

The position of mediation in contemporary Chinese civil justice

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Propositions relating to the dissertation

“The Position of Mediation in Contemporary Chinese Civil Justice: A Proceduralist Perspective”

Peter Chi Hin Chan

1. A proceduralist study of a civil justice system is incomplete if the underlying judicial culture is not thoroughly examined and explained.
2. The Chinese judicial culture emphasizes substantive justice in the sense that the court plays a ‘social’ role in maintaining stability and harmony in the community.
3. The study of civil procedure must take into account the divergences between black-letter procedural laws and the realities of practice.
4. The gap between black-letter procedural laws and the realities of practice can be better understood by qualitative empirical analysis on judicial behaviour, actual court practices, expectations of litigants and the views of litigation practitioners.
5. The study of Chinese civil justice is incomplete without qualitative empirical analysis given the divergences of judicial practice in a country as vast as China.
6. Courts are institutionally weak within the Chinese political structure under which executive power is predominant.
7. Chinese mediation is highly directive and interventionist as compared with the mediation processes generally practiced in Europe.
8. The original function and nature of mediation were distorted by the policy of ‘prioritizing mediation’ during the period between 2008 and 2013.
9. Judges in China generally view court mediation as a convenient way to reduce caseload and demonstrate efficiency in dispute resolution.
10. The various reform proposals set out in the dissertation can be valorised by way of framing them in the form of judicial interpretations of the Supreme People’s Court.
11. A good researcher in Chinese procedure, like an investigative journalist, must press on boldly in search of the truth and never be content with an official answer.