

“Shang-Tou” vs. “Shang-Di” “上头”与“上帝”

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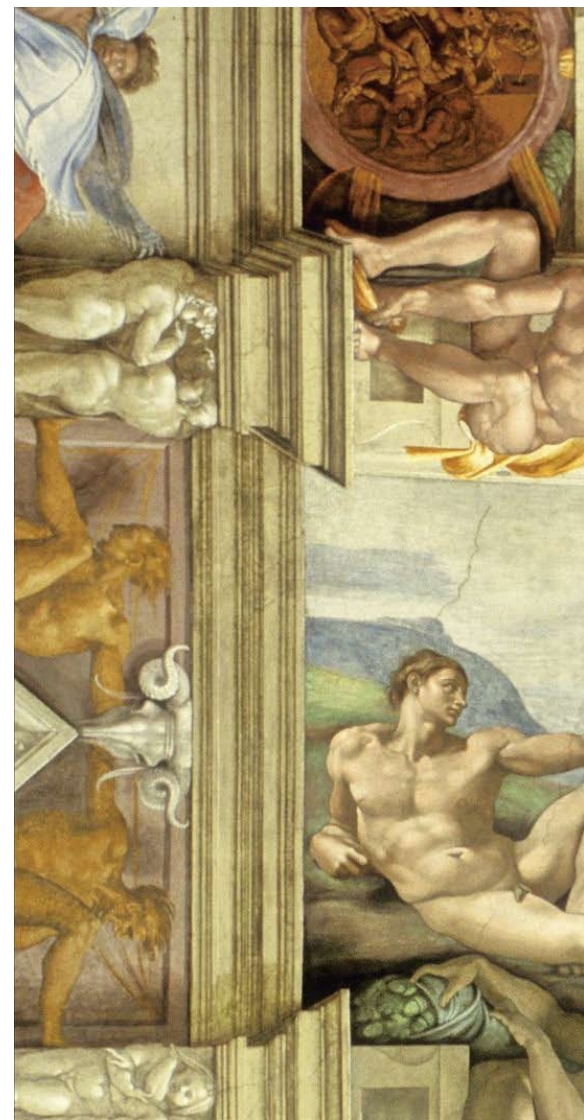
"Shangtou" literally means immediate superior or supervisor, boss, ultimate head, upper leader, work team in-charge and similar connotations. "Shangdi" is the mandarin translation of the King James Version Bible term God, the all-mighty deity, the creator of the universe.

单看字面意思，“上头”指的是直属上司、部门主管、老板、总领导、上级领导、工作组负责人等与之相关的一切管理者。“上帝”是英王詹姆士一世钦定版《圣经》中“God”一词的中文翻译，意为强大的神，宇宙的创造者。

It happens everyday, at workplace or at home. When asked, whether one should or refrain from doing something, in China, the most heard reply is: "Let's see what shangtou says so...", particularly in governmental matters, in the public sector or state-owned-enterprises (SOEs). While in the West, particularly in those countries of Christianity/ Catholic/ Orthodox traditions, the most heard reply is "Let's see what shangdi says so...", that is, "what the Good Book or the Bible says so..." with its ultimate origin of which can be traced back to the Ten Commandments recorded in "the Laws of Moses" the first five books of the Old Testament, or the Torah in

Hebrew Judaism. At modern times, in western countries of well-developed mature rule-of-law tradition, "Let's see what the law says so..."

在中国，当人们想要负责或想推诿一项工作时，最常说的一句话就是，“看看上头是什么意思.....”，尤其是在公共部门、国有企业以及凡是涉及到政府事务的工作上。然而，在西方，特别是那些信奉基督教、天主教等正统教义的国家，最常听到的一句话则是，“让我们看看上帝的旨意.....”，意思就是看看《圣经》中是怎么说的。其根源可追溯到《旧约圣经》（也称《希伯来圣经》）最初的五部经典“摩西律法”（即《摩西五经》，希伯来犹太教称“Torah”）中记录的“十诫”。如今，一些法律体制发达成熟的



西方国家则会说，“让我们看看法律规定.....”

In China, while regarding what's right, or what's inappropriate, to one's act, in childhood period, it was elaborated both in family education and school education, their parents and their teachers became everybody's shangtou. While stepped into work stage after schooling, his employer, immediate superior or supervisor, boss, ultimate head, upper leader, work team in-charge would become his shangtou. Other than due to the reasons of responsibility-chain or decision-making echelon, this phenomenon is particularly acute as illustrated in China's huge bureaucratic executive-oriented machinery, the



PRC government, public sector and corporate cultures in both SOEs or private companies.

在中国，孩子从小会接受家庭和学校两方面的教育，去学习、理解和评判个人行为的是非。因此，家长和老师便成为他们的“上头”。当孩子们完成学业，走上工作岗位之后，他们的雇主、直接上级或部门主管、老板、总领导、上级领导和工作组主管便成为他们的“上头”。不同于责任体系和决策制度，这一现状也很好的说明了在中国政府、公共部门、国企或私企企业文化中存在着庞大的官僚行政体系导向机制。

In the West, particularly in those countries of Christianity/ Catholic/ Orthodox traditions or cultures, when

regarding what's right, or what's inappropriate to one's act, in childhood period, it was elaborated both in family education, school education and church education. So, their parents, teachers and family priests/ clergymen would become the shangtou, with all the "laws of shangdi" (上帝的律法) originated from the Bible. As a matter of fact, lots of modern day jurisprudential values and concepts of laws of the West could be traced with their origins from the Bible, no matter the Greek version or the Protestant version since Martin Luther, no matter how it was interpreted and elaborated. Therefore, it is not a surprise that when asked, whether one should do or refrain from doing something in the West, the most heard reply is: "Let's see

what shangdi says so...", or "What the law says so".

在那些信奉基督教、天主教及传统教义的西方国家，孩子会接受来自家庭、学校和教堂三方面的教育。所以，家长、老师和家庭牧师便成为他们的“上头”。事实上，无所谓是希腊版本还是马丁路德新教版本，也无所谓是何种译本，现代西方很多司法审判的法律观点都源自《圣经》。因此，在了解了当地背景文化之后，当再听到有人说“看看上帝的意思...”或“看看法律的规定.....”时就不足为奇了。

The only major similarity in regarding the appropriateness, or righteousness of our everyday acts, in both cultures of the east and the west, is, "Someone is watching above..." that is, "Ren zai gan, tian zai kan"(As one acts, the heaven watches 人在干，天在看). In China, traditionally we do not speak of "God" or shangdi, but we speak of "heaven" or tian 天, that non-secular deity with human-character "God" as referred to in the West. Both the east and west cultures point to the same idea, or the same non-secular warning: " There is a regulator, or supervisor, or a all-mighty deity watching our everyday deeds above. And, something more in the West, "be prepared for the Judgment Day".

在日常行为规范方面，中西方文化中唯一重大相似点就是都存在“有人在上面看着你”这样的说法，也就是俗语中说的“人在做，天在看”（无论你做了什么，上天都会看见）。其实从传统意义上来讲，中国人并不相信“神”或是“上帝”，而是相信“上天”或“天”，也就是将西方思想中非世俗的“神”赋予了人的特性。

“我们所做的事情其实都会受到无论管理者，领导甚至是神祇的监督”，这样的思想或是非世俗的警示在中西方文化中都有类似的存在，只是西方还相信会有审判日的到来，相信上帝终会审判每个人的功过是非从而决定其命运。



Fencing Vs. Swordplay

击剑与舞剑

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古代的中国，剑在十八种传统兵器里被视为“百刃之君”，文人和武士都喜欢斗剑。《史记·项羽本纪》里“项庄拔剑起舞，项伯亦拔剑起舞，以身翼蔽沛公，庄不得击”。这便是“项庄舞剑，意在沛公”典故的由来。

关于中国剑道的内涵，做过最好表述的应该是古龙《三少爷的剑》。三少爷的剑，不但始终没有刺出，而且也没有活着的人看到剑是如何拔出来的。可能这就是用剑的至高境界：无剑之剑，方为至剑。

无论东方还是西方，随着火器的出现，结束了人类对剑的膜拜。击剑不再限于仅代表强悍和勇武的英雄精神，而是完全属于浪漫优雅的运动审美。

In ancient China, sword was regarded as the most supreme among the Eighteen Weapons. Both scholars and warriors were fond of sword fighting at that time. In Xiang Yu Basic Annals, "Xia Zhuang drew his sword and danced. Xiang Bao also drew his sword and danced along, protecting Pei Gong obscurely with his body. Zhuang had no chance." This was the story and origin of the Chinese idiom "Xiang Zhuang performs his sword, but his mind is set on Liu Bang".

With regard to the connotation of Chinese Kendo, the best illustration would be The Sword of the Third Young Master. Not only did his sword not stab out, but it was also said that no one who lived could ever witness how the sword was pulled out. This is perhaps the highest limit of using a sword.

With the discovery of the use of firearm, people in both the East and the West ended their worship towards swords. Fencing is no longer a symbol of power and chivalrous heroism, but also presents an appreciation for romantic and elegant aestheticism.

Fencing, “A Fight in Ballet”

击剑，“格斗中的芭蕾”

击剑是中世纪骑士制度和近代西方上流社会盛行的决斗制度的遗留物。丹麦王子哈姆雷特就是以一场击剑比赛，“简单的一刀了之”，解决了“生存还是毁灭”的“必答之问题”。按照我们的思维，为什么这些血统纯正、出身高贵的人不能找到“理性的出口”而非以这种疯狂的行动解决纷争呢？身处决斗依旧存在、编写过《英语词典》的塞缪尔·约翰逊的解释是：“在一个高度文明的社会中，一次侮辱会被认为是严重的伤害，因而必须受到憎恨，或者甚至必须为此进行一次决斗。人们公认忍受这种侮辱而不进行决斗的成员，必须被逐出他们的社群。”

中世纪骑士传说

小说中，中世纪的骑士身穿盔甲，是淑女的守护者；手持长剑，是正义的代名词；策马扬鞭，是荣誉的急先锋。骑士精神从古罗马走来，在漫长的中世纪里锻造出最灿烂的颜色，影响着与风车争斗的唐吉可德，与剑客同行的达达尼昂，甚至还有绵延至今的历史。

1066年，“征服者威廉”带领诺曼人登陆英格兰，央格鲁·撒克逊人称威廉的仆人为“Cnihts”，演化到后来便成为“Knights”。“Norman Knights，诺曼骑士”便是受到国王册封的勇敢又血腥的征服者。骑士当然要骑马，法语中“Cheval”是马的意思，“Chevalier”便是驭马出击的骑士，他们的精神就是“Chivalry”，从这些词汇的由来，大致能勾勒出骑士的血脉。那么究竟什么是骑士精神？从古罗马开始的尚武之风历经中世纪的荡涤，化作骑士精神传与后辈，有对忠诚和正义的崇拜，有对勇气和力量的赞许，也有对残忍和血腥的反思。有人总结骑士精神是Fighting, Fame, Fortune。以今天的眼光看，大约可理解为：拥有斗志，崇尚声名和追求财富。

Fencing is a relic left by the preceding Medieval Chivalry System and the Western Duel Regime System, which prevailed among the upper class society. In The Tragedy of Hamlet, the Prince of Denmark “with a bare bodkin” solved the question of “To be, or not to be”. According to our logical thinking, why couldn’t such a highborn find a rational exit to problems, but rather preferred to solve them such absurd behavior? Samuel Johnson, the writer of A Dictionary of the English Language, made an explanation to this. While the English writer lived his life in duels, he explained that “In a highly civilized society, an insult would be considered as a serious injury. As a result, hatred arises and to conduct a duel would be the solution to the problem, whereas it is accepted that one who accepts and tolerates such insult should be expelled from their community.”

The Legend of the Medieval Knights

In fictions, Medieval Knights are often portrayed as the guardian of the fair maidens. Armed with a sword, they represent the code for justice and rightfulness. As they rode on their horses, they became the vanguards of great honor. Such spirit was originated from Ancient Rome and gradually spread to other countries, coining the most vivid colors in the long history of the Middle Ages and affecting Don Quixote’s attack on windmills, d’Artagnan’s adventure with the Three Musketeers, and even stretching far beyond to the modern times.

In 1066, William the Conqueror led the Normans to the land of England. The Anglo-Saxons referred William’s servants to as “Cnihts”, which later became the title “Knights”. Norman Knights are those who are conferred a title as the brave and bloody conqueror by the King. The Knights, of course, rode a horse. “Cheval”, in French, means

击剑运动的发展

“让我们决斗去！”——这句话在大仲马的小说中屡见不鲜。击剑，是当时流传在欧洲各国的闲适阶层、骑士与民间的个人格斗训练，因此很自然地成为人们生活、工作、爱情不顺心时的决斗武器。1588年到1601年法国决斗成灾。在这二十年里巴黎就有八千名绅士在决斗中毙命。这种状况在法国引起强烈反响，法国国王路易十三的宰相黎塞留发出禁令不准决斗，然而收效甚微。

怎样既能满足大家的决斗热情又不致伤人，聪明的剑客于是设计出一种轻巧、剑身呈四棱状、剑锋如“花”长出蓓蕾一样带皮头的剑。人们用这种练习剑在宫廷或习武厅尽情演练，不致出现伤害，因而女性也可参与其中。法庭还正式规定了击剑时的服装：贵妇们穿丝绸和缎子的马甲或坎肩一类的一幅，还要配讲究的发型；男子穿长统丝袜、马裤和有浮花织锦的上衣。

大约在1776年，法国骑士圣乔治的剑师拉·布瓦西埃发明了金属网面罩，这一发明使击剑走上了高雅的道路，也为复杂击剑技术的发展创造了条件。人们戴上面罩、手套穿上击剑服，可以安全地进行一连串的交锋。而为使击剑比赛有一定规矩，有必要制定规则和协定来指导控制比赛。最早的击剑规则由法国当时有名的剑师四人编写的。规则不但对进攻动作有要求，而且比赛时的有效击中限制在胸部。这个规则即是现代击剑规则的雏形。

然而这种无危险的剑显然无法满足当时欧洲的决斗爱好者们。他们从1855年开始在习武厅里练习一种决斗用剑——三棱重剑。决斗不是街头战斗，而是有组织、是否有理由决斗、是要有证人作证的。假若的确有理由，双方约定决斗时间和地点，使用何种武器由受辱的一方决定，最后双方还要商定决斗的规则和许可攻击的动作。决斗之前证人还要丈量场地，抽签决定双方的位置。在为决斗而训练时，为了提高技术，习惯上是不穿防护服不戴面

罩的。以后，在符合现代击剑规则下的重剑比赛逐渐流行起来。

1875-1900年间，意大利人发明了一种普遍被人们采用的轻便佩剑，这是一种既能用于击剑又能用于决斗的武器。这种轻便佩剑的击剑技术是著名意大利选手朱塞普·拉达叶利创造的。至此，人们在从事现代击剑时，便有了花剑、重剑、佩剑三种选择。三种剑的区别在于它们的尺寸大小、重量、技术和有效部位不同。

现代击剑——目不转睛的精彩

奥运会上中国击剑队令人炫目的成绩让大家对击剑比赛的热爱骤增。与其他赛事相比，击剑比赛的得分方式与赛制十分不同。击剑被誉为“格斗中的芭蕾”，是一个需要目不转睛的观看项目，动静间的优雅与激烈、攻防间的灵动和节奏让这项运动充满魅力。击剑在电视影像里的典型场景是：喧扰的世界被周围的黑暗隐去，光照在狭长的剑道上，两个白衣人，戴着面具，剑在手，相遇了。敬礼。起势。前进。冲刺。剑锋相接，捕捉碰触对方身体的瞬间。对于平静欣赏这项运动的我们，击剑不像是一种比赛，却像是一个仪式，一幕表现生死游戏的舞台剧。

horse, and “Chevalier” means cavaliers who rides on a horse, whereas the Knight’s spirit is “Chivalry”. So after all, what does the spirit of Chivalry represent? From the martial spirit and honor in Ancient Rome to the clean up in the Middle Age, later evolving into the Chivalry spirit and passes down to later generations. It contains the worship of loyalty and justice, the appreciation of courage and strength, and also reflections for the cruel and bloody parts of the history. Some may conclude the spirit as Fighting, Fame and Fortune, but in the modern point of view, it can be roughly interpreted as follows: the pursuit of fortune and fame alongside with morale.

The Development of Fencing

“We must fight in order to conquer it!” — this is a common and familiar phrase in works of Alexandre Dumas, Jr. Fencing was a popular activity within the quiet sectors as well as the combats between knights and private individuals of countries in Europe. Naturally, it became the weapon for individuals in matters of life, work and love. From 1588 to 1601, a disaster in France occurred as the result of frequent combats. Within these 20 years there were around 8000 casualties in Paris.

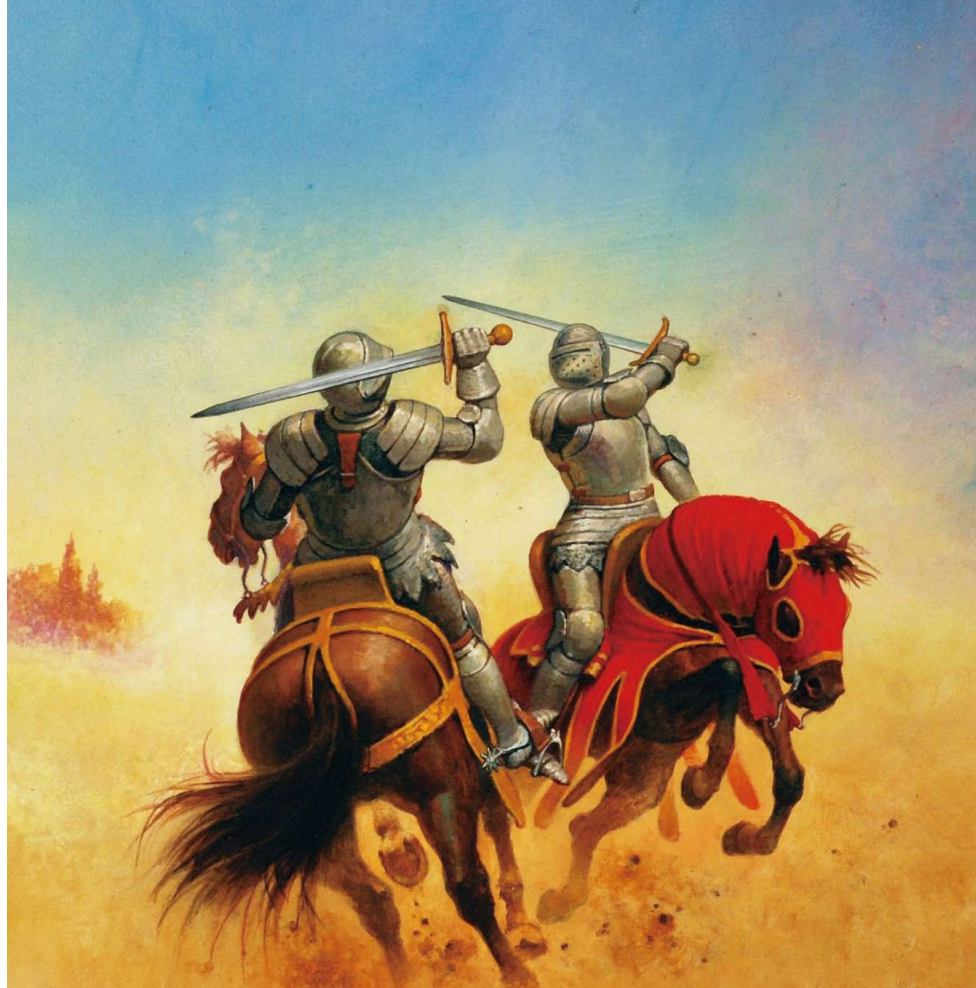


It resulted in strong repercussions in France, causing King Louis XIII's chancellor to announce an injunction to prohibit fights. Its effects were nonetheless insignificant.

So what can we do to satisfy the enthusiasm for duels but at the same time minimize the risk of casualties? Some clever swordsman designed a lightweight sword, with rectangular blade and its point covered by a bud-like button. One can use such sword to enjoy their martial practice without hurting anyone, while women can also participate and be a part of the practice. The Court even formalized the attire for fencing: silk and satin vest or waistcoats for ladies, paired with accessories and a luxurious hair; silk stockings, breeches and a floral brocade code for men.

Around 1776, Saint George, a French Knight's fencing master La Boissière invented the metal mesh mask, which led fencing to become an elegant sport and also created conditions for the development of a complex fencing technique. When one puts on a mask, fencing gloves and its attire, a series of confrontations can be carried out safely. There is also the need to set up rules and arrangements for a formal fencing competition: the earliest fencing rules were set up by four of the renowned fencing masters in France. They made requirements not only for the actions for an attack, but also that an effective target must be on the chest of one's competitor. This forms the prototype of the modern fencing rules.

Yet, such safe fencing swords could never satisfy the wants of Europe's duel lovers. From 1855, they started using a special sword in practice halls – the epee. Duels were not street fights, but organized duels and witness should be present to testify the reasons necessary for such duels. If there was a sensible reason, both parties will then agree on the time and venue for the duel. The decision of which weapons to use would be placed on the insulted party. They will lastly agree



on the rules for the duel as well as the attacking actions. The witness would be responsible for measure the size of the venue and decide the position for each side by drawing lots. For the improvement of their skills, they would not put on protecting clothing or wear a mask during the practices before the duel. Gradually, fencing competitions in line with modern fencing rules were developed and became popular.

Between 1875 and 1900, the Italians invented a light sword, which became commonly used by the people at that time. It was a weapon suitable for the use during fencing and duels. Such light, narrow-bladed weapon was invented by the famous Italian fencer Giuseppe Radaelli. From then on, foil, sabre and epee became the three choices of modern fencing, where their size, weight, techniques and their valid targets.

Modern Fencing – A Graceful Combat

The Chinese Fencing Team's success and accomplishments in the Olympics

has gained much enthusiasm towards fencing in the public. The scoring system and rules for a fencing tournament is essentially different when compared with other races. Fencing was said to be "A Fight in Ballet", one which requires the audience to watch intently and with all eyes. The elegant while intensive movements and the rhythms between the thrusts and defends fills the sport with charm. A typical scenario in fencing, as portrayed in the television would be like this: while the darkness engulfs the tumult world, two men in white were standing in the spotlight. They met with their masks and sword, made a salute, on guard, and one makes his thrust. As the blades flick, the audiences capture every moment it touches the opponent's body. To those who appreciate such sport in peace, fencing is never a tournament, but a ceremony – a theatre which puts on a play on life and death.

Chinese Swordsmanship - Dance between Heaven and Earth

中国剑术 舞动天地间

昔有佳人公孙氏，一舞剑器动四方。
观者如山色沮丧，天地为之久低昂。
霍如羿射九日落，矫如群帝骖龙翔。
来如雷霆收震怒，罢如江海凝清光。

——杜甫《观公孙大娘弟子舞剑器行》

剑是我国古代的四大名器之一，誉称为“百兵之君”。剑在古时，是作战的武器，有剑锋和两刃，使用起来逢坚避刀，不硬撞、不强击；练起来“剑如游龙”，带有几分文气、优美。而辛弃疾的一曲“醉里挑灯看剑，梦回吹角连营”又是多少铮铮男儿家国梦想的真心写照——中国剑除了身份和地位的象征，更被历代文人侠客在文章和功名中夸大，成就了中国剑术的不朽传奇。大师金庸的武侠小说和徐克的武侠电影更是将中国剑术和侠客精神发挥到极致，正所谓：醉里狂歌随君笑，剑中无招胜有招。在书中和屏幕上我们体会着快意恩仇的江湖梦。刹那间江湖风云变色，血雨腥风夹裹着刀光剑影席卷而来，惊涛拍岸，其势如虹。

我国的剑术在春秋后期开始出现，史籍中也开始出现关于剑术家的记载。中国历史上有名的卧薪尝胆、报仇复国的越王勾践，曾请了一个埋名隐姓、生活在山林中的剑术家越女给他的士兵传授剑术。这个越女不仅剑术精通，而且还有一套理论。她说，剑术看起来似乎浅显而容易，但是其中的道理却深邃而精妙，有门户的开合，阴阳的变化。用剑进行搏斗时，精神要充足，外表

要沉稳，看上去安详平和，像一个文静的少女，一经交手才知道凶狠如同恶虎。这样的剑术家可以以一当百，以百当万。

剑术在春秋末期得到极大发展。剑术不仅在春秋战国的战场上发挥着临阵杀敌的重要作用，而且也是一种表演艺术……在这一时期，无论是临阵打仗，还是击剑娱乐，剑术的好坏都关系到格斗者的生死存亡，所以这是的剑术都是非常实用的实战技术，没有半点华而不实之处。在格斗时，往往先以假动作欺骗对方，等到对手开始动作，自己再动。不动则已，一动起来就急如闪电，这样虽然是后发制人，却往往抢在对手之前击中对手。（《庄子·说剑》）

手持兵器的舞蹈在秦末汉初有了新的发展，成为军队中的一种娱乐。公元前206年项羽的谋士范增为了除掉



In the past there was a lovely lady called Kung-sun, whose sword dance astonished the whole world.

Audiences numerous as the hills watched awestruck as she danced, and, to their reeling senses, the world seemed to go on rising and falling, long after she had finished her dancing.

Her flashing swoop was like the nine suns falling, transfixed by the Mighty Archer's arrows; her soaring flight was like the lords of the sky driving their dragon teams aloft; her advance was like the thunder gathering up its dreadful rage; her stopping was like seas and rivers locked in the cold glint of ice.

—Du Fu, "On seeing the sword dance of a pupil of Madame Kung-sun"

Jian (Cantonese: gim), a narrow-blade, double-edged sword, is considered one of the four major weapons, along with the *Gun* (staff), *Qiang* (spear), and the *Dao* (sabre). *Jian* has been respected as the "King of Weapons" in China for thousands of years. In ancient China, *Jian* was a combat weapon. In addition to the obvious self-defense uses, it was commonly carried by scholars for their elegance. When playing Chinese sword art, you can hardly see hard hit, or strong blow - it was just like "a drifting dragon", with a sort of elegance and beautifulness.

"Though drunk, we lit the lamp to see the glaive; Sober, we heard the horns from tent to tent." (Xin Qiji in Song Dynasty in his poet "Dance of Cavalry" (《破阵子·醉里挑灯看剑》)) The image of *Jian* in China not only symbolizes knighthood and social status, but also stands for pride, honor and patriotism in scholars'

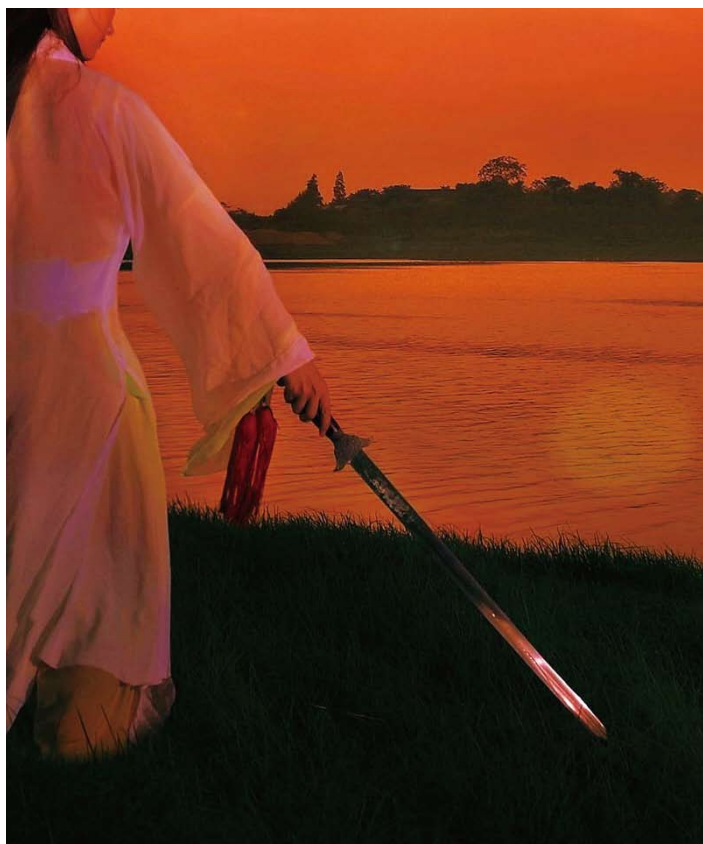
与项羽争天下的刘邦，项羽招待刘邦的酒宴上，示意手下的战将项庄在席间刺杀刘邦。于是，项庄就以舞剑助兴为名，持剑舞向刘邦，准备在舞剑中找机会行刺。这时，同情刘邦的另一楚军将领项伯件势不妙，借口一个人独舞不如双人对舞好看，也急忙拔出剑，跳入场中于项庄对舞起来，暗中用身体保护刘邦（《史记·项羽本纪》）。这就是历史上有名的故事“鸿门宴”。“项庄舞剑，意在沛公”就作为成语流传下来。

为了对付匈奴的骑兵，汉朝也发展起了以骑兵为主力的军队。骑兵交战中以砍斫为主，很少有刺的动作。于是，环柄刀代替了剑，使得剑在战场上的使用价值大大下降。到了东汉末年，环柄刀几乎完全取代了剑，成为军中主要的短兵器。

剑在战场上地位的下降反而使击剑的风气在社会上风行开来，人人喜欢击剑，喜欢佩带宝剑，剑术有了很大的提高。上至皇帝，下至文武百官，每人都在腰间挂一口宝剑。“君子佩剑，武者佩刀”——在中国剑是高贵与正义的象征，是我国尚武精神的体现。不管是汉代的汉剑还是唐代的唐刀都是君子配备的象征。在中国古代的汉唐，君主赐予剑履上殿是无上的光荣。

唐之前的剑法，力求破敌，简单实用，重突刺，乃战阵之用居多。宋以后的剑法，因一度受到军方弃剑用刀的指导思想的影响，几起几落，又受到“剑器”和“武舞”的影响，技艺逐渐完善、精湛，重精妙，用于民间私斗居多，形制上有了重大变化，一直影响到了现代。

明清以降的剑法，在表演和理论研究上几乎可以说达到顶峰，但是用剑高手渐少。而民间私斗大量减少，直接导致实战经验也开始渐渐不足；不少好的理论和技艺，种种原因没能流传下来，实在是千古之恨。中华人民共和国成立以后，剑术被列为中国武术比赛项目。增加了各种花法、平衡、翻腾、造型等动作，使剑术有了很大发展。



immortal literary works. Chinese swordsmanship, which has been largely exaggerated by the master novelist Jin Yong and the reputed film director Tsui Hark in their gorgeous works, is well evolved into a superb legend: A spirit of nobility that marks the 'Ways of Heroes'.

The first Chinese sources mentioned the Jian and swordsman date to the 7th century BC during the Spring & Autumn Period (770-476 BC), which is about King Goujian of Yue. Goujian was a famous emperor in Chinese history who reigned over the Yue State. Although his kingdom was defeated by the State of Wu, Goujian led his army to victory 10 years later following the humiliation of sleeping on thorny firewood and eating the bile from a gallbladder every day. His story became widespread in China, and some even say that the sword is the very weapon that restored a defeated state. It was said that King Goujian learned army swordsmanship from Yuenv (means "Daughter of Yue") who was a superb female sword fighter. Following Yuenv's theory, swordsmanship looks simple at the first glance, but it is profound and subtle in essence. When fighting with a sword, a swordsman may disguise himself as a "quiet maid", then turned into a "fierce tiger" when the combat kicks off. That is why a superb swordsman can defy thousands of people in a battle.

The late Spring & Autumn Period and the Warring States Period of China (500BC - 221BC) were incredible times for the study of

swordsmanship. In this period, swordsmanship was not only a skill to kill enemies on the battlefield, but a performing art...Whether it was served for a battle or an entertainment, swordsmanship was the vital factor matters who would survive the game. Swordsmanship principle was rather practical at that time - it emphasized mobility and required the fighters to be devious as well as unpredictable. A fighter would not take actions until his opponent began to move. The fighter could use deceptive movements before his real attack, and his attack must be as swift as lightning. Though the tactics of "attack after being attacked" may plunge the fighter into an inferior status, he can hit the opponent instantly at the very first. (Chuang Tzu, "Discoursing on Swords")

In the end of Qin Dynasty (221BC - 207BC) and the beginning of Han Dynasty (206BC - 220AD), numerous Chinese swordsmanship styles flourished and swordsmanship was widely played for recreational purpose in the army. "Hongmen Banquet" was a famous story and classical idiom largely used by Chinese people. It was used to express the meaning of killing or warning someone via inviting him to a well-prepared dinner — a feast setting up as a trap for the invited. It happened in 206 BC, Fan Zeng, Xiang Yu's main advisor, planned to kill Liu Bang by inviting him to a banquet at Hongmen. During the banquet, Xiang Zhuang, a general of Xiang Yu, presented a sword performance which was actually meant to assassinate Liu Bang. Getting the conspiracy in advance, Zhang Liang, a main advisor for Liu Bang, asked Xiang Bo, Xiang Xu's uncle to help, who also stood up to join the sword dance. He joined the dance to protect Liu Bang. Under the assistance of his subordinates Fan Kuai and Zhang Liang, Liu Bang rode out the crisis. (*Shiji* or *Historical Records*, The Biography of Xiang Yu)

To fight against Huns' cavalry, Emperors of Western Han Dynasty (202BC — 9AC) also developed troops where the cavalry was its main force. Cavalry troops usually chopped their foes instead of stabbing them. Thus, the sabre with a round handle took the place of Jian on the battlefield, which to a great extent, weakened Jian's practical function. Until the end of Eastern Han Dynasty (25AC — 220AC), sabre had almost completely replaced sword, becoming the major short weapon among troops.

Contrary to its decline on the battlefield, sword fighting was all the rage in grass root society in Han and Tang Dynasty (618AC –

907AC). Wearing a sword became a fashion then and swordsmanship skills had improved a lot. The emperor and his officials all hung swords at their waists. "Gentlemen wear swords, Warriors wear sabres" - in ancient China, Jian was a symbol of nobility and justice and a manifestation of martial spirit. The "Han Jian" in Han Dynasty and "Tang Dao" in Tang Dynasty all stood for the social status and elegance of a gentleman. It was an unparalleled honor for an official to be allowed to wear a sword when summoned by the emperor at the palace.

The swordsmanship before Tang Dynasty was simple and practical, which embodied many thrusting movements, and was mostly used to defeat the enemy. The swordsmanship of Song Dynasty (960AC – 1279AC), affected by the decline of Jian on the battlefield and the uprising of "Jian Chi" ("剑器") and "Warrior Dance" ("武舞"), had developed perfect skills and was widely used in sword fighting among the grass root society. The styles of swordsmanship in that period had great impact on its latter development.

Another upsurge of the study of swordsmanship happened in Ming Dynasty (1368AC – 1644AC) and Qing Dynasty (1644AC – 1911AC), and the skills and theories had peaked their climax. The decline of sword fighting among grass root society resulted in the lack of combat experience, and it was very regretful many good theories and skills were not handed down for various reasons. After the founding of the PRC, "Jian Shu" (swordsmanship) was listed as one of Chinese Wushu (martial arts) competitions. With the innovation of certain styles, swordsmanship is gaining much progress in modern time.

¹In the late Qin Dynasty, Liu Bang and Xiang Yu led their respective army to fight against Qin's army. Though comparatively weak in military force, Liu Bang first occupied Xianyang (capital city of the Qin Dynasty). When Xiang Yu arrived in Xianyang, he felt furious and threatened to kill Liu Bang.

Compliance Risk in China is Growing, and King & Wood Mallesons is Rising to the Challenge

合规风险中国多发，金杜迎接挑战

胡 梅 | 合伙人 (上海)

Meg Utterback | Partner (Shanghai)

Willis Sautter | 外国法律顾问 (上海)

Willis Sautter | Foreign Council (Shanghai)

In the last month, Chinese units of prominent multinational drug makers have been rocked by bribery scandals, with their offices raided and senior executives detained. This kind of dramatic, high-profile enforcement action, with all the reputational damage it brings, confirms what legal professionals have known for some time: compliance risk in China is growing. At King & Wood Mallesons, we are experienced in helping clients manage regulatory risk and compliance. Because we know that the costs of non-compliance – in economic, reputational, and personal terms – can be devastating, we have set up a dedicated compliance team to offer clients a comprehensive and effective way to manage all facets of regulatory risk.

就在上个月，著名跨国药企的中国分部因贿赂丑闻而遭受了巨大动荡。其办公室被

查封，高管被拘留。这类出人意料、夺人眼球的执行措施连同其为企业带来的名誉损失一起，再一次向我们证实了一个法律人已经意识到的问题：合规风险在中国正呈上升趋势。金杜，我们在帮助客户管理监管风险及合规方面有着丰富的经验。我们知道，不论是经济、名誉还是个人方面，不合规所能带来的损失是毁灭性的，因此，我们设立了一支专业的合规团队，为客户管理监管风险的所有问题提供全面、高效的服务。

Compliance risk in China is driven by a number of factors. First, it is a simple matter of math. Every year, more laws and regulations are added to the books, and the regulatory maze grows more complex. Since 1978, more than 600 laws, 1,000 administrative regulations, and 30,000 local statutes and

regulations have been promulgated. But despite the large number of new laws and regulations introduced over two decades of reform, China's legal system remains incomplete, and barely a week goes by without another government body issuing new or revised regulations.

在中国，合规风险的上升由几个因素组成。首先，一个简单的数学问题。每年都有大量的法律、法规发布和实施，从而是监管问题越加混论、复杂。自1978年起，中国共颁布了600多部法律、1000多部行政法规以及30000多部地方法规。然而，尽管改革开放的20多年中颁布了大量的法律、法规，中国的法律体系仍旧没有建成，几乎每周都有有关部门颁布新的或修订现有的法规。

Companies also grapple with the

twin problems of transparency and discretion – namely, too little of the former and too much of the latter. In a well-established legal system, lawyers assume that the law is clear, reasonably stable, and is consistently drafted and implemented. In a developing country like China which is trying to respond to rapid social and economic changes, the law is still changing and may result in ambiguous or contradictory regulation. In addition, it can be difficult to get an official interpretation from authorities on the application of law to specific issues. In short, companies struggle to find reliable guides to their behavior, and what might be acceptable practice in one municipality might not be accepted in another. On top of this uncertainty, the government authorities may exercise considerable discretion in interpreting the law. There are multiple levels of government in China, and each has latitude in interpreting policies and rules in a way which best suits their regional or local interests. The result is a less coherent regulatory landscape for companies. Where there is uncertainty, there is risk. Accordingly, ongoing ambiguity in the interpretation and implementation of the law results in compliance risk in China.

企业同时还面临法规不透明以及难以下判断的双重烦恼—即可以参照的前例太少、需要考虑的因素太多。在一个健全的法律体系下，律师认定法律自起草、实施起，是一贯明确、稳定的。但在向中国这样需要不断迎合快速变化的社会和经济情形的发展中国家，法律也不断地变化，因此出现了可能引起歧义，甚至相互矛盾的各类法规。此外，就一些特定的问题，又很难从法规的主管部门处得到官方的解释。总的来说，企业难以找到可靠的政策指导，在某一地区得到认可的行为可能在另一地区被否定。这些不确定因素的主要原因，便是政府的主管部门对解释法律拥有相当大的自由裁量权。中国政府分为多个级别，每个级别都有权以他们认为最符合



地区、地方利益的方式解释法律、法规。结果就是企业可以确定的监管范围越来越小。有不确定因素就会有风险。于是，模糊不清的法规解释及执行直接导致了企业在中国的合规风险。

Changing political priorities also play a role in elevating compliance risk. The government previously was concerned with promulgating laws, but now the focus is swinging to enforcement. Enforcement actions effectively further their policy goals. For example, the government currently wants to reform its healthcare sector. It is worried not only about healthcare costs now

but also about costs in the future, as waves of Chinese workers retire and put unprecedented strain on the healthcare system. Additionally, society is concerned about any industry that touches on the health and safety of the people, e.g. healthcare and food. In this light, the recent crackdown on drug makers makes sense. According to Chinese authorities, the bribery scandals not only violated China's laws but also "damaged markets" by raising drug prices. At least one multinational company recognized what needed to be done. Soon after having its offices raided and executives detained, it announced that it would reorganize its

China operations and the resulting savings would be passed on to Chinese patients in the form of price reductions. Thus, companies must have a cohesive planned response to compliance risk that addresses not only the nuts and bolts of a compliance program but also identifies and adapts to the needs of the Chinese consumer.

不断变化的政策方向同样也对合规风险的加剧起着极大的“作用”。政府原先将着重点放在立法，但现在又将转移到了执法上。执法能有效地推进政策目标。例如，政府当前想要改革卫生保健部门。这不仅需要考虑到卫生保健的成本，要到考虑到未来的开销。大量的中国员工下岗将为卫生保健系统带来空前的压力。此外，也不能忽视社会对关系到人们健康与安全的产业，像保健品和食品，也十分关心。有鉴于此，我们就可以理解近期对制药企业的制裁。对中国的主管部门来说，药企的贿赂丑闻不仅违反了中国的法律，其提高药价的行为还“有损市场经济”。于是一家跨国企业意识到了他该怎么做。就在其办公室被查封、高管被拘留后，该企业宣布其将重整在中国的运作模式，结果直接反映为中国病人药价的下降。因此，不仅仅是针对合规的程序，企业必须有一套计划周详且与实际紧密结合的合规风险应对策略，来分辨并满足中国消费者的需求。

China's increased enforcement is not always a product of design. With the growth of social media, sometimes the authorities are pushed to pursue enforcement actions. Whereas the government used to be able to bottle-up or at least delay revelations of misconduct, China's millions of Weibo users no longer allow it that luxury. Within hours of a train wreck or a chemical spill, news of the event spreads across the country, prompting investigation and in some instances, a cry for greater regulation and justice. In 2011, an oil spill in China's Bohai Bay polluted 6,200 square kilometers of water. Neither the oil companies

nor the government regulators involved notified the public. After a month, word leaked on Weibo and QQ and the government then acknowledged the disaster publicly. Chinese society is seeking greater transparency from the government. In the Bohai spill, the government moved against the oil companies in question, launching investigations and requiring them to pay heavy fines. Companies now need crisis management and a cohesive response which prepares them to address the concerns of government and the netizens.

中国正在加剧的执法行为并不总是政治设计的产物。随着公众媒体的发展，主管部门有时不得不采取执法行动。鉴于政府曾压制，或至少推迟不法事的曝光，数以百万计的中国微博用户站了起来。不论是列车失事还是化学原料泄露，只需几小时，这些新闻就将传遍全国，从而促使主管部门开展调查，甚至有时会引发对更高部门参与的要求。2011年，中国渤海湾一起原油泄露事件导致6200平方公里的海水遭受污染。不论是原油公司还是政府的主管部门都没有向公众披露。直到一个月后，有关消息在微博和QQ上曝光，政府才将这起事件公诸于众。中国社会正在向政府寻求更高的透明度。在渤海泄露案中，政府向原有公司采取了质询、调查以及高额罚款的处罚。现在的企业不仅需要应对政府的很关注，还需要一套结合实际的危机公关应对办法来应对广大网民。

As this incident shows, oil leaks, chemical spills, and other disasters will be increasingly difficult to manage quietly. Social media will likely continue to pull back the curtain on incidents that might have been quietly managed in years past. And as whistleblowers increasingly use these sites, companies recognize that mishaps in their China operations might receive a dramatic public airing sooner rather than later. This is a relatively new development in China,

and unquestionably increases the stakes of non-compliance. Information is increasingly available and the Chinese government is adapting to a modern society that demands greater transparency in enforcement of the law.

正如上述事件所表现出来的，原油泄漏，化学原料泄漏以及其他恶性事件越来越难以被不声不响地处理掉。公众媒体很可能将盖在过去几年悄悄处理掉的事件上的遮羞布掀开。随着告密者越来越多地使用这类网站，企业认识到其在中国运营中的不幸迟早会受到引人瞩目的曝光。这是中国一个相对较新的发展，并且毫无疑问地加剧了不合规的风险。人们可以获取信息的渠道越来越多，中国政府正在向一个对执法透明度要求更高的现代社会转变。

Finally, compliance risk has grown because it is no longer just a concern for foreign firms operating in China. It is also a concern for Chinese firms who increasingly want to invest or expand abroad. When Chinese companies were largely domestic, their network of "guanxi" was often more effective in addressing compliance risk than a team of lawyers. But as they go abroad, they find they must change. If they become publicly-listed in the United States, for instance, they must comply with a range of reporting requirements enforced by the U.S. Securities & Exchange Commission. If they expand to Europe, they become subject to the labyrinthine maze of EU regulation. A Chinese approach to compliance may not always work in the international arena. Many Chinese companies listed overseas have learned the hard way that non-compliance is much more expensive than managing compliance risk at the outset. Using a lawyer to draft an anti-bribery policy that address the US Foreign Corrupt Practices Act and engaging in compliance training is much cheaper than paying lawyers to investigate allegations of wrongdoing by the US Department of Justice. Foreign and Chinese companies are increasingly addressing compliance

risk on the front end to avoid the high cost of correcting regulatory non-compliance.

合规风险上升的最后一个原因是，这已经不是一个仅仅国外企业在中国运作时需要注意的问题了。日益增多的想要向海外发展的中国企业同样需要关注这个问题。当中国企业主要在国内运作时，他们的“关系网”在处理合规风险时将远远比一个律师团队高效得多。不过一旦他们进军海外，他们发现自己必须转变。举例来说，如果他们想在美国上市，他们就必须遵守美国证券交易委员会制定的一系列报告义务。如果他们发展到欧洲，他们又必须遵守犹如错综复杂的迷宫般得欧盟规则。中国式的方法在合规的国际竞技场中不一定能起作用。许多进军海外的中国企业在吃了一番苦头后，学到了不合规的代价远远大于在一开始就进行合规风险管理的开销。雇一名律师起草反贿赂规章来应对美国反海外腐败法（FCPA）并参加合规培训的花费，比雇佣律师调查美国司法部的不法行为指控要廉价得多。越来越多的海外、国内企业在一开始就处理好合规风险，以回避改正监管不合规的高开支。

As compliance risk grows, so does the demand for its mitigation. At King & Wood Mallesons (KWM), we have seen a steady increase in demand for our compliance services over the last several years. In response, last year KWM created a specialized compliance team. KWM recognized that the compliance team needed to be cross-departmental and tailored to meet the needs of foreign and Chinese clients alike. To that end, KWM hired David Tiang, an experienced in-house counsel who had dealt for many years at companies such as GE and Walmart with regulatory compliance in all areas. KWM needed someone who had managed as counsel in a multinational company, compliance issues relating to procurement and sales, environment, tax, real estate, FCPA, and all manner of regulatory issues that confront our

clients on a daily basis. A former in-house counsel would be best suited to utilize the resources within the firm, both non-contentious and contentious lawyers, to provide our clients with solid compliance programs. Over the years we developed ad hoc crisis management teams to help our clients to deal with major incidents. We now have an established team, ready to mobilize as needed to manage every aspect of an event from the initial government inquiries and media assault to the defense of litigation or criminal charges.

随着合规风险的增长，对应的应对方案的需求也不断上升。在金杜过去几年中，对我们合规服务的需求量呈稳步上升趋势。作为回应，金杜在去年专门成立了一支专业的合规团队。金杜意识到合规团队需要跨部门的合作，并贴切地迎合国内外客户的需求。为此，金杜聘用了程伟宾律师，一位曾在通用电气、沃尔玛任职多年，拥有各个领域合规业务丰富经验的公司内部法律顾问。金杜需要这样一名曾在跨国企业任职，对采购、销售、环境、税务、不动产、FCPA以及其他所有客户日常面临的合规问题有着丰富经验法律顾问。对充分利用包括诉讼、非讼律师在内的全部所内资源，来为客户提供可靠的合规程序，一名原公司内部法律顾问是最好的选择。过去几年中，我们需要临时组成危机公关队伍来帮助客户应对各类重大事件。现在，我们有一支整装待发的团队，随时准备应对从最初的政府调查、媒体攻势到为民、刑事诉讼抗辩的所有问题。

In particular, our compliance team focuses on risk management, anti-corruption advice, compliance with sector-specific regulation, and crisis management. In the course of this work, the team advises clients in setting up internal controls and policies designed to avoid compliance problems, counsels clients through anti-corruption investigations, and guides clients through the regulatory

maze of heavily-regulated sectors. Our compliance team also has extensive experience in crisis management, often triggered by a “dawn raid,” which requires the team to serve as a rapid-response contact partner who helps the client coordinate with government investigators, the media, and PR firms.

我们的合规团队尤其专注于风险管理、反贪腐建议、部门规章的合规以及危机公关。在此工作方针下，团队将为客户建立内部管理、指定合规问题章程提供建议，为客户调查反贪腐提供咨询，指引客户走出主管部门的层层政策迷宫。不仅如此，在需要一支快速反应队伍来帮助客户协调政府调查、媒体、公共关系，以应对突然袭来的危机公关方面，我们同样有着丰富的经验。

As a Chinese law firm that has gone outbound through merging with Australian and London law firms, we are uniquely positioned to understand the Chinese market and the compliance requirements. We have also come to appreciate through our network of partners how regulations promulgated in London or New York may enhance or at time conflict with the legal regime in China. We are rising to the challenge to help our clients be compliant in China and around the globe.

作为一家通过与澳大利亚及伦敦律所结盟从而走向全球的中国律所，我们可以从一个独特的视角理解中国市场以及其对合规的要求。同时，通过合伙人的关系网，我们领会了在伦敦或纽约颁布的法规与中国法制体系可能的升华与冲突。我们准备好了，面临来自中国乃至全球客户合规服务的挑战。

Meg Utterback is a partner in King & Wood Mallesons' Domestic Litigation Group, Shanghai Office.

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改革开放30多年来，中国高技术产业从无到有迅速发展，成为中国成长性最高的产业之一。今天，在中国很多城市都有规模可观的高新技术产业园区和软件产业园区，它们合力铸就了中国的“硅谷”。与此同时，全球创新中心会否东移的预测，正变得越来越多。据安侯建业联合会计师事务所2012年对650多位科技业主管的调查显示，一半以上的受测者看好中国“硅谷”的后发优势，对中国营造出的鼓励研发、立足科技的环境充满信心。但无论如何，中国的“硅谷”尚年轻，展望未来任重道远。

Since the reform and opening-up 30 years ago, high-tech industry in China has experienced a rapid development from scratch and become one of the industries with highest growth in China. Today, sizable high-tech industrial parks and software industrial parks are scattering in many cities. That's how "Silicon Valley of China" came into being. Meanwhile, eastward movement of global innovation center leads to extensive speculation. According to a survey on 650 supervisors in science & technology industry conducted by KPMG in 2012, more than 50% subjects are optimistic about China's Silicon Valley and have confidence in its environment that encourages R&D based on science and technology. However, Silicon Valley in China is burgeoning. There's a long way to go for a prosperous future.

China's Burgeoning “Silicon Valley”

中国“硅谷”尚年轻

杨超 Yang Chao (北京)



北京——中关村
Beijing——Zhongguancun

大连——大连软件园
Dalian——Dalian Software Park

苏州——苏州工业园区与苏通科技产业园
Suzhou——Suzhou Industrial Park and Su-Tong Science & Technology Park

上海——张江高新区
Shanghai——Zhangjiang High-tech Industrial Park

成都——天府软件园
Chengdu——Tianfu Software Park

杭州——杭州高新区（滨江）
Hangzhou——Hangzhou High-tech Industrial Park (Bingjiang)

广州——天河软件园
Guangzhou——Tianhe Software Park

深圳——深圳高新区
Shenzhen——Shenzhen High-tech Industrial Park

中关村是一个令人热血沸腾的地方。同时也是北京，甚至是整个中国最令人狂热的地区。

——美国《新闻周刊》

Zhongguancun ignites passion. All China, particularly Beijing, is crazy about it.

——*Newsweek*, USA

大前研一向我推荐了中国的大连，他说作为软件外包中心，大连之于日本的价值，犹如班加罗尔之于美国和其他讲英语的国家。

——《世界是平的》作者
托马斯·弗里德曼

Kenichi Ohmae recommended to me the city of Dalian in China. He said as the heart of China's software outsourcing industry, Dalian is important to Japan in much the same way as Bangalore to USA and other English-speaking countries.

——Thomas·Friedman, author
of *The World is Flat*

杭州是中国最有可能成为硅谷的城市。

——中国著名经济学家吴敬琏

Hangzhou is the city most likely to become China's "Silicon Valley".

——Wu Jinglian, China's most renowned economist

苏州工业园区不仅成为中新合作的亮点，也成为中国工业园区中的亮点。

——国务院前总理温家宝

Suzhou Industrial Park not only exemplifies China-Singapore cooperation, but also stands out among all industrial parks around China.

——Wen Jiabao, Former prime minister of the State Council, PRC

北京 Beijing

中关村 Zhongguancun



经过20多年的发展建设，中关村已经聚集了以联想、百度为代表的高新技术企业近2万家，形成了以下一代互联网、移动互联网和新一代移动通信、卫星应用、生物和健康、节能环保以及轨道交通等六大优势产业集群以及集成电路、新材料、高端装备与通用航空、新能源和新能源汽车等四大潜力产业集群为代表的高新技术产业集群和高端发展的现代服务业，构建了“一区多园”各具特色的发展格局，成为首都跨行政区的高端产业功能区。

After more than 20 years of developments, Zhongguancun has accumulated nearly 20,000 high-tech enterprises, represented by Lenovo and Baidu, and formed six superior industry clusters, like next generation internet/mobile internet, new generation mobile communication, satellite application, biology & health, energy saving and rail transport, and high-tech industrial clusters, represented by integrated circuit, new material, high-end equipment, general aviation, new energy, new energy vehicle, etc., and modern sophisticated service industry. The developing pattern features “one area with multiple parks”. Zhongguancun is the high-end multi-administrative industrial areas.

大连 Dalian

大连软件园 Dalian Software Park

大连软件园创建于1998年，由大连软件园股份有限公司建设运营，首创的“官助民办”园区开发模式开创了国内园区经营管理模式的先河，先后被国家有关部委认定为“国家火炬计划软件产业基地”、“国家软件产业基地”、“国家软件出口基地”。园区目前已发展成为国内最具规模的 ITO/BPO/KPO 产业基地和产学研一体的生态科技园区。截止 2012 年底，入园企业数量约 650 家，包括48家世界 500 强企业，是大型跨国公司在华设立区域服务支持中心和共享服务中心的首选目的地。

Dalian Software Park was created in 1998 and was operated by Dalian Software Park Co., Ltd. They established a precedent for domestic park operating model by creating “officially-aid and privately-run”, and won the recognitions from government. Dalian Software Park is the software industry base of National Torch Plan, National Software Industry Base and National Software Export Base, growing into the most significant domestic ITO/BPO/KPO Industrial Base and the Eco-Scientific Park combining production, study and research. By the end of 2012, 650 enterprises entered the park, including 48 of the world's top 500 enterprises. Dalian Software Park is a destination of choice for large multi-nationals to set up regional service support center and shared service center in China.



上海 Shanghai

张江高新区 Zhangjiang High-tech Industrial Park



张江高新区是上海贯彻落实创新型国家战略的核心基地，成立于1992年。经过20多年的发展，园区构筑了生物医药创新链和集成电路产业链的框架，建有国家上海生物医药科技产业基地、国家信息产业基地、国家集成电路产业基地、国家半导体照明产业基地、国家软件产业基地、国家软件出口基地、国家文化产业示范基地、国家网游动漫产业发展基地等多个国家级基地。目前，张江高新区正全力打造10大拥有自主创新能力的国家级高科技战略产业平台。

Created in 1992, Zhangjiang High-tech Industrial Park is the core base of implementing national innovation strategy in Shanghai. After more than 20 years of developments, the park has formed the framing of biomedical innovation chain and integrated circuit industry chain, like National Bio-medical technology Industry Base of Shanghai, National Information Industry Base, National Integrated Circuit Industry Base, National Semiconductor Lighting Industry Base, National Software Industry Base, National Software Export Base, National Cultural Industry Demonstration Base, National Online Games & Animation Industry Development Base, etc. At present, Zhangjiang High-tech Industrial Park is sparing no effort to build the top 10 state-level high-tech strategy industry platform with the ability of independent innovation.

苏州 Suzhou

苏州工业园区与苏通科技产业园 Suzhou Industrial Park and Su-Tong Science & Technology Park

苏州工业园区于1994年2月经国务院批准设立，同年5月实施启动。作为中新两国政府间重要的合作项目，苏州工业园区开发建设一直得到党中央、国务院的高度重视和亲切关怀。受到苏州工业园成功的鼓舞，中新两国于2009年5月再次启动第二个合作项目苏通科技产业园，力争通过10至15年的开发建设，成为长三角最具竞争力的新的经济增长极，并成为长三角经济圈的科技发展先导区与先进产业集聚区。

Suzhou Industrial Park was approved by the State Council in Feb., 1994 and was launched in May, 1994. The CPC Central Committee and the State Council attach great importance to the development of the park, as it's an essential cooperation project between China and Singapore. Inspired by the success of Suzhou Industrial Park, China and Singapore launched their second cooperation project Su-Tong Science & Technology Park in May, 2009, which strive to be the most competitive economic growth pole in Yangtze Delta and the technology development pilot area and the advanced industrial agglomeration area in Yangtze Delta Economic Circle in 10 to 15 years.



杭州 Hangzhou

杭州高新区（滨江） Hangzhou High-tech Industrial Park (Bingjiang)



杭州高新区（滨江）于1991年经国务院批准为国家级高新区，区内主导产业有通信设备研发制造、软件业、电子商务及信息产业、数字电视、集成电路、动漫游戏文创产业等等，目前拥有超过100家从事物联网关键技术和产业化应用开发的企业，正以物联网产业园这一产业平台为抓手，积极引进集聚物联网产业链上下游企业，形成与全区整体发展布局有机融合的产业链体系及完善的物联网产业空间布局。

Hangzhou High-tech Industrial Park (Bingjiang) was approved by the State Council in 1991 as the state-level High-tech Industrial Park. Its leading industries include Research & Manufacture of Communication Equipment, Software, E-commerce & Information, Digital TV, Integrated Circuit, Online Games & Animation, etc. At present, the Park boasts of over 100 enterprises engaging in the study of key technology of the internet of things and its application & industrialization. On this platform, they gather together enterprises as many as possible that are in upstream and downstream of the chain of the internet of things, forming a chain system that integrates well with the overall regional development layout and a well-developed spatial composition of the internet of things industry.

成都 Chengdu

成都是中国首批五个“中国软件名城”之一，也是中国首批“中国服务外包示范城市”之一，拥有11个软件类国家级产业基地称号，居全国大城市之冠，软件及信息技术服务业规模企业总数近1000家，全球软件20强企业已经有13家落户成都。目前，已形成以IC设计、行业应用、数字娱乐、信息安全和软件外包等为支撑的产业格局。

Chengdu was listed in the first batch of “Five Software City of China”, and also in the first batch of “Model City of Chinese Service Outsourcing”. Chengdu has 11 titles of state-level software industry base, which is at the top of the tree. There're nearly 1000 competitive enterprises engaging in software & IT service, with 13 of the world's top 20 software enterprises. At present, the industrial layout is supported by IC Design, Industry Application, Digital Entertainment, Information Security, Software Outsourcing, etc.

天府软件园 Tianfu Software Park



广州 Guangzhou

天河软件园

Tianhe Software Park



1999年在天河科技园的基础上设立了天河软件园，是华南地区软件企业最密集的国家软件产业基地，集国家高新技术产业开发区、国家软件产业基地、国家火炬计划软件产业基地、国家网游动漫产业基地、国家软件出口创新基地以及中国软件出口欧美工程试点基地和中国服务外包基地城市广州示范区于一身，是中国最重要的软件产业园区之一。

Tianhe Software Park was launched in 1999 based on Tianhe Science Park. Being the national software industry base with an intensive scattering of software enterprises in Southern China, Tianhe Software Park is regarded as one of the most important Software Parks in China, having titles like National High-tech Industrial Development Zone, National Software Industry Base, Software Industry Base of National Torch Plan, National Online Games & Animation Industry Development Base, National Software Export Innovation Base, Trial Base for National Software Export to Europe & America and Model Area of Guangzhou for National Service Outsourcing.

深圳 Shenzhen

深圳高新区

Shenzhen High-tech Industrial Park



深圳高新区成立于1996年9月，是国家科技部“建设世界一流科技园区”发展战略的6家试点园区之一，也是国家级高新技术产品出口基地、亚太经合组织开放园区、先进国家高新技术产业开发区、国家知识产权试点园区、中国青年科技创新行动示范基地、国家火炬计划软件产业基地、国家高新技术产业标准化示范区、国家海外高层次人才创新创业基地、科技与金融相结合全国试点园区以及国家文化和科技融合示范基地。

Shenzhen High-tech Industrial Park was built in September, 1996 and was listed as one of the six Pilot Parks of National Strategy of “Building World-class Science Park” by the Ministry of Science and Technology. It also won many titles like National High-tech Product Export Base, APEC Open Park, National Advanced High-tech Industry Development Zone, Pilot Park for National Intellectual Property, Demonstration Base for China Youth Science & Technology Innovation, Software Industry Base of National Torch Plan, Demonstration Area for National High-tech Industrial Standardization, National Overseas Talents Innovation & Startup Base, National Pilot Park for the Integration of Science & Technology, and Demonstration Base for National Culture and Science & Technology.

编者按

该文从中国投资者经常搞混“旧金山湾”和“硅谷”说起，谈到硅谷从一个区域性地理概念如何发展衍变成一个高新技术产业的泛指，以及硅谷发展现状和饱受争议的扩张问题。作者还在文末指出，“有时争论无果也并非坏事，这也正暗合硅谷的创新精神：永远不知道接下来会发现什么”。

This article started by the confusion over “Bay Area” and “Silicon Valley”. Then it turned to the process that how “Silicon Valley” changed from a specific location to a technology industry, and its status quo and controversial expansion. At the end, the author said that, “The discussion will continue. Not bad. Just like the innovative spirit it represents: you never know what is coming out next.”

Beyond “Silicon Valley” “硅谷”之外

Nadya Xie (Silicon Valley)

In late May, a Chinese investor wrote an article after his recent trip to Silicon Valley. Being a frequent visitor, he nonetheless mistook the “Bay Area” for “Silicon Valley.” The former actually refers to a populated region that surrounds the San Francisco and San Pablo estuaries in Northern California. The two concepts are somewhat related, but definitely not the same.

五月下旬，一位中国投资者从硅谷归来，写了篇文章。尽管该人到处旅游，但还是把“旧金山湾区”错当成了“硅谷”。“旧金山湾区”实则指的是旧金山周边的都会区以及加州北部的圣保罗湾区。这两个地理概念存在关联，但不能混淆为一。

He is not alone.

这位投资者犯的错误并非个例。

The question then is: what exactly is Silicon Valley? Considering that our firm does have a Silicon Valley office, this article will try to clear some clouds for you.

Nadya Xie is a lawyer
in King & Wood
Mallesons' Corporate
Group, Silicon Valley
Office.

谢江燕为硅谷办公室
公司部律师





问题随之而来：硅谷到底指哪？鉴于我们事务所在硅谷有所分所，本篇文章将为大家解疑释惑。

For most people, “Silicon Valley” sounds like a place. After all, it has the word “Valley” in the name. For others, it is a way of doing business instead. And for others still, it means the technology industry. But whatever meaning one attaches to “Silicon Valley,” the precise definition has shifted over time, as the local economy and technology have evolved.

多数人会觉得“硅谷”是个地名。没错，名字中的“谷”会让人联想到是个地方。对有些人来说，“硅谷”就是做生意的地方。而对另一些人来说，“硅谷”等价于技术产业。但不论人们怎样诠释“硅谷”，其本身含义都在与时俱进，随着当地经济和技术的发展而发展。

When “Valley” is Still a Valley

“硅谷”的“谷”实为山谷

At the beginning, Silicon Valley was indeed a more specific location. Geographically, it is nestled in the Santa Clara Valley, bordered by the Santa Cruz Mountains in the west, and the Diablo Range to the east. If you are not familiar with those places, just remember that, it was a valley. Moreover, it was in this valley that the semi-conductor industry originally set roots. The industry at the time consisted of only a handful of companies, and so the term “Silicon Valley” was initially a limited concept. But the use of such a limited geographic definition probably is outdated.

最初，硅谷确实就是一个具体地理方位。从地理上看，硅谷坐落在圣克拉拉谷，西边与圣塔克鲁兹山脉接壤，东边挨着戴勃洛山脉。如果你对等地名不熟悉，只需记住是个山谷即可。另外，这里是半导体产业的发源地，当时这里只有稀疏几个企业，所以“硅谷”的提法最早是个非常有限的概念，但如今再使用这个地理界定就不免过时了。

The Expansion of its Meaning

“硅谷”含义的延伸

The kinds of companies and industries once clustered in that specific place can now be found throughout the region, as the tech

industry has expanded its areas of influence. In fact, for many companies, Silicon Valley no longer represents a location, but rather an industry definition. The growth of high-tech business in the American economy has exceeded any other industry over the past decade. In short, the concept of what Silicon Valley represents has changed.

随着技术产业影响力的不断扩展，当初聚积在硅谷的公司和企业，现多已分散在该地区各处。事实上对多数公司来说，硅谷不再代表着一个地方，而是一个产业的代名词。在过去的10年里，高科技产业迅猛发展，已超过了美国经济中的其他任何产业。总而言之，硅谷代表的概念已经改变。

Today, it is clear that the traditional definition has been expanded over the years. Companies located in areas not traditionally within the geographical confines of the South Bay are claiming ties to the Valley. For those that do so, "Silicon Valley" has become more of a way of doing business and a "state of mind" more than it is a mere place on a map. Furthermore, some geographically closer cities no longer mere satellites of Silicon Valley, but instead the focal point of the present technology industry. For example, many of the Valley's trend-setting high-tech companies are forming headquarters in San Francisco instead of a typical Silicon Valley location, taking advantage of lower rents and tax breaks while continuing to reach into the South Bay for continued investment.

今天看来，曾经的界定业已随着时间而发生改变，这点显而易见。传统上并不属于南湾地理范围内的公司，如今都跟硅谷脱离不了干系。对于这些公司来说，硅谷更多是一种做生意的渠道或者是一种思维概念，完全超越了地图上一个具体的方位。另外，一些在地理位置上与硅谷毗邻的城市并非仅是卫星城，而是现今技术产业蒸蒸日上发展的中心。举例来说，很多走在科技前沿的硅谷企业都在旧金山设立总部，而没有选在真正意义上的硅谷设立，原因是前者租金相对低廉且提供税收优惠，同时继续他们在南湾投资的拓展步伐。

Probably because of such expansion, the Chinese investor and those alike got confused.

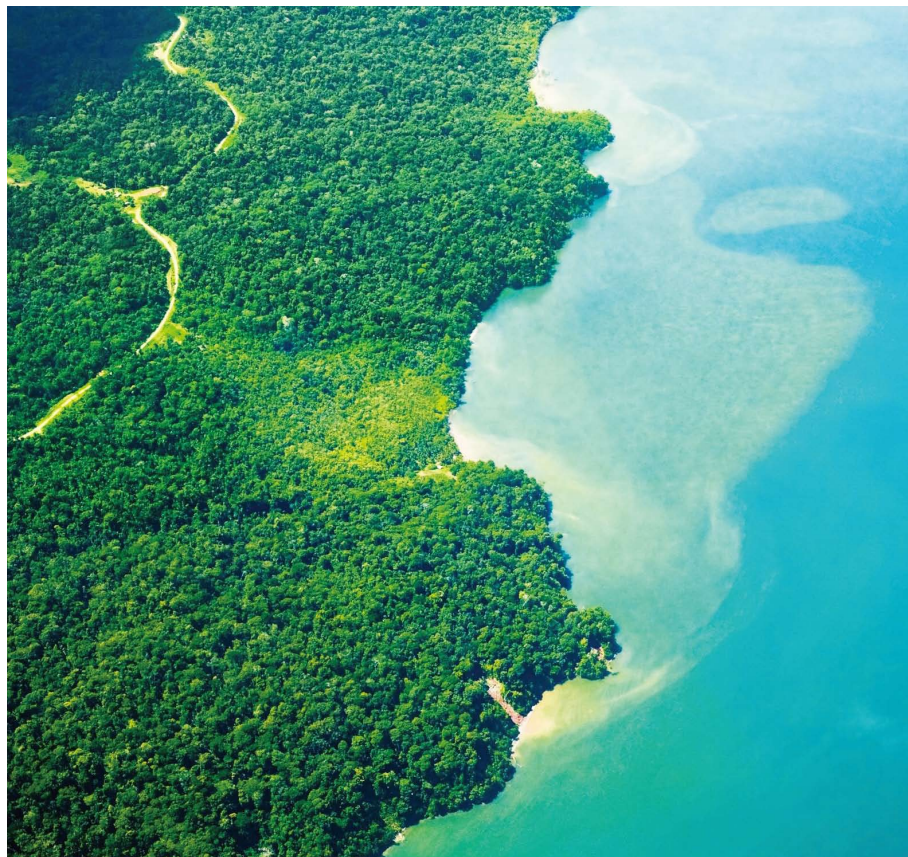
可能基于这样的外扩，中国投资者及相关人士常常搞得一头雾水。

Any Problem?

随时而来的问题？

The abovementioned expansion, however, did not come without controversy. The success of Silicon Valley has led to concerns over "valley creep," where areas with the most tenuous of ties claim connections to the Valley. Given concerns regarding whether or not Silicon Valley's brand name and reputation could be compromised if stretched beyond reasonable borders, it is important to determine just what those borders should be.

上述提及的外扩，其实不无争议。硅谷的成功模式也引起了“硅谷蠕变”的担忧，该区域与硅谷有着千丝万缕的联系。倘若硅谷外扩太快使得硅谷在品牌与名誉上的价值稀释，那么该有必要决定一下外扩的合理边界在哪。



One possibility is limiting Silicon Valley to the geographical boundaries, in effect creating a "campus" that places entrepreneurs and investors all in one place. By doing so, networking opportunities can multiply given the close proximity, and meetings can be expedited. But the Bay Area is not a prohibitively large area to begin with, and such an interpretation may be unnecessarily limiting.

一个解决办法或许是限制硅谷的地理边界，即建立一个“园区”圈住所有的企业家和投资者。这么做的好处是，彼此接近使得人脉搭建的几率呈几何级增长，且会面也变得容易和频繁。但旧金山湾区并不是一个限制很多、让人难望其项背的投资地，一开始就限定范围反倒没必要。

Another suggested alternative is to use revenue as a defining factor. Revenue and profits have soared in recent years, as consumers have flocked to buy new handheld gadgets, and corporations have purchased hardware and software to handle a growing wave of digital data, from emails and videos to online transactions and internet searches. Between San Francisco and San Jose alone, around 4,000 IT-related companies have created nearly \$200 billion in IT-related revenue. Such a definition would expand Silicon Valley much further in all directions. While using revenue as a factor would dilute the idea of Silicon Valley as being restricted to the South Bay, revenue is one of the strongest connections a company can have, and could justify such an expansion.

另一个建议是以收益作为衡量因素。近些年，消费者趋之如鹜购买各种新款便携式电子产品，企业也争相买进各种硬件软件来应付庞大的数据资料，从电子邮件、视频、在线交易到网络搜索不等，收益与利润节节攀升。仅旧金山和圣何塞两地而言，就有约4000家IT公司合计创造利润达2千亿美元。以收益来界定，无疑全方位扩展了硅谷的界限。用收益作衡量因素免不了弱化硅谷局限于旧金山湾的概念，但收益确实是企业与硅谷之间抹杀不掉的最强连结，也让硅谷外扩这事变得名正言顺。



What's Next?

前途未卜？

The discussion will continue and the answer will remain debated. After all, it is not about finding an accurate answer. And that is where the beauty lies. The meaning is evolving and it will always be so, just like the innovative spirit it represents: you never know what is coming out next.

争论不休，答案仍然悬而未定。会否找到准确答案其实没那么重要，这也正是其魅力所在。“硅谷”的含义在变化发展，且永远处在变化之中，恰与创新精神有着异曲同工之妙：你永远猜不到接下来会发生什么。

Oh, by the way, in case you are wondering, yes the firm's office is located in heart of Silicon Valley.

最后顺便提一下，以防你纳闷我说这些做什么用。没错，我们事务所硅谷分所正处在硅谷腹地。

编者按

加利福尼亚大学伯克利分校是美国最负盛名且是最顶尖的一所公立研究型大学，与斯坦福、麻省理工等一同被誉为“美国工程科技界的学术领袖”。来这里深造的学生，都希望毕业后能在硅谷就职，因为这里汇聚着世界顶级的IP学术资源与科研力量。作者作为一年级新生，接触到科技法研究的前沿，意识到在技术无孔不入的今天，知识产权的保护正变得愈加重要。

UC Berkeley in California is the top public university that is on par with Stanford and MIT, all three are known as “Academic Leaders in Engineering and Science & Technology of America”. People chose here in order to ultimately work at Silicon Valley, as here gathered world-class IP academic resources and advanced R&D. Just completed her first year in law school, the author has access to the groundbreaking issues in the domain of technology law and realized that in an increasingly technological world, issues ranging from patents to privacy will become increasingly significant.

Silicon Valley is Hot Ever 硅谷恒“热”

Siena Caruso (Silicon Valley)

When I was deciding which law school to choose, I wanted to attend the best law school in California that could ultimately help me work in China. Once my acceptance letters arrived, the choice to attend UC Berkeley was an easy one. It is the top public university in California and has a strong East Asian languages department, along with many ties to China and the rest of Asia.

当初选择该去哪所法学院时，我的考量标准就是选所加州最棒的，这样将来在中国觅得一职就高枕无忧了。录取通知书寄到后，加入美国加州伯克利分校则成为顺理成章的事。该校在加州是顶尖的公立大学，东亚语言系很强，与中国及亚洲其他国家都建立了很好的联系。

Upon arriving at Berkeley, however, I realized

that many of my fellow students had a very different reason for choosing Berkeley. They chose it in order to be close to Silicon Valley and San Francisco, and ultimately to work in one of these locations.

然而到了伯克利分校我才意识到，很多同学选择来这里就读的原因千差万别。他们希望能靠近硅谷和旧金山，最终在任意一地谋得一职。

UC Berkeley Law School is famous for its focus on IP – intellectual property law. The Law and Technology Program offers unparalleled opportunities for students interested in intellectual property and technology law. Many



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of my classmates have undergraduate degrees in science and engineering, and some are even doctors! In response to the growth of Silicon Valley and the increased interest of the students to learn more about intellectual property and technology law, UC Berkeley Law opened up the Berkeley Center for Law & Technology in 1995. Along with inviting many prominent practitioners from both firms and major companies to campus to speak with students about current issues in the technology legal market, the Center is home to the Berkeley Technology and Law Journal, one of the oldest technology law journals in the nation and currently the most cited non-flagship journal in the U.S. including citations from the U.S. Supreme Court!

伯克利分校法学院的知识产权法最强。其法律和技术项目为对知识产权与技术法感兴趣的学生提供了无与伦比的机会。我们班上很多同学本科都是科学和工程学背

景，个别同学甚至修到了博士学位。为了适应硅谷的发展以及满足学生对知识产权法与技术法高涨的热情，伯克利分校法学院早在1995年开设了法律与技术中心，还经常邀请律师事务所及大公司的杰出人士来学校讲座，告诉学生们该领域的最新发展动向。该中心还是《伯克利技术法杂志》编辑部所在地，该刊也是美国技术法类报刊中历史最为悠久的一个，是美国现今非旗舰刊物中被征引最多的杂志，其中包括征引美国最高法院的内容。

Seeing all this math and science initially scared me. One of the reasons I chose to go to law school was because I don't like math and science! However, once I arrived at UC Berkeley and saw the wealth of opportunity before me in the field of technology law and Berkeley's close proximity to Silicon Valley, I immediately knew that I had to learn about technology law.

但当初看到这些数学和自然学科时着实把我吓坏了。其实我选择法学院的一个原因就是我不喜欢数学和那些自然学科！但我到了伯克利分校，见识到在技术法领域学校提供的无尽发展机会以及学校与硅谷在地理上天然毗邻时，我当即意识到必须要学习技术法。

By the end of my first week of law school, I had joined three organizations: the women's group (which makes sense since I am a woman), the Asian student group (because I interested in China), and the Law and Technology journal. This choice surprised my family and myself, but I knew that it would be a shame for me not to maximize the amazing opportunities that UC Berkeley has to offer in the area of technology law.

在法学院第一周结束时，我已加入了三个社团组织：女性联盟（这一点不奇怪，因为我本身就是名女性），亚洲学生组织（因为我对中国兴趣颇浓），以及法律与技术报刊。选择加入这些组织着实令家人

吃惊不小，也令我自己觉得不可思议，但我知道如果不充分利用学校提供的技术法方面的资源和机会，那就太可惜了。

Now that my first year of law school is complete, in addition to my normal course work, I have attended many lunches given by prominent speakers in the field of technology law, I have edited articles written by prominent professors in the field of technology law, and as the Notes & Comments editor of the Berkeley Technology and Law Journal, I have read many articles written by students from around the country discussing groundbreaking issues in technology law.

现在我已修完法学院第一学年的课程，除主修课程外，我还参加了在技术法领域有深厚造诣专家举办的午餐会讲座，也编辑了很多该领域专家学者撰写的文章。作为《伯克利技术法杂志》评论版的编辑，我有幸读到来自全国各地学生的文章，探讨技术法领域里各种富于开拓性意义的议题。

Even though I wish to eventually work in Los Angeles and/or China, I know that everything I learn at UC Berkeley about IP and technology law will be invaluable to me in the future. The importance of technology law is expanding around the world. Whether or not Silicon Valley remains the hot spot of technology in the future, we are living in an increasingly technological world, and issues ranging from patents to privacy will become increasingly significant regardless of where we are.

尽管我希望将来能在洛杉矶或中国工作，但我在伯克利分校学到的知识产权及技术法方面的知识将是我一生最宝贵的财富。技术法的重要性在全世界范围内正日益凸显，不管硅谷将来会否仍是技术的热门地，不管我们身在何处，我们都将生活在一个技术无孔不入的世界里，专利、隐私等事项都将变得至关重要。

