



## Justice and Law at the (1980) Chinese Movies

Alison W. Conner

To cite this article: Alison W. Conner (2020): Justice and Law at the (1980) Chinese Movies, Law & Literature, DOI: [10.1080/1535685X.2020.1766780](https://doi.org/10.1080/1535685X.2020.1766780)

To link to this article: <https://doi.org/10.1080/1535685X.2020.1766780>



Published online: 02 Jun 2020.



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# Justice and Law at the (1980) Chinese Movies

Alison W. Conner 

**Abstract,** This essay analyzes two of the most famous examples of Chinese “scar cinema,” movies that depicted the harsh realities of the political and cultural campaigns of the Cultural Revolution and the terrible suffering they caused. Though very different in story and style, Xie Jin’s *Legend of Tianyun Mountain* and Wu Yonggang’s *Evening Rain* constitute works which, in addition to their individual stylistic achievements, feature ideas of justice and even of law that remain relevant to China today.

**Keywords,** PRC movies, Chinese film, scar cinema, law and film, Xie Jin, Wu Yonggang, *Evening Rain*, *Legend of Tianyun Mountain*

## INTRODUCTION

### In Search of Happy Endings

Forty years ago, the Chinese leadership sought to put the Cultural Revolution behind them and embarked on dramatic legal as well as economic reform. From the earliest days of those reforms, legal issues have appeared in Chinese literature and film, although the cinematic references might be indirect or fleeting. Later movies, most notably *The Story of Qiu Jiu (Qiu Ju Daguanzi)*,<sup>1</sup> filmed in 1992, include greater legal content and even dramatic courtroom scenes. And now that legal issues feature more often in Chinese movies, a study of recent films might reveal how much the legal system has changed, however unrealistic many of the depictions are. Yet, the first post-Cultural Revolution films suggest another line of analysis: what problems did those movies highlight and to what extent have they been resolved after four decades of reform? But why watch movies when we have other materials to hand? Perhaps they might satisfy our longing for justice (and happy endings), which, with the turn against law in Xi Jinping’s China, we may no longer expect to find in real life, outside the cinematic world.

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**Law & Literature**, pp. 1–16. ISSN 1535-685X, ELECTRONIC ISSN 1541-2601.

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<http://dx.doi.org/10.1080/1535685X.2020.1766780>

## Two Films That May Provide Them

This essay will discuss two 1980 films produced by the Shanghai Film Studios: *Legend of Tianyun Mountain* (*Tianyunshan Chuanqi*), directed by Xie Jin, and *Evening Rain* (*Bashan Yeyu*), which was directed by Wu Yonggang and Wu Yigong. Both were made during the unusually open years of 1979 to 1981,<sup>2</sup> when movies were not only the major form of popular entertainment in China, but also a critical way for people to come to terms with the traumatic events of the Cultural Revolution (1966-1976).<sup>3</sup> Although many films with similar themes were produced during those years, few could stand up to serious viewing today, however earnest their sentiments or worthy their goals. But *Tianyun Mountain* and *Evening Rain* were made by some of the greatest Chinese directors of the twentieth century; they are works of art as well as historical documents reflecting the concerns of their time. Indeed, both movies were deservedly recognized in the first Golden Rooster awards, given by the China Film Association in 1981, when they shared the best picture award and swept the other prizes that year.<sup>4</sup>

The two movies, though very different in story and style, represented a break from Maoist aesthetics both thematically and cinematically,<sup>5</sup> and they remain the best of the early “scar cinema” which (like scar literature) dramatized the wrongs inflicted during the Cultural Revolution. Both films continued the melodramatic tradition of pre-1949 Chinese movies and, like those earlier films, they critiqued the social and political system of their own time, giving them great emotional impact even now.<sup>6</sup> Indeed, Wu Yonggang and Xie Jin had themselves experienced many of the political events they depicted in their movies and had suffered because of them. Consequently, *Evening Rain* and *Legend of Tianyun Mountain* are deeply felt, they are authentic, and—especially when read together—they raise important issues of justice and accountability that remain surprisingly relevant to Chinese society today. Although neither film features courtroom or trial scenes, which both Xie Jin and Wu Yonggang had expertly used in earlier movies, they still offer plenty of (legal) drama for us to consider.<sup>7</sup>

## LEGEND OF TIANYUN MOUNTAIN

### The Film and Its Director

*Legend of Tianyun Mountain* was directed by Xie Jin (1923-2008), the most popular and doubtless the most important of China’s Third Generation directors;<sup>8</sup> in the Shanghai Film Museum he is, quite rightly, portrayed as larger than life.<sup>9</sup> Xie was an unusually effective filmmaker, one who understood the traditions of Chinese melodrama as well as the conventions of Hollywood, and consequently his films had broad mass appeal. In Xie Jin’s view, “the film which can generate

genuine feeling is, to me, the ideal film.”<sup>10</sup> Indeed, *Tianyun Mountain* is melodramatic and deeply emotional, and its depiction of the wrongs suffered by its main characters moved audiences to tears when it was first screened.

Many critics consider *Hibiscus Town* Xie Jin’s best film, and it was certainly his last word on the tragedies of the pre-reform era, but the issues that *Legend of Tianyun Mountain* raises are equally important. Although the film might now seem old-fashioned in many respects, its narrative is sophisticated and complex: *Tianyun Mountain* employs, at least indirectly, multiple narrators, offers multiple viewpoints, and tells much of the story in flashbacks.<sup>11</sup> As in many other films made just after the Cultural Revolution, youth and romance feature prominently,<sup>12</sup> in this case along with the regrets of middle age, and Xie Jin skillfully combines the movie’s romantic and political drama. Whatever its relevance to current political-legal issues, *Legend of Tianyun Mountain* would remain a powerful film: this movie is about justice and, read broadly, whether justice can be achieved in the absence of law.

## Two Women Save Luo Qun

The plot of *Tianyun Mountain* is based on a novella by Lu Yanzhou (1928-2006), who also wrote the screenplay, although in the film Xie Jin has made the story his own. The movie opens in winter 1978, not long before the historic Third Plenum of the Eleventh Central Committee held in late December,<sup>13</sup> and it ends with the arrival of spring the next year. Through flashbacks, however, Xie offers viewers a sweeping look at major events of the 1950s, particularly the Anti-Rightist Campaign and the Great Leap Forward,<sup>14</sup> as well as the Cultural Revolution. At its simplest, *Tianyun Mountain* tells the story of Luo Qun, a brilliant and idealistic engineer who is wrongly accused of being a rightist and as a consequence is removed from his position, sent into exile and suffers terribly for over twenty years. But perhaps the film is really about two women who love the same man and the way the choices they make affect his life as well as their own, a story completely intelligible to anyone who has ever seen a Hollywood movie.

Thus in *Tianyun Mountain* a young woman (Song Wei) falls in love with an idealistic engineer (Luo Qun) on the Tianyun Mountain Exploration Team, but when Luo is denounced for his opposition to the huge projects pushed by the Party leadership, Song succumbs to Party pressure to “make a clean break” with him and chooses a safe but loveless marriage to Wu Yao, an older, ambitious cadre. Song’s shyer and plainer (she wears glasses) friend Feng Qinglan also loves Luo Qun, initially from a distance, but when Luo is disgraced and expelled from the Party, Feng alone defends him, and then in an act of great courage as well as true love she saves his life. The two marry and find happiness together

despite a life of isolation and deep poverty, as well as Luo's continued persecution during the Cultural Revolution. Feng's loving support of Luo and her unwavering belief in her husband's research ensure its preservation; her death just as Luo Qun may be rehabilitated is probably the saddest moment of a very sad film.<sup>15</sup> Stylistically, *Tianyun Mountain* bears all the hallmarks of Xie Jin's films, including his ability to make comfortable quarters look cold and joyless as the tomb while a crude shack with cracks in its walls is full of warmth; viewers are not left to guess how Xie felt about the two women's choices or wonder who has led a happier life.

Years later, when Song Wei has become a local Party official, she learns the details of Luo Qun's fate from Feng Qinglan and must choose whether to risk her position and her marriage to overturn the unjust accusation and redress the wrong done to Luo long before. Song Wei's husband Wu Yao, now a senior Party official as well as the architect of the original charges against Luo Qun, threatens Song and tries to block her efforts. Enraged when he discovers that Song Wei insists on moving forward to rehabilitate Luo Qun, Wu Yao viciously strikes her and knocks her to the floor, seriously injuring her. Song Wei has nevertheless succeeded in having Luo Qun's case overturned, and at the film's close we see Luo once again enthusiastically planning development on Tianyun Mountain, his work finally recognized and his views justified despite all that he has endured.<sup>16</sup>

Although the novella on which the film is based may well make Luo Qun the main character, the movie arguably does not, or at least the movie as we see it now. Xie Jin was sympathetic to the plight of women, and he often placed them at the center in his movies, most notably in the brilliant 1964 *Two Stage Sisters*. In *Tianyun Mountain*, Song Wei is the main narrator of the film's events, which she herself experienced or has learned about from the other women. Indeed, Luo is only seen through the eyes of the women in the story, which may be why we know that he is not only intelligent and principled, but also handsome and brave (and he can ride and shoot).

Xie Jin was criticized by younger filmmakers in the 1980s for his emotional film style (or "model") and what were viewed as stereotyped women characters, submissive and self-sacrificing.<sup>17</sup> But surely his style suited the dramatic events he depicted in *Tianyun Mountain*, and in fact neither Song Wei nor the seemingly self-sacrificing Feng Qinglan truly fits those stereotypes. It is true that, under great pressure, Song Wei made mistakes when very young, but later she steps up to take action she believes is right, and she is willing to see it through, whatever the consequences. Feng Qinglan may appear to sacrifice herself for her husband and his work, but despite the disapproval she faces, she is living the life she chose and clearly believes it has meaning; we see no sign that she regrets any of it.

## What Kind of Process Is This?

*Legend of Tianyun Mountain* does not depict the legal system, and indeed for much of its story none functioned. No court judged Luo Qun, removed him from his position or sent him into exile; he was never accused of an actual crime under law or formally sentenced for it. (Could he have done worse or suffered more if he had been?) Nor does any court—or indeed any independent body—review his case after the Cultural Revolution ended, so we cannot analyze a legal process.

But the film is nevertheless of interest for its depiction of Party procedure for the redress of past wrongs, specifically decisions or actions taken during the Cultural Revolution. For Song Wei is not simply a woman who turned her back on the man she loved. When the film begins, she is the deputy head of the region's Organization Department, which her husband Wu Yao chairs and which is charged with reviewing petitions of misjudged cases from the Cultural Revolution. While Wu Yao is away on sick leave, Song Wei discovers that their department has ignored three appeals for the review of Luo Qun's case, though she has heard nothing about them. Luo was declared a counterrevolutionary for opposing the Gang of Four, but (more seriously) a rightist for opposing the Great Leap Forward, a verdict he has also sought to reverse. After Feng Qinglan writes to her about the unanswered appeals, Song discovers Luo's file locked away in her husband's desk, and she calls a meeting in his absence to consider Luo's case. Wu Yao returns and angrily confronts her, but Song is undaunted and insists she is going to raise Luo Qun's case with the First Party Secretary, which in the end she does.

This review process, though less accessible to non-Chinese viewers than the romance or the two women's choices, is essential to the plot—to some extent it is the plot—and it raises serious issues. The process is administrative (and political) rather than legal, and the Party is judging its own behavior, with all the obvious problems that must entail. In this film, we see only Party actions, but surely Luo Qun's case cries out for an independent review, whether by a commission or a court; instead, a high-ranking cadre persecutes a talented Party member for personal reasons and then later blocks review of his earlier actions. It is only by chance that Song Wei learns about Luo Qun's petitions and is able to act—and surely a fair legal process would have prevented Luo Qun's fate in the first place?

Luo's petitions are ultimately received by and reviewed at the highest levels, so the film's message could be read as a positive one: even if some officials are covering up their own wrongdoing, they will be discovered, as Wu Yao's case seems to show.<sup>18</sup> But *Tianyun Mountain* raises difficult issues and is far more critical of the Party: Luo Qun's problems stemmed not from the Cultural Revolution, but from the Anti-Rightist campaigns, something that could hardly

be blamed on the Gang of Four.<sup>19</sup> Or perhaps it is only bad cadres like Wu Yao who are at fault? This film's judgment is much tougher, and viewers might reasonably conclude that the Party is the problem,<sup>20</sup> an extremely sensitive, even dangerous, position to take.

### A Happy Ending?

*Legend of Tianyun Mountain*, which began in cold dark winter, ends in a beautiful spring filled with flowers, suggesting that the way forward is bright. It is true that Luo Qun's views have been vindicated and he is now free to pursue his calling, while Song Wei has been given the opportunity to undo a wrong and save the man she once loved. Whatever Song's memories of her youth, she recognizes that their romance cannot be rekindled, and she can now let go of the past ("what's gone is gone"); she will be fine.<sup>21</sup> As for Luo Qun, I am less certain. There may be no clouds in that spring sky, but the ending can be read in a far less positive way: some wrongs cannot be righted. Luo's case has finally been resolved and he is a free man, but the twenty years he lost have not been returned to him nor has Feng Qinglan been restored to life. (Nor, so far as we know, has Luo even been paid compensation.) And while Wu Yao has apparently been removed from his position, he is a cunning survivor; he will be back and he will doubtless flourish like a green bay tree. When the First Party Secretary approves Luo Qun's petition, he declares that, "We will never allow this kind of thing to happen again." But where is the redress if he is wrong? The whole procedure is deeply flawed; it is not the Party's process but Feng Qinglan and Song Wei who have saved Luo Qun.

## EVENING RAIN

### The Film and Its Directors

*Evening Rain*, sometimes known as *Night Rain on the River*, was directed by Wu Yonggang (1907-1982) and Wu Yigong (1938-2019),<sup>22</sup> based on a script by the writer Ye Nan (1930-2003). Labeled a rightist in 1957 and then barred from directing movies during the Cultural Revolution, Wu Yonggang nevertheless managed to come back and make this beautiful film. It was in fact Wu's last major movie, and like his first, the 1934 masterpiece *Goddess*, it creates a powerful mood. The plot of *Evening Rain* lacks the dense, complex (and very Chinese) political drama of *Tianyun Mountain*, and at least on the surface it is a simpler film. But *Evening Rain's* cinematography, haunting music, and its many references to the arts, as well as the long takes and measured pace set by the directors, all contribute to the movie's impact on viewers even now. *Evening Rain* might

also speak more easily to a broader audience than *Tianyun Mountain* could do today. Despite its iconic Chinese scenery and a setting clearly recognizable (to those who knew it) as China in the early 1980s, the film's spare sets and plain costumes suggest, at least at this remove in time, that its story might take place anywhere and that the issues it raises are universal.

*Evening Rain* may be quieter in tone and less openly emotional than *Legend of Tianyun Mountain*, but it too is sharply critical of injustice, in particular the treatment of writers and other artists, who were not just harassed and prevented from working but often beaten up, imprisoned, or driven to suicide during the Cultural Revolution. *Evening Rain* is about freedom of expression, about art and the power of the written word, as well as the devastating attacks on China's culture during the "eleven bad years." At the same time, *Evening Rain* addresses more directly than other films of the era, including *Tianyun Mountain*, the relationship between law and justice, the ways in which the absence of law perpetuates injustice, and the role law, not some bureaucratic (and all too possibly biased) Party review, must play in ending it.

### Qiu Shi's Journey<sup>23</sup>

Although the two movies were filmed the same year, *Evening Rain* is set earlier than *Legend of Tianyun Mountain*, perhaps in 1972 or 1973, and the action takes place almost entirely on a passenger ship over the course of a single day and night. A prisoner is being escorted in secret from Chongqing to Wuhan by two special agents; the three of them find themselves assigned to a third-class cabin with five other passengers of different ages and backgrounds, all of whom have suffered during the Cultural Revolution. During their brief time together on the ship, these passengers share their stories, and their interactions with the prisoner constitute much of the plot. The life of that prisoner is also revealed: he is the poet Qiu Shi and after six years of imprisonment he is being taken to Wuhan for judgment and probable execution by henchmen of the Gang of Four, who are still in power. A subplot involves a little girl who has slipped onto the ship, for reasons that are unclear; the tiny stowaway turns out, by chance or otherwise, to be Qiu Shi's daughter. At the film's end, the three ship's officers, together with both agents, act to save Qiu from an uncertain but undoubtedly harsh fate by releasing him and his daughter into the beautiful mountains of Sichuan.

From the movie's opening shots of the Yangtze River, the audience realizes that this is a journey film and that the main voyager is Qiu Shi,<sup>24</sup> who first appears in shackles; for him at least it will be a dangerous passage. But the people who share his cabin are embarked on journeys of their own, and most of them undergo a transformation through their interactions with Qiu Shi. What is most notable about these passengers, some of whom might otherwise be viewed



as stock characters, is the prominent place given to artists and educators, and the film's sharp criticism of their treatment, which the filmmakers understood all too well. They include a Peking opera (*Jingju*) performer who was banished to the cowshed for performing roles in "feudal" operas and a former teacher who still loves literature but is no longer permitted to teach it. As for Qiu Shi, he is no ordinary poet, and his writing is obviously well-known. The ship's captain begins quoting lines from Qiu's poetry when his name is mentioned, the retired teacher reads Qiu's poetry because she admires it, and another cabinmate, a former Red Guard, is well aware of Qiu's reputation; he stole Qiu's manuscripts but is now protecting them.

Qiu Shi is the only passenger whose life is shown directly, as the trip stirs memories and he recalls moments from his past; he does not know what punishment awaits him in Wuhan and can only assume the worst. Qiu lives in a terrible time, yet he has preserved his integrity, whatever the price he must pay for it and, having suffered greatly himself, he treats others with compassion. Viewers understand Qiu Shi's character from his interactions with the other passengers, but his earlier life is revealed in flashbacks, which are smoothly done. As the journey triggers memories, Qiu Shi vividly relives events from his past; he is looking back on his life and what mattered to him, while contemplating its end. Most of these flashbacks feature scenes with his wife, including their meeting and courtship, and their life together during the early years of the Cultural Revolution, when Red Guards vandalized their home and stole or destroyed his work. Qiu recalls his years of imprisonment, when he learned that his daughter had been born, and imagines his wife raising their child, whom he has never seen, on her own. The film's audience sees this last chapter as Qiu views the events in his mind's eye: his cramped, dark prison cell, his wife caring for their daughter, and then as she dies, worn out and ill, leaving their little daughter alone.

### The Importance of Law

Like other scar cinema, *Evening Rain* depicts injustices that Chinese people suffered during the Cultural Revolution, mostly as a result of the lawlessness of that period. But *Evening Rain* addresses the protections of law and the consequences of its absence much more directly than one finds in other films of this era.<sup>25</sup> Several sequences in particular stand out; they are shown from the perspective of both Qiu Shi and the ship's Public Security Bureau (PSB) officer or "policeman," Lao Wang. As in many other movies made during the 1980s, the police represent law in the broadest sense, so Lao Wang is actually a kind of legal officer, not a Party functionary—and given the film's message he is arguably the most important of the three officers on the ship.

### *A criminal who has committed no crime*

In the eyes of the young agent guarding him, Qiu Shi is a criminal, a prisoner—but what is his crime? After Qiu has rescued a young passenger who tried to commit suicide, he tries to help her choose life; he may be sentenced to death when he reaches Wuhan, Qiu tells her, yet he is still trying to live. “What crime did you commit? You couldn’t have killed someone,” the young woman asks him in surprise. “You only know the crime of homicide,” Qiu replies, almost smiling at her naiveté. “But nowadays there are many ‘criminals’ who like me have committed no crime (*wuzui de zui ren*).” And as Qiu speaks of those “criminals,” the filmmakers show us a high, dark prison wall, and we understand that Qiu Shi is a prisoner of conscience, condemned for what he has written. “Isn’t it beautiful?” the teacher had exclaimed to the other passengers in their cabin as she read a few lines of Qiu’s poetry to them. “But writing things like that has become a crime.”

### *A community governed by law*

Law, which is sorely needed but nowhere appears in *Legend of Tianyun Mountain*, is discussed more directly in *Evening Rain*, and by the ship’s three officers, its revolutionary committee. When the opera performer realizes that the passengers in his cabin include a prisoner and his guards, he becomes frightened and asks the captain to reassign him to another cabin. After the harsh treatment he has already endured, the performer tells the officers, he fears more “struggle” (*douzheng*), i.e., attacks. But the ship’s political officer reassures him: “You’re on board now. So long as you observe the law, nothing will happen.” This is no warning that the performer must obey the law, but a reassurance that whatever takes place elsewhere, their ship will observe it. Their ship is a law-governed community in a sea of lawlessness, and what happened to the performer on land cannot happen there. Early in the movie, we learn that the officers recognize Qiu Shi and know that he is in great danger. “It’s tyranny!” one of them exclaims as they discuss Qiu’s situation. These three officers are professional, impartial and reserved, but despite the desperate times they live in they will take action to save the poet Qiu Shi, out of humanity and respect for law that may exist only on board.

### *Has he been sentenced or prosecuted?*

The PSB officer, Lao Wang, has a larger role to play in the story than the other two officers, partly because of the rounds he makes of the ship, and in all of his interactions he is portrayed in a positive light. Lao Wang, all kind and twinkly in his good-humor uniform, is a benevolent figure; it is he who finds the little stowaway, discovers her connection to Qiu Shi and then helps to bring them together. Wang is played by the actor Zhong Xinghuo, who had starred in the late 1950s comedy *It’s My Day Off* (*Jintian Wo Xiuxi*) as a young policeman who

selflessly continues to help people even when he is off duty and deserves a rest. In some ways, Lao Wang is just an older version of that sweet young man, and at least a few viewers would have recalled him in the earlier role.<sup>26</sup>

What is most striking in *Evening Rain* is the way the policeman speaks up for legal values: he represents law as well as order on the ship, and he values legal procedure.<sup>27</sup> So when the young guard refers to Qiu Shi as an “important criminal,” Lao Wang questions her use of that term, and in surprisingly procedural terms. “Can you tell us what his crime is?” the policeman asks her. The agent declares that Qiu Shi is a public enemy wanted by the central leaders for “vilifying the Cultural Revolution of the proletariat.” “That’s too obscure, I’m not too clear. What I mean is, has he been detained, taken into custody, or formally held? Has he been sentenced, prosecuted or not?” Wang asks. At this point, Lao Wang does not directly refer to a trial, but all of his questions about procedure imply that one should have occurred. “What I’m talking about are legal concepts,” Wang continues, as the agent looks puzzled. “Have you returned from some foreign country or what?” she asks in amazement. Lao Wang is in fact referring to the first post-1949 criminal and criminal procedure laws,<sup>28</sup> which had just gone into effect in 1980 when *Evening Rain* was filmed, but of course did not exist when the story is set. (No wonder the young agent is baffled by his questions.)

### Another Happy Ending (Despite the Clouds)?

In the film’s final sequence, the ship’s officers make an unscheduled stop to free Qiu Shi before the ship reaches Wuhan. Once freed, Qiu climbs up into the mountains with his daughter and the film ends in a beautiful meadow filled with brilliant sunshine. The filmmakers restored Qiu Shi’s future when they restored his child, and now they suggest that Qiu’s future is bright. But a few clouds can be seen in the sky and uncertainty remains: the Gang of Four are still in control and the Cultural Revolution has not yet ended. The filmmakers knew that within a few years of the events *Evening Rain* depicted the Gang of Four would fall from power and an increasingly open atmosphere would permit artists like Qiu Shi more freedom (they benefited from it themselves). Qiu has also learned that his manuscripts are safe; we must believe that he will survive the rest of the Cultural Revolution and that his poetry will be published and read. But today’s viewers know, as the filmmakers did not, what political movements would follow during the late 1980s and beyond, and we understand what legal and justice issues remain unresolved.

### What Does It All Mean?

At least on the surface, *Evening Rain* is far less critical of the Party than *Legend of Tianyun Mountain*; the film is apparently following the standard line on the

Cultural Revolution (the Gang of Four are the sole villains), and it is true that still-sensitive issues such as the Anti-Rightist Campaign are nowhere raised. The ship's officers, including its political officer, are heroes in this story, united in their determination to save Qiu Shi; they all believe in the law and they recognize that Qiu is a criminal who has committed no crime. In the end, even the two agents, specifically assigned to guard Qiu Shi and deliver him to Wuhan for punishment, support Qiu and abet his escape.

A brilliant director, Wu Yonggang understood how to show you the deep wrongs of a system, and he could really break your heart (he did it in *Goddess*). But in *Evening Rain* I believe the filmmakers were not just criticizing the treatment of Qiu Shi, nor were they making a statement that, except for the Gang of Four, law and justice would already exist. They knew that the laws Lao Wang refers to had just gone into effect when their film was being made, so *Evening Rain* points the way forward, to the essential role of law and the importance of legal procedure. The filmmakers were expressing their hope that the promise of those laws would be fulfilled and that China—like the ship—might also become a law-governed community, with officials who supported the rule of law. We might therefore conclude that *Legend of Tianyun Mountain* presents the problem, but *Evening Rain* provides the answer, and consequently it is a far more optimistic film.

## CONCLUSION: BACK TO THE FUTURE?

Both *Legend of Tianyun Mountain* and *Evening Rain* addressed events of their time, and their stories resonated with Chinese audiences hungry for justice. We can still appreciate these films for what they meant to viewers then, and they are certainly no ordinary movies, but do their ideas have any relevance for us now? Forty years on, the Cultural Revolution is long since over, and the Chinese Party-state has created a legal infrastructure that Lao Wang could never have imagined, any more than he could have pictured today's Chongqing. To what extent does the current system resolve the problems depicted so starkly in *Tianyun Mountain* and fulfill the hopes so movingly expressed in *Evening Rain*?

It is true that the laws Lao Wang cited have been substantially amended since 1980 to provide greater protections for suspects and defendants, including earlier access to a lawyer and a larger role for the defense. The courts have been re-established, now with specialized chambers as well as regional divisions, and the judicial process is more open and transparent in many respects. A professionalized and better trained judiciary sits in new and impressive courtrooms, and lawyers have long since ceased to be “state legal workers” given only the simplest of training. Even long-abused administrative punishments like re-education through labor have been abolished, suggesting less reliance on informal or

extrajudicial means of control. As a result of such broad reforms, many scholars have concluded that a new legal system has been firmly established, with law something more than an instrument of stability, and significant progress made despite some flaws.<sup>29</sup> And however we judge them, the laws themselves are an enormous intellectual achievement, something we can appreciate all the more if we view them from the vantage point of these films.

But what exists in theory does not necessarily obtain in practice, and since the accession of Xi Jinping to power in 2012<sup>30</sup> we have witnessed a clear retreat from the political-legal reforms first launched in 1979, just before these two movies were filmed. Xi Jinping has openly condemned constitutionalism, judicial independence, the separation of powers, and the role of defense lawyers, and has instead enforced the “absolute domination of the Party,” which is now enshrined in the PRC’s Constitution.<sup>31</sup> The amended Constitution also provides for “supervision commissions,” which are granted broad powers to investigate and detain public officials, both non-Party as well as Party; these commissions may also maintain their own system of custodial control, without supervision by either the judiciary or the procuracy.<sup>32</sup> As for the regular criminal justice system, it is often a politicized process, characterized by closed trials, forced (and televised confessions), incommunicado detention, the denial of access to defense counsel, and a dominant role for the police. Rights defense lawyers (*weiquan lüshi*), always under pressure, since July 2015 have been harassed, removed, and disappeared, as well as sentenced to prison.<sup>33</sup> Consequently it seems that even forty years after the launch of legal reform and the promulgation of “much relevant legislation,” the Chinese criminal justice system cannot assure defendants a fair trial.”<sup>34</sup>

So how would Luo Qun and Qiu Shi fare today, under the current legal regime, and could they expect better treatment now than we saw in *Tianyun Mountain* and *Evening Rain*? Luo Qun is incorruptible, but he is also idealistic and on matters of principle he will certainly speak his mind; he might once again be caught up in the nightmare of a Party-dominated process. As for Qiu Shi, the crime of “counterrevolution” may be gone, but “inciting subversion of state power,” an equally powerful weapon, has taken its place. Wouldn’t Qiu risk being treated like Liu Xiaobo,<sup>35</sup> another “criminal who committed no crime”? Ideally, contemporary Chinese movies could address current injustice as directly as *Evening Rain* and *Tianyun Mountain* criticized their own recent system forty years ago, and today’s filmmakers would certainly find plenty of material to hand. But given ever-tighter film censorship and increasingly direct Party oversight, with movies routinely pulled from distribution for “technical difficulties” or never released at all,<sup>36</sup> we are unlikely to view them. In a future, more open era, we might hope to see such movies, with their own happy endings, but in the meantime, even if *Evening Rain* and *Tianyun Mountain* are old-fashioned films, their broader messages about justice and law remain timely for China today.

## ACKNOWLEDGEMENTS

An earlier version of this article was originally presented as a paper at the conference on “China’s Legal Construction Program at 40 Years: Towards an Autonomous Legal System?” held at the University of Michigan Law School on October 13-19, 2019. Research for the article was conducted with the assistance of research support from the University of Hawai‘i/Mānoa William S. Richardson School of Law, which is gratefully acknowledged; I would also like to thank Jerome Cohen, Linda Johnson and Daniel Barnett for their comments on the paper.

## DISCLOSURE STATEMENT

No potential conflict of interest was reported by the author(s).

## GLOSSARY

*Bashan Yeyu* 巴山夜雨

*Cheng Nan Jiushi* 城南旧事

douzheng 斗争

*Fating Neiwai* 法庭内外

*Furong Zhen* 芙蓉镇

*Jintian Wo Xiuxi* 今天我休息

*Jingju* 京剧

Li Zhiyu 李致宇

Lu Yanzhou 鲁彦周

*Qiu Jin* 秋瑾

*Qiu Ju Daguansi* 秋菊打官司

Qiu Shi 秋石

*Shennü* 神女

Shishi qiushi 实事求是

*Tianyunshan Chuanqi* 天云山传奇

weiquan lüshi 维权律师

Wu Yigong 吴贻弓

Wu Yonggang 吴永刚

Wutai Jiemei 舞台姐妹

wuzui de zuiren 无辜的罪人

Xie Jin 谢晋

Ye Nan 叶楠

Zhang Yimou 张艺谋

Zhong Xinghuo 仲星火

Zhonghua Renmin Gongheguo Xingfa 中华人民共和国刑法

Zhonghua Renmin Gongheguo Xingshi Susong Fa 中华人民共和国刑事诉讼法

Zhonghua Renmin Gongheguo Lüshi Zhanxing Tiaoli 中华人民共和国律师暂行条例

zongdaoyan 总导演

1. Directed by Zhang Yimou. Sil-Metropole Organization, Youth Film Studio of Beijing Film Academy, 1992. See Jerome A. Cohen and Joan Lebold Cohen, "Did Qiu Ju Get Good Legal Advice," in *Cinema, Law, and the State in Asia*, ed. Corey K. Creekmur and Mark Sidel (New York: Palgrave Macmillan, 2007), 161-73.
2. Yomi Braester, *Witness against History: Literature, Film, and Public Discourse in Twentieth-Century China* (Stanford, CA: Stanford University Press, 2003), 133; Paul Clark, *Reinventing China: A Generation and Its Films* (Hong Kong: Chinese University Press, 2005), 24.
3. When millions of people were persecuted, imprisoned, or died. 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*, ed. Ellen Widmer and David Der-wei Wang (Cambridge, MA: Harvard University Press, 1993), 89.
4. Both movies were produced by Shanghai Film Studios in 1980. For full cast and production credits, see Zhongguo Dianying Yishuzhongxin, ed., *Zhongguo dianying dadian 1977-1994* [Dictionary of Chinese Movies 1977-1994] (Beijing: Zhongguo dianying chubanshe, 1995), 73-4, 106-7; Zhongguo Dianying Tushi Bianji Weiyuanhui, ed., *Zhongguo dianying tushi 1905-2005* [Pictorial History of Chinese Movies 1905-2005] (Beijing: Chuanmei daxue chubanshe, 2006), 565, 596.
5. Braester, *Witness against History*, 23. See also the detailed analysis of more than eighty of these films in Chris Berry, *Postsocialist Cinema in Post-Mao China: The Cultural Revolution After the Cultural Revolution* (New York: Routledge, 2004). Berry focuses on the political-social themes of the films, not their aesthetics—though their aesthetics is what sets the two films discussed in this essay apart from so many others.
6. See the discussion in Pickowicz, "Melodramatic Representation," 313 ff.
7. In three of his films, Xie Jin does depict a trial, none of which he portrays in a positive light: *Qiu Jin* (Shanghai Film Studios 1983), set at the end of the Qing; *Two Stage Sisters* (*Wutai Jiemei* Shanghai Film Studios, 1964), set in late 1940s Republican China; and *Hibiscus Town* (*Furong Zhen*. Shanghai Film Studios, 1986), set during the Cultural Revolution. See Alison W. Conner, "Images of Justice and Injustice: Trials in the Movies of Xie Jin," *Hawaii Law Review* 35 (2013): 805. Wu Yonggang's film *Goddess* (*Shennü*, Shanghai Lianhua Film, 1934) also includes a trial, but the story makes clear that formal legal procedure had nothing to offer its tragic defendant.

8. Chinese directors of the twentieth and early twenty-first century are usually classified into different generations according to their shared backgrounds and the period in which they were active. Thus Zhang Yimou and Chen Kaige, who captured the international imagination from the later 1980s, belong to the Fifth Generation.
9. For a discussion of the Museum's dioramas, see Linda Johnson, "Screening Times: Dioramas at the Shanghai Film Museum," in *The Future of Museum and Gallery Design, Purpose, Process, Perception*, ed. S. MacLeod, T. Austin, J.O. Hale, Hing-Kay (London: Routledge, 2018), 277-87.
10. George Stephen Semsel, *Chinese Film: The State of the Art in the People's Republic* (New York: Praeger, 1987), 110.
11. Braester, *Witness against History*, 140-1.
12. Clark, *Reinventing China*, 51.
13. It was at the full meeting of its Central Committee, held on December 18-22, 1978, that the Chinese Communist Party (the CCP or the Party) formally turned its back on years of chaos and embraced the policies of "reform and opening up" of China's economy—and even reform of its legal system.
14. The Anti-Rightist Campaign, launched in 1957, consisted of campaigns to purge alleged rightists from the Party. The term "rightists" was largely used to refer to intellectuals and artists accused of favoring capitalist ideas, or anyone who opposed Party policy, including legal professionals who had advocated respect for legal procedure and the rule of law. The campaign remains a sensitive topic, even though most of the rightist verdicts were overturned in 1979. The Great Leap Forward was a disastrous campaign (1958-1961) launched by the Party to collectivize agriculture and force rapid industrialization through household industry.
15. Xie Jin treated the women characters in his movies as individuals in their own right, so Feng Qinglan's death is not simply a device to show the audience how much Luo Qun has suffered and what he has lost: it is a tragedy, and the audience feels it all the more.
16. Contemporary viewers would recognize Luo Qun as an environmentalist as well as a scientist. Xie Jin shows us the disastrous consequences of the project Luo opposed, so we know that Luo was right, and his research is truly important.
17. For example, Zhu Dake, "The Drawback of Xie Jin's Model," in Semsel, *Chinese Film: The State of the Art in the People's Republic*, 144-6. Yingjin Zhang, "Directors, Aesthetics, Genres: Chinese Postsocialist Cinema, 1979-2010," in *A Companion to Chinese Cinema*, ed. Yingjin Zhang (Wiley-Blackwell, 2012), 67.
18. See Braester, *Witness against History*, 140, for this argument.
19. The Gang of Four, most notably including Mao Zedong's wife Jiang Qing, are still officially blamed as the chief architects of the chaos as well as for the persecution of millions of people during the Cultural Revolution.
20. See Paul G. Pickowicz, "Popular Cinema and Political Thought in Post-Mao China," in *Perspectives on Chinese Cinema*, ed. Chris Berry (London: BFI Publishing 1991), 40-2, 46. According to Pickowicz, the film also turned upside down many of the Party's moral categories (e.g., the saintly hero is a "rightist").
21. I believe that Xie Jin has given Song Wei a happy ending: she still has her son and her position, but she is now free of a dreadful husband.
22. Wu Yonggang is credited as "general director" (*zongdaoyan*), but he actually blocked out all the shots. See Ye Nan, *Bashan Yeyu: cong juben dao yingpian (Evening Rain: from script to screen)*, (Beijing: Zhonghua dianying chubanshe, 1982). His co-director Wu Yigong, though less experienced at the time, went on to make the highly praised *My Memories of Old Beijing (Cheng Nan Jiushi)*, Shanghai Film Studios, 1983.
23. Some of the discussion of *Evening Rain* is based on my article "Law and Justice in *Evening Rain*," *Hong Kong Law Journal* 47 (2017): 615.
24. Qiu Shi's name means "Autumn Stone," but it may also suggest to "seek truth from facts" (*shishi qiushi*), the slogan emphasized during the reform and opening policy when the film was made. The actor Li Zhiyu, who turned in some unimpressive performances in other films of the day, plays Qiu with dignity as well as real feeling, making it easy to see why the other passengers are drawn to him.
25. Another 1980 movie, *In and Out of Court (Fating Neiwai)*, directed by Chong Lianwen and Lu Xiaoya and produced by Emei Film Studio, illustrates the importance of procedure and features an honest judge (with perhaps a few echoes of the Judge Bao stories), but it is simply



- not in the same league as either *Evening Rain* or *Tianyun Mountain*, nor is it an example of scar cinema. The film scenario is discussed in some detail in Jeffrey C. Kinkley, *Chinese Justice, the Fiction: Law and Literature in Modern China* (Stanford, CA: Stanford University Press, 2000), 70 ff.
26. *It's My Day Off*. Directed by Lu Ren. Shanghai Haiyan Film Studios, 1959. Zhong Xinghuo, who appeared in other films during the 1980s and 1990s, was a good actor. Indeed, in *Legend of Tianyun Mountain*, he convincingly plays the villain Wu Yao, and in that role he somehow looks leaner as well as meaner, even though *Tianyun Mountain* was filmed the same year as *Evening Rain*.
  27. In contrast to *Goddess*, in which trial and procedure can do nothing for the defendant, procedural protections have everything to offer Qiu Shi—and he is saved by the officials' belief in its importance.
  28. Criminal Law of the PRC (Zhonghua Renmin Gongheguo Xingfa) and Criminal Procedure Law of the PRC (Zhonghua Renmin Gongheguo Xingshi Susong Fa), both enacted by the National People's Congress on July 1, 1979 and effective as of January 1, 1980. Lao Wang makes no mention of a lawyer or a legal defense, but the PRC's Provisional Regulations on Lawyers (Zhonghua Renmin Gongheguo Lüshi Zhanxing Tiaoli), were only adopted in August 1980 and did not go into effect until January 1, 1982. Lao Wang (and the filmmakers) could hardly have imagined such a possibility, much less dared to hope for it.
  29. See J. Chen, "The Uncertain Future of Legal Reforms in China's New Era," in *Real Legal Certainty and Its Relevance*, ed. Adriaan Bedner and Barbara Oomen (Leiden: Leiden University Press, 2018), 97–106, 97–8.
  30. Xi Jinping became general secretary of the CCP in November 2012, president of the PRC in March 2013—and is president for life as of March 2018.
  31. Jerome A. Cohen, "Xi Jinping Sees Some Pushback against His Iron-fisted Rule," *Washington Post*, August 2, 2018.
  32. See Jerome A. Cohen, "Law's Relation to Political Power in China: A Backward Transition," *Social Research: An International Quarterly* 86 (2019): 231–51. Safeguard Defenders, *From Central Control to National Supervision*, 2018. The Procuracy, at least in theory, exercises supervisory as well as prosecution powers.
  33. Amnesty International, *Third Anniversary of the Lawyers Crackdown in China: Where Are the Human Rights Lawyers?*, July 9, 2018. Human Rights in China, *Mass Crackdown on Chinese Lawyers and Defenders*, June 6, 2017.
  34. Jerome A. Cohen, "If Beijing Wants an Extradition Law with Hong Kong—and Elsewhere—It Should Reform Its Judicial Process," *South China Morning Post*, May 23, 2019.
  35. Liu Xiaobo (1955–2017), one of China's most famous dissidents and a Nobel Peace Prize laureate, was sentenced to eleven years of imprisonment in 2009 for "inciting subversion" and died in prison in 2017.
  36. Patrick Brzeski, "China's Tightening Censorship Is Making a Bad Box Office Year Even Worse," *Hollywood Reporter*, July 16, 2019.

**Alison W. Conner** is Professor of Law and Carlsmith Ball Faculty Scholar, William S. Richardson School of Law, University of Hawai'i at Mānoa. She earned her MA and PhD in Chinese history at Cornell University and her JD degree at Harvard Law School. Her research interests include Chinese legal history, legal education, and the depiction of law in Chinese film.

## ORCID

Alison W. Conner  <http://orcid.org/0000-0002-7393-7035>