

Images of Justice (and Injustice): Trials in the Movies of Xie Jin

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I. INTRODUCTION

Jon Van Dyke was not only a brilliant teacher and scholar but also a wonderful colleague and friend, so it is a privilege to participate in this conference organized in his honor. During the years we were colleagues, I benefited many times from his open-door policy: I could always discuss China and international law issues with Jon, and I'm still grateful for his expertise and support. Some years ago, I remember, we both spoke at a Law School panel on China and human rights, for which I focused on criminal justice. As part of my presentation, I raised a general question for our group: when would the criminal justice system be reformed in China, when would people there enjoy the rights essential to a fair trial? "When Chinese people make these criticisms themselves and press for their rights," was Jon's immediate reply.

Since then, Chinese legal scholars and reformers have indeed worked hard to expand procedural rights in criminal trials and to limit the extra-judicial administrative procedures that too often replace them. It is their efforts, just as Jon predicted, that have led to important criminal justice reforms in China, especially since 1996. In the keynote speech for this conference, for example, Professor Jerome Cohen discussed both the newly amended Chinese criminal procedure law¹ and the possible end to re-

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¹ The Criminal Procedure Law of the People's Republic of China (Zhonghua Renmin Gongheguo Xingshi Susong Fa), as amended on March 14, 2012, effective January 1, 2013.

education through labor,² which would introduce reforms long advocated by Chinese experts as well as by international human rights groups.³

Chinese critiques of criminal justice may also be found outside the legal world: in literature and film, but especially in film and from its earliest days. Indeed, encounters with the criminal justice system in Chinese movies of the 1930s and 1940s provide some of that cinema's most striking (and terrifying) scenes. In these movies, ordinary people are wrongly arrested, leading to harsh consequences for them and their loved ones, or they are hounded and driven to acts of desperation to survive, then punished severely. The police harass and relentlessly pursue them, and such people are trapped even before they are imprisoned behind bars. Although the trial was not the central, continuous event we find in common law systems, early Chinese filmmakers also used courtroom scenes to great dramatic effect. Judges sit high above those who appear before them, remote from their concerns and deaf to their pleas for mercy; defense lawyers rarely make an appearance in these movies, so the hapless defendants invariably stand alone.⁴

Despite tighter film censorship after 1949, compelling images of justice and injustice also appear in later Chinese movies, particularly in the films of the great Xie Jin (1923-2008),⁵ the most celebrated of the Third-

² Andrew Jacobs, *Opposition to Labor Camps Widens in China*, N.Y. TIMES, Dec. 14, 2012, http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&_r=0. *Necessary Reform of Labor Re-education System*, CHINA DAILY, Jan. 14, 2013, http://europe.chinadaily.com.cn/opinion/2013-01/14/content_16116574.htm. Re-education through labor (*laodong jiaoyu* or *laojiao*) is an administrative punishment allowing the police to imprison people for up to four years without court action or application of the criminal procedure law. Human Rights Watch, *China: Fully Abolish Re-Education through Labor*, HUMAN RIGHTS WATCH, Jan. 28, 2013, <http://www.hrw.org/news/2013/01/08/china-fully-abolish-re-education-through-labor>. Jerome A. Cohen, Professor of Law at NYU, Keynote Address at the He Hali'a Aloha No Jon: Memories of Aloha for Jon, an International Law Symposium Tribute to Professor Jon Markham Van Dyke (Jan. 14, 2013), available at <https://www.law.hawaii.edu/event/video-new-era-chinese-justice-reflections-bo-xilai-and-chen-guangcheng-cases>.

³ For a discussion of criminal procedure before the 2012 amendments (and the 1996 reforms that preceded them), see JIANFU CHEN, CHINESE LAW: CONTEXT AND TRANSFORMATION 299-325 (2008). For a detailed analysis of criminal procedure in practice, see MIKE McCONVILLE, CRIMINAL JUSTICE IN CHINA: AN EMPIRICAL INQUIRY (2011).

⁴ Among the most famous are GODDESS [SHENNÜ] (Lianhua Film Co. 1934), THE TWO-MAO NOTE [LIANGMAO QIAN], one of eight short films in SYMPHONY OF LIANHUA [LIANHUA JIAOXIANG QU] (Lianhua Film Co. 1937), and SONG OF THE FISHERMAN [YUQUANG QU] (Lianhua Film Co. 1934). See Alison W. Conner, *Movie Justice: The Legal System in Pre-1949 Chinese Film*, 12 ASIAN-PAC. L. & POL'Y J., no. 1, 2010.

⁵ One of the most popular as well as critically acclaimed directors from the 1950s to the 1990s, Xie Jin also directed WOMAN BASKETBALL PLAYER NO. 5 [NÜLAN WUHAO] (Tianma Film Studio 1957), RED DETACHMENT OF WOMEN [HONGSE NIANGZI JUN] (Tianma Film

Generation directors who emerged in the Chinese film world after 1949.⁶ Though Xie's fame may now have been eclipsed internationally by the stars of the Fifth Generation,⁷ he remains one of the most important Chinese directors of the twentieth century and his films continue to be highly popular in China.⁸ During his long career, Xie Jin directed a wide variety of films in different genres, ranging from comedy to drama and from historical to contemporary settings. But a concern with justice and the vindication of those wrongly punished are central, recurring themes in his work, especially in his post-Cultural Revolution movies. As Xie himself acknowledged, his filmmaking was influenced by Chinese melodrama traditions as well as by Italian realism and Hollywood conventions.⁹ For that reason, his movies are sometimes dismissed as melodramas, whether

Studio 1961), and *THE OPIUM WAR* [YAPIAN ZHANZHENG] (Emei Film Studio 1997) as well as the films discussed in this article. See *Xie Jin*, in *ENCYCLOPEDIA OF CHINESE FILM* 376-77 (Yingjin Zhang & Zhiwei Xiao, eds. 1998); TAN YE & YUN ZHU, *HISTORICAL DICTIONARY OF CHINESE CINEMA* 185-187 (2012); XIE JIN ZHUAN [Biography of Xie Jin] (Dai Xiu & Zhuang Xin, eds., 1997). Ronald Bergan, *Xie Jin: Chinese film director who survived the cultural revolution*, *THE GUARDIAN*, Oct. 19, 2008, <http://www.guardian.co.uk/film/2008/oct/20/china-xie-jin-film>. Leo Goldsmith, *The People's Director: The old new China of Xie Jin (1923-2008)*, *MOVING IMAGE SOURCE* (Dec. 11, 2008), <http://www.movingimagesource.us/articles/the-peoples-director-20081211>. Xie Jin's work has been very widely discussed, in both English and Chinese. See, e.g., the essays collected in *LUN XIE JIN DIANYING* [THE MOVIES OF XIE JIN] (Chen Jianyu et al., ed. 1998) as well as the articles and essays cited in this article.

⁶ Most "Third-Generation" directors, many trained before 1949, were active during the 1950s to the late 1970s. For a discussion of the different generations of Chinese film directors, see HARRY H. KUOSHU, *CELLULOID CHINA: CINEMATIC ENCOUNTERS WITH CULTURE AND SOCIETY* 2-19 (2002).

⁷ PAUL CLARK, *REINVENTING CHINA: A GENERATION AND ITS FILMS* 192-93 (2005).

⁸ For example, a two-week retrospective at the MOMA Cinemathique theater in Beijing in 2010. *2010 Retrospective of Xie Jin Movies*, *CCTV.COM* (Mar. 15, 2010), <http://english.cctv.com/program/cultureexpress/20100315/103053.shtml>. Most of Xie Jin's films are still widely available on DVD in China and his screenplays have also been edited and published (see below). Several of Xie's films were included in the 47th New York Film Festival, held September 25-October 11, 2009, "(Re)Inventing China." See *(Re)Inventing China: A New Cinema for a New Society, 1949-1966*, Shaoyi Sun's Film Review Blog (Oct. 22, 2009, 5:45 PM), <http://shaoyis.wordpress.com/2009/10/22/reinventing-china-a-new-cinema-for-a-new-society-1949-%E2%80%93-1966/>.

⁹ Paul G. Pickowicz, *Melodramatic Representation and the "May Fourth" Tradition of Chinese Cinema*, in *FROM MAY FOURTH TO JUNE FOURTH: FICTION AND FILM IN TWENTIETH-CENTURY CHINA* 295-326 (Ellen Widmer & David Der-Wei Wang, eds., 1993); Ma Ning, *Spatiality and Subjectivity in Xie Jin's Film Melodrama of the New Period*, in *NEW CHINESE CINEMAS: FORMS, IDENTITIES, POLITICS* 15-39 (Nick Browne, Paul P. Pickowicz, Vivian Sobchack & Esther Yau, eds., 1994).

“political”¹⁰ or “sentimental,”¹¹ and he has been criticized for his conventional narratives or for an old-fashioned style.¹² But Xie’s best work is made with great feeling and passion¹³ and that style is what makes his movies so effective, more sophisticated and perhaps more powerful than the earlier films.

This article will analyze Xie’s depiction of trials—the images of justice—in three of his best-known movies: *Qiu Jin* (1983),¹⁴ set in the last days of the Qing dynasty; *Stage Sisters* (1964),¹⁵ set mostly in the pre-1949 Republican era;¹⁶ and *Hibiscus Town* (1986),¹⁷ which takes place during the mass political movements of the 1960s and 1970s. As it happens, these movies portray trials in the three different political regimes of twentieth-century China, and one might easily consider them in that chronological order. But they reflect Xie’s political experiences and are very much the products of the time he made them, so considering them in the order they were filmed may prove a more illuminating approach.¹⁸ How do these three movies reflect Xie’s critique of Chinese criminal justice, and what might they suggest about legal reform today?

¹⁰ Nick Browne, *Society and Subjectivity: On the Political Economy of Chinese Melodrama*, in *NEW CHINESE CINEMAS: FORMS, IDENTITIES, POLITICS*, *supra* note 10, 40-56.

¹¹ Paul G. Pickowicz, *Huang Jianxin and the Notion of Postsocialism*, in *NEW CHINESE CINEMAS: FORMS, IDENTITIES, POLITICS*, *supra* note 9, 57, at 63.

¹² See, e.g., Zhu Dake, *Xie Jin Dianying Moshi de Quexian* [The Defects of Xie Jin’s Model], in *LUN XIE JIN DIANYING*, *supra* note 6, at 91-93 (this essay was written in 1986); Li Jie, *Xie Jin’s Era Should End*, in *CHINESE FILM THEORY: A GUIDE TO THE NEW ERA* 147-48 (George S. Semsel, Xia Hong, & Hou Jianping eds., 1990).

¹³ In Xie Jin’s words: “The film which can generate genuine feeling is, to me, the ideal film. I like my films to touch my audience, to cause an emotional impact.” George S. Semsel, *Interviews: Xie Jin, Director of the Third Generation*, in *CHINESE FILM: THE STATE OF THE ART IN THE PEOPLE’S REPUBLIC 110* (George Stephen Semsel ed., 1987).

¹⁴ *QIU JIN* (Shanghai Film Studio 1983).

¹⁵ *STAGE SISTERS* [Wutai Jiemei] (Shanghai Film Studio 1964). The screenplay appears in *XIE JIN DIANYING XUAN JI. NÜXING JUAN* [ANTHOLOGY OF XIE JIN’S MOVIES. WOMEN] (Xie Jin, ed., 2007).

¹⁶ The Republic of China, 1912-1949 on the Chinese mainland. The Qing dynasty (1644-1911), the last imperial dynasty, represented the final version of China’s traditional laws and legal system.

¹⁷ *HIBISCUS TOWN* [Furong Zhen] (Shanghai Film Studios 1986).

¹⁸ MICHAEL BERRY, *SPEAKING IN IMAGES: INTERVIEWS WITH CONTEMPORARY CHINESE FILMMAKERS* 36-39 (2005).

II. THE TRIAL AS THEATER: *STAGE SISTERS*

One of the last Chinese films made during the “seventeen years” (1949-1965)¹⁹ before the Cultural Revolution, *Stage Sisters* (*Wutai Jiemei* 1964)²⁰ is widely considered one of the best films of the era as well as Xie Jin’s masterpiece.²¹ Based on an original screenplay, this film is optimistic, even romantic, and it ends on a high note that one cannot find in the two post-Cultural Revolution movies discussed below.

Stage Sisters tells the story of two young women who perform in a Shaoxing Opera²² troupe, and the film follows them from the mid-1930s until 1950. Xing Yuehong is the daughter of the opera master, and Zhu Chunhua, who becomes her close friend and “stage sister,” is a runaway child bride who is allowed to join the opera on tour. During the Sino-Japanese War, the troupe master takes the sisters, his two best performers, to Shanghai, where they are bound on a three-year contract to theater manager Tang. Their performances together meet with great success, but ultimately the interests of the two sisters diverge and their lives follow very different paths. Yuehong marries Tang and ceases performing, while Chunhua moves on to star in leftist, more realistic dramas that directly challenge the political system.

In league with corrupt officials, Tang organizes an attack on Chunhua, which seriously injures her, though fortunately she recovers. Still acting on the officials’ orders, Tang arranges for Yuehong to be blamed as the mastermind of the attack, and she is put on trial, with the goal of discrediting Chunhua in the process. In order to conceal the political motives behind it, the attack is cast as resulting from personal enmity

¹⁹ On the films of this period, see Julian Ward, *The Remodelling of a National Cinema: Chinese Films of the 17 Years (1949-66)*, in *THE CHINESE CINEMA BOOK* 87-94 (Song Hwee Lim & Julian Ward eds., 2011).

²⁰ Screenplay by Lin Gu, Xu Jin and Xie Jin; starring Xie Fang and Cao Yindi. The film is also known in English as *Two Stage Sisters* or *Two Actresses*.

²¹ *Stage Sisters* regularly appears on lists of the best Chinese movies. See, e.g., *100 Greatest Chinese films of the 20th Century as chosen by Asia Weekly Magazine* [Yazhou Zhoukan], CHINESECINEMAS.ORG (Dec. 19, 1999), <http://www.chinesecinemas.org/china/century.html>, and the 2005 Hong Kong Film Awards list of the 100 best Chinese movies. *Hibiscus Town* was also among the twenty-four mainland Chinese films included in that list. *The Best 100 Chinese Motion Pictures*, HONG KONG FILM AWARDS ASSOCIATION, <http://www.hkfaa.com/news/100films.html> (last visited Mar. 8, 2013).

²² Shaoxing Opera (*Yueju*), which rose to popularity in Shanghai during the 1930s, is performed by an all-female cast and often features love dramas or other “women’s stories.” The performers usually sing as pairs in sets, as Chunhua and Yuehong do in this movie. See JIN JIANG, *WOMEN PLAYING MEN: YUE OPERA AND SOCIAL CHANGE IN TWENTIETH-CENTURY SHANGHAI* (2009).

between the sisters. But after a dramatic courtroom confrontation, and Chunhua's defense of her stage sister, the prosecution falls apart and Tang's plans are foiled. The story then jumps to 1950, a year after the Communist victory. Chunhua belongs to a troupe that tours the countryside to present revolutionary operas, and when the troupe performs in her former hometown, she meets Yuehong again. The two stage sisters are reunited, and Yuehong also joins the opera troupe; she has apparently reformed her thinking for the new, revolutionary society. In the final scenes, Chunhua and Yuehong sit shoulder to shoulder on one of the troupe's boats, bathed in bright sunshine as they travel into the future.

Stage Sisters is the most nuanced and least obviously political of the three films discussed in this article, and its main themes would be accessible to anyone who has ever seen a Hollywood movie.²³ Theater life, with its backstage rivalries and competing artistic visions, is vividly portrayed and linked to broader themes, such as the unhappiness of a bad marriage, the reconciliation of estranged sisters, or even the plight of low-status performers. The film also contains a long and brilliantly staged courtroom sequence, in this case reflective of all the themes Xie Jin develops throughout the movie and full of his trademark emotion. Xie is known for his sympathetic and memorable film portrayals of women,²⁴ and in *Stage Sisters*, as in *Qiu Jin*, it is women who are brought before the authorities and tried. In both movies, the officials they must face are all men, which further underscores the women's lack of power.²⁵

The sisters' later trouble with the authorities, along with the relative powerlessness of women, is prefigured in an early sequence, which also provides an instructive contrast to the trial. While Chunhua and Yuehong are still in the countryside, they are asked to give a private performance at the home of a rich local landlord, but when Chunhua spurns the man's advances, he takes his revenge. The next day the police arrive to break up

²³ *Stage Sisters* was shown during the 2009 New York Film Festival by the Film Society of Lincoln Center in "(Re)Inventing China: A New Cinema for a New Society, 1949-1966." The movie's quality and continued appeal is also recognized by contemporary viewers; see, e.g., Mike Hale, *Two 'Sisters' From Time of Mao Star Again*, N.Y. TIMES, Sept. 25, 2009, at C3. The movie does indeed use a "very Hollywood form of cinematic melodrama." Goldsmith, *supra* note 5.

²⁴ "And naturally this has something to do with my interests, and choices. My childhood memory remains full of oppressed, victimized women." Da Huo'er, *Interview with Xie Jin*, EJUMPCUT.ORG, <http://www.ejumpcut.org/archive/onlinessays/JC34folder/XieJinInt.html> (last visited Mar. 8, 2013).

²⁵ In *Hibiscus Town*, the main but not sole defendant is a woman, and the main though not sole judge is also a woman. At least as filmed by Xie Jin, the story is primarily Hu Yuyin's, not Qin Shutian's. Although of the three films discussed in this article only *Stage Sisters* is generally classified as one of Xie's "women's dramas," all are women-centered.

the troupe's regular performance and take Chunhua away to be pilloried, held up for shame and ridicule in the center of town. A policeman reads an announcement of her punishment, declaring that women are forbidden to perform in public and that the evidence shows she has violated the country's laws. Because it is only her first offense, he says, she will be exposed to public scorn for three days.²⁶ We understand then that formal justice is not available in the countryside, at least for the poor, who may be subject to punishment at the behest of rich and powerful men. Of course this episode also underscores the importance of access to impartial courts and formal procedure, a view that is reinforced when we witness the trial.

In pre-1949 Chinese movies, courtroom scenes often depicted a vast distance between judge and judged, as well as the utter helplessness of the accused, but Xie Jin stages this trial in a very different way. The *Stage Sisters* court is indeed separated from the spectators, but as a stage is from the audience, and the distance between them is not exaggerated. We see a realistic modern courtroom, with three robed judges, the prosecutor and a clerk seated on the bench, a box for the plaintiff or complainant, and a bar at which both the witnesses and the accused stand and testify. The judges are obviously professionals, though it is not through their professionalism or any of their actions that the truth comes out. Nor do lawyers take an active part; although we briefly glimpse them seated below the judges, it is Chunhua herself who plays the advocate's role and the journalists sitting behind her who provide her with support.

When the defendant Yuehong is brought into the courtroom and takes the stand, Chunhua speaks directly to her (and to the audience), and this courtroom confrontation between the two sisters marks the dramatic climax of the film. Just as *Stage Sisters* shows Yuehong and Chunhua performing on stage—and on the broader stage of life—the relationship between the two sisters, and the contrast in the lives they have chosen, plays out before an audience in these courtroom scenes. The trial is a public and open proceeding, and the court is packed with spectators, all deeply engaged in the drama being enacted before them. Indeed, the movie's courtroom bears a strong resemblance to the Shanghai theaters the two sisters appeared in together, and the lead witness against Yuehong gives what is obviously a

²⁶ Apparently Chunhua is being punished under the police offenses act, which allowed the police to handle minor offenses without recourse to a court. Under the Police Offenses Act (*Weijingfa Fa*), the police during this period had the power to determine and punish minor infractions of the law, though not to handle more serious offenses, without judicial oversight. Tsung-fu Chen, *The Rule of Law in Taiwan*, in *THE RULE OF LAW: PERSPECTIVES FROM THE PACIFIC RIM* (Mansfield Dialogues in Asia, 2000), papers published by the Mansfield Foundation, available at www.mansfieldfdn.org. Or her treatment may be completely without legal basis.

scripted performance, though he cannot remember his lines (to the derision of the courtroom crowd).²⁷

But if this judicial process is corruptible, the trial does not reach its intended result. Frozen with fear, Yuehong cannot answer the chief judge's interrogation: "Is it true you abetted others to kill Chunhua? Was it you?" But Chunhua defends Yuehong and speaks the truth about her attacker. "I know someone wanted to break our sisters' friendship, then shift the blame to leave the true criminal at large," she says, defying the judge's demand that the defendant, not the complainant, answer his questions. When Yuehong, still mute, falls into a dead faint, the crowd of spectators surges forward to support her, shouting, "find the true criminal!" to the officials on the bench. Despite their best efforts to restore order to the court, the judges are helpless to continue the case. We see that justice will triumph when the masses stand up, and that this corrupt order will be finished, swept away by the tide of revolution. As a choral interlude highlights Chunhua's triumph, the camera moves to a shot of the sun rising over the Huangpu River, marking the dawn of a new system.

III. THE TRIAL AS PERSECUTION: *QIU JIN*

Qiu Jin (1983)²⁸ takes place in an earlier period than the other two movies and it is usually classified as one of Xie's "historical" works.²⁹ Although Xie Jin was assigned to direct this movie by the Shanghai Film Studio, he said he felt a personal connection to the subject: he and Qiu Jin shared the same ancestral place and Xie's grandfather was her friend.³⁰ The movie portrays the life of Qiu Jin (1875-1907), the Qing activist, women's rights advocate and writer who was executed for her involvement in a failed uprising against the Manchu government. Born into a scholarly family, Qiu also earned a reputation as a poet and writer. She was married into a well-to-do family and had two children, whom she left to pursue her studies in Japan, where she joined Sun Yat-sen's revolutionary movement. On her

²⁷ The whole film shows the influence of opera, with its episodic structure and its choral interludes throughout. See the discussion by Gina Marchetti, *Two Stage Sisters: The Blossoming of a Revolutionary Aesthetic*, EJUMPCUT.ORG, <http://www.ejumpcut.org/archive/onlinessays/JC34folder/2stageSisters.html> (last visited Mar. 8, 2013), reprinted in HARRY H. KUOSHU, *CELLULOID CHINA: CINEMATIC ENCOUNTERS WITH CULTURE AND SOCIETY* 32-51 (2002).

²⁸ Also known as *QIU JIN: A REVOLUTIONARY*. Screenplay by Ke Ling and Xie Jin; starring Li Xiuming in the title role.

²⁹ In Xie Jin's published screenplays, for example, *Qiu Jin* appears with the other historical movies. XIE JIN DIANYING XUANJI. LISHI JUAN [ANTHOLOGY OF XIE JIN'S MOVIES. HISTORY VOLUME] (Xie Jin, ed., 2007).

³⁰ BERRY, *supra* note 18, at 43.

return to China, she became head of the Datong School while she worked with her cousin to plan an uprising against the Qing government. When the uprising failed, Qiu might have escaped, but she stayed behind and was arrested, tried and executed.³¹ Since then she has held a special place in the Chinese pantheon of revolutionary martyrs,³² and the film portrays her as a patriotic and noble heroine who sacrifices family and a comfortable life to devote herself to her country.

In many respects, *Qiu Jin* is a less compelling movie than either *Stage Sisters* or *Hibiscus Town*. The historical setting is a relatively safe one (before the Communist Party came on the scene), the film criticizes a traditional system that was indeed harsh, and its story is told, at least in part, in shades of black and white.³³ A Chinese audience would know the main events of Qiu Jin's life, and the traditional trial scenes, a staple of Yuan drama,³⁴ would also have been familiar to many. Although Xie Jin invests his heroine with warm as well as heroic qualities, *Qiu Jin* thus lacks the narrative suspense one finds in the other two movies: the story follows popular accounts of Qiu's life and its outcome could hardly be in doubt.

But Xie Jin uses the courtroom scenes in this movie to great dramatic effect, with the trial portrayed as a tense clash between the Qing authorities and the woman they accused of rebellion and treason. It was a dark time for revolutionaries, and as Xie filmed them the trial sequences too are dark ones. Qiu Jin's interrogations, and later her execution, are all held in the black of night, and dark metaphors abound throughout the film: autumn is here and we know winter must be coming soon. Thus we see Qiu, during her final interrogation, write her "death poem" instead of the confession the officials demand: "Autumn's wind and rain make me die of sorrow," a theme that echoes the opening lines of the movie. Qiu's trial was simply the final step on her road to revolutionary martyrdom, and its filming so

³¹ For Qiu Jin's life and work, see Mary Backus Rankin, *The Emergence of Women at the End of the Ch'ing: The Case of Ch'iu Chin* [Qiu Jin], in *WOMEN IN CHINESE SOCIETY* 39-66 (Margery Wolf & Roxane Witke eds., 1975); see also MARY BACKUS RANKIN, *EARLY CHINESE REVOLUTIONARIES: RADICAL INTELLECTUALS IN SHANGHAI AND CHEKIANG, 1902-1911* (1971). The movie, not surprisingly, follows popular accounts of Qiu's life rather than documented events. She did not, for example, write her death poem at her trial, and it may even have been written by a supporter after her death. *Id.* at 187.

³² There is a monument to Qiu Jin in Shaoxing, her family's ancestral place, as well as at her tomb by the West Lake in Hangzhou.

³³ I was very impressed with *Qiu Jin* when I first saw the movie, in Nanjing in 1983, but I don't find that it stands up to repeated viewing, as the other two films do.

³⁴ The popular Yuan dynasty (1271-1368) drama (*zaju*) often included courtroom (*gongan*) stories, and social justice is a major theme. CHUNG-WEN SHIH, *THE GOLDEN AGE OF CHINESE DRAMA: YÜAN TSA-CHÜ*, 100-12 (1976).

soon after the end of the Cultural Revolution may also have contributed to the movie's dark tone.³⁵

Both the trial and prison scenes highlight Qiu Jin's courage in confronting officials who hold the power of life and death over her. Of course she has no lawyer (no legal profession was officially recognized then),³⁶ and Xie's staging of the trial shows her standing alone yet defiant against the forces of the state. Although Qing trials were generally open to the public, here there are no spectators, and it is only Qiu Jin against the many officials she must face without help or support. Heightening the contrast between their positions, the officials all appear in splendid dress, while Qiu is very simply attired, and in the final scenes of the movie she wears plain white, the color of mourning.

Xie Jin portrays this system in all its cruelty—and the traditional system was cruel, even though torture was at least formally prohibited in 1905, shortly before Qiu's trial and this interrogation took place.³⁷ Of course the conclusion of these proceedings is never in any doubt: Qiu Jin is guilty and the court's only goal is to get her confession and the names of her accomplices. Qiu's whole life, as depicted in this movie, illustrates her unswerving dedication to the revolution and her choice of that duty over her own children, whom she clearly loves. But in her trial that dedication can be underscored even more dramatically; in prison she is also given one last chance to choose life (and family) over her revolutionary ideals, and once again she refuses. In the film's closing sequence, an unbowed Qiu Jin is slowly marched in chains to her execution, and in the final shot we see her blood on the stones.

IV. THE TRIAL AS PUNISHMENT: *HIBISCUS TOWN*

Hibiscus Town (Furong Zhen 1986),³⁸ which is based on the 1981 novel by Gu Hua,³⁹ is usually classed as "scar cinema," i.e., films that depict the

³⁵ It also proved to be a dark time for the Qing dynasty, which was overthrown only a few years after Qiu Jin's trial.

³⁶ Lawyers were formally recognized as a profession in the 1912 Provisional Regulations on Lawyers. XIAOQUN XU, CHINESE PROFESSIONALS AND THE REPUBLICAN STATE, 107-28 (2001); Alison W. Conner, *Lawyers and the Legal Profession During the Republican Period*, in CIVIL LAW IN QING AND REPUBLICAN CHINA 215-48 (Kathryn Bernhardt & Philip C. C. Huang eds., 1994).

³⁷ See MARINUS JOHAN MEIJER, THE INTRODUCTION OF MODERN CRIMINAL LAW IN CHINA (1950).

³⁸ Shanghai Film Studio; starring Liu Xiaoqing and Jiang Wen. Winner of the 1987 Golden Rooster, Hundred Flowers and Golden Phoenix awards.

³⁹ GU HUA, FURONG ZHEN [A SMALL TOWN CALLED HIBISCUS] (Gladys Yang trans., 1982) (1981).

tremendous personal suffering caused by the mass movements of the Cultural Revolution years (1966-76).⁴⁰ Alone of the three movies discussed in this article, this touching film reflects Xie's own experience during that era, and for this reason it seems the most deeply felt. In two other deeply emotional post-Cultural Revolution movies, *The Herdsman*⁴¹ and *The Legend of Tianyun Mountain*,⁴² Xie Jin also dramatizes the wrongs suffered by those who were persecuted in political movements and their later vindication or rehabilitation,⁴³ but only *Hibiscus Town* includes a dramatic trial.

Hibiscus Town tells the story of Hu Yuyin, a beautiful and enterprising young woman who runs a small bean curd restaurant in a rural Chinese town. During a 1964 political campaign, she is labeled a "rich peasant" and quickly loses everything: her business, her home and even her husband, who commits suicide after being arrested. When a devastated Yuyin is assigned to manual labor sweeping the streets of the town, she is befriended by a fellow street-sweeper, the "crazy rightist" Qin Shutian. They fall in love and when she becomes pregnant they ask for permission to marry. But the town's Party leaders are outraged by their request and instead the two are severely punished, their sentences pronounced at a public meeting. Years later, when the political winds have shifted, Qin is released and returns to Yuyin, to their son and to the business Yuyin has been permitted to reopen. But the film's ending is not entirely happy: when reminded of political campaigns and their possible recurrence, Qin and Yuyin look warily into the future.

Hibiscus Town illustrates broad issues of justice and procedure—or lack of procedure—including the use of mass rallies and struggle sessions, one of which foreshadows later events. When a new Party leader with an ominous resemblance to Jiang Qing (Madame Mao) arrives in the town, Qin Shutian is called up for public criticism at a political meeting. At this

⁴⁰ The term is an extension of "scar literature" (*shangheng wenxue*). Scar literature is a genre of Chinese literature that emerged during the late 1970s, after the downfall of the Gang of Four; like scar cinema, it portrays the personal tragedies caused by the Cultural Revolution. See, e.g., PERRY LINK, *THE USES OF LITERATURE: LIFE IN THE SOCIALIST LITERARY SYSTEM* 4 (2000).

⁴¹ *THE HERDSMAN* [MUMAREN] (Shanghai Film Studio 1982).

⁴² *THE LEGEND OF TIANYUN MOUNTAIN* [TIANYUNSHAN CHUANQI] (Shanghai Film Studio 1980).

⁴³ XIE JIN DIANYING XUANJI. FANSI JUAN [ANTHOLOGY OF XIE JIN MOVIES. REFLECTIONS VOLUME] (Xie Jin, ed. 2007) These three films are all "about the rehabilitation of rightists." BERRY, *supra* note 18, at 39. *Hibiscus Town* is the best known of the three films and is probably the most accessible to outsiders; it remains a moving treatment of the period. See JEROME SILBERGELD, *CHINA INTO FILM: FRAMES OF REFERENCE IN CONTEMPORARY CHINESE CINEMA* 188-233 (1999) for a long and sympathetic analysis of the film.

session, held in the dark of night, we learn that Qin is a “bourgeois rightist” sent there for “supervised labor reform” for his attacks on socialism and the Party (he wrote a questionable play). The film thus starkly condemns the arbitrary way in which vague, ill-defined “crimes” are denounced and punished. The law is whatever the Party says it is and no defense is possible, or perhaps the law is simply irrelevant. When at the same meeting the first hint of political trouble for Yuyin appears on the horizon, she is at first defiant and tells her husband she will not sell the house they have built with their profits. “What law have we broken?” she asks him. It’s an excellent question.

Yuyin’s trial, or what passed for a trial during the Cultural Revolution, is held outdoors, on a large platform in the town square, and it epitomizes all that is wrong with the system. There are no impartial judges, no lawyers to defend the accused, and no possibility of appealing the decision. After Qin and Yuyin are arrested, we see them standing on the stage, facing their fellow townspeople, who have been assembled to witness the proceedings. Their heads are bowed and Qin’s hands are tied behind his back. Throughout this sequence, Yuyin and Qin are shown standing alone and unprotected in the pouring rain; they cannot even face their accusers (who are also their judges), the Party officials who sit behind them, at least partly shielded from the rain. A soldier declares that, “On behalf of the public security organs and the military control committee, the rightist and counterrevolutionary Qin Shutian is sentenced to ten years of fixed-term imprisonment and the rich peasant Hu Yuyin gets three years.” Even if we view this “trial” as a sentencing hearing, the proceedings are a travesty of justice: in *Hibiscus Town*, Xie Jin has put the whole political system on trial.⁴⁴

Indeed, the dramatic way in which Xie stages these trial scenes leaves the viewer in no doubt of his perspective. Overall, *Hibiscus Town* has a closed-in, dark feeling,⁴⁵ and the trial itself is held under a dark and threatening sky, with the two accused standing in a cold, heavy rain throughout. As the pair’s sentences are pronounced, there is a loud clap of thunder, underscoring their harsh treatment and perhaps reflecting Heaven’s disapproval of the entire event. The final shot, taken from above as if viewed by a higher power, leaves us with this tableau of figures on the

⁴⁴ Browne takes the analysis a step further and argues that the film “subjects that process to a critique that puts politicization itself on trial from an ethical standpoint. For its audience, the film is a kind of judicial hearing with its own rules of evidence and argument.” Browne, *supra* note 10, at 47.

⁴⁵ See the analysis in SILBERGELD, *supra* note 43, at 217-18.

stage and the townspeople anxiously watching from below, still in the pouring rain.

V. XIE JIN'S TRIALS: IMAGES OF INJUSTICE

In some respects, *Qiu Jin* is the least interesting of the three films discussed in this article, despite any personal tie Xie Jin may have felt to its heroine. Xie's connection to his subject is much stronger in the other two films: the optimistic *Stage Sisters* is deeply grounded in Xie's own theater training and stage experience, while *Hibiscus Town* depicts events of a recent past in which he had personally suffered. But Xie's trial sequences, though filmed in different styles, are all highly affecting, not least for the way they reflect the lives of their characters and mirror the narratives of the films. The director's use of the weather and time of day in creating these scenes, which in lesser hands might have seemed too obvious a device, relies on traditional Chinese conventions⁴⁶ and actually intensifies the mood. Consequently, Xie's views on the shortcomings of the very different trials he depicts—his images of injustice—are always powerful. The audience can see that all of these trials are political, and none of them is fair.

Which of these systems receives Xie Jin's sharpest criticism, which trial seems the worst? From a political standpoint, it should be *Stage Sisters* or *Qiu Jin*, both set before the 1949 revolution that brought the Communist Party to power. Indeed, *Qiu Jin* highlights the Qing system's worst features, including its reliance on torture and the harsh treatment of prisoners, which could safely be criticized as part of China's cruel "feudal" past.⁴⁷ *Qiu Jin*'s trial for rebellion and treason is also the most obviously political; even at the time many people believed that she was innocent and the authorities had acted tyrannically when they tried and executed her so hastily.⁴⁸

The legal (and political) system in *Stage Sisters* should have been an equally easy target: the bourgeois capitalist system that the 1949 revolution had only recently overthrown.⁴⁹ Yet that Republican-era trial arguably

⁴⁶ *Id.* at 218-19.

⁴⁷ These features are also highlighted in Xie Jin's OPIUM WAR [YAPIAN ZHANZHENG] (Emei Film Studio 1997), which depicts the Qing system as backward and cruel.

⁴⁸ The careers of the officials who were responsible for *Qiu Jin*'s trial and execution were soon ended. Mary Backus Rankin, *The Emergence of Women at the End of the Ch'ing: The Case of Ch'iu Chin [Qiu Jin]*, in WOMEN IN CHINESE SOCIETY, *supra* note 31, at 62. Although Xie Jin did not depict those events in the movie, the aftermath of *Qiu Jin*'s story was well known.

⁴⁹ Of course that also made the period more sensitive: the Qing system was further in

receives the kindest treatment by Xie Jin of any in these three films. To be sure, the process is corruptible and the villains seek to use it for bad political ends; the crowded courtroom and its dark paneling create a closed-in feeling and the sisters seem trapped. Perhaps this formal setting is only stage dressing and nothing more? But the trial is open to reporters as well as the public and even lawyers are present, however limited their role. Most striking of all, both the complainant and the defendant are free to speak—indeed, Chunhua does so at length, she dominates the trial. When thus boldly challenged, the case against Yuehong falls apart, and that is the end of it: both Chunhua and Yuehong are freed.

Stage Sisters is the only one of these films in which justice is done, or at least a serious miscarriage of justice is averted. Ultimately, of course, it is the revolution that frees the sisters for a new life, but in the meantime the trial process cannot be used to convict them and they escape legal punishment. We might thus conclude after viewing *Stage Sisters* that procedure alone is not everything, but it is still something. No wonder Xie was denounced for the political stance of this movie (“bourgeois humanist”) as well as his sympathetic portrayal of the characters, who seem all too easily reformed. For that reason, *Stage Sisters* could not be shown in China for many years, until after the end of the Cultural Revolution.⁵⁰

Xie Jin paints what is perhaps his bleakest picture of injustice in *Hibiscus Town*, even though the heroine survives and is seemingly restored to her previous life. Xie himself acknowledged the dark tone of this movie: in the years after the Cultural Revolution, he reported, he made tragedies because of the immense tragedies that had taken place in China during that era.⁵¹ Some critics have argued that Xie Jin was criticizing the danger of mass movements, not the system itself; the Party is not the problem. But in *Hibiscus Town* it is the Party that organizes these “trials,” and at the end of the film the Party official responsible for them has been restored to her position of power.⁵² Whatever the director’s intentions, therefore, a viewer

the past and politically more removed.

⁵⁰ BERRY, *supra* note 18, at 33-35. Other post-1949 films also depict events of the Republican era, but it was a hard period to get right, politically or otherwise. See Paul G. Pickowicz, *The Limits of Cultural Thaw: Chinese Cinema in the Early 1960s*, in PERSPECTIVES ON CHINESE CINEMA 197, 29 (Chris Berry ed. 1985). Xie did better politically with his 1961 film RED DETACHMENT OF WOMEN, in which he wisely depicted plenty of class struggle but no trials.

⁵¹ According to one interview, Xie did not think it was an appropriate time to make comedies or lighter films. BERRY, *supra* note 18, at 39.

⁵² This message is especially clear if *Hibiscus Town* is watched in conjunction with *The Herdsman* and *The Legend of Tianyun Mountain*, the two other examples of Xie Jin’s scar cinema. That is no doubt the reason that Xie’s three “rehabilitation” movies were subject to serious political criticism, particularly *Tianyun Mountain*; they seem to show that the

both then and now might reasonably conclude that the Party *is* in fact the problem, an extremely sensitive political position to take. In *Hibiscus Town*, which was directed at the system of his own time, Xie was continuing the earlier progressive tradition of criticizing the administration of justice as an integral part of an unjust political system.⁵³ For that reason, as in the 1930s films that Xie knew well, his criticisms seem more deeply felt, and *Hibiscus Town* was also denounced for its political stance.

The trial in *Hibiscus Town*, like the trial in *Stage Sisters*, could also be viewed as theater, and it is even more obviously scripted and staged. All the characters stand or sit on a high platform, facing not each other but their audience, the townspeople compelled to witness the performance—though here they are cowed spectators, not the actively engaged crowd we find in *Stage Sisters*. But in this trial, Yuyin and Qin are denied a speaking role, and there can be no deviation from the script. Although their trial is the only one of the three that is held out-of-doors, that offers the two accused no possibility of escape. On the contrary, it subjects them to the elements, which heightens our sense of their unprotected state.

If, after viewing *Stage Sisters*, we concluded that the justice system is irrelevant as well as corrupt, then *Hibiscus Town* reminds us that it is not. No one watching Xie Jin's staging of this trial could find it good: even Qiu Jin has more of a hearing than Hu Yuyin (Qiu Jin speaks and at least in the film she does not sign a confession). But the trial in *Hibiscus Town* provides no procedure at all; it exhibits all the features of an extrajudicial proceeding, which of course is what it was. Even if we viewed this as a sentencing hearing, which it resembles more than a trial, when and how did they determine Yuyin's guilt?

VI. CONCLUSION

As a Chinese friend once reminded me, these are “only movies,” not historical materials or even documentaries, on which scholars should rely. But movies can convey emotional truth, and Xie Jin's films are as powerful a critique of unfair trials as anything we might find in books. All three of his movies are set in the past, even if it is a not-too-distant one, yet the issues they raise remain of great concern: Xie's depiction of justice or—more accurately, injustice—in all three films is still relevant today. Thus

behavior of Party regulars is the problem. BERRY, *supra* note 18, at 39-40. Paul G. Pickowicz, *Popular Cinema and Political Thought in Post-Mao China: Reflections on Official Pronouncements, Film, and the Film Audience*, in UNOFFICIAL CHINA: POPULAR CULTURE AND THOUGHT IN THE PEOPLE'S REPUBLIC (Perry Link, Richard Madsen & Paul G. Pickowicz, eds. 1989) 37, 41-46.

⁵³ For a discussion of this point, see Pickowicz, *supra* note 9, at 320-24.

Qiu Jin can be read as critical of any regime that tries and cruelly punishes its political opponents, while *Stage Sisters* reminds us that the trappings of procedure can mask what is actually a very unjust trial.

Hibiscus Town may hold the broadest lessons, though its trial is the least formal of the three and the Chinese authorities seem to have left such lawless proceedings behind. The major legal reforms of 1979 included the enactment of codes of criminal law and procedure, and the latest criminal procedure amendments were intended to address human rights concerns.⁵⁴ But many fundamental criminal justice rights, the absence of which is shown so starkly in the films of Xie Jin, exist only on paper or remain very imperfectly achieved: the right to engage counsel, to present a defense, to speak (or not to speak), or simply to face one's accusers. Of course Xie Jin's movie trials are all political—but are the days of political trials over? Today, despite the great achievements of Chinese legal reform, it seems they are not. And unfortunately, as in *Hibiscus Town*, the Party's role in the legal system still constitutes the greatest obstacle to an independent judiciary and truly fair trials in China.⁵⁵

⁵⁴ See, e.g., Xinhua, *Newly amended criminal procedure law to take effect in China*, XINHUA, Dec. 30, 2012, http://news.xinhuanet.com/english/china/2012-12/30/c_124168420.htm.

⁵⁵ For a clear and concise statement of this position, see Jerome A. Cohen, *Courts with Chinese Characteristics*, USASIALAW.ORG (Oct. 15, 2012), <http://www.usasialaw.org/?p=7391>.