toward originality which can be dated.

The Romantic Movement was concurrent with the Industrial Revolution, which signified the start of modernization and the blossoming of capitalism. Modernization and capitalism, which connote individualism, are synonymous with the cult of originality. As Posner argues:

as society grows more complex, creating more differentiated roles for its members to play, and as the spread of education and prosperity frees people from the shackles of custom, family, and authority [...], each person is encouraged to be individual...Each of us thinks that our contribution to society is unique and so deserves public recognition, which plagiarism clouds...Individualism also creates heterogeneity of demands for expressive and intellectual products: the greater the demand for variety, the greater the demand for originality. (Posner 68)

In China, capitalism “failed to enter the mainstream of historical development”; “The 1911 Revolution signified that the bourgeois started to play a role in Chinese history. However, the revolution failed. It could neither change the country of China, nor the social system” (Jiang, Y). Therefore, the social circumstances which allowed the rise of the cult of originality in the west were absent in China.

By looking into Chinese principles throughout history, a foundation for people’s present behaviour is revealed — imitation has been constantly and inherently good in Chinese society.

## 1.2 The Chinese Linguistic Usage System Values Memorization

Apart from the maxims or principles that inform Chinese people's understanding of plagiarism, linguistic usage, another component of custom, also has a huge impact on people's perception and treatment of this social behaviour: "If one says, that the members M of a given society S have a linguistic usage X, it follows that (1) The members M1, M2, M3...Mn of S generally practice X. (2) Any member of S may choose not to do X, and not do X" (Leiser 28).

Leiser points out that "linguistic usage, like regulations, is not strictly a personal matter, but is culturally or group determined" (Leiser 26). Therefore, the Western standards concerning plagiarism, which are based on the Western linguistic usage system, need to be understood as a very particular cultural concept. What is the "linguistic usage system" determined by Chinese culture? Furthermore, how does the Chinese "linguistic usage system" affect people's views of plagiarism?

Memorization is the core of the Chinese linguistic usage system. Matalene, an American associate professor of English who has had experience of teaching English writing in China, wrote, "To be a literate Chinese requires feats of memorization so prodigious that we [Westerners] have difficulty in even understanding the nature of the task" (Matalene 791). To read a newspaper requires the command of three to five thousand characters:

Although the characters can be reduced to components, most analyses yield figures of around 200 semantic signs and 800 which combine serially, these



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character components form geometric patterns that change when put together. Users must remember what components of a graph go where in relation to the others. These placement rules increase as the number of components used in the analysis decreases (as their stroke counts decline), with the result that the memory burden stays fairly constant no matter how the tokens are divided. (Hannas 246)

Thus, “memorization is mandated by the [Chinese] writing system itself” (Matalene 791). Bearing in mind the saying: “Memorize three hundred T’ang poems, if even you cannot compose a poem, you can steal one,” the Chinese memorize entire passages and use them as models when they start to learn writing. Xiao Yanhua, a middle school teacher in China, emphasizes the importance of memorization by making an analogy: “Even the cleverest housewife can’t make bread without flour. Similarly, a student cannot write a good article without accumulating the vocabulary and pattern through memorization” (Hua). The Chinese perceive learning as a process progressing from “rote” to “structured”. They memorize the language in both its lexical and structural dimensions.

In the lexical dimension, Chinese people collect a large number of phrases, idioms, and pieces of folklore. Writing filled with old sayings, idioms, and folklore is considered to be good, for those borrowed words and expressions flavour the text in an interesting or vivid way. For example, to say senior people want to go back to the place where they originally come from, people will use the idiom “Fallen leaves fly to the trunks” (*yeluo guigen* 叶落归根) to emphasize the

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need for self-retrospection, people will use Zengzi's words "self-reflection is needed three times per day" (*wu ri bi san xing wu shen* 吾日必三省吾身). This lexical memorization is not advocated in the modern Westerner's learning process. "Western parodies of the Chinese propensity for maxims in the form of 'Confucius say' jokes indicate our [Westerner's] failure to understand or respect this rhetorical practice" (Matalene 793).

In the structural dimension, using a linguistic "plug-in" framework — constructing a new text by using a model piece of writing as a structural template — has been an important rhetorical strategy throughout the history of Chinese literature. The use of the linguistic template has been encouraged especially for beginning or developing writers. The "eight-part essay" required by the Chinese imperial examination system<sup>19</sup>, which dominated the Chinese intellectual field for twenty centuries, is a typical product of "plug-in" template.<sup>20</sup> In fact, the "plug-in" template is so ubiquitous among Chinese people's writing that it can be seen in the introduction part of this paper as noted.<sup>21</sup> When I drafted this paper, I recalled that Randall's text had an introduction which was relevant to my work. Then, I substituted the words and phrases within her linguist framework to present my own ideas. Alastair Pennycook at Melbourne University, who also has the experience of teaching English writing in China, noted the same custom of

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<sup>19</sup> The "eight-part essay" was the requested form of examination paper in Ming- Qing era (1368-1911). It became a literary genre, at the latest, in the 16<sup>th</sup> century.

<sup>20</sup> Its influence as a national regulation will be discussed in section 1.3.

<sup>21</sup> See note 3, p. 13.

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“plug-in” writing among his students in China:

another student explained that if you understand the material but use the language from the text, that may be the best means to achieve such clarity. According to another student, “It’s my usual practice... when I find something that seems to be meaningful, I will try to take it from the article. (Pennycook 223)

Chinese professors will heap praise on those “plug-in” paragraphs, for they view “plug-in” writing as a strategy to express one’s own idea clearly and elegantly, while Western professors will pour scorn on it, for they consider this as being plagiarism.

A linguistic usage system which values memorization determines Chinese people’s high tolerance of borrowing others’ texts. Zhang Tianchang, the chief editor of *Meng Ya* magazine, said about Guo’s case, “It is a fact that *Never-Flowers in Never-Summer* imitates *In and Out of the Circle*. However, imitation is an inevitable stage in a beginner’s development” (Jin). Even the comment by the Beijing intermediate court seems to echo the value of the Chinese linguistic system by claiming that “language should not be monopolized”. Pan and his colleagues’ plagiarism, which was charged as plagiarism in international academia, is forgiven, or to be more exact, forgotten, within China. Zhang Jing, who comes from the same college of the same university as Pan, reports the recent situation of the people who are involved in Pan’s scandal:

It seemed that Pan was the only victim in the whole case. Other

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co-authors did not suffer from that any more. For example, Dr. Chen Zhangliang was promoted as president of China Agriculture University in Beijing last year. Dr. Ru Binggen, Pan's mentor, retained his honor before he retired last year. Students in both Chen and Ru's labs all claimed that their mentor was innocent. It seemed Pan was the only person who did wrong. In fact, Chinese do not care much about such cases of "plagiarism". We "forget" them after the investigation is over. (Zhang)<sup>22</sup>

In contrast, once people remember 26 letters, they gain the "key" to enter the Western linguistic system, the alphabetic system. Each letter in the alphabetic writing system represents roughly a phoneme of spoken language, so people can basically read out the words even without knowing their meaning. Therefore, unlike the Chinese scenario, memorization does not divide people between the illiterate and the literate or even distinguish great writers in Western cultures, since the ability to memorize 26 letters is a common feat. After remembering 26 letters, "people using alphabet-based language are forced to be creative because of the unnatural act of using a little pile of ABCs to represent phonemes rather than syllables" (Hannas 14). *Genius* is believed to be the stamp of a great writer, and writing is considered to be a manifestation of one's spiritual nature. Good writing "may be said to be of a vegetable nature, it rises spontaneously from the vital root

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<sup>22</sup> Zhang Jing: "I come from the exact college of the exact university as the first case mentioned in that article-College of Life Sciences, Peking University. What's more, my lab and Dr. Zhangliang Chen's office were on the same floor of the same building. I met him nearly every day. But I never met Pan Aihua because before I came to Peking University five years ago, he was dismissed."  
<<http://fall2004106g.blogspot.com/2004/10/jing-zhangs-experience-on-plagiarism.html>>.

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of genius; it grows, it is not made” (Young 11). Edward Young states the relationship between learning and Genius in his *Conjectures on Original Composition*: “I would compare genius to Virtue, and Learning to Riches. As Riches are most wanted where there is least Virtue; so learning where there is least Genius... Genius, therefore, leaves but the second place, among men of letters, to the Learned” (Young 26).

William C Hannas, a linguist and a senior officer at the Foreign Broadcast Information Service, a federal agency in Washington, differentiates between “radical creativity” and “incremental creativity” in his polemical book *The Writing on the Wall: How Asian Orthography Curbs Creativity*. He defines “radical creativity” as creativity marked by “knowledge breakthrough”, and “incremental creativity” as creativity which centers on “routine development” (Hannas 96). He claims that Asians are capable of incremental development but not of the “aha” experience of discovery. Applying Hannas’ theory to the literary field, we may claim that when it comes to judging writing and writers, Westerners value “radical creativity”, an extraordinary breakthrough inspired by genius, while the Chinese value “incremental creativity”, a development based on long-term learning, or memorizing, the accumulation of prior knowledge, and small rather than radical additions. This incremental intellectual development process is demonstrated in a poem by Du Fu — the famous poet in Tang dynasty — “dushu po wan juan, xiabi ru you shen 读书破万卷，下笔如有神” (“after having read more than 10,000 scrolls, one can write as if by divine inspiration”).

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As a component of Chinese custom, the Chinese linguistic usage system, which values memorization, greatly influences Chinese people's perception of copying as a social behaviour. Due to long training, literate Chinese possess a "bank" of texts in their minds, from which they can borrow material when they write. The bigger their "bank" is, the better a writer they are considered to be. Guo declared: "I've read Zhuang's book. My book has been influenced by hers. However, I did not copy" (Chen). Obviously, his argument is backed up by the Chinese custom which values memorization in literary production. Having read (and remembered) Zhuang's book, in Guo and many Chinese people's view, is an indication that Guo is a good writer with a big "memory bank", rather than proof that Guo is a plagiarist.

### **1.3 Standing Rules and Regulations Strangle Originality**

Another aspect of custom examined by Leiser is "standing rules and regulations":

There are rules governing the proceedings of organizations. To say that it is a regulation of the group S that each member M do X is equivalent to saying the following: (1) The members M1, M2, M3... Mn of S regularly do X. (2) Any member M of S might choose not to do X, and not do X. (3) When M does X, he is conscious of doing X. (4) When M does X, he may do so deliberately, but he may not. (5) If M fails to do X, M is subject to sanctions which may be imposed by S. (6) M may be prevented by S (or by its authorities) from failing to do X. (7) S may permit its members M1,

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M2,M3... Mn not to do X and not impose sanctions upon members who do not do X, either for a specified period of time or indefinitely<sup>23</sup> (Leiser 24).

Some practices in a society come to be accepted and eventually acquire the status of rules. These rules may not appear in law, but they regulate people's behaviour. Generally speaking, low value is given to freedom and personal autonomy by many standing rules and regulations in Chinese society. Most of the rules reflect a strong sense of conformity. For example, Li Si, China's great unifier under the Emperor Qin Shi Huang (259-210 BCE), "standardized axel lengths", and "made the ruts in the roads of China" (Bodde 179). This simple rule of conformity assured unblocked transportation and communications between different regions in a vast land, which is of political, economic and military significance for the governing mechanism in China. "Authoritarian rule is wielded in East Asia intensively and extensively. Just as government has exerted its power over individuals [...] so has it managed to corral large populations into centralized states, which by nature tend toward uniformity" (Hannas 269).

Unity was always the goal for which the Chinese rulers strove. In order to strengthen their power of control, the rulers in ancient China also imposed rules of conformity in the intellectual field, among which, the Chinese imperial examination system (605-1905) was the most representative and the most influential. "The system was one of the most distinctive features of Chinese civilization and constituted an institution unmatched by any other nation in the

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<sup>23</sup> "This last condition, (7), amounts to the statement that the organization may suspend or abolish the rule that X is to be performed" (Leiser 24).

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world” (Martin 40); “In any discussion of the development of Chinese civilization, the institution of the official literary examinations must be given careful considerations” (Cressey 255).

The purpose of the Chinese imperial examination was to select government officials. Only those who were successful in the examination could be appointed as officials. During the exam, the candidates were locked in examination rooms and concentrated on writing a dissertation on topics from Confucian Classics and Commentaries. The dissertation is called the *Baguwen* 八股文 [eight-part essay]. The candidates were requested to write within a “plug-in” framework: “The general features of *Baguwen* are as follows: firstly, all the titles for examinations are from original texts of *The Four Books* and *The Five Classics*; secondly, the content must be in accordance with the commentary of the Cheng-Zhu School; thirdly, there is a fixed format for the structure of the article”; “There is also a strict limitation for the number of words” (“Eight-Part Essay”). This examination system prohibited the slightest originality, and confirmed that using the template for writing was the right way to success. As the gateway to social prestige and political power, the imperial examination system’s encouragement of imitation has greatly influenced Chinese judgment of people’s intellectual capability. A Western scholar writes in 1929:

The influence of the system was twofold: (1) It aided in preserving the cultural unity and political stability of China (2) its chief defect lay in its rigid prohibition of all originality and experimentation. Thus cultural progress



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was rendered impossible and cultural stagnation has resulted. (Cressey 255)

Though the imperial examination system was abolished more than one hundred years ago, its successor — today's College Entrance Exam — is still dominating the Chinese intellectual world, guiding all educational and learning activities. According to William C. Hannas, "In East Asia, the struggle for status starts early in life with relentless cramming for college entrance examinations. There is nothing comparable to this institution in the West" (Hannas 270). All the study from primary school to high school aims at scoring high in the College Entrance Exam, which is a test of one's knowledge of approved materials. "It is the pivotal event of a lifetime, through which one's placement in the hierarchy of universities and, ultimately, society is determined" (Hannas 271).

One important part of the entrance exam is composition. Students are required to compose one or two articles to demonstrate their literacy and intelligence. The way in which teachers prepare students for this writing task is by memorizing and reciting. The materials students memorize include the sayings of ancient famous people, typically poets such as Du Fu 杜甫 and Li Bai 李白; articles in books, newspapers, magazines, and even the articles which earned high grades in past years. According to a website investigation, in the 2006 college entrance exam, more than one third of the candidates mentioned people in ancient times, such as Li Bai 李白, Du Fu 杜甫, Tao Yuanming 陶渊明 and Su Shi 苏轼; more than one third of the candidates mentioned "the top ten moving people in

China”<sup>24</sup>. The compilations of high-grade compositions are ubiquitous. A recently published *Gaokao manfen zuowen jingxuan zhencang (baijin ban)* 高考满分作文精选珍藏(白金版) *Full-mark Compositions in College Entrance Exam Select (Platinum Edition)* by Ou Feng 欧锋 is just a drop in the bucket. Yin Cao 曾颖, a writer, found that a candidate in the 2004 exam plagiarized her article “*Taohuayuan Ji* 桃花源祭”<sup>25</sup>, which was published in *Xin kuai bao* 新快报 [*New Express Daily*] in 2000. The candidate’s composition has the same title, structure and story as Cao’s article. Cao condemned the plagiarist on the “Tianya 天涯” website. However, she did not win the support of the public. Some people responded: “Forget about it (do not blame the candidate). It is not easy for the candidate to memorize such a long article anyways.” Some people thought Cao was narrow-minded. Some people asked: “Hasn’t your high school teacher told you that you are capable, you should memorize all the articles and put the suitable one into the template...and do not copy the most famous one!” Some people frankly commented: “70% of the full-mark compositions can be traced to articles in newspaper and magazines.” Cao, herself, realized that “Guessing the content of the exam and memorizing articles are ‘normal practice’. These practices have been taken for granted” (Cao).

Both the Chinese imperial examination system and its successor strangle

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<sup>24</sup> For several years, CCTV, the central television station, chose through public appraisal ten people who have done good deeds that touched the Chinese people, and entitled them “the top ten moving people in China”. Students are taught to memorize these examples and use them to support their arguments in composition. The “ten top people” are announced on the website: <http://www.qy165.com/gk/news.asp?id=168>.

<sup>25</sup> Her title is “borrowed” from one of the most famous prose works in China.

originality. The rules that governments have imposed upon the intellectual domain have coloured Chinese people's judgment of intelligence. People's intellectual ability or literacy is measured by how well one can memorize and imitate.

In contrast to the Chinese rules applied for judging intelligence, the way Western culture measures its members' intelligence demonstrates a sense of personal freedom. For example, in Greek civilization, which gave rise to European and consequently American civilization, debate is the measurement of people's intellectual capability. "Homer emphasizes repeatedly that, next to being a capable warrior, the most important skill for a man to have was that of the debater" (Cromer 65). George Kennedy, the author of *The Art of Persuasion in Greece*, quotes Socrates' words to manifest the respect of personal freedom in Greek Culture: "In most of our abilities we differ not at all from the animals; we are in fact behind many in swiftness and strength and other resources. But [...] there is born in us the power to persuade each other and to show ourselves whatever we wish [...]" (Kennedy 9) "Confidence in debate was a characteristic of Greek democracy until the tragedies of the Peloponnesian war overtook Athens" (Kennedy 29).

Even today, public debating is an essential component of democracy in Western countries, for instance, it is one of the crucial steps in the presidential elections in the United States. In Chinese society, debate, the confrontation of different ideas, is discouraged. Though in the period between 770-222 BC, a period called "Hundred Schools of Thought", debate in philosophic field did occur,

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“[China] never develop a ‘spirit of controversial language’ nor a ‘tradition of free public debate’” (Becker 78).

While the West views debate as an expression of one’s wisdom, the Chinese culture employs a competitive examination system to measure people’s intellectual ability. Whether in the imperial examination in ancient times or in the college entrance exam in contemporary China, a mastery of approved material is the measurement of one’s intelligence. As a result, Chinese people take for granted that people who are able to memorize and imitate are intelligent. Furthermore, this rule in the intellectual field sets the foundation for Chinese people’s high tolerance for imitation.

A look into the three aspects of custom, which are closely related to the literary and intellectual fields, reveals the salient fact that imitation is inherently good in Chinese custom. Admittedly, imitation has played an important role in literary creation both in Chinese culture and in Western culture throughout history. However, imitation in the Chinese literary and intellectual fields differs from the concept of imitation in Western literary history. “Imitation” in the Chinese literary tradition has been fostered by Chinese Maxims or Principles with a purpose of ancestor-worship, while the concept of “imitation” in Western literary history clearly voiced its purpose of betterment. Since the Chinese linguistic usage system values memorization and standing rules strangle originality, Chinese people take the similarity among literary works for granted. In other words, Chinese custom, in some sense, cultivated the “egregious thievery” in the Chinese literary field.

However, the 5000-year-old Chinese custom is facing challenges nowadays. Just as Richard Posner pointed out, the trend towards the emergence of the “cult of originality” in the west trends towards individualism. Since “individualism is characteristic of modernity” (Posner 68), as China develops quickly, people’s desire to be unique and to win public recognition grows accordingly. The increasingly frequent communication with Western culture also channels the influence of individualism into Chinese society.

Chinese custom serves as a foundation on which members of Chinese culture interpret plagiarism as a social behaviour. An investigation of several components of Chinese custom explains and even justifies the high tolerance for imitation and for similarities among literary works. However, it is worth noticing that the foundation itself is evolving, therefore, bringing disagreements within China about the line dividing acceptable forms of imitation and the ethical or legal “crime” of plagiarism.

## **Part II. Law Code: The Battle against Brazen Trespass**

Plagiarism violates copyright laws, though plagiarism and copyright infringement are different concepts: “Wrongful copying in literature or academia is called plagiarism by writers and scholars and copyright infringement by lawyers and judges.” (Stearns 513); “In an effort to avoid confusing plagiarism with rights violation, some have pushed the point that plagiarism and intellectual property /copyright do indeed represent distinct categories, but that the law is slow to honor, or perhaps incapable of honoring that distinction” (Mash 33). Debora Halbert, a professor of Political Science at Otterbein College who has specialized in intellectual property issues, argues that plagiarism is about “personal feelings”, while copyright does not deal with “personal feelings” (Halbert 33).

Laurie Stearns, a copyright lawyer, points out the connection between the two concepts:

Plagiarism dwells at the meeting place of two great human endeavors: literature and the law. It is the source of legal and critical disputes, an example of ‘creativity gone bad’. Both the law and the way we define creativity can shape the way we understand plagiarism, and the way we understand plagiarism and the way we define creativity can shape the law. (Stearns 514)

Following the previous section, which initiates a discussion around how Chinese customs affect Chinese people’s understanding of plagiarism and touches upon some related issues including imitation and creativity, this part will look into the

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two-way influence between people's understanding of plagiarism in China and Chinese copyright law.<sup>26</sup>

## II.1 The Characteristics of Chinese Copyright Law

The idea of copyright in the West<sup>27</sup> can be traced to the story of Saint Columba. In 567 AD, St. Columba, a deacon, copied a psalm book by his teacher St. Finnian. Finnian asked High King Dermott for judgment. Dermott supported Finnian, "to every cow its calf; to every book its copy"<sup>28</sup>. The King's remark "pointed in the direction of the future development of copyright law" (Stearns 535). The import of printing technology and the growth of distribution capacity made commercial profit from the book trade possible. At the same time, "[after the introduction of printing,] in England, the Crown quickly recognized that the press could be a powerful instrument of sedition, as well as a weapon against established religion" (Lindsey 102). The King asserted the authority of censorship

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<sup>26</sup> The interest of this chapter lies in the relationship between the different characteristics of copyright laws and the different understandings of plagiarism, rather than the complexity of the relationship between copyright law and plagiarism. There has already been large amount of literature on the latter question, which includes for instance, Stearns' *Copy Wrong: Plagiarism, Process, Property, and the Law*".

<sup>27</sup> Western copyright traditions can in fact be treated, for our purpose, as being homogeneous. The Western copyright laws are divided generally between the Anglo-American tradition of copyright and the European tradition of author's rights: the first privileges economic profits developing from the right to copy the work, the second, evolving from a more "personalist" tradition, includes moral rights which go beyond simple financial considerations. It has been said that the tradition of British Common Law, which protects the rights of person, renders moral rights redundant, whereas civil law as developed in France, is statutory law, meaning that all elements of law have to be coded, rather than established by tradition, as in Common Law. Therefore, especially since the signing of the USA to the Berne Convention, there are few significant differences between the Western traditions. (See Randall 92-95).

<sup>28</sup> This story can be found in *Life of Saint Columba, Founder of Hy*, written by Adamnan, Ninth Abbot of that Monastery.

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over the press: “From 1556 to 1640, this authority was exercised through the Stationers’ Company, and enforced by decrees of the Star Chamber... The King and his favorites found a new source of revenue in the license fees” (Lindsey 102). The maturity of economic, technological and political conditions gave birth to the world’s first copyright act, the Statute of Anne, in 1710. After that, copyright law experienced several important revisions. For instance, in 1774, the judicial branch of the House of Lords finally ruled that an author had perpetual rights in his unpublished work, but after publication his rights continued only for the period specified in the Statute. Internationally, the Berne Convention, an international copyright agreement, was passed in Berne, Switzerland in 1886<sup>29</sup>. Copyright law plays an important role in protecting creativity: “Cases of literary plagiarism are most often handled as cases of copyright infringement. Copyright law aims both to encourage individual creativity and to encourage the dissemination of the results of the creative effort to the public” (Stearns 523).

The technology of printing is one of The Four Great Inventions of Ancient China. Movable-letter printing, which was invented in China by Bi Sheng in Beisong dynasty (960-1127), gave birth to a stamp which was placed on book covers, between 1190 to 1194. The information on the stamp, “this book was published and distributed by the Cheng Family of Meishan, and has applied for protection, any reproduction without permission is forbidden”, is strikingly similar to the modern copyright notice, “All rights reserved”. From the Song dynasty

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<sup>29</sup> This summary of copyright law history refers to Randall.



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(960-1279) to the Qing dynasty (1644-1911), this form of copyright notice was in use. (Zhou)

Although the rudimentary notion of copyright or intellectual property appeared in China 800 years earlier than the Act of Anne, the first copyright law in the world, China's first copyright law, *Daqing zhuzuoquan lu* 大清著作权律 [*The Copyright Law of Great Qing*], was not born until 1910, after the door of China was opened by foreign gunboats in the Opium War. "The Chinese government found itself falling behind the West, and thus sent students abroad to assist in drafting new laws. As a result, The Copyright Law of Great Qing, virtually a copy of Japanese Copyright Law, came into being. In 1915, Beiyang Government published the Law on Authors' Rights, which is based on the 1910 Law. In 1928, the Kuomintang government passed another Copyright Law, which is still used in Taiwan." (Zhou)

In 1949, the founder of the People's Republic of China abrogated all existing laws and replaced them with new regulations. From 1949 to 1979, China was under "the planned economy". The Chinese government controlled all major sectors of the economy and the distribution of resources. There was no Copyright Law during this period.<sup>30</sup>

The modern Chinese copyright law, the Copyright Law of the People's Republic of China, was not enacted until 1991. Foreign concerns regarding

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<sup>30</sup> "Copyright legislation did not develop except for three contracts drafted by the People's Publishing House (PPH). The first was the PPH Standard Contract for the Submission of a Manuscript, the second was for Publication of a Work, and the third was the PPH Measures Governing Remuneration" (Tang 278).

intellectual property during the increasingly frequent international communication and cooperation led by China's new "Reform and Opening up" policy spurred the government on to make this law. In 1992, China joined the Berne Convention and the Universal Convention, in order to eliminate the gaps between China's Copyright Law and the international standard (Zhou).

Historically speaking, rather than responding to the maturity of social, economic conditions from within, the birth and development of Chinese copyright law is jointly formed by domestic and external forces. Although the earliest notion of copyright appeared in China as early as the 1190's, there was no Chinese copyright law until foreign forces intervened. Each step of the development of Chinese copyright law was accompanied by external forces and influences.

Recently, the Chinese government has made great efforts to complete copyright legislation and promote public awareness of intellectual property protection issues. For instance, in 1985, the National Copyright Administration of the People's Republic of China (NCAC) was established<sup>31</sup>. In 1998, the Chinese Patent Office changed to the State Intellectual Property Office (SIPO), which is directly subordinated to the State Council. However, "the sense of copyright in society as a whole is still somewhat hazy"; "Copyright owners still lack sufficient awareness and capability to take up the weapon of war to protect their own rights and interests" (Tang 280). The international society, especially the United States, regards the protection of intellectual property in China as ineffective. And within

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<sup>31</sup> Information from the website of NCAC <<http://www.ncac.gov.cn>>.

China, some people allege that “China has not yet established a ‘full and effective intellectual property system’, and that China ‘lacks the ability to undertake international obligations’” (“Information Office of the State Council of the PRC”).

Why was there no copyright law in China for such a long time? Why does the sense of copyright in China remain somewhat hazy and why does “awareness of intellectual property rights remain underdeveloped in society at large?” (“Information Office of the State Council of the PRC”). How do the characteristics of Chinese Copyright Law reflect and affect Chinese people’s attitudes towards creativity, and furthermore their understanding of plagiarism? The above review of the history of Chinese copyright law leads to a discussion of the following two issues: ownership of the text in China, and the external forces in Chinese Copyright Legislation.

## **II.2 Ownership of the Text in China**

The notion of ownership of the text accompanies the existence and development of copyright law. “Copyright law is a celebration of authorship, because it secure[s] special conditions, status, and recognition for the creative worker as author” (Lury 26). Since “in order to claim a work is copyrightable, or to protect one’s work against the charge of copyright infringement of another work, the work has to demonstrate the originality and creativity excised by the author” (Pang 24), both the notions of copyright and of authorship are inseparable from perceptions of originality and creativity.

The Western vision of “ownership of the text” is produced jointly by the Western notion of authorship and other socio-economic developments such as printing, which created the text as a marketable commodity. According to Alistair Pennycook, during the “mimetic period” (biblical, classical, and medieval), human’s imagination and thinking were viewed as a representation of reality. Both Aristotle and Plato viewed imagination as mainly reproductive, rather than productive. Literary work was generally un-authored, because it was considered to be the representation of reality. However, the Enlightenment brought a dramatic shift in this mindset — the human started to become the center of creativity. The modern Western notion of individual ownership of ideas and language was produced by the joint forces of this view on human’s thinking and the notion of property. The coming into being of the notion of “author” signifies the individualization of ideas, knowledge and literature<sup>32</sup>.

Responding to the introduction and development of printing in the 17<sup>th</sup> century, the Stationers’ Company in the United Kingdom set up a system of trade regulations to serve the interests of the publishers. In 1710, the Statute of Anne was enacted. It was designed to combat the monopoly of the publishers and to highlight the rights of the author. The Common Law concept of copyright has since its beginning negotiated the struggle between publishers’ rights and authors’

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<sup>32</sup> This summary of the development of “author” in the West refers to Pennycook’s “Borrowing Others’ Words: Text, Ownership, Memory, and Plagiarism” (204-206) Michel Foucault, a French historian and philosopher, stood at the turning point of the development of the Western notion of authorship. His “What is An Author” is considered to be landmark work in this respect.

rights<sup>33</sup>. Ever since the enlightenment, no matter whether the ownership of the text rests with the author or with the publisher, the text has been respected as individual private property. In ancient China, the ownership of texts was more often than not ignored by both the author himself and by society. In *The Culture of the Copy*, Schwartz quotes a Chinese scholar's idea: "[For a Chinese writer], if his views are copied out and passed around, he is delighted ... if they are seized upon, printed, and scattered to the furthest corners of the Empire, he folds his hands and dies triumphant. He has said what was in him to say, and men have listened" (Schwartz 63). While "render outstanding service and be famous" (*gongcheng mingjiu* 功成名就) as a standard for being successful was prioritized in an author's agenda, the way in which the texts were passed around was of less importance to him.<sup>34</sup>

As well, the imperial system, which dominated China for thousands of years, denied individual human rights by advocating that "the emperor is valued, while the people are humble" (*jungui minqing* 君贵民轻), making the full recognition of author's rights impossible: "The individual pursuit of economic gain was seen as a threat to the state and was actively discouraged" (Tang 292). Therefore, attention to the author's ownership of texts was also lacking on the social and economic

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<sup>33</sup> This summary of history of copyright law and authorship in the West refers to Pang (24-25).

<sup>34</sup> The dominant theory of literature in the Chinese tradition has been the didactic approach or the "writing conveys truth" tradition (*wen yi zaidao* 文以载道). Writing in general and literature in particular is seen as the vehicle for the *dao*, social, political, ideological and moral. From the perspective of the purpose of writing (conveying truth), the way in which the texts were passed around was also of less importance, because writing most of the time was not considered as not a money-driven behavior in ancient China.

levels.

In contemporary China, the introduction of Communism strengthened the collectivist nature of Chinese culture. In contrast to the emphasis on individual possessions in Western society, “sharing” and “selflessness” are encouraged by the society. This mindset also applies to writing, “[Westerners] tend to believe that what’s mine is mine, not anyone else’s... North Americans believe that when a writer produces an original thought or idea, the writer owns that thought or idea, and someone else cannot ‘borrow’ it” (Pattison 5), while in Chinese culture writing is considered as an expression of the manifestation of the wisdom of “us”.

Modern Chinese copyright law, which in practice results from foreign influence, contains clear statements regarding ownership of the text in Articles 11 and 13: “In general, the copyright in a work belongs to its author. A citizen author may be the owner of copyright to a work that he has created. A legal person, or entity without legal personality, that initiates, sponsors, or takes responsibility for the creation of a work, can be the owner of the copyright to the work in question” (Hu 3). However, since the author’s ownership of the text has been ignored in China for a long time, the modern Chinese copyright law seems to have not been fully able to regulate people’s treatment of “discourse borrowing” in Chinese culture. Some people regard “discourse borrowing” as a sincere form of flattery, a way of helping people to achieve their “goal” of being well-known, and a way in which the merits of the work are recognized. Some people barely have the sense that intellectual property needs to be respected, dressing themselves in other

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people's "feathers" to serve themselves at will. An analogy quoted by Leiser in his book suits the situation in Chinese culture, in which the long-time ignorance of ownership of text and the modern copyright law collide with each other:

A man has beaten a path from his home through his neighbor's land to the highway, and has used it regularly over a period of years. His continued use of the path and his neighbor's forbearance create for him a legal right of way, and for his neighbor a legal obligation to refrain from interference with his exercise of the that right (Leiser 65).

In China, both those who "borrow" other's text and those whose text is borrowed tend to assume that this behaviour is just fine. Leiser quotes Francisco Suarez's<sup>35</sup> explanation of the path-beater's power in his book to analyze this phenomenon: "our path beater has the power to create this legal right of way for himself because of a law already in existence which confers that power upon him" (Leiser 65). Before the modern copyright law was enacted in China, mainly under foreign influence and pressure, a "consuetudinary law", as Francisco Suarez termed it, had already existed in China, which is how the "ownership of the text" was usually viewed and handled in Chinese culture. Suarez's theory may further justify people's tendency to ignore copyright law and to trespass on others' intellectual property in Chinese society: "the consuetudinary law is created where there is no law before, and may in fact abrogate existing laws" (Leiser 65).

However, is the long-held "consuetudinary law" sufficient for Chinese culture

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<sup>35</sup> Francisco Suarez (1548 -1617) is the author of *Treatise on Laws and God the Law Giver*, which analyzes the custom and its relations to law.

to handle issues around “ownership of the text”? For thousands of years, when China was an isolated empire, the way in which the behaviour of borrowing text was handled seemed to work well within Chinese culture. The isolated empire was, as Suarez would define it, “a perfect community”, which is not part of any larger community, being sufficient unto itself (Leiser 67). Nowadays, however, the conventions of handling the behaviour of borrowing text have collapsed mainly for two reasons. On one hand, due to the advent of globalization, Chinese society is no longer a “perfect community”. It has inevitably become a part of the international society, thus, has been subject to regulation from a larger community. Today’s China is an “imperfect community”. As Suarez claims,

private persons and “imperfect community” may follow certain customs, these customs never attain the status of law, for a person cannot establish a law over himself, though he may be determined to carry out the custom which he set out for himself. No matter how often he may repeat a certain act, the repetition in itself is never sufficient to establish an obligation. (Quoted in Leiser 67)

That is to say, no matter how long the ownership of the text has been ignored and how often “copying” take place, the acceptance of “copying” itself is never sufficient to establish an obligation. Today’s Chinese society, an imperfect community, can no longer override copyright law by its own long-held beliefs and practices.

On the other hand, just as in the West, with the development of printing,



today's publishing industry in China generates a huge amount of economic interest. Authors and publishers have an urgent need to protect their rights, while economic benefits drive some people to deliberately trespass others' intellectual property.

The claim by Guo's fans, "there's nothing wrong with copying", originates from the way people have viewed textual ownership in Chinese society for thousands of years. However, in today's Chinese society, an "imperfect community" on the global front, the establishment of respect for copyright law is a must.

### **II.3 External Influence and Internal Acceptance of Chinese Copyright Law**

Apart from the traditional notion of ownership of the text, people's perception and response to Chinese copyright law is also influenced by the fact that Chinese copyright law is a production of foreign interference, and that each step of its development was accompanied by external forces or influences.

The external influences were initiated by missionaries from the West. After the second Opium War (1856-1860), the Qing government was forced to sign a series of unequal treaties with several Western countries, such as the Treaty of Tianjing (*Tianjing tiaoyue* 天津条约) (1858) and the Convention of Beijing (*Beijing tiaoyue* 北京条约) (1860). These treaties gave Western missionaries the opportunity to go everywhere in China and set up agencies to spread their ideas. In 1896, Lin Lezhi 林乐知 (John Allen Young), an American missionary, compiled a list of "essential books for the test". "The one who duplicates must be brought to

justice” appeared on the first page of *A Review of the Times* (*Wanguo gongbao* 万国公报), a monthly publication in China from 1868-1907 founded and edited by him, in order to protect his translations, such as *Tracts for the Times* (*Shishi xinlun* 时事新论). To reinforce this protection, Lin delivered notification of copyright protection to the local officials through the U.S. consulate in China. However, this way of protecting copyright could not satisfy foreign publishers when trade between China and the West became increasingly frequent. The U.S. and Japan pressed China to protect the interest of their publishers<sup>36</sup>. After a 17-month-long period of strenuous negotiations, the Qing government signed the Sino-American Treaty of Trade and Navigation with the U.S. in 1903. “For the first time, the word ‘copyright’ appeared in China” (Tang 278). Being defeated in the first and second Opium Wars, the Qing government realized that China was far behind the rest of the world. The government sent students abroad, in the hope that they would bring back advanced technology and thoughts to save China from crisis. In 1910, the first copyright law in China, *the Copyright Law of Great Qing*, which was virtually a copy of Japanese copyright law, came into being<sup>37</sup>.

The stimulus to create a modern Chinese copyright law can be traced to a Sino-U.S. meeting on a bilateral trade treatise in 1979. The American

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<sup>36</sup> For this summary of Western missionaries’ influence on the development of Chinese copyright law see Zhou’s “Zhongguo banquanshi yanjiu de jitiao xiansuo 中国版权史研究的几条线索” [Several Clues in Study of the Chinese Copyright Law History].

<sup>37</sup> For the information on the Great Qing Law see Zhou. “Copyright Law in China”.

representatives put up the issue of copyright protection as a precondition to signing the treaty. However, the Chinese side did not even know the concept of “copyright law” at that time<sup>38</sup>. The Chinese government started to consider the drafting of copyright law. Negotiations on the substance of the law lasted for 11 years. In 1991, a modern Chinese copyright law was passed. China joined the Berne Convention and the Universal Convention in 1992. In order to integrate into the world economy, China has since accelerated the process of establishing an intellectual property rights protection system, “covering in a little more than a dozen years a distance which took other developed countries scores of years, even a hundred years, establishing a relatively comprehensive legal system for the protection of intellectual property rights” (Information Office of the State Council of the PRC). However, in the international community, “there still remains suspicion about China’s ability to effectively protect intellectual property and fully undertake international obligations” (Information Office of the State Council of the PRC). Some Western countries, such as the UK and the U.S., have constantly put pressure on China with the threat of sanctions and trade wars.

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<sup>38</sup> The information about the meeting on *Sino-U.S High Energy Physics Treaty* refers to Zhou “Zhongguo banquanshi yanjiu de jitiao xiansuo 中国版权史研究的几条线索” [Several clues in study of the Chinese Copyright Law History] Before the Chinese government adopted the Opening up and Reforming Policy in 1979, China experienced a period of “closing the door, building the socialism” (“Guanqi men lai gao shehuizhuyi jianshe 关起门来搞社会主义建设”). Chinese people’s knowledge about the outside world is rather limited. This might be the reason why “the Chinese side did not even know the concept of “copyright law” at that time”.

In the face of the foreign nature of Chinese copyright law, China responds, as a modern country under the policy of reform and opening-up, with sincere efforts to improve its copyright protection. However, the reaction of many members of Chinese society is often ignorance or even, to some degree, resistance.

The motivation for modern China's efforts to put an end to "copying wrong" can be clearly explained by the studies on the relationship between international law and national behaviour. Ahmed Sheikh, the author of *International Law and National Behaviour*, who studies the dynamics between international law and national politics, argues that, "Much of the international law is interwoven into the very fabric of international society, and, thus, to a certain extent all are interested in the maintenance of the international system because it benefits them all" (Sheikh 255). He further points out three reasons why "states are sometimes obliged to observe international law in certain areas where they would rather not" (Sheikh 255). His analysis fits Chinese attitudes towards foreign pressure on copyright protection: first, Sheikh claims, "they observe international law primarily for a greater interest, for example to preserve law and order in the international society by not providing others with an opportunity to violate international law by using their example" (Sheikh 255). As the modern publishing industry and high technology industries grow rapidly, China is aware of the fact that copyright protection is not only an expectation of the international community, but also necessary to protect the industries inside the country. A complete legal system can protect the country's interest in the global market. Secondly, "every

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state in the international system strives to develop some credibility” (Sheikh 257). Due to some political and ideological differences, for decades, China has been somewhat “alienated” from some Western countries in the international community<sup>39</sup>. Modern China strives for recognition from the international community in various respects. Credibility in the intellectual field is no doubt one of China’s significant goals. Thirdly, “[the states expect] great rewards in particular international conflict situations” (Sheikh 260). An international legal standard that can be referred to when conflicts arise is necessary for every country, including China. The white booklet *The Conditions of the Protection of the Intellectual Property Rights in China* released by Chinese government declares that

The Chinese government holds that the protective system of the intellectual property rights plays an important role in the promotion of scientific and technological advancement, the ability of the culture to flourish and creates economic prosperity. It not only is a necessary system ensuring the normal functioning of the modern economy, but also stays one of the basic conditions on which international social communication and cooperation in science, technology, economy and culture are developed. (Information Office of the State Council of the PRC)

In contrast to the country’s accepting attitude, the reaction towards the foreign imposition of copyright law by members of the Chinese society is ignorance or

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<sup>39</sup> After communism collapsed in Eastern Europe (1989) and the Soviet Union (1991), China became the biggest socialist state in the world.

even resistance. Individuals' reaction to external laws is a totally different story from a nation's official behaviour. In *The Marvels of Animal Behaviour* (1972), Peter Marler holds the view that animals bound by tradition often resist the development of new behaviour patterns. Although Gruter, the founder of the Gruter Institute<sup>40</sup>, challenged Marler by claiming that the readiness to accept and utilize information developed by others exists in animals (Gruter 59)<sup>41</sup>, she admitted that "when people do not recognize or believe in the potential benefits [...] the formalization of behaviour rules" or "law" is often disregarded (Gruter 62). As previously mentioned, Chinese people have held their special view on ownership of the text for thousands of years. The benefit of handling the ownership of the text in such a special way has been seen at both the individual and social levels. The traditional view of ownership of the text in Chinese culture is what Gruter would call "the rules with which people first complied". According to her,

The rules with which people first complied are likely to have been of a specific type. They had to be of such a nature that the majority of members of a group could understand and follow them. They had to be rules that individuals followed because they believed that doing so would result in benefit (Gruter 58).

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<sup>40</sup> Gruter Institute is a forum for scholars and practitioners to apply scientific findings into the exploration of the relationship between the human mind and a wide range of legal and social issues.

<sup>41</sup> Gruter draw this conclusion from a well-known instance: "Macaque monkeys adopted a new eating habit within six years after it was initiated by one young member of the group" (Gruter 59).

The word “copyright” first appeared in China within the unequal treaties. The first copyright law in China, *the Copyright Law of Great Qing*, was forcibly born by foreign guns. The threat of trade wars and sanctions from the West accompanied the creation and improvement of the modern Chinese copyright law. Therefore, more often than not, members of the Chinese culture feel that their behaviour pattern has been interfered with and their customs have been disdained, and fail to see any benefits from the law. Furthermore, the traditional Chinese culture values *renzhi* — rule of man — rather than *fazhi* — rule of law. The will of ruler and officials was “the rule with which people first complied”: “The [...] philosopher Lao-tzu remarked that the more laws and ordinances are promulgated, the more thieves and robbers there will be [...] For centuries, the Chinese public treated lawsuits as bad-luck, even evil” (Tang 292). Since Chinese people have experienced copyright law as an external imposition, contrary to their behaviour pattern and mindset, therefore, they tend to ignore or even resist the law.

Gruter writes in her *Law and Mind*:

Individuals’ legal behaviour is not only guided by their ability and willingness to engage in such behaviour, but what they actually do, whether they obey or break the law, is directed also by their own sense of justice and their response to the concept of justice held by the group to which they belong. When members of a group make value judgments about acceptable behaviour [...] these judgments often coalesce into rudimentary concepts of right and wrong,

the basic concepts of any doctrine of justice. (Gruter 64)

Guo's behaviour is not only guided by his own will, but also directed by his own sense of justice and his response to the concept of justice held by the group to which he belongs, namely the Chinese culture. Leiser mentions in his book that "few persons are ever confronted with a situation in which a choice must be made between a deeply ingrained custom and an official regulation" (Leiser 117). Interestingly, the members of Chinese society are currently encountering such a situation. The Chinese people are facing a choice between their traditional view of the ownership of the text and the modern Chinese copyright law imposed by the West. Leiser claims that "when [people] are confronted with such choices, they do not necessarily behave in a consistent manner. If a man has committed himself to a positivistic philosophy of law, he will probably accept the official regulation; but ordinary men never make such commitments" (Leiser 117).

His theory, along with the history of the development of copyright law in China which we have briefly outlined, explains the complexity of the situation in Chinese culture. No consensus could be reached around the issues of plagiarism while both the whole culture and the individual members within the culture are caught in a conflict between Chinese tradition and the Western or international standard (the standard in the legal respect as discussed in this part). It is perhaps the time for members within this cultural group, many of whom are used to being intellectual trespassers, to re-consider their behaviour patterns.



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### Part III. Morality Code: Condemnation of Shameless Cheating

Why do people plagiarize, given that they are under the threat of being discovered and thus at risk of being punished by copyright law or of receiving academic sanction? It is worth noting that many cases of plagiarism result from “desperation” — when people are pressed by academic or professional deadlines. Some students fall into the trap of plagiarism simply out of “ignorance” — they fail to know the correct reference style or format. However, apart from these “involuntary” plagiarists, many people actively plagiarize, such as Guo and other plagiarists in Chinese literary field. What drives these plagiarists?

“The reason why one commits plagiarism is that he does not have the ability to write. Plagiarism is a question of morality as well as a question of conscience. A person with conscience won’t plagiarize,” says Hu Weishi 胡玮蔚, the editor of the *Meng Ya* magazine, who views Guo as a degenerate (quoted in Sun). In contrast, the voice of approval of this behaviour also arises, as Guo’s fans typically claim: “There is nothing wrong with plagiarism as long as it can produce good books.”

Although many cases of plagiarism are handled as copyright infringement, and plagiarists are “taken care of” by copyright law, some plagiarism is “too slight to warrant cranking up the costly and clumsy machinery of the criminal law” (Posner 38). Since “moral beliefs may affect attitudes and behaviour in areas where, for one reason or another, the law does not intervene” (Blom-Cooper xiii), the moral perspective of plagiarism, a conscience-related issue, whose scope may

fail to fully be covered by law, needs to be addressed.

“Lord Devlin<sup>42</sup> proclaims that the morals of society are those standards of conduct of which the reasonable man approves. Common morality depends upon the collective wisdom or un-wisdom of the reasonable men” (Blom-Cooper 3). No doubt, every cultural community holds its own moral traditions and standards. However, the era of globalization opens up a new space where the moral perspective on issues around plagiarism can and should be re-examined. The international community against the backdrop of globalization is what some would call a “pluralistic society”, in which there exists a diversity of moralities, each deserving a fair hearing. As is known to all, customs and laws are not of a universal nature. That is to say, trans-national consensus in these two fields is difficult to achieve, if possible at all. However if moral judgment determines whether an action should be considered as appropriate or inappropriate, this is a perspective which might allow different cultural communities to get around differences in custom and law, and negotiate for agreement, since “there is a necessary order of priority between law and custom [...] but whenever a given practice is required either by custom or law, but forbidden by moral considerations, the moral rule takes precedence” (Leiser 90).

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<sup>42</sup> Patrick Devlin (1905- 1992) was a British lawyer, judge, and jurist.



College of Communication at Boston University, resigned from his post because he had failed to attribute one sentence at the end of a lecture due to time constraints. This oversight, which was obviously unintended, triggered on-line discussions about whether the university has a double standard for professors and students. Schulz decided to resign in order to exemplify the consequence of committing “plagiarism” (Marsh 133). The Schulz incident reflects a fanaticism about the obligation to cite correctly. In today’s Western society, people respond to the behaviour of plagiarism with outrage: the apology from Kaavya Viswanathan, the “Harvard girl”, was not able to win her forgiveness. Teachers in school watch their students’ writing with eyes sharper than eagles, although none of them would admit that catching a “plagiarist” produces a sense of “triumph”. Augustus M. Kolich, a professor at Saint Xavier University, revealed his “hatred” when he dealt with students’ plagiarism:

Over years, I have burned a fair number of plagiarists when I could catch them cheating and I have ignored only those cases that I could not prove. Like an avenging god, I have tracked plagiarists with eagerness and intensity, face them with dry indignation when I could prove their deception, and fail them with contempt (Kolich 142).

The over-sensitivity to plagiarism is, in fact, counter-productive, since it denies the fact that copying — which might be called “plagiarism” by some — is not only inevitable, but sometimes necessary or desirable, especially in some pedagogical situations.

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In his letter to Helen Keller, who had unconsciously (re)written a story read aloud to her years before when she was twelve, Mark Twain wrote “As if there was much of anything in any human utterance, oral or written, except plagiarism! The kernel, the soul — let us go further and say the substance, the bulk, the actual and valuable material of all human utterances-is plagiarism” (“Plagiarism”). Schwartz quotes a famous estimation to demonstrate the inevitability of plagiarism in his own book: “the number of different ideas the human mind is capable of is 3,655,760,000, and while there may be a slight hope that all the ideas have not yet been spoken, there is a high probability of coincidence or unconscious repetition” (Schwartz 313).

Ironically, condemners of plagiarism are sometimes plagiarists themselves. As John Frow demonstrates, “the paradox of the relation between first and second authors [defined by copyright] resides in the fact that all first authors are themselves always second authors, indebted to their predecessors in an endless chain” (Frow 173). There are many cases that show such plagiaristic hypocrisy: a University of Oregon booklet plagiarized its section on plagiarism (Pennycook 212); “Lexicographers responsible for defining plagiarism have been accused of plagiarizing definitions” (Schwartz 31). People who over-react to plagiarism might be too rash in their judgment, since “there is nothing new under the sun” (The Bible - NKJY Ecc. 1:9-14), and, in fact, “copying” is “the major driving force of culture, which informs both individual creativity and cultural heritage” (Pang 35).

On the other end of scale, Guo’s fans are clamouring “there is nothing wrong

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with plagiarism, as long as it can produce good books.” This idea sounds convincing especially in today’s money-driven Chinese society. Guo’s book has entertained numerous readers, and has brought publishers and Guo himself huge economic profit. Can Guo’s behaviour be approved by society by considering that it results in big economic profit? It is true that sometimes plagiarism produces popular books. As a matter of fact, the flaw of this behaviour lies in the creating process, not in its end products. Laurie Stearns uses a vivid analogy in his “Copy Wrong: Plagiarism, Process, Property, and the Law” to locate where the flaw is and where the blame should be put: “If Dr. Frankenstein were viewed as a plagiarist who stitched together a creature made of parts stolen from other entities, it would be Dr. Frankenstein whom society condemned, not the monster he animated” (Stearns 519). The condemnation of plagiarists should not be distracted by the books they produce, though some of them might be popular, because “[plagiarism] is a form of cheating that allows the plagiarist an unearned benefit” (Stearns 519). According to Stearns, this benefit could be commercial value, academic achievement or professional reputation. Obviously, Guo’s fans and many readers have never stood in the victims’ shoes to feel their pain and loss brought by those plagiarists. However, if they looked into the issues surrounding plagiarism from another perspective, the perspective of morality, they would have understood why plagiarists are particularly abhorrent, just as Paul proposed in his *Literary Ethics*: “Let those who plead that no offence has been committed ask themselves how they would like their own original work to be misappropriated by

a rival author” (Paul 130).

The rash condemnation of plagiarism is as improper as condoning. “Plagiarism proclaims no majestic flaw of character but a trait, pathetic, that makes you turn aside in embarrassment. It belongs to the same run-down neighborhood as obscene phone calls or shoplifting” (Morrow 126). No doubt, any shameful behaviour should be despised. However, since the tolerance for imitating, repeating and copying is inherently high in Chinese culture, under some circumstances, when money and power go along, some people might totally ignore the shame of committing plagiarism. At this moment of introspection, the Chinese society might need to re-consider its moral principle regarding the behaviour of shameless cheating. “It is a commonplace in ethics that practices once deemed innocent become gradually to be regarded as crimes as civilization advances. Infanticide, polygamy and slavery may be cited as examples. The standard of morality changes with the ages” (Paul 13). Even though shoplifting of others’ intellectual property has not encountered sufficient condemnation within the Chinese society in the past, as the society changes, this behaviour may gradually be put under questioning and condemnation. As Paul claims, “In no branch of human activity is the change more marked than in that of literature, which is, after all, a reflection of life” (Paul 13). The Chinese culture might need to gradually make changes concerning its ethics in the literary and academic fields as its society develops in an increasingly global community.

Imitation and repetition are an essential part of writing in both Chinese and

Western culture, but the degree of tolerance and acceptance for the behaviour of “copying” is different. Under some special circumstances, the evaluation of this behaviour in Chinese society and in the Western cultural community might go to extremes. The Western cultural community is a “law-ridden society”, that is to say, “law has cannibalized the institutions which it presumably reinforces or with which it interacts [...] We [Westerners] are encouraged to assume that legal behaviour is the measure of moral behaviour...” (Diamond). It might therefore be too rash to make a sweeping accusation of any violation of the so-called citation rules. In most cases, the writer’s intention has been an element in versions of the definition of “plagiarism”, to be considered when judgments are made. The attitude of being over-sensitive to plagiarism, as has been seen in Schulz’s resignation, turns out to be counter-productive. Meanwhile, another tendency of going to extremes, that is the approval of plagiarism, is equally problematic. After the societies entered an economic profit-driven age, the mentality of pursuing money by hook or crook has become rampant, which is reflected in the condoning of plagiarism which produces popular books and economic profit. This phenomenon has appeared in both the Western and Chinese societies at different times. However, since Chinese culture has a long tradition of ignoring the protection of individuals’ intellectual property, in current Chinese society, these two factors – the new power of money and the long tradition-- are intertwined to produce an extreme neglect in regulating the behaviour of “copying”. Though copying has been inherently good in Chinese tradition, as the society changes, the



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Chinese culture might need to adjust its moral judgment system, so that shame would be directed to “shoplifting” in the intellectual field.

### **III. 2 The Meeting Point on the Valuation Scale**

Apart from the problematic tendency in each cultural community that has been addressed above, disputes around plagiarism also arise when Chinese culture and Western culture confront each other against the backdrop of globalization. The Chinese traditional perception of copying, which is based on five thousand years’ old custom, has been questioned both by members of the Chinese society and by Westerners. As is shown in Guo’ s case, some people, the plaintiff Zhuang and her lawyer for example, refer to the Western practice as a standard for resolving the disputes, just as Western culture is penetrating into Chinese society during the increasingly frequent intercultural communication. Some people still cling to Chinese customs when they deal with issues around plagiarism. The implementation of intellectual property protection in China has not been satisfying to the international community. The collisions of the Chinese traditional values regarding copying and repetition with Western standards arise in many arenas, for example in the pedagogical field, and have attracted more and more attention recently.

According to the statistics released by the United Nations Educational Scientific and Cultural Organization in May 31, 2006, China has the largest number of students abroad, which make up one-seventh of the total of the whole

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world. Western countries, the U.S., the U.K., Germany, France, Australia and Japan, attract more than two-thirds of the students. Most of the Chinese students regard the U.S., Japan and the U.K. as the favorite countries to study in (“UNESCO Reports”). Meanwhile, the number of foreign students in China has also increased quickly. Xu Qinzhang, the secretary of National Administration Bureau for Study-Abroad Students, declared that in 2005, the number exceeded 140,000, increasing by 32% during the previous seven years (“Xinhua News Agency”). More and more students and educators are able to expand their horizon of cultural experience under such a new environment. However, disputes also begin to surface as a result of cultural differences. Teachers from the West often find that many students from the East “plagiarize”, given that their writing violates the Western rules of citation. Students from the East are stuck in a dilemma: imitating a paragraph from a famous work, which is the start of writing elegantly in Chinese teachers’ eyes, turns out to be an academic offense in the view of the teachers from the West; attributing when quoting a sentence of a well-known writer, which is a must in Western teachers’ eyes, is considered by Chinese teachers to be the fault of underestimating the reader’s intelligence. Just as Ouyang Huhua, professor of Foreign Studies at Guangdong University, explained: “In China, knowledge-making is not open to everybody as it is in the West. It is a privilege belonging to a handful [...] [who] stay in history, so everyone knows who said what and there is no question about the source” (quoted in Grill).

In fact, Chinese students’ “plagiarism problem” has attracted attention

from Western teachers ever since academic contact started to occur and has gradually become more frequent under China's Opening up and Reform policy. Carolyn Matalene, who is currently a distinguished professor emeritus at University of South Carolina, wrote of the cultural shock she experienced some twenty years ago when she ventured into the entirely different culture of teaching Chinese students writing at Shanxi University, a provincial university of about four thousand students: "Over my head as I stood at the yellow lectern with the red star were the thoughts of Chairman Mao in eight large characters. Be United, Be alert, Be earnest, Be lively" (Matalene 791). She later found that "being united" means "don't be different" after she observed that when Chinese students say "I learned it", they actually mean "I memorized it". Chinese students' way of writing pushed this post-Romantic Western teacher out of her comfortable zone in many ways. For instance, Chinese students' endless repetition of idioms, clichés and set phrases, and imitation of the sample text they have memorized, go against the post-Romantic Western value of originality and individuality, the value of "authentic voice". In another instance, Chinese students' demonstration of their creativity by making up stories which resemble the "ideal form," goes against the tacit Western tradition of "nonfiction".<sup>43</sup> Very recently, Yale University biology professor Stephen Stearns, who teaches two courses at Peking University (PKU)

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<sup>43</sup> Matalene exemplified her idea that sometimes Chinese students' creation occurs in contexts where Western educators might least expect it: "During our plagiarism-imitation controversy, I asked another student if the character sketch he had written about his late grandfather had all been true. No, he said, he made part of it up. To me, reconstructing one's own grandfather was scandalous; but to him, making his grandfather more clearly resemble the ideal form for grandfathers was perfectly natural. He was more concerned with the form and the style of his text than its truth value." (Matalene 804)

in a PKU and Yale combined program, expressed his frustration on the internet after he found three students committing plagiarism in his classes, “I work hard to be a good teacher, I take time to prepare good lectures, and I spend many hours providing detailed feedback on essays [...] I feel cheated, dragged down into the mud. I ask myself, why should I teach people who knowingly deceive me?” He also claimed that “I found some (plagiarism) there (in Europe and the U.S.), but much less than in China”, and estimated that half of his Chinese students plagiarize (“Yale Professor Condemns Plagiarism in China”).

Many Western educators face the same confusions in the classroom in their own country, due to the increasing cultural diversity amongst the student population. Chinese students’ way of writing and how they perceive writing become no doubt problematic in Western academic setting. Western educators’ impression of Chinese students’ writing and learning mode has not been pleasant:

“They’re such rote learners and not at all interested in understanding.”

“Asian students will copy anything just to get a high mark.”

“I believe copying is part of their culture. No wonder we have problems when they come here [a university outside of Asia].”

“You work in Hong Kong? The cheating must drive you spare!”

“Obviously no one has ever taught them about referencing conventions.”

“I suppose it is not their fault. Their schooling does nothing to make them think” (Graham 3).

Are Chinese lazy or deceptive? Are they prone to plagiarize? Recently, more and

more Western educators are making attempts to suppress the “emotional factor” and dive into a deeper analysis of the conflict. Tania Pattison, an ESL Instructor at Trent University recently wrote a booklet called *Avoiding Plagiarism: A Guide for ESL Students*, inspired by the difficulties faced by her own writing students in the ESL program. She categorizes plagiarism in North-American University as “deliberate plagiarism”, “which happens when a student deliberately tries to ‘cheat’ by handing in work which is not his or her own” and “accidental plagiarism”, “which occurs when students are not aware of how to use research material in a North American university setting, or how to show where they found their material” (Pattison 5). She points out that “accidental plagiarism” is very common among ESL students, and exemplifies “accidental plagiarism” as “copying a sentence or two directly from a book or article, but not using quotation marks or giving the name of the author”; “cutting and pasting a short factual paragraph from an internet website, but not giving any information about the site” (Pattison 5). Although there are a large number of Chinese students who fall into the trap of “plagiarism” in the Western academic setting, it is worth noting that the cause of their academic misconducts might be very special. Given that the actions of plagiarizing fall into two categories, it is questionable to lump the Chinese students who usually commit “accidental plagiarism”, which is culture-specific, together with some deliberate plagiarists, if academic justice is to be established. As a matter of fact, some Western educators have already begun to ponder the special causes of international students’ plagiarism. For example, Cheryl

McKenzie, the author of “Plagiarism: a Cultural Aspect” has found what might cause the students from other cultures to plagiarize:

“They believe that it is a compliment to authors if they use their words and ideas;

Not actually know that copying another’s words is cheating;

Believe that ideas cannot be owned;

Not know about quoting and citing;

Not understand how the (US) disrespects plagiarism” (Quoted in Sergious)

The statistics from a research project at Lancaster University, which aims to identify whether there are significant cultural differences in the student’s interpretation of plagiarism is very revealing:

		Chinese	Greek	UK
Action	Once or more	40%	21%	19%
	Never	60%	79%	81%
Moral	Not or trivial cheating	30%	7%	25%
Judgment	Somewhat or Very serious	70%	93%	75%

**Table 1: Copying material, almost word for word, from any source and turning it in as your own work (Introna 20).**

Compared with students from other cultures, Chinese students do “copy” more. However, the differences between Chinese students and students from other cultures not only lie in how much and how often they copy, but also lie in their perception of this behaviour. As the chart indicates, fewer students from UK and

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many fewer students from Greece view this behaviour as ignorable (not or trivial cheating). More students from Western cultures (Greek and UK in this case) treat this behaviour seriously.<sup>44</sup>

The students and educators' experience as well as the statistics bring the conflict to the fore. Chinese students do "copy" more in their learning process, which is a behaviour that frequently pokes Western educators' sensitive, or sometimes over-sensitive "nerve". Chinese students who unintentionally offend those "avenging gods"<sup>45</sup> are facing the fate of failing the course, while some frustrated Western educators are starting to conduct research projects with titles sounding desperate, like "Can you teach students to avoid plagiarism in 6 months?" (Perry)

### III. 3 Consensus on the Moral Rule

As the above discussion reveals, people's perceptions of plagiarism are, in fact, subjective. According to Alexander Lindey, a lawyer and author of textbooks on copyright, censorship and plagiarism: "In short, to plagiarize is to give the *impression* that you have written or thought something that you have in fact borrowed from another" (Lindey 92). He makes it clear that people's judgment of plagiarism is, in fact, all about *impressions*. In today's world, the West is very

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<sup>44</sup> Quoting this data is not to stereotype specific groups as "high risk", but to demonstrate that cultural insight can help understand students' behaviour of copying and can help tackle plagiarism.

<sup>45</sup> Refers to the quotation of Augustus M. Kolich, p.61 *infra*.

vocal about its “impression” of the issues around plagiarism.

Alastair Pennycook has pointed out that “The spread of English often consequently devalues other languages and their cultures”; “When other culture’s differences in attitudes about authorship are acknowledged, they are defined as deviant, [...] it is “others” who need to change their ideas, not the West” (Pennycook 129). Today, non-Western cultures are facing the challenge of learning from the developed Western countries while still protecting their own traditions and identities. In some academic fields, non-Western researchers have to obey Western academic standards and struggle to publish in English in order to win recognition in the international academe.<sup>46</sup> A Korean engineer who is frustrated by being forced to conduct research in English and according to Western academic rules has said: “I have learned English since I was in junior high school until now. This is 15 years after I started to learn English. Whenever I have a problem in English, I felt the same feelings as the slaves in the ancient period might did. The slaves might have an idea that if I were born in royal family, what would happen to me?” (quoted in Myers). The question he asks, in other words, is “what if instead of the Western standard, the value of other cultures was considered as the standard?” His question might be whether Westerners have ever thought about “other” cultures’ views before imposing their own standards?

“We will limit ourselves to winning a few battles and minor skirmishes in our campaigns against plagiarism; and ultimately we will lose the war” (Leask). Betty

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<sup>46</sup> In many fields, especially science and technology, English is the universal scholarly language.



Leask from University of South Australia points out the perils of seeing students from other cultures as “deficient learners who need to be taught a better way of doing academic work” rather than efficient learners in an unfamiliar environment (Leask); “Had I known then what I have come to know now, I am sure that my classroom presence and my social interactions might well have been less obtrusive and more effective” (Matalene 791). If educators could set aside their emotional factors, which include their bias, to have an insight into a distant culture, they might be able to achieve justice.

Chinese culture has survived and thrived for thousands of years, therefore its vitality of creativity is unquestionable. In fact, after the passive phase of learning, Chinese learners do reach a stage of being creative, just as Matalene found out in her teaching experience,

Those who have done their years of memorizing and have mastered this tradition have done more than become literate. They have learned how to behave, what to say, and how to say it. They have gained the entrance to beauty, often the tragic beauty, of a century-old literary tradition and the right and the privilege to contribute to it. (Matalene 791)

Sophia Delza points out in her article *The Art of the Science of T'ai Chi Ch'uan*, in practicing the fixed forms of Taichichuan, “although this composition is not an original for anyone, the participator, in-enacting the structure, creates it anew, so to speak, and is transformed by it” , which is the very essence of Chinese learning style (Delza 450). “Similar to the art of Taichichuan, the imitation of styles and

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memory of elegant phrases and verses are expected to transform the person into a creative writer, not just an automatic vending machine capable only of spitting out what is stored” (Shei 99).

Since both the Western and Chinese teachers aim to help students be able to write well — “the goal is the same for Chinese and Western writing pedagogies, only the procedures are slightly different” (Shei 99) — it might be unnecessary to burst into hatred when the “turnitin” turns orange and sentences the students to “academic death” immediately in an “anti-terrorist” way. Ouyang Huhua, a Chinese professor, “told delegates at the Office of the Independent Adjudicator event that it was ‘very hard’ for Chinese students studying in the West to abandon an approach learnt over a lifetime” (Grill). However, why should they abandon an approach that has been effective? Elizabeth Phelps states the two-fold effect of present-day globalization on education: it “increase[es] pressure on countries to produce “globally competitive” citizens on the one hand, and impact[s] educational philosophy and structures on the other, as certain countries and educational ideologies have dominated the world stage” (Phelps 11).

If Chinese students do “abandon” their tradition when they pick up the Western standard, they become at most, the same as students in Western countries, like the bear who only gets one corn cob in the fable.<sup>47</sup> “Our responsibility is

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<sup>47</sup> The fable of “a bear picking up corn cob” is well known: A bear picked up a corn cob and tucked it under his arm. The he picked up the second one, to tuck it under his arm. The first one fell off. He kept doing this. At the end of the day, he only had one corn cob. (See *Chengyu yuyan gushi 成语寓言故事 [Stories of Idioms and Fables]*, compiled by Shao Jiangong 邵建功.)

surely to try to understand and appreciate, to admit the relativity of our own rhetoric, and to realize that the logics different from our own are not necessarily illogical” (Matalene 791). The attempt to understand and appreciate cultural difference might be the first step to resolve the conflicts.

It is remarkable that some Western educators have even taken this a step further. Sharon Myers proposes that since insufficient English proficiency stands in the way of non-native English speakers to getting their work published, it should be possible for them to make use of existing language models while injecting their original scientific findings into the sentences and paragraphs adopted from published works. What matters in this case is the contribution to knowledge, rather than the words or the formality. According to her, how a scientist delivers his new findings if they are original and insightful is of little importance. In fact, the possibility of becoming more flexible in other academic fields is also worth discussing. For example, the piece of “template writing” in the introduction to this thesis injects my own ideas into a borrowed linguistic framework. The information is presented in a useful way, and at the same time gets around the linguistic barrier. The appropriateness of template writing can be examined from two perspectives. For one thing, in psycholinguistics, in processing natural language sentences, structures are often discarded after meanings are extracted (Wingfield 241). My idea has already been clearly expressed in a concise and elegant way that I am not able to do otherwise. For another, it is certain that I had no intention to deceive the reader or infringe

another's intellectual property in this case. This is a situation "where no one is deceived and no author is exploited". According to Wilks, this practice is a so-called "benign plagiarism" (Wilks 117).

Crew claims that "A Chinese person abuses 4000 years of rich Chinese creativity when the person mindlessly copies" (Crew 829). Chinese culture highly values the virtue of "honesty": "Insincerity is not tenable", Confucius' remark, has been the Chinese people's motto. As early as 2,500 years ago, Guan Zhong 管仲<sup>48</sup>, a Chinese philosopher, defined "the four cardinal principles for the governing of the country" as *li* 礼 [politeness], *yi* 义 [justice], *lian* 廉 [honesty], and *chi* 耻 [honor], which have become four of the cardinal virtues of China ever since then. Lu Chi 陆机(261-303)<sup>49</sup>, a Chinese poet and critic, wrote in "The Poetic Exposition on Literature": "Even if the shuttle and loom were in my own feelings, I must dread lest others have preceded me; If it damages integrity and transgresses what is right, Though I begrudge doing so, I must cast it from me. [虽杼轴於予怀, 怵佗人之我先。苟伤廉而愆义, 亦虽爱而必捐。]" His words not only reflect a "radical demand for originality [which] is most unusual and certainly not true of Chinese literary tradition as a whole [...]" (Owen 152), but also address the high value of *lian* 廉 [honesty], namely integrity, in Chinese literary field. Unquestionably, Chinese culture holds a moral standard regulating honesty in literary creation,

<sup>48</sup> Guan Zhong 管仲(? ~ 645 BCE), the minister of Qi Kingdom during the Spring and Autumn Period (770-476BCE). He was a famous politician and strategist.

<sup>49</sup> Luchi 陆机 is best known for his "Wen-fu", one of the finest works of criticism and aesthetics by a Chinese, and a masterpiece in the poetic style of the *fu*.

though this standard might not be the same as in Western culture.

In those arenas where different cultures confront each other, today's pedagogical field as a typical instance, "finding the right balance is crucial"; "One way to do this is to make the issue discussible in an atmosphere of probity and objectivity" (Decoo 2). Only by treating the cultural other as different but equal, can we ensure justice when disputes arise and approach the goal we share despite our cultural disagreements.

## Conclusion

Many times during writing, I paused to ask myself, “Is this analysis of plagiarism just another case of plagiarism itself?”<sup>50</sup>. However, at this point of conclusion, I am proud of being able to manifest in this thesis the Chinese style of creativity. It is believed that in Chinese Kungfu, after people have a command of different kinds of swords, they will reach a stage of being able to use a new sword, a sword without shape. This invisible sword is shaper than any concrete sword. Plagiarism often shows up under different names: imitation, copying, repetition, misappropriation, faulty citation, copyright infringement, literary theft, cheating, and so on. I have endeavored to weave these concepts into the system constructed by Leiser to explore the complexity of this social behaviour. “Chinese customs and plagiarism”, “Chinese copyright law” and “ESL teaching experience” are subjects some scholars have already delved into. I have gained my vision on the issues around plagiarism through study of these fields, however, my discussion does not simply dwell in any of them. After an analysis of these areas, I have attempted to formulate an effective angle, to probe into the heart of the controversial issue: a cultural perspective is the “invisible sword”, whose power lies in the dynamics of custom, law and morality, rather than in any isolated arena.

Plagiarism in China sometimes has a comical air. Despite the lawsuits and disputes, *Never-Flowers in Never-Summer* has been adapted into a teleplay

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<sup>50</sup> As a Chinese student in Canada, I am anxious about the possible citation flaws in this thesis which would really bother Western eyes.

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recently and Guo Jingming had the highest income of any Chinese author, \$1.4 million. As *New York Times* reported,

Thousands of teenagers — his readers are rarely over 20 — flock to Guo’s signing sessions. Some post frenzied declarations of love on his blog: ‘Little Four, I will always be with you!’ (Guo’s nickname comes from ‘fourth dimension war,’ a random quotation he found in a magazine.) Alongside adoring letters addressed to ‘Big Brother Guo,’ the author posts pictures of himself half-naked in the shower, in his underwear or swathed in Dolce & Gabbana accessories and Louis XIV-style shirts. (King )

“Some people call Guo “‘Super Plagiarism Boy’, a play on ‘Super Voice Girls’, the Chinese equivalent of ‘American Idol’ ”(King). In spite of teasing Guo, a lot of people still enjoy his book.

Severe punishment did not fall upon Pan Aihua and his colleagues who were involved in the plagiarism scandal in the academic field. Stephen Stearn, the complaining professor at Yale University, pointed out the irony in the Chinese academic field, “Professors in China also plagiarize, which makes students hard to blame” (“Yale Professor Condemns Plagiarism in China”).

Due to the influence of the thousands years’ old traditional value, Chinese culture is prone to have a higher tolerance of imitation, copying and repetition. In fact, imitation, copying and repetition are considered to be necessary in the learning process, and are viewed as good ways to compose elegant text even for mature writers. More often than not, Chinese people’s response to the borrowed

text is rather positive: imitation, copying, repetition make one's work more convincing, more authoritative. It is a manifestation of the writers' knowledge, showing that he or she is in the position to discuss the subject.

Since imitation is inherently good in Chinese culture, the modern Chinese copyright law, a product of foreign interference, has encountered unconscious and even conscious resistance in Chinese society. Copyright is "a legal mechanism for ordering socioeconomic and cultural life and a method to link the world of ideas to the world of commerce" (Zhou). The popularity of Guo, a commercial writer and a plagiarist at the same time, reflects the disjunct between cultural norms and copyright law in today's Chinese society, which is highly profit-driven. However, being pressed by the Western countries and by the needs of some domestic industries, the Chinese government has made great efforts to complete the legal protection of intellectual property.

Despite the differences between Chinese tradition and post-Romantic Western values, consensus on the issues around plagiarism may be reached in the moral domain. Plagiarism, as shoplifting, is not approved of either in Western or Chinese morality. Since condemnations of plagiarism have the same goal of fostering creativity, both the Chinese culture and the Western culture community need an open mind to cultural others that might approach this goal differently during the process.

"Law, custom, and morality are intertwined in a complex network of inter-relations"; Law and custom are linked by "contradiction, not continuity"



(Leiser 10). Due to the contradictions and discontinuities of the cultural components of the issues around plagiarism, disputes seem to remain both within Chinese society and in the international community. For a modern open China, a country that is eager to catch up with the Western developed countries, it is a moment of introspection, a time to reflect on the gap in the intellectual and legal domains between China and the West. For the West, it is a time to look up from a notion of plagiarism solely based on Western conventions, in order to meet the needs of globalization, in which each culture deserves a fair hearing. A Chinese engineer boldly challenged the West-centered mentality by speaking eloquently of his expectations: "I think as scientific work becomes more and more complicated, we sink deeper into the nature of reality. At that point the philosophy of China is more appropriate for complex systems, more than the simple, practical, analytical philosophies of the West" (English-Lueck 83). His opinion, though somewhat extreme, has voiced the necessity of respecting the values of cultural others. To conclude, I enthusiastically endorse an important call for both Chinese and Westerners to adjust their vision to achieve justice in issues around plagiarism.

Plagiarism is a culture-bound issue, but it is also universal. It is worth repeating that conscious and deliberate plagiarism is not at the heart of the above discussions.<sup>51</sup> Conscious and deliberate plagiarists exist in every culture.

A desperate student knows that he will not pass a particular course unless he produces an acceptable term paper. He is too short of time, imagination, or

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<sup>51</sup> The focus lies in "unconscious plagiarism" and disputes around plagiarism, which in many senses results in misunderstanding between different cultures.

initiative to create a work of his own, so he buys a pre-written term paper from an Internet “cheat site” and puts his name on it, or copies substantial passages from a book he finds in the library and fails to credit it. He weighs the likelihood that he will be caught, and the penalty that would be imposed, against the benefit of passing a course or obtaining a degree with minimal effort. His psychology is similar to a thief who obtains money or goods from others by theft or fraud, rather than by earning an honest living. (Green 15)

This kind of rational, calculating plagiarist is by no means culturally specific. However, the differences in customs, law and morality lead to the variation of peoples’ view on imitation and repetition in the intellectual field. While plagiarists’ shameful “shoplifting” is condemned by both Western and Chinese morality, the Chinese 5000 years’ old customs cultivated a large number of copiers who are in fact “unconscious” and “benign plagiarists”. The concept of plagiarism in China — constructed from the custom, law and morality perspectives — is culturally specific. being contextualized by the conditions of China. The establishment of this concept is particularly necessary, as globalization<sup>52</sup> requires the voice of every culture to be heard; it is also particularly timely as China is developing into a major world power. While there is no doubt that China will have its own say about its view on issues around plagiarism, questions remain about what, exactly, Chinese culture will say.

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<sup>52</sup> “The central problem of today's global interactions is the tension between cultural homogenization and cultural heterogenization” (Appadurai). Against this frame of tension, a call for fairness in view and treating each culture becomes increasingly necessary though unprecedentedly difficult.

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