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## 論清朝地方衙門審案機制的運作—— 以《淡新檔案》為中心

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過去學術界關於傳統中國法的研究，較常見的作法是以經過編纂的律例和會典等素材進行歸納整理，認為這些官府規定是普遍地被遵守。但是這項以中央層級材料歸納出的典章制度，本質上乃帝國官僚體系內用以控制地方官的手段，故能否持之以解釋地方廳縣衙門審案程序，不無疑問。本文以《淡新檔案》為基礎史料，透過對地方官員在判斷案件輕重、採擇程序以及作成裁斷等實際操作過程的分析，重新思考律例和會典上規定是否足以認識地方廳縣衙門的審案程序。結果顯示，地方衙門所進行的審案，乃是廳縣正堂在律例揭示的價值或基本精神底下，運用有限的官府資源，為當事人伸冤，並維持地方秩序。在此審案機制下，並非律例和會典等官府規定決定了審案的流程，而是正堂依其判斷而決定是否引用這些官府規定。

**關鍵詞：**傳統中國法 清朝 地方縣官 審案 淡新檔案

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## The Administration of Trial in Local Governments of the Qing Dynasty: An Examination of the *Tan-hsin* Archives

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It was a commonplace in the past for research on traditional Chinese law to rely on those *lü-li* and *hui-dian* which had been compiled by the central government of the Qing dynasty, as these official regulations were believed to be prevalently respected and practiced. However, these were mainly layouts designed by the central government to control the local bureaucrats; therefore, it is debatable whether they are able to accurately depict the actual proceedings in the trials that are carried out in local governments. This article explores the *Tan-hsin* Archives in depth and analyzes the different stages in the actual administration of trials, namely evaluating the degree of seriousness, selecting proper procedures and making final verdicts. The authors want to reconsider whether those provisions written in *lü-li* and *hui-dian* are adequate in providing us with a thorough understanding of the trials undertaken by local governments. It was found that when dealing with complaints brought by ordinary people, magistrates in the local governments in north Taiwan redress grievances of parties involved and maintain the social order by making verdicts which merely upheld the basic value and spirit prescribed in *lü-li* and *hui-dian* but perhaps not precisely in line with the provisions in these legal documents. Under this mechanism, official regulations such as *lü-li* and *hui-dian* were not the sole determinants in the proceedings; in fact, magistrates had their discretion in deciding whether these official regulations relating to the proceedings were to be abided by or not.

**Keywords:** traditional Chinese law, Qing dynasty, local magistrate, trial, *Tan-hsin* Archives