

A WALK DOWN THE JUSTICE LANE: TRADITION,
REFORM, AND THE MODERN CHINESE COURT

A REVIEW OF CHINESE JUSTICE: TRADITION AND
MODERNIZATION

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1 Jinyi Zheng. Book review of NIE XIN (聂鑫), ZHONGGUO SIFA: CHUANTONG YU XIANDAIHUA (中国司法：传统与现代化) [CHINESE JUSTICE: TRADITION AND MODERNIZATION] (2026).

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Abstract

This review analyzes Nie Xin's Chinese Justice: Tradition and Modernization as the first comprehensive study of the transformation of Chinese judicial institutions from 1911 to 1949. It argues that Nie's central contribution lies in treating Republican judicial reform as a process of institutional reconfiguration rather than a simple transplantation of Western legal forms. The book reconstructs modern Chinese justice through three interrelated dimensions: the differentiation of judicial authority within the Judicial Yuan; the organization of adjudicatory power through criminal-civil division and appellate hierarchy; and the practical innovation of justice in civil service discipline, administrative adjudication, election litigation, and judicial publicity. By tracing these institutional arrangements and practices, Nie shows how legal modernity was made through professional expertise, normative control, procedural design, and the daily operation of courts and quasi-judicial bodies. The review also emphasizes the contemporary significance of this history. Problems concerning the function of the highest court, the burden of appellate review, the unification of legal application, guiding cases, judicial interpretations, and judgment publication all have structural precedents in the Republican period. Nie's book therefore contributes not only to Chinese legal history, but also to a broader understanding of how judicial institutions are constructed under conditions of political instability, administrative scarcity, and social demand for justice.

Keywords: Legal History; Judicial Reform; Republic of China; Modern Chinese History

I. INTRODUCTION: JUDICIAL REFORMS AS INSTITUTIONAL RECONFIGURATION

Did the nature of law in imperial China lie in a system of statutes, cases, administrative commands, moral instructions, or something that these modern conceptions cannot easily capture? Was Chinese law

penal in its very nature? Was it legally rational, or did it remain patrimonial and substantive justice? From early Jesuit missionaries and British diplomats to major giants of thoughts such as Voltaire and Weber, Western observers have long treated Chinese law as a privileged site considering of bureaucracy, civilization, rationality, and state power.² For a long time, the dominant image was an imperial legal order centered on punishment, moral discipline, and the magistrate's discretionary authority, with little room for autonomous adjudication, legal professionalism, or rights-based litigation. Yet this picture has been substantially revised by later historical scholarship. With the use of county archives, case records, contractual documents, and materials on litigation masters and legal specialists, scholars have shown that imperial Chinese justice was a far more complex practice,³ ranging from statutes and punishments, to petitions, mediation, property disputes, marriage and inheritance conflicts, documentary strategies, local norms, bureaucratic routines, and the practical mobilization of state authority by ordinary people. The history of Chinese justice has therefore become a history of the interaction between codified norms and social practice, between bureaucratic governance and local society, and between official representations of order and the actual techniques

2 Voltaire's admiration for China and the Confucian moral-political order appears most clearly in his universal history, especially in the opening chapters on China. See VOLTAIRE, *THE PHILOSOPHY OF HISTORY* chs. 1–2 (Thomas Kiernan trans., 1965). For discussion, see Arnold H. Rowbotham, *Voltaire, Sinophile*, 47 *PMLA* 1050 (1932); W. W. Davis, *China, the Confucian Ideal, and the European Age of Enlightenment*, 44 *J. HIST. IDEAS* 523 (1983); TEEMU RUSKOLA, *LEGAL ORIENTALISM: CHINA, THE UNITED STATES, AND MODERN LAW* 32–38 (2013). On the long Western construction of Chinese law as an object through which to theorize civilization, despotism, bureaucracy, and legal rationality, see MONTESQUIEU, *THE SPIRIT OF THE LAWS* bk. 8, ch. 21, bk. 19, chs. 17–20 (Anne M. Cohler et al. trans. & eds., 1989); MAX WEBER, *THE RELIGION OF CHINA: CONFUCIANISM AND TAOISM* (Hans H. Gerth trans. & ed., 1951); DERK BODDE & CLARENCE MORRIS, *LAW IN IMPERIAL CHINA: EXEMPLIFIED BY 190 CH'ING DYNASTY CASES* 3–50 (1967).

3 See PHILIP C. C. HUANG, *CIVIL JUSTICE IN CHINA: REPRESENTATION AND PRACTICE IN THE QING* (1996); KATHRYN BERNHARDT, *RENTS, TAXES, AND PEASANT RESISTANCE: THE LOWER YANGZI REGION, 1840–1950* (1992); MELISSA MACAULEY, *SOCIAL POWER AND LEGAL CULTURE: LITIGATION MASTERS IN LATE IMPERIAL CHINA* (1998); BRADLY W. REED, *TALONS AND TEETH: COUNTY CLERKS AND RUNNERS IN THE QING DYNASTY* (2000); MATTHEW H. SOMMER, *SEX, LAW, AND SOCIETY IN LATE IMPERIAL CHINA* (2000).

through which disputes were processed.

This broader historiographical shift offers a unique point to reconsider legal transplantation in an institutional sense. The judicial reform of the late Qing and Republican periods was not only boosted by external stimuli but also lay in the attempt to reorganize the relationship among state authority, legal knowledge, and social dispute resolution. The creation of modern courts, the separation of judiciary and executive, the introduction of procedural law, the professionalization of judges and lawyers, and the codification of civil and criminal law all sought to transform adjudication from a magistrate-centered practice of bureaucratic governance into a specialized function of a modern state. Seen from the perspective of legal development and social history, these reforms marked a critical transition from an imperial order of administrative rule and local mediation, to a modern judicial system of legality, procedural regularity, institutional differentiation, and national legal integration.

Professor Nie Xin's latest book, *Chinese Justice: Tradition and Modernization*, offers a comprehensive attempt to tackle these questions. It examines the transformation of Chinese judicial institutions from 1911 to 1949 through the lens of comparative law and legal history.⁴ Its central concern is not merely how modern courts, procedural rules, and appellate structures were introduced into China after the fall of the Qing dynasty. Rather, it discusses how did a judicial order long embedded in imperial bureaucracy, administrative supervision, and local dispute-processing practices become reorganized into a modern institutional system claiming procedural regularity, hierarchical review, professional adjudication, and national legal unity.

Nie's discussion involves three interrelated themes. The first is the reconstruction of judicial authority through the differentiation of powers within the central judicial institution, especially the relationship among judicial administration, supreme adjudication, and normative control.⁵ The second is the organization of adjudicatory power, including the criminal-civil structure of the highest court and the

4 NIE XIN (聂鑫), *ZHONGGUO SIFA: CHUANTONG YU XIANDAIHUA* (中国司法：传统与现代化) [CHINESE JUSTICE: TRADITION AND MODERNIZATION] (2026).

5 See NIE, *supra* note 3, at 31–117.

vertical design of appellate review.⁶ The third is the practical life of modern justice beyond formal court organization, where disciplinary proceedings, administrative adjudication, election litigation, and judicial publicity became important sites of legal innovation.⁷ Read together, these themes show that Nie's book is not only a history of judicial reform in Republican China, but also a study of the institutionalization of legal modernity with power allocation, professional expertise, procedural experimentation, and judicial practice.

II. JUDICIAL AUTHORITY RECONSTRUCTED

A. Forging Judges' Autonomy: Three Faces of Judicial Power

When attention shifts to the judiciary, how governmental agencies attain autonomy is framed in terms of judicial independence within the study of constitutional law and political theory. The administration of judges is almost regarded as one of the most important determinants of judicial autonomy, yet the organization of judicial administration varies significantly across jurisdictions. In many European countries, important aspects of judicial administration historically were entrusted to the executive branch. The American, shaped less by centralized bureaucratic design than by a more decentralized and judge-centered institutional order, has tended to place substantial control over judicial administration in the hands of the judiciary itself.

The Chinese story reconstructed by Professor Nie is distinctive. He identifies three dimensions of judicial power within the central judicial authority, the Judicial Yuan (司法院): the power of judicial administration (司法行政权), the power of supreme adjudication (最高审判权), and the power of normative control (规范控制权).⁸ This tripartite distinction allows Nie to show that judicial power could not be understood as a single and undifferentiated institutional

⁶ See NIE, *supra* note 3, at 117–212.

⁷ See NIE, *supra* note 3, at 213–311.

⁸ See NIE, *supra* note 3, at 45–76. Judicial administration concerns the organization, personnel, budget, and management of the judiciary, and is assigned to an organ standing apart from, or even above, the courts. Supreme adjudication refers to the authority to render final judgments in concrete cases. Normative control refers to the authority to interpret, unify, and discipline the application of legal norms across the judicial system based on professional legal knowledge.

competence. While judicial administration could be exercised through bureaucratic techniques, supreme adjudication and normative control required a different institutional logic, where trained judges and professional judicial organs are dominant. Thus, a meaningful degree of judicial autonomy could still be preserved where the exercise of judicial power was constrained and mediated by legal expertise.

Under the Republican constitutions and relevant statutory laws, despite persistent controversy, the Judicial Yuan was crucially defined as the highest judicial organ (最高司法机关), rather than merely the highest adjudicatory organ (最高审判机关). It indicates that the Judicial Yuan was conceived as a composite institution, combining judicial administration, supreme adjudication, and normative control. Its formal structure reflected this composite character. The Judicial Yuan consisted of three principal subordinate organs: the Supreme Court (最高法院), the Administrative Court (行政法院), and the Commission on the Disciplinary Sanctions of Public Functionaries (公务员惩戒委员会), alongside the Council of Grand Justices (大法官会议), which functioned as a parallel organ of constitutional interpretation.

The power of judicial administration, vested in the Judicial Yuan and concentrated in its president, and both the president and vice president of the Judicial Yuan were political appointees. Hence, this political distinction indicates that judicial independence was substantially compromised under the authoritarian rule of the Kuomintang. Nie's account, however, points in a different and more nuanced direction. Even within a politically constrained framework, professional expertise, bureaucratic self-organization, and the internal logic of adjudication could work together to produce judicial autonomy. This point becomes clear in moments when legislative or political interventions threatened to narrow the institutional autonomy of judges. In December 1931, the *Organic Law of the National Government* (《国民政府组织法》) was amended to require that the president of the Judicial Yuan concurrently serve as president of the Supreme Court, and that the vice president of the Judicial Yuan concurrently serve as chair of the Commission on the Disciplinary Sanctions of Public Functionaries. Yet only a few months later, in March 1932, the National Government revised the Organic Law again, transforming this mandatory arrangement into a more flexible one. The change suggests that judicial institutions and legal professionals were not simply passive under the political design. An even clearer example emerged in 1947, when all judges of the Supreme Court

opposed the March amendment to the *Organic Law of the Judicial Yuan* (《司法院组织法》), which sought to reduce the Supreme Court to a mere chamber within the Judicial Yuan. It demonstrates that, even within an authoritarian political environment, judicial autonomy could be defended through institutional argument, professional solidarity, and resistance from within the judiciary itself.

The expanding power of normative control, deriving from the early Republican Dali Yuan's authority to interpret and apply the law, shows an even greater extent of judicial autonomy. It practically came close to a form of judicial lawmaking, and played a significant role during the Beiyang period. According to the *1928 Organic Law of the National Government*, the president of the Judicial Yuan was empowered to exercise this authority through a conference procedure. The procedure was organized by the president and vice president of the Judicial Yuan, while the substantive work of interpretation was carried out by the president and division chiefs of the Supreme Court, together with other legal professionals. The resulting interpretations were then deliberated upon and approved by the full body of Supreme Court judges. This institutional design transformed unified legal interpretation into a checked form of normative control. The authority of statutory and regulatory interpretation was further extended to constitutional interpretation under the *1947 Organic Law of the Judicial Yuan*. Through this reform, the power of judicial review, institutionalized in the form of constitutional interpretation, was vested in the Council of Grand Justices. This development gave the Judicial Yuan the authority to interpret the Constitution and to review the validity of laws and governmental acts in constitutional terms. Additionally, the president of the Judicial Yuan was not simultaneously entitled to vote in the conferences of the Council of Grand Justices unless he belongs to the Grand Justices. This arrangement illustrates Nie's central point: even where the Judicial Yuan remained embedded in a politically structured constitutional order, the most legally and politically consequential forms of normative control were designed to depend upon judicial expertise rather than ordinary bureaucratic command.

Seen in this light, Nie's analysis indicates judicial autonomy does not depend solely on formal independence or political insulation. The Judicial Yuan was never a purely self-governing judicial body, nor was it institutionally detached from the political structure of the Republican state, which reflected the broader constitutional design of the Kuomintang regime. Yet the coexistence of judicial administration,

supreme adjudication, and normative control created possibilities of judicial autonomy. Political authority could shape the organization of the judiciary, but it could not fully absorb the professional logic of adjudication and legal interpretation. Judicial autonomy therefore emerged through the differentiation of judicial powers, the resistance of adjudicatory organs to administrative subordination, and the embedding of normative control in professional legal expertise, which is one of the central insights of Nie's book.

B. A Court Divided? Criminal and Civil Adjudication

If judicial autonomy can be reconstructed through the differentiation of judicial powers, the internal structure of adjudication itself reveals another dimension of Nie's analysis. The division between criminal and civil adjudication is not a mere matter of procedural classification, but the way where the highest court (最高审判机关) defines its own function. It thus reveals how a legal system understands the function of adjudication and the relationship between public authority and private ordering,⁹ and Nie begins from this basic distinction.

In traditional Chinese justice, criminal and civil matters didn't develop along the same institutional track. Serious criminal cases, especially those involving capital punishment, were subject to sophisticated mechanisms of upward transmission and review. But ordinary civil matters were generally handled at the local without similar path of review. It reflects that the imperial judiciary assigned different procedural weight to different categories of cases. Criminal adjudication, especially capital review, became closely tied to sovereign authority, while civil adjudication remained more deeply embedded in local administration, mediation, and petitioning practice.

The late Qing and Republican reforms, influenced largely by Japan and Germany, placing criminal and civil adjudication within the same ordinary court system, made them operate under a common law of court organization. Both criminal and civil procedures could be brought in parallel through appellate review, even to the supreme adjudicatory organ. In this sense, modern judicial reform created an integrated highest court, but didn't erase the distinction between criminal and civil justice. Criminal and civil adjudication existed inside one highest adjudicatory institution, but retained separate chambers, different procedural techniques, and distinct institutional weights.

⁹ See NIE, *supra* note 3, at 79–108.

Hence, the internal architecture of the court itself made the Republican highest court divided unified.

In the Beiyang period and under the Nanjing National Government, the number of criminal and civil chambers, the allocation of judges, and the handling of caseloads were adjusted. Criminal and civil judges could sometimes assist across divisions, and the highest court's precedential practice developed increasingly in both fields to guide lower courts in the application of law.

Simultaneously, criminal adjudication carried a special political and sovereign weight, especially capital punishment. The modern court system formally integrated criminal cases into ordinary appellate channels, yet exceptional arrangements pulled criminal justice away from ordinary procedural guarantees. It reveals that the criminal-civil structure of the highest court was never a purely technical design, but a site where sovereignty, public order, legal professionalism, and judicial regularity were negotiated.

C. Vertical Judicial Power on Books and in Actions: Appellate Reform

In theories of legal process, the appellate system tends to serve two purposes that protect litigants by review of erroneous judgments, and protect the legal order by interpretation and application of law. But these two purposes don't always point in the same direction. The more broadly a right of appeal may lead to greater justice in individual cases. However, the more cases reach the highest court, the more difficult it becomes for its central function of legal unification.

This tension is at the center of Nie's reconstruction of appellate reform in modern China. Introduced under the influence of Japanese and German models, late Qing and Republican reformers sought to establish a modern system of levels and instances. The Qing reformers moved from the traditional many-layered review of serious criminal cases to a four-level, three-instance system (四级三审制). The Beiyang government inherited but modified this framework through practical arrangements. The Nanjing National Government later transformed the system into a three-level, three-instance structure (三级三审制), with the Supreme Court as the single national court of third instance. In books, therefore, appellate reform seemed to move toward procedural rationalization, institutional hierarchy, and national

judicial unity.¹⁰

In action, however, the design of appellate hierarchy was constantly constrained by the geography, finances, personnel, and administrative capacities. Limited number of courts, inadequate judges and budgets, and inconvenient transportation made most regions still rely on county magistrates, branch courts, or other provisional arrangements. Thus, the history of appellate reform was not an implementation of a legal model, but compromises under institutional scarcity. Nie's analysis is most compelling when showing that those were attempts to preserve the ideal under conditions that made full implementation impossible, yet they also show that reformers tried to build a vertical judicial order with the limited institutional resources available to them.

The same tension becomes sharper in the principle that the third instance should be a trial of law (法律审). In doctrinal and legislative terms, the third instance was designed to review errors of law rather than to reexamine facts, but the practice of modern China repeatedly pushed the third instance beyond this role in case serious injustice would not be corrected. Theoretically, the third instance was a court of law. But in practice, it often became a mixed institution with legal review and factual correction.

The unified legal application must be understood against this background, and the highest court could not rely on appellate review alone to produce national legal unity. It also developed additional techniques of normative control, including precedential abstracts (判例要旨), edited collections of judgments, and interpretive opinion, which turned concrete adjudication into general rules and allowed the highest judicial authority to speak beyond individual cases. They were not accidental by-products of adjudication, but institutional responses to the difficulty of governing a vast and uneven judicial system through ordinary appeals. Therefore, the vertical appellate structure was supplemented with a more general mechanism of legal guidance.

This also explains why Nie's discussion of appellate reform should be read together with his discussion of normative control. Appellate hierarchy gave the highest court access to cases, and precedents and interpretations bring about legal authority. However, where first and second instance courts were weak, the third instance had to bear too many functions, such as reviewing facts, correcting injustice and

10 See NIE, *supra* note 3, at 117–207.

unifying law. Although the role of the highest level is enlarged, its ability to perform its distinctive function is weakened.

In short, the history of Republican appellate reform was marked by a tension between legal form and institutional constraints, which exactly makes Nie's account historically significant. He does not describe appellate reform simply as an unfinished project or a failed transplantation, but shows how modern Chinese judicial power was constructed through the continuous negotiation between imported ideals and administrative realities. The appellate system existed both in books and in actions, and vertical judicial power was therefore not given by institutional design alone, but should be made, adjusted, and defended through practice.

III. JUSTICE PRACTICED AND INNOVATED IN COURTROOMS AND BEYOND

The preceding sections have focused on the institutional architecture of judicial authority, and the other important contributions of Nie's book lies in showing that modern Chinese justice was also practiced and innovated in a series of marginal, hybrid, and politically sensitive arenas. They were sites where new forms of legal reasoning, procedural protection, institutional self-assertion, and public legal communication were tested.¹¹

The first of these arenas concerns the discipline of civil servants (公务员惩戒). Nie shows that the boundary between administration and adjudication became most visible precisely in this field. On the one hand, officials should be disciplined in order to maintain bureaucratic order and administrative efficiency. On the other hand, civil servants required legal protection against arbitrary dismissal, demotion, or punishment by political superiors. By placing important disciplinary matters before relatively independent committees and by introducing quasi-judicial procedures, Republican China transformed bureaucratic punishment into a legally structured process. The Civil Servant Disciplinary Commission retained features of committee organization, administrative decision-making, and political supervision, under the Five-Power Constitution (五权宪法), it conflicted with the Executive Yuan (行政院), the Examination Yuan (考试院), and the Control Yuan (监察院), each of which could claim some institutional connection to the management, evaluation, or impeachment of public

11 See NIE, *supra* note 3, at 213–326.

officials. Therefore, Nie's analysis resists a simple account of rationalization, but point its modernity lay in this unstable combination of judicial form, administrative function, and constitutional competition.

The second arena is the Pingzhengyuan (平政院) and the judicial protection of civil servants (文官权益保护). In the volatile politics of the early Republic, civil service protection was not merely for individual rights, but for the continuity and professionalism of the bureaucracy. Nie's study of Pingzhengyuan decisions shows that administrative adjudication could function as a stabilizing device within a fragile constitutional order. By reviewing dismissals, suspensions, and disciplinary measures imposed by administrative authorities, the Pingzhengyuan gave concrete legal effect to the abstract promise of civil service protection. More importantly, Pingzhengyuan didn't simply intervene bureaucratic management, but insisted on procedure, which was itself a form of judicial innovation. It transformed civil service protection from a statutory formula into a practice of administrative legality, and also shows that modern justice in Republican China could operate outside ordinary civil and criminal courts, through administrative adjudication directed at the legality of bureaucratic power.

A third arena is election litigation (选举诉讼). Election disputes were among the most politically charged cases of the early Republic. They concerned not only the rights of individual candidates or voters, but also the legitimacy of representative institutions. Due to novel modern electoral laws with scarce electoral experience, rules were incomplete and local electoral practices were disorderly. In this context, the Dali Yuan became an active producer of legal norms. Nie's treatment of election litigation is important because it shows judicial innovation at the intersection of law and politics. The Dali Yuan created a body of rules that enabled the electoral system to function through precedents and interpretations, and clarified jurisdiction, procedure, standing, electoral validity, and the distinction between election litigation and criminal prosecution. It was an attempt by the highest judicial authority to make a newly imported constitutional institution workable under conditions of legislative incompleteness and political contestation.

The fourth arena is the publication of judicial judgements (裁判文书公开). Nie's discussion of Republican judicial publicity further expands the meaning of judicial practice. Publicizing judgments was not merely an archival or informational act, but reshaped the

relationship among courts, legal professionals, litigants, scholars, and the broader legal public. This practice also altered the nature of precedent. Once judgments were published in judicial gazettes or collected in case compilations, they could be read, invoked, criticized, and reused. In this way, judicial documents became part of a public legal conversation.

Justice was practiced in ordinary courts, administrative tribunals, disciplinary committees, electoral disputes, and printed legal media. It was innovated through procedure, jurisdiction, precedent, interpretation, publication, and professional communication. Therefore, the third part of the book brings judicial history down from constitutional design to judicial practice, and from legal form to the everyday techniques through which law was made to operate.

IV. CONTRIBUTION

The contribution of Nie's book lies first in its reconstruction of Republican judicial reform as an institutional history of Chinese justice, where the basic problems of modern Chinese judicial authority were formulated, tested, and contested.

When it comes to the methodology, Nie shows that imported legal forms acquired meaning only when they entered concrete institutional settings by using comparative legal history, or rather, a history of institutional capacity.

The contemporary relevance of this history is evident. Current Chinese judicial reform faces many problems that are structurally familiar, even though the political and legal environment has changed fundamentally. The Republican experience offers no ready-made model for today, but its value lies in clarifying the recurrent constraints of Chinese judicial reform.

In this sense, Nie's book contributes to both historical scholarship and contemporary reflection. It shows that Chinese judicial modernization has always been shaped by a tension between institutional aspiration and practical constraint. Reformers repeatedly sought legality, hierarchy, professionalism, and unity, while courts had to operate under scarcity, political pressure, uneven capacity, and social demand for concrete justice. The lesson of the Republican period is therefore not simply that reform was incomplete. It is that judicial reform succeeds or fails through the ordinary institutional conditions that allow legal ideals to become working practices. By walk the

Chinese legal practitioners down the memory lane of judicial reforms, Nie enables us to see modern Chinese justice less as a set of borrowed forms than as a continuing project of institutional construction.