

On Their Best Behaviour: Foreign Plaintiffs in Chinese Administrative Litigation

Abstract for:

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The combination of China's involvement in the world economy, accession to the World Trade Organization and the growing presence of foreign companies in China was supposed to help bring it into line with international standards of governance, including rule of law and eventually human rights. In some sectors progress is clearly visible. Representatives of multinationals frequently bring suits against the Chinese state in the form of the patent or trademark bureau in Beijing's First Intermediate Court. Yet in any given year, outside of this single chamber in a single court in a single city in a country of over a billion people, only a small handful of foreign litigants will directly challenge the Chinese state in court.

This paper argues that this discrepancy is part of a compromise between the Chinese state and multinationals operating in China. The "groping across the river for stones" approach that has been a hallmark of China's reform era government means that instead of using a foreign presence to motivate reform and improve the administrative legal system, the state creates an effective but *ad hoc* solution to fix problems affecting foreigners. For their part, multinationals are given the incredible opportunity of access to the People's Republic of China, both as a market and as a production site. Additionally, they are given a venue for Intellectual Property disputes with the state, and the reasonable expectation of favorable treatment by local governments, especially outside the largest and most developed coastal cities. In return, the Chinese state receives foreign investments that include intellectual property because foreign firms are, at least minimally comfortable that their intellectual property will be protected and that there will be reasonable recourse if it is not. The Chinese state can therefore continue to enjoy this foreign investment without significant foreign pressure to make costly and independence granting reforms to its justice system. I conclude that while the reluctance of multinationals to engage the Chinese state in litigation is understandable, multinationals' reluctance to make use of administrative courts and preference for extra-legal special treatment severely limits their potential contribution to China's rule of law.

Biography:

John Wagner Givens is a Doctoral Candidate in Politics at the University of Oxford, a Clarendon Scholar and an associate Lecturer at the University of the West of England. His dissertation, based on nearly two years of fieldwork, examines lawyers who sue the Chinese state. He has an MA in Asian Studies from the University of California at Berkeley and an undergraduate degree in Culture and Politics from Georgetown University. In addition to his research on the role of the legal system within the Chinese state, he is interested in the relationship between tax, land appropriation and protest in China and has published on the subject of China's rise.