Andrew Mertha provides a balanced, insightful, and detailed account of the institutional politics of intellectual property in China. Eschewing a narrow focus on technical legal doctrine, Mertha takes us on a masterful tour of the complex regulatory regime charged with making and implementing intellectual property regulations.

Mertha demonstrates with great clarity how organizational politics, institutional structure, administrative hierarchies, overlapping jurisdictions, competing agency interests, and tensions between the central government and local governments have affected intellectual property developments.

This book will put to rest two notions: first, that passing a few World Trade Organization–compliant intellectual property laws will have a dramatic impact on the enforcement of intellectual property rights in China or, by analogy, other developing countries, and second, that it would be a straightforward matter for the central authorities in Beijing, if only they were so inclined, to put an end to fake products and other intellectual property violations.

A central topic is the role of foreign pressure on intellectual property developments in China. One of the great strengths of the book is a much-needed discussion of the politics of intellectual property in the United States. After a careful examination of the impact of trade associations on the United States Trade Representative (USTR) and, in turn, the USTR’s role in policy making, Mertha concludes that “the United States pursues its domestic politics through its trade policy because that is exactly what the trade policymaking mechanism is designed to do” (p. 36). Industries and trade associations that make the most noise (the proverbial squeaky wheel), that submit specific and feasible recommendations based on a careful analysis of the data rather than just simply dumping reams of aggregate data on the thinly staffed USTR, and that demonstrate a continued commitment are more likely to be successful in having the USTR take up their cause.

Having demonstrated how and why foreign pressure builds, Mertha turns to its impact. He finds that foreign pressure, particularly from the United States, was relatively effective at influencing legislation, especially in the copyright area. U.S. pressure also had an impact on institutional reorganization, most notably in the creation of State Intellectual Property Office. However, top-down foreign pressure had little influence on enforcement. The reasons are straightforward. Lawmaking and the establishment of a national intellectual property office fall squarely within the power of the central authorities. Enforcement, on the other hand, is largely a local matter, carried out in the trenches.

To the extent that foreign influence did have an impact on enforcement, it was through foreign actors cooperating with local actors. Foreign companies and private investigators, for example, work closely with local officials from the Administration of Industry and Commerce or the Quality Technical Supervision Bureau by collecting information about fake products, funding government raids.
on violating factories, and then taking out ads in the press to praise the local authorities for their efforts in upholding intellectual property regulations.

In working with local authorities, a less confrontational approach is often required. The China Anti-Counterfeiting Coalition, initially formed by U.S. Embassy officials to bring attention to trademark counterfeiting, first assumed the more confrontational approach of the USTR and the International Intellectual Property Alliance. However, over time, the group adopted a more cooperative approach, changed its name to the Quality Brands Protection Committee, obtained the sponsorship of what is now the Ministry of Commerce, and drew in more Chinese companies to the point where its membership now consists of predominantly Chinese companies.

Mertha’s lively account, based on extensive interviews and fieldwork over many years, provides for interesting reading. He is surely right to emphasize the challenges facing regulators, the impact of the administrative regime, and the competing interests and incentives of different actors inside and outside government. This type of analysis explains much, including some of the differences in the enforcement of patents, copyrights, and trademarks. And just as surely, a focus on formal legal doctrines and a court-centric approach are much too narrow. Most disputes are resolved outside of the court, often through administrative channels.

On the other hand, it is now perhaps time for a more detailed study of the role of courts in enforcing intellectual property rights. Civil intellectual property cases are increasing dramatically, and, in response to U.S. pressure, China recently amended its laws to make criminal prosecutions easier. Moreover, materials are now more readily available. A number of volumes have collected and analyzed intellectual property cases, and many courts are publishing judgments online. The Shanghai High People’s Court Web site alone contains 1,300 intellectual property case judgments from various Shanghai courts.

Mertha suggests that while certain dimensions of the institutional analysis may be unique to China, the general dynamics and many of the outcomes are also present in other developing countries. One hopes that Mertha or others will pursue this line of research in subsequent works, as a broader comparative context would be useful in understanding and assessing intellectual property developments in China. More generally, the study for the most part adopts a means–end approach rather than questioning the fairness of the international intellectual property regime and whether the regime, on balance, serves the interests of China or other developing countries. While undoubtedly a controversial topic that is best left for another occasion, one cannot help but wonder to what extent concerns about the fairness of the intellectual property regime for developing countries contribute to the “implementation gap” in China and elsewhere.

This engaging book deserves a wide audience, and it is a must-read for anyone interested in intellectual property issues in China.

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