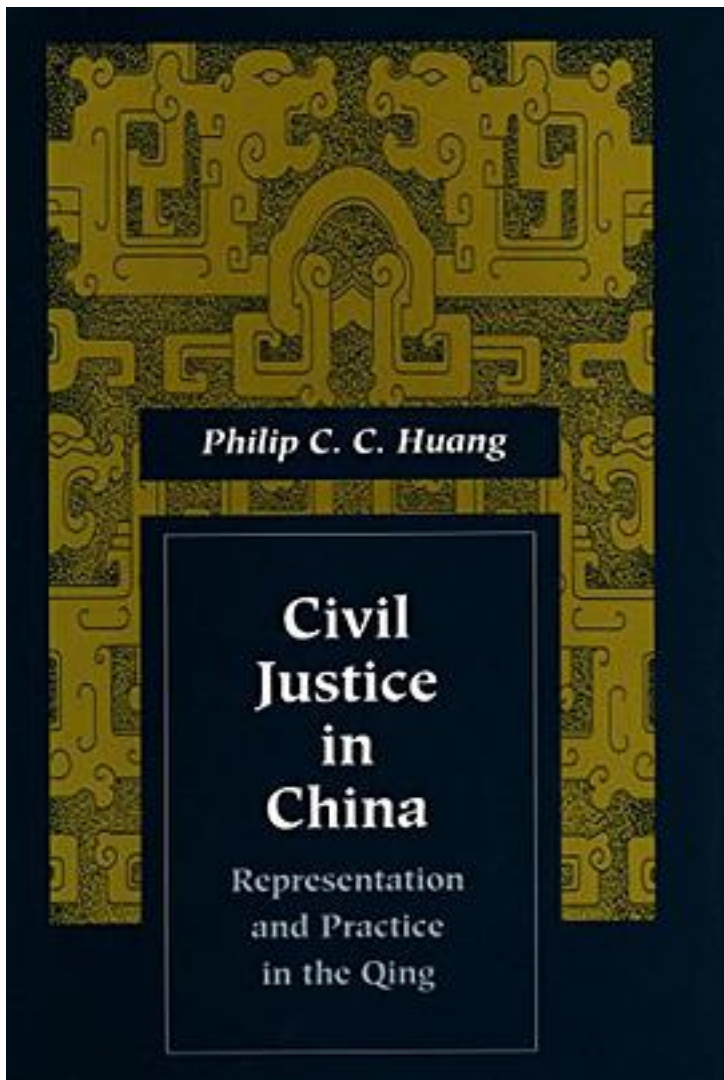


# Civil Justice in China



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To what extent do newly available case records bear out our conventional assumptions about the Qing legal system? Is it true, for example, that Qing courts rarely handled civil lawsuits—those concerned with disputes over land, debt, marriage, and inheritance—as official Qing representations led us to believe? Is it true that decent people did not use the courts? And is it true that magistrates generally relied more on moral predilections than on codified law in dealing with cases? Based in large part on records of 628 civil dispute cases from three counties from the 1760’ s to the 1900’ s, this book reexamines those widely accepted Qing representations in the light of actual practice.

The Qing state would have had us believe that civil disputes were so “minor” or “trivial” that they were left largely to local residents themselves to resolve. However, case records show that such disputes actually made up a major part of the caseloads of local courts. The Qing state held that lawsuits were the result of actions of immoral men, but ethnographic information and case records reveal that when community/kin mediation failed, many common peasants resorted to the courts to assert and protect their legitimate claims. The Qing state would have had us believe that local magistrates, when they did deal with civil disputes, did so as mediators rather than judges. Actual records reveal that magistrates almost never engaged in mediation but generally adjudicated according to stipulations in the Qing code.

作者介绍:

Philip C. C. Huang is Professor of History and Director of the Center for Chinese Studies at the University of California, Los Angeles.

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标签

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一般。作者不懂法理学。

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书评

從標題到開篇不久，作者反復強調其中心論點，即清代民法的表達與實踐之間存在矛盾，本書即解讀這些矛盾在中國傳統社會與文化中的意義（10、14）。這個矛盾可以概括為“言行不一”，言是法律文本表現的國家意識形態，行是司法實踐。如果按照這一線索，作者探討的應該是法律的執...

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法律的表达，是指国家制定法通过其所运用的官方话语体系表达出权威性的价值准则。法律的表达构建出国家政权眼中理想社会秩序的图画。法律的实践，是指国家制定法在现实中的运作和实施，以及国家制定法之外民间法的产生和运行。当国家与社会之间，

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