

Philip C C Huang
Chinese Civil Justice, Past and Present
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xviii + 297

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After a distinguished academic career in the United States of America, Professor Huang, now in his 70s, is writing, teaching, and supervising research at the Renmin University in Beijing. In this book he brings together his research experience, and shares some observations not only on the continuities and novelties in China's civil justice system, but also comparisons with law in "the West".

For those who have already read Professor Huang's published works, there is considerable repetition: this work is a kind of collage of a lifetime's research. A positive aspect of this research is Professor Huang's deep research into records of actual cases, even from Qing times, as opposed to the mere restatement of clichés. He also draws on studies by others. But the number and range of studies can become confusing, and it is not always clear to which period he is referring.

Professor Huang obviously intends his lasting contribution to be the "history-of-practice" approach to studying law. This is the best feature of his work. He wants to look at what has actually happened in the administration of China's civil law, as opposed to what theoreticians might say. A reader of his "history-of-practice" is led to a strong sense of the continuities of Chinese practice. This is especially apparent in his excellent overall treatment of mediation, including some very useful comments on the characteristics of respected mediators. (chapter 2 and 3)

Professor Huang's span is from the late Qing to the turn of the millennium. Only a few references go beyond 2000. Unfortunately, his "history-of-practice" skips a significant portion of his period. We hear next to nothing about the collapse of civil law – and indeed most of the legal system – during the twenty-two bad years from 1957 to 1979. Surely this period cannot be dismissed as aberrant "leftism" and swept under the carpet. Sooner or later, the law, as practiced during this period of history, has to be discussed.

A key part of the legal system, for Professor Huang, is the administration of divorce. In the Maoist period, he argues that it has shaped the contemporary Chinese civil justice system as a whole. (202) Because of revolutionary changes to marriage and to property, divorce law was then the main topic of the civil law. He devotes two very helpful chapters and a number of other sections to the development of divorce law and practice.

Professor Huang's work on mediation and its importance in Chinese civil law is somewhat dated, and does not confront a recent development. This is the pressure on judges to achieve mediation, rather than adjudicate according to law, in order to manage social issues. Managing social issues is a catchcry in recent years, and the emphasis is on management according to the stability of the state rather than the solution of individual problems according to law. According to Carl Minzer "such efforts are loosely clothed in the language of mediation or alternative dispute resolution, but this does not accurately reflect their true nature"¹. The purpose is not legal minimalism, but to protect the central officials from rising protests. One of the by-products of this protection is the dis-empowerment of the courts and the emerging legal system.

I join with reviewer Cong Xiaoping² in seeking more detail of Professor Huang's argument that there is a consistent theme in Chinese civil law of "practical moralism" (246-250). This could have been an exciting development of Huang's experience, but it is left to a few tantalizing comments. Professor Huang points to such moralism in the Confucian tradition, but does not delve into the contemporary proclamation of socialist spiritual civilization and its morality.

Professor Huang has the standing to comment on some of the well-known names in legal studies of China, and his targets include Derk Bodde and Clarence Morris (7), Shūzō Shiga (148), and a rather intrusive bibliographic note on Liang Linxia (186-189).

Less satisfactory for the reader are some of Professor Huang's blanket comparisons with the 'West'. Although he rightly asks for a sophisticated understanding of the complexities of Chinese law, his approach to "Western" law is sometimes a caricature. Perhaps his long period of residence in the USA leads him to conflate "Western" law with law in the USA. Fortunately, there are exceptions, and he does recognise the German roots of both Guomindang and modern Socialist civil law.

Perhaps his enthusiasm for mediation in China inclines him to dismiss the fact that the vast majority of civil cases in common law jurisdictions do not go to trial. Rather, they are settled (244-245). Professor Huang does not mention that parties may begin a process of litigation in order to retain their rights in the face of time limits, while always intending to settle if possible. Negotiating for settlement empowers the parties much more than mediation. China's lawyers are now negotiators for settlements, in ways not dissimilar to lawyers in common law jurisdictions such as Hong Kong.

¹ Carl Minzner: "China's Turn Against Law" http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1767455

² Cong Xiaoping: Book Review: China's Civil Justice Past and Present. *Twentieth-Century China* <http://www.thechinabeat.org/?p=3879>

Professor Huang should not be blamed for an unfortunate decision by the publisher to use *pinyin* in the text rather than Chinese characters. There is a useful glossary of Chinese characters at the back of the book. The publisher has used Chinese characters in the endnotes, but only for some names. This is frustrating for the reader.

Notes for translator

Philip C C Huang 黄宗智

Carl Minzner 明克胜

I do not have Chinese translations for

Cong Xiaoping, http://www.uh.edu/class/history/faculty-and-staff/cong_x/index.php

Liang Linxia <http://www.law.stu.edu.cn/ytNewsPostSQL/Attachments/2012-5-17-9-30-49-723-UC%20Davis%20Linxia%20Liang%20Bio%2020110413.pdf>