



The Shanghai Club

Governance, Law and Land: Institutional Development and Economic Growth of Shanghai in the Treaty Port Era, 1854-1937

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Abstract:

Despite being situated in the midst of political disintegration and social disorder, Shanghai in the first three decades of the 20th century achieved a remarkable record of commercial prosperity, rapid industrialization and accelerated financialization. The transplantation of western-style institutions in the treaty port has been repeatedly highlighted by historical literature to explain the golden age of Chinese capitalism that took place in the 1930s. This paper aims to establish the crucial links between institutional development and economic growth by focusing on three major spheres – governance, land and law – based on qualitative and quantitative sources compiled by both Chinese and western contemporaries. The provision of public goods and services by the Shanghai Municipal Council, the grafting of adjudicative legal standards onto disciplinary justice at the Mixed Court and the system of land tenure created by the Land Regulations form the core of the analysis. The overall findings point to the indispensable significance of western-style institutions within the International Settlement in streamlining administrative processes, defining property rights and encouraging economic transactions. Hence, this paper supports the narrative that the introduction of western practices in a Chinese setting has decisively contributed to the economic development of Shanghai during the treaty port era.

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1 INTRODUCTION

Emerging as China's major commercial, industrial and financial hub by the early 20th century, Shanghai was the epitome of western institutional transplantation. Being profoundly similar in nature to other colonized cities of Asia, it was also a city of two civilizations. Despite the arrival of modern elements, vestiges of traditional China remained. The walled Chinese city with its ancient temples and gardens stood adjacent to the European-style mercantile architecture on the Bund. The waxing and waning of the indigenous city and the foreign enclave were critical to the political, economic, legal and cultural transformation Shanghai underwent during this era.

The remarkable ability of Shanghai, especially its International Settlement, to achieve a record of rapid industrialization and financialization during a phrase of political instability and social disorder has been a popular topic of investigation by economic historians in the past. This paper seeks to empirically and analytically identify how the city's institutional developments have contributed to its spectacular economic growth. The time period under investigation spans from the creation of the Shanghai Municipal Council in 1854 to the end of the "golden age" in Shanghai by 1937. Due to the word limit and the time constraints, it would be impossible to cover all institutional transformations that occurred and hence this paper offers a selective analysis.

This paper addresses three decisive spheres of institutional influence – foreign administration, rule of law, and property rights – by examining and analyzing the economic impact of the Shanghai Municipal Council, the International Mixed Court and the Land Regulations within the International Settlement. The formation of these institutions imported well-defined and disciplinary legal standards from the West to Shanghai, offered those residing in this administrative unit a stronger degree of private property rights protection and facilitated contractual enforcement and economic transactions, paving the way for the golden age of Shanghainese capitalism.

This paper applies theoretical frameworks developed by past scholarship to an original dataset of qualitative and quantitative sources. The "western challenge and Chinese response" approach introduced by Fairbank and Teng, its modified version advanced by Cohen and new institutional economics (NIE) pioneered by North and Weingast constitute as guiding concepts. Compiled by Chinese and western contemporaries, the sources offer valuable insights into the functioning of numerous institutional arrangements and present detailed statistics of the city for scholarly reference. This paper aims to (1) establish a pattern of introduced institutions from the West, (2) follow institutional developments over time, and (3) evaluate its impact on the local economy and society. It begins with section 2 illustrating the

historical context and tracing the development of Shanghai from a Qing market town to an international treaty port. Section 3 provides a historiographical overview of the key academic debates surrounding the institutional origins of the “golden age of capitalism” in Shanghai. Section 4.1 addresses the two theoretical frameworks this paper refers to -the impact-response concept and new institutional economics. Section 4.2 presents the research design and discusses the characteristics, strengths and weaknesses of the primary sources. Section 5 constitutes the analysis and splits into three subsections, one establishing the tripartite relationship between governance, law and land and the remaining two each focusing on one aspect of western-style institutions and its economic effects. The scope spans from foreign administration and the rule of law to land regulations and property rights. Section 6 offers the concluding remarks.

2 HISTORICAL BACKGROUND

The history of Shanghai as a treaty port began with the Treaty of Nanjing in 1842, signed after the defeat of the Qing government in the First Opium War. Forcibly opened up by foreign imperialism, the city underwent a remarkable transformation over time. It rapidly evolved from a modest market town located at the periphery of Lower Yangtze Delta to a flourishing metropolis, benefiting from the co-existence of Chinese and western administration and the concentration of wealth and prosperity. The dual administration of the city initially gave rise to the distinct segregation of Chinese and foreign communities. As Johnson remarked, one of the core principles which have been consistently observed throughout the early days of the treaty port was the strict division between Chinese and foreign habitation, reinforced by the title deeds of 1848 which forbade Chinese subjects from legally entering into the lands or renting the properties of the Settlement areas.² However, this situation was soon reversed by the massive influx of Chinese refugees into the British, American and French concessions due to a series of internal strife that affected the Lower Yangtze region, including the Taiping Rebellion in 1850 and the Small Swords Rebellion in 1853, which was largely an extension of the former within Shanghai.³ The admission of the Chinese population into foreign settlements unleashed a new era in which Chinese and foreign interests, ideologies, and institutions became increasingly intertwined.⁴

In the wake of the collapse of Qing’s administration in Shanghai, the treaty powers took steps to preserve and strengthen their rule. In 1854, the Shanghai Municipal Council, along with a revised set of land regulations and bye-laws, were established to oversee the general

² Linda Cooke Johnson, *Shanghai: From Market Town to Treaty Port, 1074-1858* (Stanford: Stanford University Press, 1995), 325.

³ Marie-Claire Bergere, *Shanghai: China’s Gateway to Modernity* (Stanford: Stanford University Press, 2009), 45.

⁴ F. L. Hawks Pott, *A Short History of Shanghai: Being an account of the growth and development of the International Settlement*, (Shanghai: Kelly & Walsh, 1928), 311.

administration of the British, American, and French concessions. However, in 1862 the French opted for independent governance and dropped out of the arrangement. By the late-19th century, Shanghai was a city of three governments - the Chinese City, the French Concession and the International Settlement, which was created by a merger of the British and American concession areas in 1863.⁵ In the following year, the International Mixed Court was installed to settle legal cases involving Chinese and non-treaty-power residents in concession areas.⁶ The Mixed Court continued to deal with a variety of criminal and civil cases until 1926, when the Shanghai Provisional Court was instituted to take its place. The Municipal Council's enduring nature is evidently illustrated by the length of its reign, as it governed the International Settlement until 1943, when the western powers officially renounced the treaty port privileges and gave in to Japanese armed forces' occupation.

Economically, Shanghai's rapid industrialization was sparked off by the Treaty of Shimonoseki in 1895, a consequence of Qing defeat in the First Sino-Japanese War, which authorized foreign interests to establish industrial enterprises within the city. Accompanying the arrival of modern enterprises, including cotton textiles, flour mills and machinery production, was the emergence of Shanghai as an embryonic industrial city. In the first three decades of the 20th century, the city housed 50-60% of cotton spindles and generated around half of national electricity.⁷ The spurts of Chinese industrialization were so unevenly concentrated in Shanghai that it could be referred to as "Shanghai-based industrialization", as the port city alone accounted for 41% of national manufacturing output, 46.4% of total foreign direct investment and 67% of foreign direct investment in manufacturing.⁸ Shanghai's accelerated financialization was triggered by the Note-Suspension Incidence of 1916, in which the Shanghai branch of the Bank of China effectively declared monetary autonomy from the central Beiyang Government.⁹ From then onwards, the operation of Shanghai's financial markets based on market mechanism rather than state intervention has attracted successive waves of modern foreign and Chinese banks to settle along the Bund and provide a sophisticated range of services. During this golden age of Chinese capitalism, Shanghai was undisputedly the commercial, industrial and financial epicenter of China.

⁵ Debin Ma, "Shanghai-Based Industrialization in the Early 20th Century: A Quantitative and Institutional Analysis," Working Papers of the Global Economic History Network (GEHN), no. 18/06 (2006): 17, <http://eprints.lse.ac.uk/22473/1/wp18.pdf>

⁶ Robert Nield, *China's Foreign Places: The Foreign Presence in China in the Treaty Port Era, 1840-1943* (Hong Kong: Hong Kong University Press, 2015), 202.

⁷ Debin Ma, "Economic Growth in the Lower Yangzi Region of China in 1911-1937: A Quantitative and Historical Analysis," *Journal of Economic History* 68, no. 2 (2008): 374, <http://eprints.lse.ac.uk/32398/>

⁸ *Ibid.*, 359.

⁹ Zhaojin Ji, *A History of Modern Shanghai Banking: The Rise and Decline of China's Finance Capitalism* (New York: Routledge, 2016), 102-104.

3 HISTORIOGRAPHY

Historical literature has highlighted several key channels in which the implementation of western-style institutions exerted a powerful influence on the Shanghainese economy during the treaty port era. According to the Weberian school of thought, traditional Chinese cities had never been able to enjoy the same degree of freedom, vitality and civic autonomy as their European counterparts due to the control exerted by a strong and at times arbitrary central state. Within this framework, because of its unique identity as a treaty port, modern Shanghai contained foreign settlements that were beyond the reach of the imperial state and hence resembled more of a European city-state than a traditional Chinese city.¹⁰ Ma contends that the autonomy Shanghai enjoyed as a de-facto city-state free from Qing encroachment and its western-style institutions – the Municipal Council, the Mixed Courts and the Land Regulations – were the crucial determinants of Shanghai-based industrialization.¹¹

Murphey supports this narrative by emphasizing the importance of Shanghai's political independence from bureaucratic control for trade, industry, and finance.¹² The protection offered by foreign administration, foreign law, and free circulation of foreign and Chinese currencies was what attracted Chinese middlemen and merchants from the hinterland to settle in Shanghai and concentrated both foreign and Chinese capital for commercial investment.¹³ However, whilst acknowledging the security and order brought by administrative apparatuses such as the Municipal Council, Wei commented upon its limitations in terms of voter representation.¹⁴ The franchise was limited to property holders derived mostly from wealthy business backgrounds.¹⁵ It was never the case of one person one vote, as powerful firms and individuals often held multiple votes, which gave them extensive powers to determine the direction of legislation, taxation, finance and other matters of governance.¹⁶

The differences between Chinese and western legal systems have been identified by past scholarship as another key driver of economic development and long-term growth trajectories. The western system rested upon an adjudicative mode of justice, in which a set of universal

¹⁰ Wen-hsin Yeh, "Shanghai Modernity: Commerce and Culture in a Republican City," *The China Quarterly*, no. 150 (1997): 378, <https://www.jstor.org/stable/655342>

¹¹ Debin Ma, "Shanghai-Based Industrialization in the Early 20th Century: A Quantitative and Institutional Analysis," *Working Papers of the Global Economic History Network (GEHN)*, no. 18/06 (2006): 1-33, <http://eprints.lse.ac.uk/22473/1/wp18.pdf>; Debin Ma, "Economic Growth in the Lower Yangzi Region of China in 1911-1937: A Quantitative and Historical Analysis," *Journal of Economic History* 68, no. 2 (2008): 374, <http://eprints.lse.ac.uk/32398/>

¹² Rhoads Murphey, *Shanghai, Key to Modern China* (Cambridge: Harvard University Press, 1953), 79-80.

¹³ *Ibid.*

¹⁴ Betty Peh-T'i Wei, *Shanghai: Crucible of Modern China* (Oxford: Oxford University Press, 1987), 73.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

and well-defined laws were stringently applied to ensure the consistency of outcome.¹⁷ By contrast, dispute resolution in traditional China operated within the framework of a disciplinary mode of justice, in which the primary objective is to punish deviant behaviour and enhance social harmony.¹⁸ Interpreted in this light, the Mixed Court can be viewed as a place for legal experimentation as foreign assessors attempted to construct and implement a framework of rules and regulations based on the adjudicative mode of justice.¹⁹ Previously, the concept of “innocent until proven guilty” simply did not exist in the imperial legal code and it was only after the arrival of foreign assessors that this concept became gradually integrated into the system.²⁰ Businessmen and financiers within the Settlement were able to conduct their transactions in much greater confidence, knowing their contracts would be enforced according to terms and justice could be obtained at court if the other party violated its obligations.²¹ This contributed to the development of large scale modern corporations including banks, insurance, and steamship companies.²² However, the grave difficulties to reconcile the fundamental differences between Chinese and western legal standards have been equally noted.²³ The Chinese magistrates continued to display a consideration for the relative wealth, social status, and political powers of the parties involved in legal cases and enforced the obedience of the inferiors to the superiors. The adherence to the disciplinary approach hence paved the way for many disagreements between the magistrates and the assessors.²⁴

Besides administrative and legal developments, private property rights protection, facilitated by the institution of land regulations and bye-laws, has been another major determinant of Shanghainese economic growth. The installation of land regulations, along with increasing foreign and Chinese migration to the International Settlement, have set the scene for soaring land values and rents for residences, making real estate investments highly lucrative.²⁵ The operation of an active real estate market also assisted modern financialization, as both foreign

¹⁷ Debin Ma, “Law and Economy in Traditional China: A ‘Legal Origin’ Perspective on the Great Divergence,” in *Law and Long-term Economic Change: A Eurasian Perspective*, ed. Debin Ma and Jan Luiten van Zanden (Stanford: Stanford University Press, 2011), 46.

¹⁸ *Ibid.*

¹⁹ Pär Kristoffer Cassel, *Grounds of Judgement: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford: Oxford University Press, 2012), 63.

²⁰ Robert Nield, *China’s Foreign Places: The Foreign Presence in China in the Treaty Port Era, 1840-1943* (Hong Kong: Hong Kong University Press, 2015), 202.

²¹ Thomas B. Stephens, *Order and Discipline in China: The Shanghai Mixed Court 1911-1927* (Seattle: University of Washington Press, 1992), 107-8.

²² *Ibid.*

²³ Thomas B. Stephens, “The Shanghai Mixed Court and the Ming Sung Umbrella Case 1926,” *Australian Journal of Politics & History* 33, no. 2 (1987): 77, <https://onlinelibrary-wiley-com.gate3.library.lse.ac.uk/doi/full/10.1111/j.1467-8497.1987.tb01218.x>

²⁴ *Ibid.*, 78.

²⁵ Tomoko Shiroyama, “The Shanghai Real Estate Market and Capital Investment, 1860-1936,” in *The Treaty Port Economy in Modern China: Empirical Studies of Institutional Change and Economic Performance*, ed. Billy K. L. So and Ramon H. Myers (China Research Monographs; 65. Berkeley, California: Institute of East Asian Studies, University of California, Berkeley, 2011), 57.

and Chinese banks extended their range of services to mortgages.²⁶ Businesses were able to secure extra credit for the expansion of entrepreneurial activities when they collateralized their assets after land acquisition.²⁷ The institutional development of property rights thus strengthened the crucial linkages between commerce, industry, finance, and real estate.

4.1 THEORETICAL FRAMEWORKS

Past scholarly interpretations of modern Chinese history have been substantially influenced by the conceptual framework known as “Western Impact” and “Chinese Response”.²⁸ According to Fairbank and Teng, the demise of traditional China and the construction of modern China can only be understood in the context of its closer contact with the West.²⁹ The impact-response approach outlined that for much of the 19th century, the penetration of western forces into the old Chinese society was the most powerful influence on events in China. Hence, modern Chinese history cannot be deciphered if the emphasis is solely placed upon the traditional order and ancient forces. Instead, China’s modern history should be viewed as successive Chinese attempts at responding to the challenges posed and the impact exerted by the West.

Cohen, Fairbank’s student, argued for a regionally differentiated approach when examining the degree of foreign influence, since China’s vast and continental size meant the outermost, intermediate and innermost zones received different levels of exposure to western forces.³⁰ The outermost zone consisted of features that were clearly responses to or consequences of western arrival, the intermediate zone was partially influenced by such impact and the innermost zone largely preserved the features of traditional Chinese culture and society that were left largely undisturbed by foreign presence.³¹ In the case of this paper, Fairbank’s framework seems apposite to employ since Shanghai, a treaty port itself, is precisely situated within the outermost zone identified by Cohen and hence received one of the greatest levels of foreign exposure amongst Chinese cities. As Cohen would agree, Shanghai was where the conventional impact-response framework seems the most applicable. The economic transformation of Shanghai from an underdeveloped market town to an international metropolis was inextricably tied to the arrival of western institutions.

New institutional economics (NIE) is another conceptual framework that corresponds with the economic growth of Shanghai as a result of institutional developments. Over the past few

²⁶ Ibid, 72.

²⁷ Ibid.

²⁸ Ssu-yu Teng and John King Fairbank, *China’s Response to the West: A Documentary Survey, 1839-1923* (Cambridge: Harvard University Press, 1979), 1.

²⁹ Ibid, 2.

³⁰ Paul A. Cohen, *Discovering History in China: American Historical Writing on the Recent Chinese Past* (Columbia University Press, 1984), 53.

³¹ Ibid.

decades, this school of thought, once outside the mainstream of economic history, has evolved into a well-established field which studies the role of political, economic, legal and cultural systems in economic development. Institutions, defined by North as the “humanly devised constraints”³² that shape human behavior, create the environment under which economic agents act and interact. Institutions can influence the incentive structure of economies, determine transaction costs, set production costs and therefore raise or lower the potential gains from trade.³³

In their pioneering work, North and Weingast examined the positive economic impact of the institutional changes that accompanied the Glorious Revolution of 1688.³⁴ The constitutionally constrained position of the Crown enhanced governmental credibility in English capital markets, which were especially sensitive to the protection of property rights.³⁵ The lower rate of interest hence enabled the Crown to raise a more substantial amount of public debt to fund capital investments, paving the way for rapid economic take-off.³⁶ Remarkable resemblances can be observed from the English and the Shanghainese experiences. Whereas an arbitrary and confiscatory authority would disincentive agents from production due to the fear that the fruits of their labor would be taken away from them at any time, an authority that respects the rule of law and private property rights would provide a more secure environment in which agents can carry out economic transactions with much greater confidence.

4.2 RESEARCH METHODOLOGY AND SOURCE DISCUSSION

The overarching hypothesis being tested in this paper is whether the development of western-style institutions have positively contributed to the economic growth of Shanghai in the treaty port era from the creation of the Shanghai Municipal Council in 1854 to the end of the golden age of Chinese capitalism in 1937. In order to assess the validity of this hypothesis, I will employ both quantitative analysis and qualitative information to produce a robust and holistic narrative. The analysis will be split into three subsections – one establishing the tripartite relationship between governance, law, and land and the remaining two each focusing on one aspect of western-style institutions and its economic effects. Subsection 5.1 clarifies the links between the three fundamental pillars of the International Settlement. Subsection 5.2 entails an assessment of the Municipal Council and the Mixed Court of the International Settlement in performing public functions and upholding the rule of law. Subsection 5.3

³² Douglass C. North, “Institutions,” *The Journal of Economic Perspectives* 5, no. 1 (1991): 97, <https://www.jstor.org/stable/1942704>

³³ Ibid.

³⁴ Douglass C. North and Barry R. Weingast, “Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England,” *The Journal of Economic History* 49, no. 4 (1989): 803-832, <https://www.jstor.org/stable/2122739>

³⁵ Ibid, 819.

³⁶ Ibid, 823.

concentrates on the Land Regulations of 1854, which redefined property rights and paved the way for the emergence of an active real estate market. This will be followed by macroeconomic statistics showing the economic prosperity of Shanghai during its golden age, such as export volume and sectoral employment, which confirm the profound connections between institutional development and economic growth.

Qualitative Sources

The main contemporary account this paper employs is the Feetham Report of 1931, often regarded as the most authoritative and comprehensive account compiled by a western contemporary on Shanghai, especially its International Settlement. British born and British-educated, Mr. Justice Feetham served on a number of high-profile commissions besides his distinguished legal and judicial career. The Feetham Report was written under the request of the British government, which appointed Feetham to investigate the institutional establishments of Shanghai over a period of 15 months and propose the possibilities of the end to extraterritoriality. The Report provides a detailed summary of the constitutional and legal developments of the Settlement, as well as business and banking interests. Feetham possessed the advantage of free access to the Municipal Council records and personal connections with notable officials and residents in the Settlement. However, as the source was written by a westerner, backed by a British government with the intention of urging the Nationalist Government to install a constitutional state with checks and balances, it naturally adopted a praiseworthy tone when addressing Shanghai's western-style institutions. This means the Chinese side of the controversy may not be fully represented.

Another two major sources are "Twentieth Century Impressions of Hongkong, Shanghai, and Other Treaty Ports of China" written by two British travellers, Arnold Wright and H. A. Cartwright, in 1908 and "Shanghai: Its Mixed Court and Council" and "Shanghai: Its Municipality and the Chinese" written by a Russian refugee in Shanghai, Anatol M. Kotenev, in 1925 and 1927 respectively. The previous book is a work of great magnitude as it covered a wide spectrum of Shanghainese developments including local government and law, police force, public works, health and hospitals, banking and finance, industry and commerce. However, similar to the Feetham Report, the source's value is limited by its western-centric and British-dominated perspective. The latter sources focus on the workings of the Municipal Council and the International Mixed Court. Their descriptions of these administrative and legal apparatuses benefit from Kotenev's personal connections with members of the Mixed Court, including former Senior British Assessor Mr. A. D. Blackburn, former Senior American Assessor Mr. F. W. Hadley and Chief Inspector J. E. Wheeler and his privileged access to valuable reports and records. However, Kotenev's identity as an employee of the

Municipal Council meant he would not provide a wholly objective account of its institutions.

Furthermore, the paper draws upon the assessments of the Mixed Court by Chief Assessor Alabaster in 1869. The remarks made by the first British assessor, Chaloner Alabaster, provides one of the most authoritative English-language accounts of the Court. Alabaster, who spoke fluent English and Chinese, played a prominent role in this legal establishment since its inception and understood local culture and traditions enough to provide a less western-centric perspective in his account. This paper also employs additional perspectives from contemporary academics and practiced lawyers, both foreign and Chinese. The works of Hudson, Renton, and Yen all provide scholarly insights into the legal and land systems of Shanghai. Last but not least, this paper examines the reports of the Shanghai Municipal Council in 1915, 1916, and 1920 to extract evidence of the Council's administrative successes.

Overall, these qualitative sources are valuable in presenting the unique and unfiltered views of contemporaries, who acquired a deep understanding of Shanghai during the treaty port era through either residence or visit. However, due to the differences in identities and backgrounds of the authors, these qualitative sources are at the same time littered with personal biases. Hence, a critical approach is undoubtedly required when examining and comparing these sources as an economic historian.

Another major limitation of these qualitative sources is their western-centric perspective. Initially I intended to use qualitative sources written by Chinese contemporaries but I realized that it is often difficult to translate precisely what they meant in English and this could involve distortions of the original meaning of texts. In addition, most Chinese sources that I wished to examine are located in the Shanghai Municipal Archives and the Shanghai Library, making frequent overseas visits and official archival permits a necessity. Based on these circumstances, I opted for a more conservative and practical approach by referring to mostly foreign qualitative sources.

Quantitative Sources

The majority of data was obtained from Virtual Shanghai, an online research platform with an e-library of archival resources, and most of them were compiled by Chinese contemporaries, with the exception of the Feetham Report and Kotenev's Mixed Court data. Notable Chinese authors include Luo Zhiru from the National Research Institute of Social Sciences, Zhang Hui from the National Defence Design Committee, the Shanghai Civic Association and the Shanghai Academy of Social Sciences. Additionally, a table showing the number of civil and criminal cases the Mixed Court handled yearly, originally published by the Municipal

Gazette, was extracted from Lee's PhD thesis. Examining these sources has enabled me to compile data on a diverse range of economic and social indicators including Shanghainese population growth, export and import volumes and sectoral composition of employment. The 1935 Land Values Research carries a much more specific focus on the land market of Shanghai. Its data has allowed me to draw comparisons between the land areas and assessed values of the International Settlement, the French Concession and the Chinese City.

However, the major limitation of the sources is the lack of comprehensiveness, as none of them covers for the entire period of 1854-1937. For instance, combining the Feetham Report and the 1932 Statistics of Shanghai led to the creation of a table presenting the land tax and municipal rate revenues of the Shanghai Municipal Council from 1900 to 1929. But because of the absence of data for earlier and later periods, the annual revenues of the Council in 1854-1899 and 1930-1937 remained unknown. Nevertheless, assembling and merging the data available delivers valuable insights. The statistical tables and graphs complement the qualitative analysis for the testing of the hypothesis. Incorporating both western and Chinese accounts has allowed the paper to illustrate a relatively nuanced and well-rounded picture of institutional and economic developments of Shanghai in the lead up to its golden age.

5.1 ANALYSIS – THE TRIPARTITE RELATIONSHIP: GOVERNANCE, LAW AND LAND

Before delving into the historical case study of Shanghai, it is crucially important to acknowledge the casual links between the three fundamental pillars of the International Settlement. A strong, effective, and accountable governance rests upon the administration over land and the establishment of laws. Since land constitutes as one of the most basic resources of societies, any state that wishes to implement effective rule should have a comparative advantage in violence over potential rivals, which includes other states and individuals within the same political-economic unit.³⁷

By possessing such an advantage, it allows the state to monopolize, specify, and enforce property rights over a defined geographical area.³⁸ The monopolization of property rights will allow the administration to extract tax revenues from the population and the revenues would be used for a range of purposes, from paying the tax-collecting agents to the provision of public goods and services. The administration often sets up a set of institutions and rules, including local courts and land regulations, that define the use of and control over land,

³⁷ Douglass C. North, "A Framework for Analyzing the State in Economic History," *Explorations in Economic History* 16, no. 3 (1979): 250, [https://doi.org/10.1016/0014-4983\(79\)90020-2](https://doi.org/10.1016/0014-4983(79)90020-2)

³⁸ Ibid.

manage competing interests and settle disputes amongst contenders. At the same time, the powers of the administration need to be constrained to prevent it from engaging in arbitrary rule. This requires the implementation of legal frameworks, processes and institutions so that the rule of law stands above the officials and the agents of the state. The laws should be applied evenly and protect fundamental rights such as the security of persons and property. The legal process should be transparent, just, efficient, and delivered timely by capable and independent legal representatives. The combination of accountable local governance, efficient land administration, and well-developed legal systems provides the ideal conditions for economic growth and development to occur. The knowledge that their property rights are safeguarded and that justice could be obtained at courts encourages individuals and organizations to engage in transactions, set up enterprises and undertake investments. This tripartite relationship is the key to understanding how the Municipal Council, the Mixed Court and the Land Regulations worked in synchronization to transform Shanghai's International Settlement into one of the most economically dynamic centers of China in the early 20th century.

5.2 ANALYSIS – INSTITUTIONS: FOREIGN ADMINISTRATION AND RULE OF LAW

A. THE SHANGHAI MUNICIPAL COUNCIL

To contemporaries, the Shanghai Municipal Council embodied the two fundamental principles that defined the majority of western political institutions – self-government and the rule of law.³⁹ The Council of five to nine members was elected each year by popular vote and decided upon the conduct of public affairs within the International Settlement, but its administrative powers were constrained by a series of checks and balances imposed by the foreign consuls of treaty powers and the foreign ratepayers, derived mostly from the mercantile class with landed wealth.⁴⁰ The foreign ratepayers were summoned at special annual meetings to approve the levying of rates, the revision of laws and the engagement of projects.⁴¹ The self-government characteristic of the Municipal Council is evident in the practice of annual elections and the relatively wide scope of the political franchise, as every foreigner residing in the Settlement who has paid all taxes due and owned land valued at Tls. 500 or rented land on an assessed rental of Tls. 500 per annum was entitled to vote.⁴² Hence,

³⁹ Richard Feetham, Report of the Hon. Justice Richard Feetham to the Shanghai Municipal Council, Vol. 1, (Shanghai: North China Daily News & Herald, 1931), 88.

⁴⁰ Arnold Wright and H. A. Cartwright, Twentieth Century Impressions of Hongkong, Shanghai, and Other Treaty Ports of China: Their History, People, Commerce, Industries, and Resources, (London: Lloyds Greater Britain, 1908), 372.

⁴¹ Ibid.

⁴² Ibid, 400.

this executive body was held publicly accountable to the foreign consuls and the ratepayers whilst at the same time, subjected to the control of the Courts of law, including the Mixed Court, within the Settlement. In contrast to the arbitrary authorities of the Chinese city whose powers remained largely undefined and ambiguous, the Council represented in every aspect a constitutional authority with restrained powers.

The Municipal Council soon became the focal point where commercial and financial grievances were expressed and addressed. For instance, after hearing the concerns expressed by the Chinese Chamber of Commerce on the frequency of armed robberies in 1915, the Council approved the construction of a small police depot to protect the banking interests in the neighbourhood bounded by the Ningpo, Peking, Tientsin, and Honan Roads, where the majority of Chinese banking enterprises was concentrated.⁴³ Systematic measures were adopted by the Municipal Police which made it almost certain that once the alarm was triggered by the victims, the Police would arrive rapidly on the spot to arrest the robbers.⁴⁴ Beyond the limits of the International Settlement, it has been remarked that crimes of murder and robbery were been rife.⁴⁵ This example serves well to demonstrate the success of the Council in providing a safe and secure environment for robust banking and financial developments to take place.

The popularity of the International Settlement as a place for both Chinese and foreign residence is evident in the rapid pace of its population growth. From 1855 to 1932, the Chinese population grew from 20,000 to 1,030,554. From 1844 to 1932, the foreign population grew from 50 to 44,240. By 1932, the Chinese residents amounted to 96% of the total population and the foreigners accounted for the remaining 4%.⁴⁶

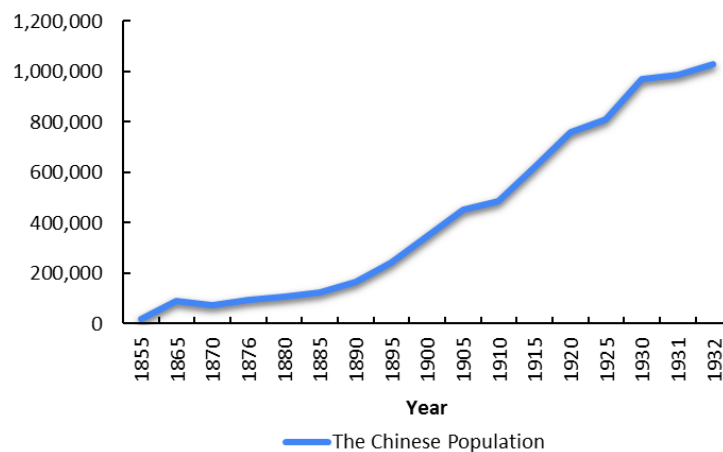
⁴³ Report for the year 1915 and Budget for the year 1916, Shanghai Municipal Council, 39A, <https://www.virtualshanghai.net/Texts/E-Library?ID=2013>

⁴⁴ Ibid.

⁴⁵ Ibid.

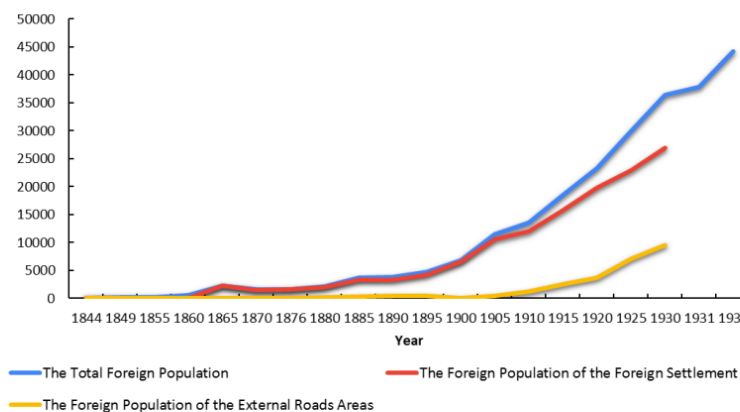
⁴⁶ See Appendix Table A.1: The Chinese, Foreign and Total Population of the International Settlement, 1855-1932.

Figure 1: The Chinese Population of the International Settlement, 1855-1932



Source: Feetham, *The Feetham Report*, pp. 50-53 and Shanghai Civic Association, *Statistics of Shanghai*, pp. 1.

Figure 2: The Foreign Population of the International Settlement, 1844-1932



Source: Feetham, *The Feetham Report*, pp. 50-53 and Shanghai Civic Association, *Statistics of Shanghai*, pp. 1.

The steady increase in the number of Chinese residents following the establishment of the Shanghai Municipal Council suggests that many Chinese preferred conditions inside the International Settlement instead of those within the Chinese City. The two main attractions of the Settlement under the administration of the Council were its method of taxation and its protection of private property rights. Within the Settlement, a fixed amount of taxes was paid on an annual basis, with the rates subjected to yearly revision. The citizens received improved public goods provision in return for taxation and this was clearly observable from the Settlement's better roads, schools, hospitals, police force, and volunteer army.⁴⁷ Elvin remarked the superior efficiency of the Shanghai Municipal Council in the provision of public goods in comparison to the Chinese area, including managing and improving water supply,

⁴⁷ Richard Feetham, Report of the Hon. Justice Richard Feetham to the Shanghai Municipal Council, Vol. 1, (Shanghai: North China Daily News & Herald, 1931), 131.

and transport and communication networks.⁴⁸ Stephens supports this narrative by stating that within the International Settlement, standards of hygiene, security, and order were much higher than what was to be found beyond its territorial limits.⁴⁹ Furthermore, property and wealth could not be seized by authoritative bodies without legal processes. By contrast, taxation within the Chinese city was irregular and oppressive in nature and there was no assurance that visible benefits would be received in return.⁵⁰ No annual reports or financial statements, like those produced by the Shanghai Municipal Council, were submitted to members of the public for examination, pointing to the local administration's lack of accountability. Chinese authorities were at times confiscatory and little justification was needed for the seizure of private assets.

B. THE INTERNATIONAL MIXED COURT

Before the establishment of the Mixed Court, a multiplicity of consular courts coexisted with the local Chinese courts, creating differing and at times conflicting legal spheres of influence in Shanghai. The complexity of the legal order could be illustrated by the remarks made by the two British writers, who stated that it would be a practically hopeless attempt for a practiced lawyer or a theoretic professor from the West to comprehend its nature.⁵¹ Previously, all jurisdictions over the Chinese population in Shanghai were exercised by Chinese magistrates, who adhered to Qing law and whose proceedings often resulted in severe miscarriages of justice.⁵²

However, these cases soon became too numerous to the extent that the Consular Body at Shanghai proposed to set up a police court to deal with such prosecutions in 1864.⁵³ Although the territorial jurisdiction of the court was small and confined to a single district, the type of legal cases it dealt with became vast. Soon it began to cover a wide variety of civil and criminal cases and evolved into what is known nowadays as the International Mixed Court by 1869.⁵⁴ The year 1911, when the Chinese Revolution broke out, transformed the nature of the Court from being Chinese-dominated to foreign-led, as the fleeing of Qing authorities from

⁴⁸ Mark Elvin, *Another History, Essays on China from a European Perspective* (International Distribution: University of Hawaii Press, Honolulu, 1996), 176-177.

⁴⁹ Thomas B. Stephens, *Order and Discipline in China: The Shanghai Mixed Court 1911-1927* (Seattle: University of Washington Press, 1992), 103.

⁵⁰ Richard Feetham, Report of the Hon. Justice Richard Feetham to the Shanghai Municipal Council, Vol. 1, (Shanghai: North China Daily News & Herald, 1931), 131.

⁵¹ Arnold Wright and H. A. Cartwright, *Twentieth Century Impressions of Hongkong, Shanghai, and Other Treaty Ports of China: Their History, People, Commerce, Industries, and Resources*, (London: Lloyds Greater Britain, 1908), 401.

⁵² A. Wood Renton, "Extra-Territorial Jurisdiction in China," *Virginia Law Review* 18, no. 7 (1932): 731, <https://www.jstor.org/stable/1066029>

⁵³ Manley O. Hudson, "The Rendition of the International Mixed Court," *The American Journal of International Law* 21, no. 3 (1927): 455, <https://www.jstor.org/stable/2189169>

⁵⁴ *Ibid.*

Shanghai allowed the Consuls to take charge of the Court and appoint foreign assessors to sit alongside Chinese magistrates.⁵⁵ Legal cases only involving Chinese subjects were ruled by magistrates of their own nationality, whilst legal cases involving both Chinese and foreigners were ruled jointly by magistrates and assessors. The addition of foreign assessors and their subsequent attempt to construct an adjudicative framework brought much certainty and calculability which were previously deficient in Chinese legal culture.

The exclusion of Chinese governmental influence over proceedings allowed the foreign assessors to at least implement a portion of western legal concepts into its constitution and operation. The presence of foreign assessors ensured legal treatment according to the rule of law as opposed to the rule of arbitrary authority.⁵⁶ In 1912, the local Republican administration imposed a system of forced loans, along with methods of coercion, upon the Chinese residents of the Settlement.⁵⁷ The Mixed Court stepped in to intervene by arresting and detaining the chief leaders of the Republican administration, who resided in the Settlement and thus were subjected to its laws, to check the abuses.⁵⁸ The legal protection the Mixed Court offered hence prevented the exercise of unlawful taxation and violence by Chinese authorities.

As listed by the annual reports of the Shanghai Municipal Council, there were four broad types of offenses the Mixed Court dealt with: offenses against the person, offences against property, offenses of a public nature, and miscellaneous cases.⁵⁹ The first category included offenses such as assault, manslaughter, murder, and rape; while the second included arson, burglary, housebreaking, and robbery.⁶⁰ The third category was targeted at breach of municipal by-laws and the last consisted of pettier crimes such as passing food to prisoners and ill-treatment of children.⁶¹ The sentences varied depending on the severity of the offenses and included fines, imprisonment, blows, and cangue-wearing. The range of sentences widened over time to account for the complexity of crimes, reflecting the flexibility and

⁵⁵ Hawklings Yen, "The Shanghai Provisional Court: Past and Present," *Pacific Affairs* 3, no. 3 (1930): 296-297, <https://www.jstor.org/stable/2749872>

⁵⁶ *Pacific Affairs*, "Judge Feetham Surveys Shanghai: A Digest," *Pacific Affairs* 4, no. 7 (1931): 598, <https://www.jstor.org/stable/2750316>

⁵⁷ Anatol M. Kotenev, *Shanghai: its municipality and the Chinese: being the history of the Shanghai Municipal Council, and its relations with the Chinese, the practice of the International Mixed Court, and the inauguration and constitution of the Shanghai Provisional Court*, (Shanghai: North China Daily News & Herald, 1927), 30.

⁵⁸ *Ibid.*

⁵⁹ Report for the year 1915 and Budget for the year 1916, Shanghai Municipal Council, 43A, <https://www.virtualshanghai.net/Texts/E-Library?ID=2013>; Report for the year 1916 and Budget for the year 1917, Shanghai Municipal Council, 41A, <https://www.virtualshanghai.net/Texts/E-Library?ID=2015>; Report for the year 1920 and Budget for the year 1921, Shanghai Municipal Council, 67A-68A, <https://www.virtualshanghai.net/Texts/E-Library?ID=2016>

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

practicability of the Court. For instance, sending young offenders to reformatories or handing them over to parents and guardians became common after 1910, as opposed to the harsher punishment of cangue-wearing, which was abolished in the early 20th century across East Asia.⁶²

Furthermore, the Court played a crucial role in structuring commercial obligations and land transactions in Shanghai of the 1910s and 1920s. The Bubbling Well Road Temple case in 1912 considerably illustrates the extensive powers of the Court in defining the rights of landowners and the principles of land transfers.⁶³ The incident, which featured the transfer of leased land to the Municipal Council for road extensions beyond the Settlement, was agreed by the lessees but met with strong resistance from the landowners, who subsequently filed a case to the Mixed Court.⁶⁴ The British Assessor ruled in favor of the landowners and against the lessees because the lessees' control over the land only extended to activities that would improve its value and the conversion of the land into public infrastructure would deplete its value to the landowners, as it would no longer be under their control.⁶⁵ The owners held the right to cancel the lease, but the power of the Municipal Council to take over the land for public use was also recognized.⁶⁶ However, the Council must negotiate with the owners, rather than the lessees, for the amount of compensation and an agreement has to be reached by both parties.⁶⁷ The rulings provided a sounder basis for future land transfers by confirming owners' rights and outlining the Council's obligations. The local independence of the Court and the decisive impact it exerted on the economy are evident in this case, as the institution displayed no special considerations for the Municipal Council and its decisions profoundly influenced the workings of one of the most powerful engines of growth, the land market. Besides disputes over land, the lasting economic impact of the Court also featured in other cases including bankruptcies and liquidations, contracts, debt, and insurance claims.

The volume of legal cases the Court dealt with continued to expand yearly – in 1926, it dealt with 103,932 criminal cases, 2,848 civil cases involving Chinese and 606 civil cases involving foreigners. Afterwards, the Shanghai Provisional Court was instituted in 1927 to replace the Mixed Court and perform similar functions. This establishment was accompanied by the installation of solely Chinese magistrates, hence signaling the diminishing influence of treaty powers in the legal sphere of Shanghai.

⁶² See Appendix Table A.2.1 and Table A.2.2: A Selection of Returns of Sentences and Decisions, *The International Mixed Court Criminal Jurisdiction, 1870-1924*.

⁶³ Tahirih V. Lee, *Law and Local Autonomy at the International Mixed Court of Shanghai*, (ProQuest Dissertations and Theses, 1990), 34-39.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

Table 1: Yearly Number of Cases, The International Mixed Court, 1918-1926

Year:	Total Criminal Cases:	Total Chinese Civil Cases: (Heard/Concluded)	Total Foreign Civil Cases: (Filed/Concluded)
1918	48,987	1,593/1,001	/130
1919	38,307	1,474/873	/124
1920	44,566	-	-
1921	57,226	1,736/1,016	610/183
1922	93,136	1,748	894/243
1923	84,999	2,181	1,060/283
1924	91,696	2,963	1,040/263
1925	80,529	2,831	730/192
1926	103,932	2,848	606

Source: Extracted from Lee, *Law and Local Autonomy*, pp. 124; Compiled from Mixed Court Reports in the Municipal Gazette, *Annual Report 1918-1919*, pp. 57-58A, 67A-68A, *Annual Report 1921*, *Annual Report 1922*, pp. 70A, *Annual Report 1923*, pp. 39, *Annual Report 1924*, pp. 45, 47, *Annual Report 1925*, pp. 39-41.

However, at the same time the Mixed Court exhibited numerous limitations as a hybrid legal institution where Chinese and western legal concepts waxed and waned. Disputes between the Chinese magistrate and the foreign assessor were frequent due to the fundamental differences in legal methods. There has been a tendency of Chinese magistrates to place personal relations and social connections above the pursuit of adjudicative justice.⁶⁸ More specifically, the Court has exhibited a persistent inability to overcome Shanghainese merchant guild interests and sustain an impartial and independent dispute resolution. The Chinese magistrates, after taking into consideration the relative financial, political and social powers each guild wielded, often favored the more powerful party. Phrases which referred to deeply-embedded informal customs and practices, such as “to pay something to stop scandal” and “the defendant is a respectable person and hence the case should be settled amicably”, were not uncommon in the rulings of the Chinese magistrates.⁶⁹ Such practices would be regarded as negligence according to western legal standards, yet they reflected the customary method of solving commercial disputes in traditional China.⁷⁰ Despite the introduction of western jurisprudence, the age-old traditions and practices, which had been well-received by the Chinese people for centuries, never withered away.

Additionally, Chief Assessor Alabaster remarked that the constant shift in foreign assessors constituted another major deficiency of the Mixed Court and other courts of the International Settlement and the French Concession.⁷¹ Foreign assessors simply did not stay long enough to

⁶⁸ Arnold Wright and H. A. Cartwright, *Twentieth Century Impressions of Hongkong, Shanghai, and Other Treaty Ports of China: Their History, People, Commerce, Industries, and Resources*, (London: Lloyds Greater Britain, 1908), 401.

⁶⁹ Anatol M. Kotenev, *Shanghai: its municipality and the Chinese: being the history of the Shanghai Municipal Council, and its relations with the Chinese, the practice of the International Mixed Court, and the inauguration and constitution of the Shanghai Provisional Court*, (Shanghai: North China Daily News & Herald, 1927), 251.

⁷⁰ Ibid.

⁷¹ The National Archives, Chinese Secretary's Office: Volume 24, Shanghai - Mixed Court, Woosung Bar, Municipal Council, French Settlement, disturbances etc. English and Chinese, FO 233/96,

familiarize themselves with local conditions and legal circumstances or to exert a considerable influence over the Chinese magistrates.⁷² The frequent replacement of foreign assessors within a relatively short time frame of less than 10 years accounted for the lack of continuity and exacerbated the inconsistencies in the Court's rulings. Although table 2 does not present a direct account of the Mixed Court, it nevertheless showcases how, following the Mixed Court's dissolution in 1926, the various courts of the International Settlement and the French Concession exhibited similar deficiencies throughout 1931-1932. As seen from the table, the majority of legal officers served for less than three years. Arguably, this would have not allowed them enough time to thoroughly implement western legal standards. Hence, the extent of western institutional implantation in Shanghai's legal sphere may not be as strong and penetrating as some scholarly perspectives have claimed it to be.

Table 2: Length of Legal Service of the Officers in the Different Courts of Shanghai, July 1931-June 1932

Court:	Kiangsu High Court 2 nd Branch	District Court for the 1 st Special Area in Shanghai	Kiangsu High Court 3 rd Branch	District Court for the 2 nd Special Area in Shanghai
Jurisdiction:	International Settlement	International Settlement	French Concession	French Concession
Length of Service:				
Less than 1 year	4	3	15	1
1 year or more	-	10	2	7
2 years or more	8	21	1	8
3 years or more	3	10	2	4
4 years or more	-	3	2	4
5 years or more	1	-	1	-
6 years or more	-	2	-	5
7 years or more	-	1	-	-
8 years or more	1	1	1	2
9 years or more	1	4	-	1
Total:	18	55	24	32

Source: Shanghai Civic Association, *Statistics of Shanghai 1933*, pp. 2.

5.3 ANALYSIS – INSTITUTIONS: LAND REGULATIONS AND PROPERTY RIGHTS

A. LAND TAX AND MUNICIPAL RATES

The Land Regulations and By-Laws of 1854, consisting of 14 regulations in total, was a considerable improvement based on the old code of 1845, as it redefined and enlarged the borders of the International Settlement and accommodated for the rights of Chinese to reside, purchase and rent land in this area. A comprehensive set of administrative procedures was established for the purchase and renting of land - such activity needed to be reported to the Consular Representatives, examined by the Intendant of Circuit and registered at the office of

1846-1880.

⁷² Ibid.

the Consular Representative of the lessee within one month of execution.⁷³ The Title Deeds provided property owners with tangible evidence of their legal rights, contributing towards the security of landed property within the Settlement. No person was allowed to undertake any building operations without first obtaining a permit from the Municipal Council.⁷⁴ Breaches of the Land Regulations were to be punished by a fine not exceeding 300 dollars, or by imprisonment not exceeding 6 months or by other sentences which the Settlement courts deemed to be just.⁷⁵ The possibilities of punishment and the various monitoring agents of the Council hence incentivized the citizens of the Settlement to adhere to the Land Regulations and uphold private property rights protection.

The Land Regulations created the basis for an active real estate market and permitted fortunes to be made through buying and selling various types of land rights within the Settlement and along the areas outside it, which were indirectly controlled by the Municipal Council for urban development. Efficient administration over land purchase and renting allowed the Municipal Council to secure its major revenue sources– the land tax and the municipal rate. The land tax was levied on the capital value of land, whilst the municipal rate was levied on the annual rent of buildings.⁷⁶ Tax rates were revised on a yearly basis to accommodate changing circumstances including fluctuations in housing prices, Settlement population and Council expenditures.

In the period 1893-1897 the annual proceeds of the Chinese municipal rate alone became substantially larger than the sum of the land tax and foreign municipal rate proceeds, due to the increasing number of Chinese residents coming from the Chinese administrative units of Shanghai and other parts of China. In addition, a rising number of Chinese residents began to hold land under foreign title deeds at foreign Consulates in the names of foreigners and occupy expensive foreign-style houses. These changing circumstances resulted in the abolition of the difference between the Chinese and foreign municipal rates, previously set to be 2 percent higher. Between 1898 and 1906, the rates were equalized at 10%. From 1907 onwards, the foreign municipal rate was set to be consistently higher than the Chinese municipal rate. Both the land tax and municipal rate revenues displayed a remarkable growth from 1866 to 1929, with the former multiplying by 214 times and the latter by nearly 79

⁷³ Anatol M. Kotenev, *Shanghai: its municipality and the Chinese: being the history of the Shanghai Municipal Council, and its relations with the Chinese, the practice of the International Mixed Court, and the inauguration and constitution of the Shanghai Provisional Court*, (Shanghai: North China Daily News & Herald, 1927), 557.

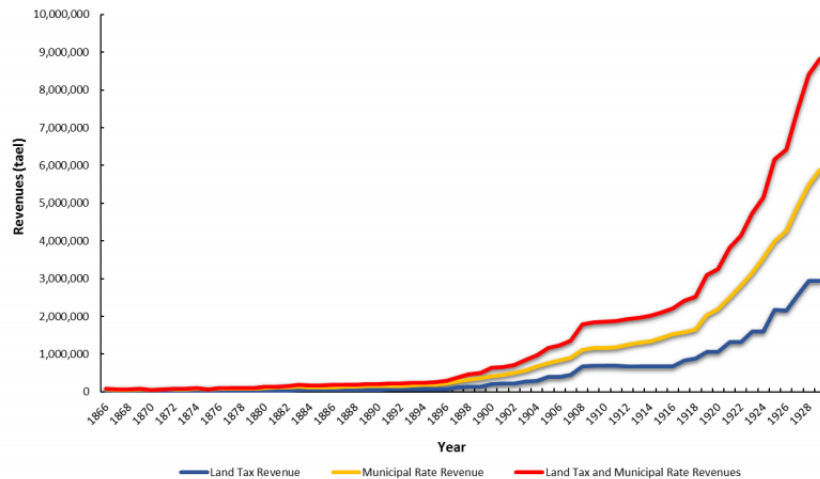
⁷⁴ *Ibid*, 573.

⁷⁵ *Ibid*, 563.

⁷⁶ Richard Feetham, *Report of the Hon. Justice Richard Feetham to the Shanghai Municipal Council*, Vol. 1, (Shanghai: North China Daily News & Herald, 1931), 132.

times.⁷⁷ In the last recording year of 1929, total land revenues reached an unprecedented 8,821,805 taels, reflecting the efficiency of the Council in terms of land revenue collection.

Figure 3: Land Tax Revenues and Municipal Rate Revenues, The Shanghai Municipal Council, 1866-1929



Source: Feetham, *The Feetham Report*, pp. 147-148.

Between 1900 and 1929, on average the land tax accounted for around 25% of total council revenue whilst the municipal rates occupied nearly 45%. The two combined to represent over two-thirds of total council revenue for the period. Consequently, these rising land revenues, along with other sources of income such as wharfage dues and license fees, provided the Council with an increasing pool of funds to be invested in infrastructure projects, public goods provision including health and education and the employment of administrative staff, volunteer corps, fire brigade, and police force.⁷⁸

⁷⁷ See Appendix A.3: Percentage Rates of Land Tax and Municipal Rates and Revenue derived annually from each of these sources, The Shanghai Municipal Council, 1866-1929.

⁷⁸ 8 Report for the year 1915 and Budget for the year 1916, Shanghai Municipal Council, 2C-57C, <https://www.virtualshanghai.net/Texts/E-Library?ID=2013>; Report for the year 1916 and Budget for the year 1917, Shanghai Municipal Council, 26C-81C, <https://www.virtualshanghai.net/Texts/E-Library?ID=2015>; Report for the year 1920 and Budget for the year 1921, Shanghai Municipal Council, 30C-90C, <https://www.virtualshanghai.net/Texts/E-Library?ID=2016>

Table 3: Land Tax and Municipal Rates as % of Total Revenue, The Shanghai Municipal Council, 1900-1929

Year:	Total Revenue (Taels):	Land Tax as Percentage of Total Revenue (%):	Municipal Rate as Percentage of Total Revenue (%):	Land Tax and Municipal Rate as Percentage of Total Revenue (%):
1900	1,045,178	20.55	40.11	60.66
1901	1,097,720	19.93	40.5	60.43
1902	1,209,175	18.04	41.1	59.14
1903	1,341,570	20.65	42.8	63.45
1904	1,505,403	19.9	44.45	64.35
1905	1,780,415	22.45	42.83	65.29
1906	1,866,398	21.46	44.47	65.92
1907	1,983,432	23.01	45.68	68.69
1908	2,403,164	28.51	46.2	74.71
1909	2,521,600	27.29	46.1	73.38
1910	2,555,055	26.98	45.84	72.82
1911	2,589,628	26.68	45.87	72.56
1912	2,734,245	24.56	46.03	70.59
1913	2,858,006	23.61	45.4	69.01
1914	2,934,382	23.11	45.56	68.67
1915	3,051,017	22.3	46.45	68.75
1916	3,333,151	20.47	45.66	66.12
1917	3,455,128	24.22	45.85	70.07
1918	3,864,577	22.81	42.6	65.41
1919	4,419,961	23.84	46.07	69.91
1920	4,823,483	21.91	45.41	67.31
1921	5,967,040	22.24	41.91	64.15
1922	6,391,200	20.78	44.08	64.86
1923	7,203,797	22.15	43.7	65.85
1924	8,028,824	19.86	44.33	64.19
1925	9,152,409	23.79	43.62	67.41
1926	10,091,921	21.42	42.24	63.66
1927	11,161,792	22.87	44	66.87
1928	12,691,714	23.12	43.2	66.32
1929	12,473,292	23.52	47.2	70.73

Source: Feetham, *The Feetham Report*, pp. 147-148 and Luo, *Shanghai as Shown in Statistical Tables*, pp. 134.

The mechanism of land revenue collection by the Municipal Council fits well with North's narrative of a state's function in economic history. In his framework, the state is an organization that monopolizes, specifies and enforces property rights over a defined geographical area for the maximization of revenues.⁷⁹ The monopolist, the Municipal Council, offers the population property rights protection and public goods and services provision in exchange for annually-collected land tax and municipal rate revenues. The collection of land revenues from a large population requires the delegation of power to agents of the monopolist,

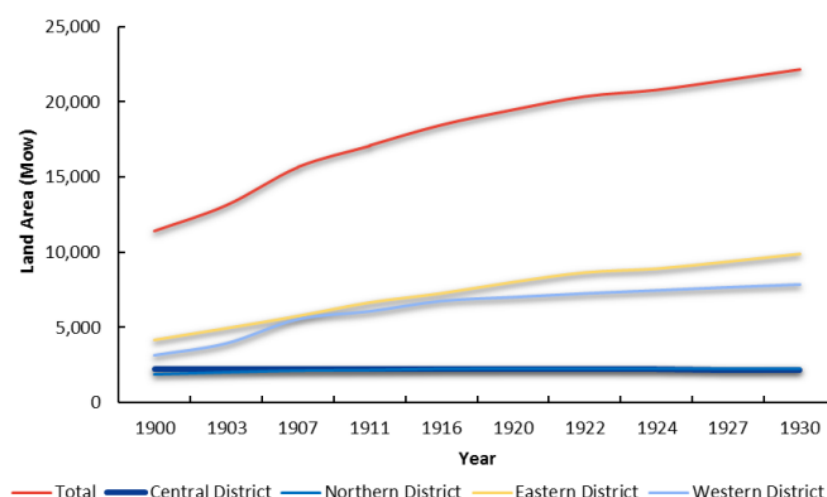
⁷⁹ Douglass C. North, "A Framework for Analyzing the State in Economic History," *Explorations in Economic History* 16, no. 3 (1979): 250-252, [https://doi.org/10.1016/0014-4983\(79\)90020-2](https://doi.org/10.1016/0014-4983(79)90020-2)

in this case the bureaucrats hired by the Council, and the salaries the Council paid to its employees represented a diffusion of some of the monopoly rents, generated from its domination over property rights.⁸⁰

B. LAND AREA AND ASSESSED VALUES

In the first three decades of the 20th century, land area under taxation within the limits of the International Settlement has almost doubled, growing from 11,427 mows in 1900 to 22,131 mows in 1930. This expansion was fuelled by the combined processes of foreign purchases of land and the rising number of Chinese residents holding land under foreign title deeds at foreign Consulates in the names of foreigners.

Figure 4: Land Area under Taxation within the International Settlement, 1900-1930

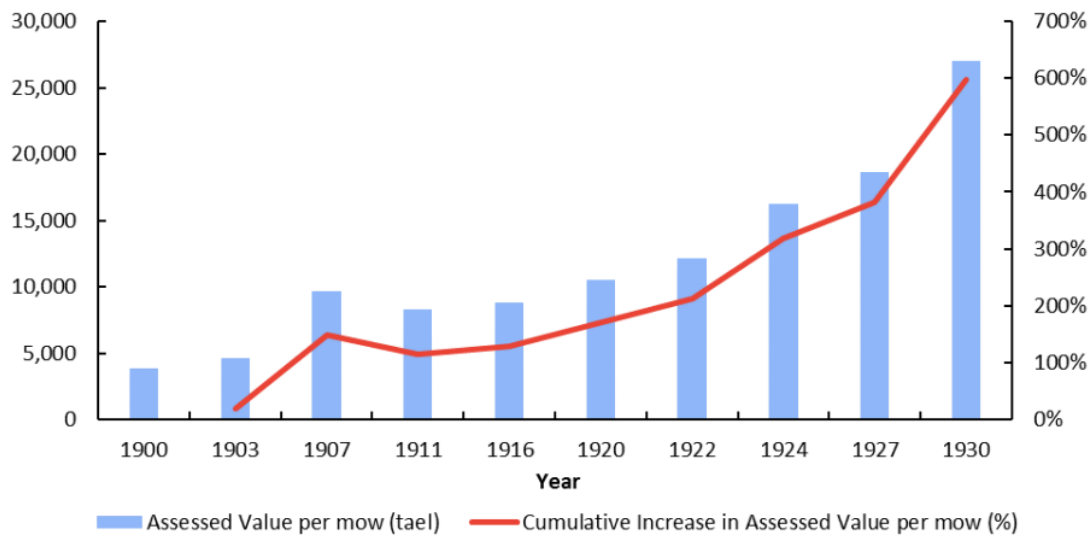


Source: Feetham, *The Feetham Report*, pp. 337.

During this period, no other city in China experienced such an explosive growth in land values as Shanghai and within Shanghai, no other administrative unit experienced such soaring property prices as the International Settlement. From 1900 to 1930, the assessed value per mow increased more than fivefold within its territorial limits. A combination of geography and institutions can account for this phenomenon. Shanghai was well-placed to attract economic activity due to its strategic location at the apex of the fertile and populous Lower Yangtze Delta and its favorable access to the Pacific Ocean trade routes. But geography was not enough for Shanghai to become China's gateway to modernity. Other neighbouring cities such as Suzhou, Hangzhou and Nanjing shared similar geographical advantages of being situated at the neck of the Yangtze River, yet it was Shanghai that flourished.

⁸⁰ Ibid.

Figure 5: Assessed Land Values within the International Settlement, 1900-1930



Source: Feetham, *The Feetham Report*, pp. 346.

Land value comparisons serve to demonstrate the institutional superiority of the International Settlement over the French Concession and the Chinese City. According to the Shanghai Property Owners' Association, land values were so closely correlated with commercial and financial development that they may be taken as a reliable indicator of political and economic prosperity.⁸¹ Politically, the rising value of land is reflective of the superior administrative capacity and private property protection of the Settlement.⁸² Economically, it signals the rise in demand for property for the establishment of modern industrial enterprises and financial institutions, pointing to the willingness of businessmen and financiers to invest great sums within this region.⁸³

The relative valuations of land in the three administrative units of Shanghai illustrates this point with perfect clarity. In 1930, the Chinese City possessed the greatest area of land under taxation, yet its assessed value per mow was the lowest out of the three. The assessed land value per mow of the International Settlement was 26 times more than that of the Chinese City and 1.4 times more than that of the French Concession. In terms of the highest assessed value per mow, the figure for the Settlement, 447,552 Yuan, was 7 times more than that of the Chinese City and over twice as much as that of the French Concession. In terms of the lowest assessed value per mow, the figure for the Settlement, 4895 Yuan, was 122 times more than that of the Chinese City.

⁸¹ Richard Feetham, Report of the Hon. Justice Richard Feetham to the Shanghai Municipal Council, Vol. 1, (Shanghai: North China Daily News & Herald, 1931), 340.

⁸² Ibid.

⁸³ Ibid.

Table 4: Land Area and Assessed Land Values between the Chinese City, the French Concession and the International Settlement, 1930

Administration:	Area under Taxation (Mow):	Assessed Value (Chinese Yuan):	Assessed Value per mow (Chinese Yuan):	Assessed Value as Percentage of Total Value (%):
Chinese City	647,130	923,898,974	1,428	2.16
French Concession	11,963	323,176,002	37,744	57.03
International Settlement	22,131	835,305,121	27,015	40.82
Total:	681,224	2,082,380,097	66,186	100

Source: Zhang, *Land Values Research of Shanghai*, pp. 33-34.

Table 5: Highest and Lowest Assessed Land Values between the Chinese City, the French Concession and the International Settlement, 1930

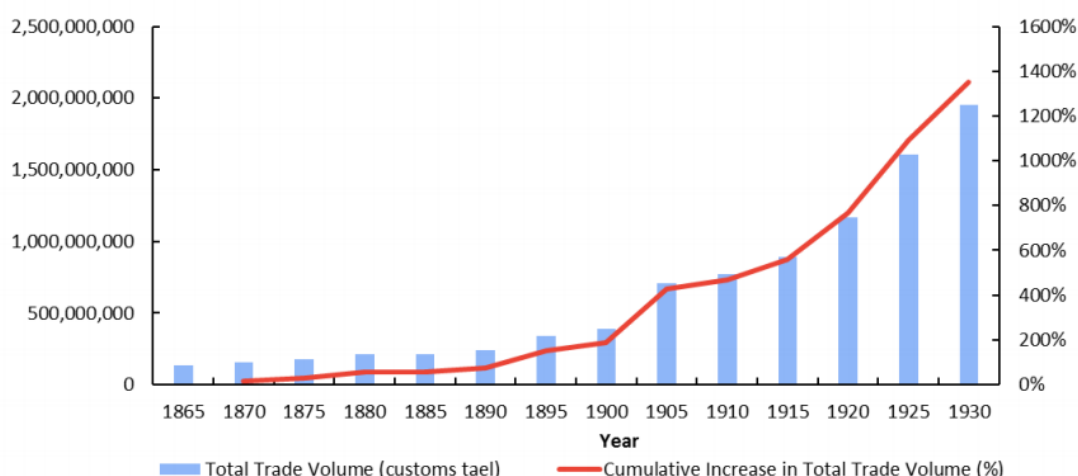
Administration:	Highest Assessed Value per mow (Chinese Yuan):	Lowest Assessed Value per mow (Chinese Yuan):
Chinese City	60,000	40
French Concession	220,979	2117
International Settlement	447,552	4895

Source: Zhang, *Land Values Research of Shanghai*, pp. 33-34.

Differences in land valuations are highly reflective of the relative degree of security and protection offered by authorities in the three administrative units. In districts where taxation was ill-defined and irregular, where no visible benefits were promised in return and where arbitrary actions by Chinese authorities were constantly exercised, there was a general trend of land value depreciation.⁸⁴ In the International Settlement, the system of land tenure was an underlying cause of the concentration of wealth and prosperity. The security and protection provided by a relatively efficient Municipal Council staffed by professional administrators were one of the most important drivers of property values, as Shanghai became an increasingly attractive destination for those engaging in commercial, industrial and financial activities.

Shanghai's increasingly dominant position in Chinese commerce throughout the treaty port era is clearly indicated by its soaring total trade volume, which underwent a phenomenal cumulative increase of 1349% from 134,809,411 customs tael in 1865 to 1,953,389,834 customs tael in 1930. From 1867 to 1939, over half of China's total import and export value was derived from the city every year.

⁸⁴ Ibid.

Figure 6: Total Trade Volume and Cumulative % Increase, Shanghai, 1865-1930

Source: Zhang, *Land Values Research of Shanghai*, pp. 52-53.

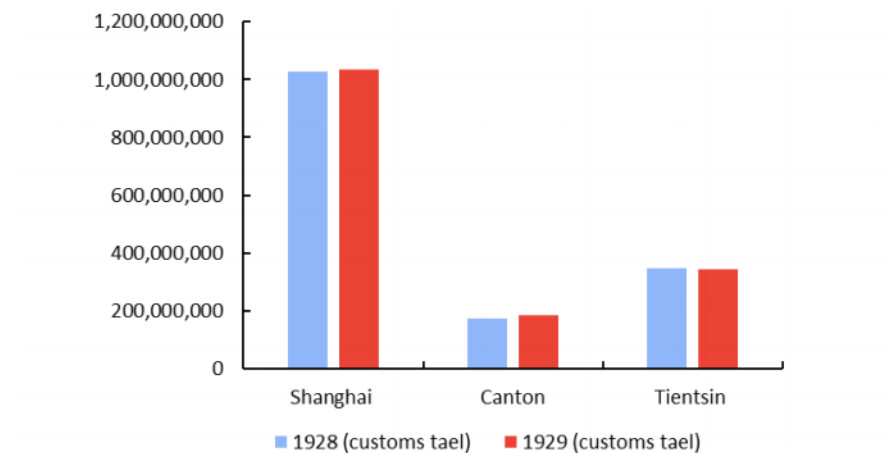
Table 6: Total Export and Import Value, Shanghai and National, 1867-1894

Year	Shanghai (Customs Tael):	National (Customs Tael):	Shanghai as Percentage of National (%):
1867	66,032	114,617	58
1873	81,444	136,088	60
1886	89,431	164,686	54
1894	155,084	293,751	52.79
1906	344,034	664,747	51.75
1913	421,310	989,596	42.57
1914	386,282	940,436	41.07
1918	416,259	1,063,527	39.14
1921	636,042	1,534,106	41.45
1929	988,687	2,297,008	43.04
1931	111,044	2,357,663	47.12
1934	560,198	1,020,726	55.43
1936	588,868	1,059,893	55.56

Source: Shanghai Academy of Social Sciences, *Shanghai Foreign Trade*, pp. 28 and pp. 184.

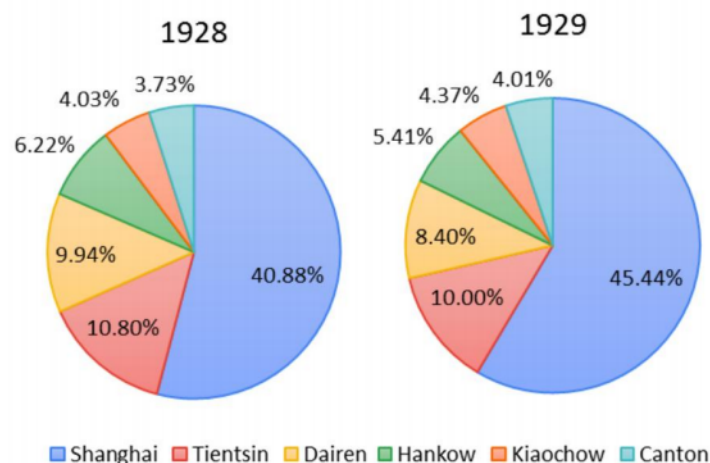
Compared to similar ports such as Canton and Tientsin, Shanghai's great commercial importance can be illustrated by the 1928 and 1929 custom statistics. The city's total trade volume in 1928 and 1929, the peak years of the golden age, was nearly 6 times as much as that of Canton and 3 times as much as that of Tientsin. Shanghai also topped the rank for its contribution to Maritime Customs, accounting for over 40% of total custom revenues amongst the principal port cities of China.

Figure 7: Total Trade Volume Comparisons between Shanghai, Canton and Tientsin, 1928-1929



Source: Feetham, *The Feetham Report*, pp. 265.

Figure 8: Relative Contributions of the Principal Ports of China to the Maritime Customs Revenue, 1928-1929

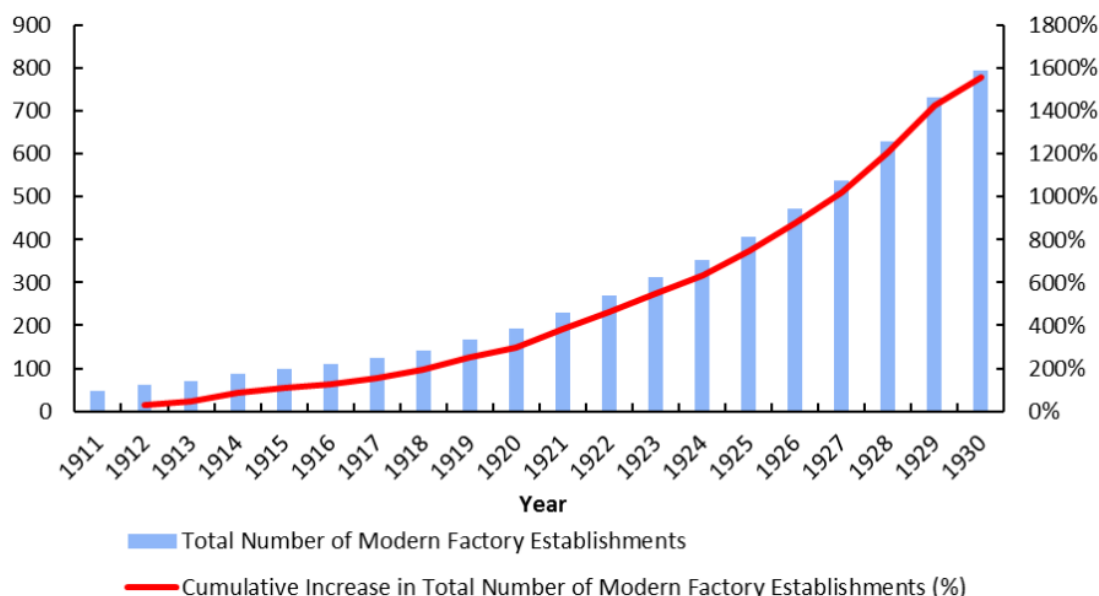


Source: Feetham, *The Feetham Report*, pp. 297.

Shanghai's accelerating industrial growth in the first three decades of the 20th century is most evident in the rise of modern factories and its sectoral composition of employment. Beginning with just 48 factories in 1911, Shanghai expanded the scope of its industrial activities to accommodate a range of enterprises to the extent that by 1930, there were 795 factories in total. By 1930, there were 61 cotton mills, 66 silk filatures, 68 cigarette and tobacco factories, 18 flour mills, 55 engineering works, 42 printing works, 4 shipyards and 34 iron foundries, together accounting for the employment of over two hundred thousand workers.⁸⁵

⁸⁵ Richard Feetham, Report of the Hon. Justice Richard Feetham to the Shanghai Municipal Council, Vol. 1, (Shanghai: North China Daily News & Herald, 1931), 267.

Figure 9: Total Number of Modern Factory Establishments and Cumulative % Increase, Shanghai, 1930



Source: Zhang, *Land Values Research of Shanghai*, pp. 55-56.

During this period, Shanghai was also one of the first cities to experience sectoral change. Agriculture's share of employment in Shanghai fell to less than 10% by 1930, whilst industry, commerce and services (including finance) employed around 20%, 10% and 38% of the total population respectively. Shanghai's status as China's financial center can be proven by the concentration of modern Chinese and foreign banking enterprises along the Bund, including the Bank of China and Hong Kong and Shanghai Banking Corporation, the formation of prominent banking associations with considerable political and economic powers such as the Shanghai Bankers' Association as well as the establishment of China's first stock and commodity exchange in 1920, in response to rapidly growing industrial and commercial needs.

Table 7: Sectoral Composition of Employment in Shanghai, 1930

Occupation:	Percentage of Total Population in Shanghai: (%)
Agriculture	9.83
Industry	19.09
Commerce	10.38
Services	38.03
On Leave	3.62
Unemployed	19.05

Source: Luo, *Shanghai as Shown in Statistical Tables*, pp. 31.

6 CONCLUSION

The great concentration of wealth and prosperity, the explosive growth of Chinese and foreign population, the expanding land areas and the high property values all serve as eloquent testimonies as to the security and protection offered by the administrative and legal institutions of the International Settlement. The superior credibility of the Shanghai Municipal Council, compared to coercive rule in the Chinese City, coincided with the greater concentration of modern commercial, industrial and financial establishments within the Settlement, suggesting a possible correlation between institutional development and economic growth. The attempt to introduce the adjudicative mode of justice in a Chinese setting at the International Mixed Court, although only achieving limited success, nevertheless brought a substantial degree of justice to Chinese subjects residing in foreign-managed areas. The recognition and protection of private property rights through the implementation of the Land Regulations and Bye-Laws facilitated the emergence of an active real estate market, where lands were sold, purchased and rented by foreigners and Chinese alike.

The importance of geography should not be dismissed. Shanghai was naturally well-placed for domestic trade and international commerce due to its advantageous position in the Lower Yangtze Delta. However, institutions have played a more decisive role than geography. From a counterfactual perspective, had the foreign settlements been located at Nanjing, which was believed, by many foreign chambers of commerce at that time, to be more suitably situated for commerce, Shanghai would have remained a modest market town, perhaps reduced to a shadow of its former self. The initiatives of the foreigners who resided in the International Settlement and to a lesser degree, the French Concession, were critical for paving Shanghai's road to modernity.

Hence, the combination of geography and institutions, the fusion of governance, law, and land gave rise to the emergence of Shanghai as the commercial, industrial, and financial epicenter of China by the early 20th century. Security, in its fullest sense, was what commerce, industry, and finance required to flourish in this context. Security, in its fullest sense, was what attracted hundreds and thousands of Chinese and foreigners, especially those of the wealthier and more entrepreneurial classes, to settle, trade, and invest. It was the security offered by the Shanghai Municipal Council, the International Mixed Court, the Land Regulations, and Bye-Laws that created the favorable conditions for the great concentration of wealth and prosperity.

Following Communist victory in the Chinese Civil War, Shanghai's unique institutions ended abruptly in 1949 and the city evolved into a centre of radical leftism in the 1950s and 1960s.

Shanghainese society and economy suffered further impairment during the Cultural Revolution of 1966-1976, when hundreds and thousands of citizens were subjected to wrongful convictions and persecutions. It was only after the introduction of the reform and opening program that Shanghai was able to restore its former economic vitality. Amidst the increasing centralization of political power in present-day China, the early 20th century Shanghai thus offers an enlightening example of the spectacular economic results that could be achieved with the installation of the rule of law, private property rights protection, and civic autonomy.

APPENDIX

Table A.1: The Chinese, Foreign and Total Population of the International Settlement, 1855-1932

Year:	Nationality:	Population:	Percentage (%):
1855	Chinese	20,000	98.8
	Foreigners	243	1.2
	Total	20,243	100
1865	Chinese	90,587	97.53
	Foreigners	2,297	2.47
	Total	92,884	100
1870	Chinese	75,047	97.83
	Foreigners	1,666	2.17
	Total	76,713	100
1876	Chinese	95,662	98.28
	Foreigners	1,673	1.72
	Total	97,335	100
1880	Chinese	107,812	98
	Foreigners	2,197	2
	Total	110,009	100
1885	Chinese	125,665	97.16
	Foreigners	3,673	2.84
	Total	129,338	100
1890	Chinese	168,129	97.78
	Foreigners	3,821	2.22
	Total	171,950	100
1895	Chinese	240,995	98.09
	Foreigners	4,684	1.91
	Total	245,679	100
1900	Chinese	345,276	98.08
	Foreigners	6,774	1.92
	Total	352,050	100
1905	Chinese	452,716	97.52
	Foreigners	11,497	2.48
	Total	464,213	100
1910	Chinese	488,005	97.3
	Foreigners	13,536	2.7
	Total	501,541	100
1915	Chinese	620,401	97.1
	Foreigners	18,519	2.9
	Total	638,920	100
1920	Chinese	759,839	97.02
	Foreigners	23,307	2.98
	Total	783,146	100
1925	Chinese	810,279	96.44
	Foreigners	29,947	3.56
	Total	840,226	100
1930	Chinese	971,397	96.38

	Foreigners	36,471	3.62
	Total	1,007,868	100
1931	Chinese	987,397	96.31
	Foreigners	37,834	3.69
	Total	1,025,231	100
1932	Chinese	1,030,554	95.88
	Foreigners	44,240	4.12
	Total	1,074,794	100

Source: Feetham, *The Feetham Report*, pp. 50-53 and Shanghai Civic Association, *Statistics of Shanghai*, pp. 1.

Table A.2.1: A Selection of Returns of Sentences and Decisions, The International Mixed Court Criminal Jurisdiction, 1870-1924

Year:	Corporal Punishment Inflicted:	Cangue:	Imprisonment , Blows and Cangue:	Imprisonment:	Expulsion:	Fine:
1870	1,040	176	-	635	-	330
1875-6	422	143	459	458	-	500
1880	119	96	184	1,119	-	682
1885	567	80	146	1,051	-	1,650
1890	548	83	414	1,173	288	3,273
1895	708	164	498	1,547	750	10,723
1900	2,331	299	1,280	1,239	625	7,601
1905	1,138	230	1,173	2,284	42	18,703
1910	4	81	-	6,586	45	3,629
1915	-	-	-	3,624	40	5,553
1920	-	-	-	2,765	81	6,326
1921	-	-	-	3,242	60	8,760
1922	-	-	-	3,649	128	13,147
1923	-	-	-	4,345	61	12,087
1924	-	-	-	4,394	273	13,393

Table A.2.2: A Selection of Returns of Sentences and Decisions, The International Mixed Court Criminal Jurisdiction, 1870-1924 (continued)

Year:	Reformatory:	Cautioned:	Sent to various Chinese authorities:	Sent to various Philanthropic Institutions:	Handed to Parents and Guardians:	Sent to the French Mixed Court:
1870	-	165	105	-	165	-
1875-6	-	163	23	-	163	-
1880	-	109	12	-	109	-
1885	-	375	93	-	375	-
1890	-	180	127	-	180	-
1895	-	132	312	170	132	-
1900	-	148	324	21	148	-
1905	-	136	256	126	136	-
1910	66	238	352	1,058	238	2
1915	90	293	304	251	293	1
1920	39	385	100	116	385	4
1921	43	382	144	105	382	15

1922	53	572	154	158	572	13
1923	81	730	172	229	730	12
1924	35	816	254	215	816	29

Source: Kotenev, *Shanghai: Its Municipality and the Chinese and Shanghai: Its Mixed Court and Council*, pp. 312.

Table A.3: Percentage Rates of Land Tax and Municipal Rates and Revenue derived annually from each of these sources, The Shanghai Municipal Council, 1866-1929

Year:	Land Tax:		Municipal Rates:					Total Land Tax and Municipal Rate Revenues (Taels):
	Percentage (%):	Revenue (Taels):	Percentage (%):		Revenue (Taels):			
			Foreign:	Chinese:	Foreign:	Chinese:	Total:	
1866	0.25%	13,682	5%	8%	31,504	43,069	74,573	88,255
1867	0.25%	13,246	4%	8%	23,176	33,425	56,601	69,847
1868	0.25%	11,785	4%	6%	25,056	32,136	57,192	68,977
1869	0.25%	14,330	6%	8%	26,704	37,622	63,696	78,026
1870	0.25%	14,032	6%	8%	-	-	42,115	56,147
1871	0.25%	14,387	6%	8%	27,201	31,647	58,848	73,235
1872	0.25%	12,962	6%	8%	28,612	34,992	63,604	76,566
1873	0.25%	13,004	6%	8%	29,808	43,664	73,472	86,476
1874	3/10 of 1%	18,189	6%	8%	31,167	45,219	76,386	94,575
1875	3/10 of 1%	16,761	6%	8%	23,744	34,934	58,678	75,439
1876	3/10 of 1%	20,111	6%	8%	27,267	48,885	76,152	96,263
1877	3/10 of 1%	20,151	6%	8%	27,077	51,606	78,683	98,834
1878	3/10 of 1%	20,475	6%	8%	26,363	50,852	77,215	97,690
1879	3/10 of 1%	20,140	6%	8%	25,865	53,009	78,874	99,014
1880	4/10 of 1%	26,862	8%	10%	34,537	70,570	105,107	131,969
1881	4/10 of 1%	31,205	8%	10%	35,698	77,099	112,797	144,002
1882	4/10 of 1%	31,239	8%	10%	37,690	84,845	122,535	153,774
1883	4/10 of 1%	54,034	8%	10%	39,705	89,720	129,425	183,459
1884	4/10 of 1%	54,311	8%	10%	40,425	83,985	124,410	178,721
1885	4/10 of 1%	54,317	8%	10%	41,452	79,192	120,644	174,961
1886	4/10 of 1%	54,157	8%	10%	42,643	83,507	126,150	180,307
1887	4/10 of 1%	54,119	8%	10%	43,360	88,290	131,650	185,769
1888	4/10 of 1%	54,007	8%	10%	43,782	95,252	139,034	193,041
1889	4/10 of 1%	54,383	8%	10%	44,952	102,037	146,989	201,372
1890	4/10 of 1%	54,645	8%	10%	44,476	104,740	149,216	203,861
1891	4/10 of 1%	67,543	8%	10%	46,836	106,926	153,762	221,305
1892	4/10 of 1%	69,029	8%	10%	47,580	111,974	159,554	228,583
1893	4/10 of 1%	67,716	8%	10%	47,572	121,037	168,609	236,325
1894	4/10 of 1%	67,761	8%	10%	48,799	132,508	181,307	249,068
1895	4/10 of 1%	67,915	8%	10%	51,675	141,064	192,739	260,654
1896	4/10 of 1%	68,418	8%	10%	56,925	168,307	225,232	293,650
1897	4/10 of 1%	110,887	8%	10%	67,247	206,321	273,568	384,455
1898	5/10 of 1%	140,291	10%	10%	94,072	239,735	333,807	474,648
1899	5/10 of 1%	141,841	10%	10%	109,085	256,312	365,397	507,238
1900	5/10 of 1%	214,775	10%	10%	146,558	272,628	419,186	633,961
1901	5/10 of 1%	218,750	10%	10%	162,230	282,383	444,613	663,363
1902	5/10 of 1%	218,148	10%	10%	177,253	319,728	496,981	715,129
1903	5/10 of 1%	277,096	10%	10%	204,375	369,769	574,144	851,240
1904	5/10 of 1%	299,541	10%	10%	241,542	427,664	669,206	968,747
1905	5/10 of 1%	399,786	10%	10%	285,892	476,671	762,563	1,162,349
1906	5/10 of 1%	400,458	10%	10%	325,513	504,427	829,940	1,230,399

1907	5/10 of 1%	456,330	10%	5%	356,028	550,082	906,110	1,362,440
1908	6/10 of 1%	685,104	12%	6%	464,112	646,268	1,110,380	1,795,484
1909	6/10 of 1% Less 20%	688,026	12%	6%	488,681	673,739	1,162,420	1,850,446
1910	6/10 of 1% Less 20%	689,335	12%	6%	499,200	672,109	1,171,309	1,860,644
1911	6/10 of 1% Less 20%	691,000	12%	6%	508,097	679,871	1,187,968	1,878,968
1912	6/10 of 1% Less 15%	671,540	12%	6%	541,851	716,846	1,258,697	1,930,237
1913	6/10 of 1% Less 15%	674,739	12%	6%	558,245	739,427	1,297,672	1,972,411
1914	6/10 of 1% Less 15%	678,067	12%	6%	563,336	773,631	1,336,967	2,015,034
1915	6/10 of 1% Less 15%	680,405	12%	6%	569,663	847,637	1,417,300	2,097,705
1916	6/10 of 1% Less 15%	682,177	12%	6%	603,196	918,645	1,521,841	2,204,018
1917	6/10 of 1% Less 7.5%	836,719	12%	6%	626,215	958,062	1,584,277	2,420,996
1918	6/10 & 7/10 of 1%	881,461	12%	6%	654,051	992,363	1,646,414	2,527,875
1919	7/10 of 1%	1,053,579	14%	7%	812,366	1,224,028	2,036,394	3,089,973
1920	7/10 of 1%	1,056,641	14%	7%	913,724	1,276,449	2,190,173	3,246,814
1921	7/10 of 1%	1,326,872	14%	12%	1,166,492	1,334,438	2,500,930	3,827,802
1922	7/10 of 1%	1,328,091	14%	12%	1,382,227	1,434,764	2,816,991	4,145,082
1923	7/10 of 1%	1,595,680	14%	12%	1,611,416	1,536,630	3,148,046	4,743,726
1924	7/10 of 1%	1,594,676	14%	12%	1,817,746	1,741,191	3,558,937	5,153,613
1925	7/10 of 1%	2,177,069	14%	12%	1,948,902	2,043,295	3,992,197	6,169,266
1926	7/10 & 8/10 of 1%	2,161,284	14%	12%	2,046,531	2,216,620	4,263,151	6,424,435
1927	7/10 & 8/10 of 1%	2,552,638	14%	12%	2,324,719	2,586,123	4,910,842	7,463,480
1928	8/10 of 1%	2,934,031	16%	14%	2,591,044	2,892,392	5,483,436	8,417,467
1929	8/10 of 1%	2,934,067	16%	14%	2,806,217	3,081,520	5,887,737	8,821,804

Source: Feetham, *The Feetham Report*, pp. 147-148.

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