

A Legal Review and Reality Mapping of the Evolution of the Joint Court System in the Shanghai Concession-Comparative Reference of the Djibouti Base

Hengxu Liu

School of Law, Xi'an Jiaotong University, No.28, Xianning West Road, Xi'an, Shaanxi, China

Abstract: This article focuses on the historical evolution of the Shanghai Concession Joint Court System from the late Qing Dynasty to the Republic of China, explores its institutional characteristics and legal logic in the game of Chinese and foreign legal rights, and analyzes the similarities and differences and evolutionary trajectories of the two under the core proposition of "sovereignty transfer-judicial control" by comparing the judicial arrangements of China's overseas support base in Djibouti. The article first clarifies the legal distinction between extraterritoriality and consular jurisdiction, and reveals that the joint court is not only an important tool for the great powers to control the judiciary, but also reflects China's institutional attempt to maintain legal rights in a limited manner. Then, it systematically sorts out the historical path of institutional reform from its establishment in the late Qing Dynasty to the Beiyang and Nanjing periods, emphasizing the government's efforts to gradually regain judicial sovereignty. In analyzing the practice of the Municipal Council embedded in the judicial field through administrative mechanisms, it points out the gap between the name and reality of judicial sovereignty under its actual control. Finally, through the case of the Djibouti base, the sovereignty consultation and judicial arrangements in modern military bases are compared to demonstrate the warning and reference value of the modern joint court system for contemporary legal design. This article uses a historical comparative approach to outline the evolution of China's legal consciousness from passive response to active construction, highlighting the logic of sovereignty and the evolution of the legal order behind the institutional transformation.

Keywords: Joint Court; Extraterritoriality;

judicial Sovereignty; Municipal Council; Djibouti Base

1. Introduction: The Evolution of China's Judicial Sovereignty from the Perspective of the Joint Court

1.1 The Legal Distinction between Extraterritoriality and Consular Jurisdiction

"Extraterritoriality" and "consular jurisdiction" are important concepts in international law. Although they coexist in practice, they are clearly distinguished at the legal level. Extraterritoriality refers to the legal immunity and power of a country to apply its own laws to its nationals or institutions in the territory of another country. Its basis is the mutual recognition and agreement arrangements between sovereign states, which is often reflected in the immunity of diplomatic personnel, specific institutions or the military. It is an institutional arrangement based on the principles of equality and reciprocity[1]. Consular jurisdiction, on the other hand, is derived from the unilateral grant of rights under unequal treaties, which allows foreign countries to try foreign-related cases through their consuls in the host country, especially criminal or civil cases involving their nationals. This right is not reciprocal and often becomes a tool for the great powers to exercise legal control over sovereign states[2].

The legal community usually regards extraterritoriality as a voluntary act of state sovereignty transfer, and consular jurisdiction as an institutional deprivation of sovereignty under oppression. As Slys pointed out, consular jurisdiction is essentially a special form of extraterritoriality, and its greatest feature is "legal immunity for foreign nationals, and the trial is led by their own consuls in the territory of the host country." This institutional arrangement is widely present in modern China and the

Ottoman Empire, and is a manifestation of the transfer of judicial power under the colonial system[3]. Załucki further pointed out that extraterritoriality should be based on "personal jurisdiction" and "reciprocity" within the framework of international law. If consular jurisdiction is implemented unilaterally, it will often lead to jurisdictional conflicts, inconsistent application of law and judicial injustice[4].

In summary, extraterritoriality emphasizes the equal transfer of sovereignty between states, reflecting the respect of modern international law for sovereign equality; while consular jurisdiction is a weakening of the legal rights of sovereign states under an unequal system, and its legitimacy is incomplete. It has long been criticized and restricted in international law practice.

1.2 The Dual Attributes of the Joint Trial Court: a Colonial Tool and a Legal Rights Game Field

The joint trial court system occupies a special position in China's modern judicial history. On the surface, it is a cooperative mechanism under consular jurisdiction, but in fact it implies complex legal tensions. The system was first established in the Shanghai Concession area, aiming to deal with civil and commercial disputes between China and foreign countries and foreign-related criminal cases, and has a joint trial system for Chinese and foreign officials. In essence, it is both a tool for colonial powers to maintain the order and interests of the concessions, and a game field for the late Qing Dynasty and the Republic of China to maintain limited judicial sovereignty.

In his study of the British extraterritoriality system in China, E. Whewell pointed out that the joint trial court was actually an important part of the judicial control implemented by the British and American powers. Its original intention was to circumvent the application of Chinese law, ensure that British expatriates were exempt from the judgment of the Chinese judicial system, and even extend the application of British and American domestic laws in Chinese concessions through the joint trial system[5]. In the joint trial system, foreign jurors actually had the power to influence or even veto the trial. This "cooperation" arrangement actually reflected the subordinate structure in legal theory.

However, as emphasized by Chinese scholars and international legal historians, the joint trial

court also became a test field for China to gradually reconstruct its judicial sovereignty. For example, during the Beiyang government and the Nanjing Nationalist government, by limiting the power of consular intervention, establishing special district courts and introducing the legal system of the Republic of China, efforts were made to "functionally recycle" the joint trial system through gradual means[6]. This strategy can be regarded as an institutional innovation of the state under the condition of limited sovereignty, reflecting the reality of the coexistence of the dual attributes of "colonial tool" and "legal autonomy".

Therefore, although the joint trial court system originated from unequal treaties and external pressure politics, its development process reflects the wisdom of sovereign states in coping with institutional dilemmas, which not only reveals the implicit power structure of judicial colonization, but also becomes an important footnote to the gradual awakening of China's legal autonomy consciousness.

2. Historical Evolution and Institutional Analysis of the Shanghai Joint Trial Court

2.1 Background of Establishment and Initial Formation of the System in the Late Qing Dynasty (1843-1911)

After the signing of the Treaty of Nanjing in 1843, the Qing government was forced to open five ports for trade and grant the powers extraterritoriality. The joint trial court system was conceived and formed in this context. The earliest joint trial mechanism was established in the Shanghai Concession, aiming to deal with disputes involving Chinese and foreign cases. Among them, the powers led by Britain obtained the right to establish consular tribunals in the treaty. The laws applied were not Chinese laws, but the laws of their home countries, reflecting a serious imbalance in judicial jurisdiction. This institutional design essentially reflects the weakening of the sovereignty of the Qing government in the judicial field, and also marks the collision between the introduction of Western legal concepts and the Chinese local judicial model [7]. Although the joint trial system was initially established for the great powers to protect the rights of overseas Chinese, the Qing government also tried to maintain a minimum level of sovereignty by sending officials to participate in the trial, forming an initial judicial

cooperation model of "formal participation and substantive constraints"[8].

2.2 Striving for and Reform Attempts during the Beiyang Period (1912-1927)

After the Revolution of 1911, the Beiyang government actively tried to regain judicial sovereignty on the basis of continuing the legal system reform in the late Qing Dynasty. The government established a modern court system and promoted the compilation of German and Japanese-style codes in an attempt to build a unified legal framework, thereby weakening the actual influence of foreign countries in exercising consular jurisdiction in China. In particular, the introduction of the "Provisional Court Organization Law" in 1915 marked China's attempt to replace the mixed trial model through institutional construction[9]. However, due to the Beiyang government's political turmoil, limited financial resources, and the strong vested interests of the great powers in the concessions, the reform measures had little effect. Foreigners could still enjoy legal immunity based on old treaties, which led to China's legal rights claims being repeatedly constrained, and the joint court was still in an awkward situation of "Chinese participation and Western dominance" [10].

2.3 Institutional Reconstruction and Legal Rights Recovery during the Nanjing Government Period (1927-1937)

After the establishment of the Nanjing Government, the abolition of extraterritoriality was listed as the core goal of the country's rule of law construction, and a series of systematic institutional reconstruction measures were taken to restore judicial sovereignty. In 1929, the "Organization Law of the Courts of the Republic of China" was officially promulgated, establishing a central and local trial system and strengthening the control of judicial activities in the concessions. At the same time, the government negotiated with the powers to abolish consular jurisdiction and achieved initial results in the early 1930s. Starting from the reform of the "joint court" system, the localization of judicial functions was gradually realized [11]. Chu pointed out that China's legal reform during this period was not only based on sovereignty considerations, but also reflected the combination of national identity and modernization concepts. The rule of law reform

became an important part of the construction of the nation-state [12].

3. The "Implicit Control" Mechanism of the Municipal Council and the Judicial Power of the Concession

3.1 The Institutional Embedding of the Municipal Council in the Judicial Structure

Although the Municipal Council (SMC) of the Shanghai International Settlement was nominally a municipal administration agency, it was actually deeply embedded in the operation of judicial power. From tax collection and police organization to public order maintenance and dispute mediation, the Municipal Council controlled a large number of substantive judicial functions in the name of administration. In terms of institutional design, the Land Ordinance became an important legal basis for the Municipal Council to expand its power, and it built a multi-level judicial mechanism including police stations, prisons and local courts[13]. Especially after the establishment of the Shanghai Mixed Court, the Municipal Council participated in the judgment by appointing "foreign assistant judges" and thus influenced the direction of the case. This institutional embedding blurred the boundaries between the judiciary and the administration, making the Municipal Council actually have legislative, executive and judicial functions, forming a "complex governance model" under the colonial legal system[14].

3.2 Intervention Paths in Typical Case Analysis

In many foreign-related cases, the Municipal Council has actually intervened in the outcome of the case with the help of a hybrid court, police system and consular coordination mechanism. For example, in the dispute over the safety responsibility of power facilities in the 1930s, the Municipal Council intervened in the trial process in the name of "urban management" and influenced the court's sentencing scale through administrative orders[15]. In this process, the judicial institutions often showed a high degree of cooperation with the Municipal Council's decisions, which to some extent became an extension of its administrative power. At the same time, the Municipal Council also frequently intervened in civil cases such as labor disputes and real estate disputes on the grounds

of "public safety", exerting control through the police and court systems it dominated. These paths show that when handling cases with potential political sensitivity, the Municipal Council has formed a set of "administrative leadership and judicial cooperation" intervention mechanisms[16].

3.3 From "Auxiliary Agency" to "Actual Control": the Gap between Legal Theory and Reality

Although the Municipal Council is theoretically only a "municipal auxiliary agency" authorized by the consuls of the concession countries, in fact, the powers it exercises have exceeded the legal authorization boundaries. According to the principles of international law, judicial power should be controlled or delegated by a sovereign state, and the Municipal Council had no independent judicial status. However, in the legal vacuum of the Shanghai Concession, it gradually evolved into a de facto judicial manipulator through its actual control over the mixed courts, police and administrative legislation[17]. The academic community generally pointed out that there is an obvious tension between this "power transfer" and the sovereignty principle of international law, which also reflects that under the imperialist order, institutional practice often goes against its original intention. The Municipal Council's judicial control has formed a huge gap between legal theory and reality, which is a concentrated manifestation of the paradox of the colonial system[18].

4. Comparative Perspective of Overseas Bases: Contemporary Expression of the Djibouti Model

4.1 Background and International Legal Basis of the Establishment of the Djibouti Support Base

China's establishment of a support base in Djibouti is an important node in China's overseas security and global strategic expansion in the 21st century. As the first military support facility established by the People's Republic of China overseas, the background of its establishment is rooted in China's growing need to protect its international interests, including non-traditional security tasks such as escort, peacekeeping, and evacuation of overseas Chinese. Unlike the traditional military

occupation during the colonial period, the establishment of the Djibouti base is based on equal consultation and respect for sovereignty. It is legally established under the framework of bilateral treaties based on the principle of national sovereignty and territorial integrity in Article 2 of the UN Charter in international law. The base clarifies the garrison authority, responsibility boundaries and scope of legal application through the China-Djibouti bilateral agreement. It does not constitute a negation or replacement of the sovereignty of the host country, but reflects a "sovereignty transfer" model based on consultation. This arrangement is in line with the "non-colonial" characteristics of the common practice of contemporary international military bases, that is, while safeguarding its own security interests, it respects the sovereignty of the host country and the basic framework of the international legal order.

4.2 Legal Logic in the Jurisdiction Transfer Model

In the operation mechanism of the Djibouti base, the allocation of jurisdiction has core legal significance. According to the garrison agreement, Djibouti has sovereignty over the base site and enjoys territorial jurisdiction in principle, while China obtains "personal jurisdiction" over its soldiers and related personnel within a specific scope through consultation. This "limited transfer of jurisdiction" model is different from the "territorial exclusion" under complete extraterritoriality, and is also different from the total takeover of the judicial power of the host country during the traditional colonial period. This arrangement reflects the negotiation between sovereign states based on mutual trust and the allocation of judicial power guided by functional needs. Its core logic is to balance the host country's maintenance of territorial integrity and the actual needs of the garrison country for military order and personnel protection. This institutional design belongs to "contractual extraterritorial jurisdiction" in international law, emphasizing the priority of agreements and moderate respect for the legal system of the host country. This kind of legal arrangement has been widely adopted in international military cooperation practices such as peacekeeping and garrisoning, and constitutes an important pillar of the modern military base legal system.

4.3 The Enlightenment of the Experience of the Joint Trial Court to the Legal Construction of the Djibouti Base

As a product of the modern Sino-foreign judicial co-governance, the Shanghai Joint Trial Court, which embodies the "limited sovereignty transfer", "Sino-foreign cooperative adjudication" and "institutional embedded jurisdiction" models at the institutional level, provides an important reference for understanding the contemporary judicial arrangements such as the Djibouti base. First, although the "personal + territorial" complex jurisdiction logic of the joint trial court and the "personal priority" arrangement of the Djibouti base are different in form, they are essentially the result of the reconfiguration of governance resources between sovereign states. Secondly, the problem of "actual control beyond legal authorization" in the power practice of foreign parties reflected in the joint trial court provides a warning for the legal design of contemporary garrisons, suggesting that it is necessary to clarify the boundaries of authority and strengthen the supervision mechanism to avoid legal idleness and excessive practice. Thirdly, the Chinese participation and institutionalized consultation mechanism formed in the joint trial system shows that maintaining the right to speak of the host country in bilateral jurisdiction arrangements is the key to ensuring the stability of the legal order and respect for sovereignty. If the legal framework of the Djibouti base can absorb the above experience, it can effectively prevent institutional alienation and enhance international recognition and legal legitimacy.

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