

# BENCH AND BAR: LAWYERS AND JUDGES IN EARLY CHINESE MOVIES

■  
Alison W. Conner\*

*This article analyses the depiction of judges and lawyers in some of Shanghai's most famous movies of the 1930s and 1940s. During that golden age for early Chinese cinema, scenes in courts and lawyers' offices often appeared in movie plots, despite the relative newness of a modern legal profession. Thus, in *Street Angel* we see a mercenary lawyer dismiss two worthy but penniless clients – but *Bright Day* and *Long Live the Missus* show us versions of the model lawyer that might resonate now. Indeed, though all these movies were very much the products of their time and place (and the views of their writers and directors), their broader themes – access to justice and the use of law by ordinary people – remain of great importance in China's legal system today.*

## **Introduction**

China's fifth-generation of filmmakers has brought contemporary Chinese films to international attention, and their social themes often illustrate broad legal concerns. Such film portrayals are of interest as we contemplate the rapid changes in China's current legal system since 1979 and the place of courts and lawyers within it. But Chinese legal reform, like Chinese movies, long predates the contemporary era. Revolutionary legal reforms began in earnest in the early years of the 20<sup>th</sup> century and accelerated during the Republican period (1912–1949 on the Chinese mainland). Modern courts were established, the legal profession was recognised for the first time, and a wide range of modern laws was adopted even before the Nationalists came to power. Despite the relative newness of these institutions, early Chinese movies soon depicted many aspects of the legal system in illuminating ways – and their relevance to contemporary legal issues is striking.

\* Professor of Law and Director of International Programs, William S. Richardson School of Law, University of Hawai'i/Manoā. Research for this essay was conducted with the assistance of a grant from the William S. Richardson School of Law, which is gratefully acknowledged. I would also like to thank my colleague Avi Soifer for comments on an earlier version of this essay; and my former colleagues at the University of Hong Kong for their generous help with library access and work space during my research visits there. It was in Hong Kong during the 1980s that I first saw some of these early movies and was intrigued by their depiction of courts and lawyers.

Before 1949, China's film industry was concentrated in Shanghai, the "capital of Chinese modernity and the culture industry before the war".<sup>1</sup> Most commentators view the period from the early 1930s until the outbreak of full-scale war with Japan in 1937 as the first golden age of Shanghai movies;<sup>2</sup> the late 1940s marked a second golden age, perhaps achieving even greater heights in film-making than did pre-war Shanghai.<sup>3</sup> Many of these movies, which could once be seen only at film festivals or – with special permission – in archives, have now appeared on DVD or VCD. Such films include not only "leftist" favourites of the Maoist era, but also comedies and dramas of middle-class life that provide a broader, and substantially different, take on the Republican legal system and its participants. These early films are of special interest because, unlike most post-1949 mainland Chinese movies, they were produced by commercial, not state-owned (or state-controlled) studios. Despite increased censorship and regulation after 1931, therefore, China's first and second generation of screenwriters and movie producers remained relatively free to comment upon the legal system of their day.

This essay analyses the depiction of judges and lawyers in some of the most famous movies made in Shanghai during that pre-1949 golden age. In Shanghai, to be sure, the legal profession was less of a novelty than elsewhere: Shanghai was a centre for lawyers – and courts – as well as for movies. But modern lawyers and judges had no true counterparts in traditional China, and their appearance in early movies is striking. Although these films are very much the products of their time and place (and the different political and artistic views of their writers and directors), their broader legal themes – access to justice and the use of law by ordinary citizens – remain of great importance in China now. What roles should and do lawyers play in the justice system, and what is the proper place of courts and judges? What lessons do these classic movies offer as we consider the role of the bench and the bar in China today?

## 1. Courts and Judges

Early Chinese filmmakers used courtroom scenes to great dramatic effect, even though modern courts were a recent development and the

<sup>1</sup> Poshek Fu, *Between Shanghai and Hong Kong: The Politics of Chinese Cinemas* (Stanford: Stanford University Press, 2003), p 69.

<sup>2</sup> Yingjin Zhang, *Chinese National Cinema* (New York: Routledge, 2004), pp 58–60.

<sup>3</sup> *Ibid.*, p 55. Leo Ou-fan Lee, "The Urban Milieu of Shanghai Cinema, 1930–1940: Some Explorations of Film Audience, Film Culture, and Narrative Conventions", in Yingjin Zhang, (ed), *Cinema and Urban Culture in Shanghai, 1922–1943* (Stanford: Stanford University Press, 1999), p 86.

continuous trial is not a central event of civil law systems. Many progressive or leftist films of that era shared a common theme: ordinary people are wrongly arrested, leading to harsh consequences for them and their loved ones, or they may be driven to acts of desperation to survive, only to be heavily punished by a harsh and unforgiving legal system. Three famous movies, all made in 1934, provide striking though somewhat different depictions of courts and of judges as they might appear to ordinary people of that era.

The first film, *The Two-Mao Note* (*Liangmao Qian* 兩毛錢, 1934),<sup>4</sup> was directed by Sun Yu 孫瑜, one of the most prominent Chinese directors of the 1930s and 1940s, and it provides an especially harsh picture of a judge in action. This movie traces the path of a two-*mao* (ie, a very low value) note as it passes through the hands of people in very different walks of life. The note's travels are launched when a rich man, playing with a woman on his knee, uses it to light his cigarette and then carelessly discards it in the dustbin. The note eventually finds its way to a poor man when a gangster pays him to transport goods in his wheelbarrow to the wharf at night. When the man is stopped by the police, his cargo proves to be contraband, and his wife, child and elderly father waiting at home learn that "the police got him"!

When next we see the man, he is standing in the dock, facing a stern judge (and two others, apparently the clerk and the prosecutor), all of whom sit behind a high bench. All are clad in gowns, with the clerk in plain black and the two others wearing robes with coloured borders.<sup>5</sup> It is a modern, western-style courtroom, its layout reflecting the European semi-inquisitorial system that the Chinese Republic adopted. The modern Chinese legal system created a separate prosecutorial office<sup>6</sup> and prosecutors were the full equal of judges; at times they even sat on the bench. Of the three men on the bench, one is clearly the clerk transcribing the trial and one is clearly the judge (he reads the sentence). The third man, whose robe also has a coloured border, is apparently the prosecutor.

The judge interrogates the accused: "Do you know this is a criminal matter? Why did you want to do something illegal?" "The goods weren't mine," the defendant replies. "It was just to get two *mao*. I'm poor and there are so many people in my family." His wife also rushes forward to

<sup>4</sup> One of eight short films contained in *Lianhua Symphony* (*Lianhua Jiaoxiangqu* 聯華交響曲).

<sup>5</sup> Beginning in 1913, regulations prescribed the style of robes for judicial officials and lawyers appearing in court. Under these early regulations, all wore black robes, but with different borders: black for lawyers, gold for judges and purple for prosecutors. *Zhengfu Gongbao* 政府公報 (*Government Gazette*) 1912–1928 (Reprint ed Taipei: Wenhua chubanshe, nd), January 1913 Vol 9, p 97.

<sup>6</sup> Xiaogun Xu, *Trial of Modernity* (Stanford: Stanford University Press, 2008).

beg the judge to show them mercy, but he remains unmoved by her tearful pleas: "This is a court of law, not a place to talk about human feelings!" he declares. "Take her away," he adds, and the police roughly grab her by the arms. "Have pity, he really isn't guilty," she pleads, as she is dragged away still begging for mercy. A newspaper report tells us that the man has been convicted and sentenced to eight years in prison.

In the movie's final scene, the wretched man is in prison, clinging to the bars while he talks with his wife and child outside them. "Eight years!" he exclaims, "I don't know how you can live for eight years!" "With you here," his wife replies, "we can't get as much money, if I can't get work we'll have to beg, I'm afraid we'll starve." Over and over the prisoner keeps repeating, "Two *mao*, two *mao*, eight years, eight years!" while his wife sobs in despair. The two-*mao* note, the rich man valued so little that he used it to light a cigarette, has ended up in the hands of a man so poor that he had to take any work he could get to earn it. Now he must serve a long prison term while his wife and child are left to fend for themselves in a cruel society. The message of the film could hardly be clearer: this is justice for the poor.

An equally dramatic courtroom scene is featured in *Song of the Fisherman*, (*Yuguang Qu* 漁光曲1934), an award-winning film directed by Cai Chusheng 蔡楚生. That film tells the tragic story of Xiao Mao and Xiao Hou, a twin brother and sister born into a poor fishing family. They become fishermen like their father, but they cannot compete with larger fishing businesses and are forced to move to Shanghai to look for work. When they try to earn a living by performing on the street, they are arrested by the police and brought before the court. In a few brief scenes, the film creates a striking image of the distance separating officials from ordinary people. The judge, also flanked by the prosecutor and the clerk, is seated high above an apprehensive Xiao Mao and Xiao Hou, as the police push them forward to face the bench. The contrast between the judge's position and that of the accused is the sharpest of any of these films, and we see it from their point of view (the judge looks enormous and towers over them) and from his (they are tiny figures before his authority). This judge looks just as severe as the one in *The Two-Mao Note* (actually, it seems to be the same actor), and the scene reinforces our understanding of their lowly status in society. Perhaps he too cares nothing for human feelings?

But the judicial outcome in *Song of the Fisherman* is different. For a moment the judge glares down at the brother and sister far below him, but when he stands to read the decision, he declares there is no evidence against the pair and he orders them both released. Unfortunately, this successful court appearance marks no turning point in the lives of Xiao Mao and Xiao Hou. It is simply one more of the hardships they must

endure as poor people trying to make their way, and the film can have no happy ending. Once released, the siblings are reunited with their childhood friend, and he tries to help them return to their livelihood as fishermen, though now as employees of his company. But Xiao Hou is injured on the boat, and he dies in his sister's arms. As the film ends, a weeping and devastated Xiao Mao is left to face life alone.

Perhaps the most interesting courtroom scene appears in *Goddess* (*Shennü* 神女 1934), which starred the tragic Ruan Lingyu 阮玲玉, one of the most famous actresses of the 1930s, in what is probably her most famous role. This poignant silent film has been widely recognised as a masterpiece, largely because of Ruan's luminous performance and the lyrical mood created by its writer and director, Wu Yonggang (吳永剛).<sup>7</sup> Ruan plays a virtuous prostitute who is also a devoted mother trying to raise her young son. Unfortunately, she falls into the clutches of a vicious gangster, who controls her and takes all her money. She manages to hide some of her earnings from him and uses the money to enroll her son in school, where to her great pride he does well. But when the parents of the other students discover her occupation, they demand that the boy be expelled, despite the objections of the school's principal.

The prostitute (we never learn her name) decides to leave the city and start over with her son, but she finds that the gangster has stolen all her hidden savings and gambled them away. Desperate, she confronts him and after a brief struggle she strikes and kills him. When the upright principal sees the report of her trial in the newspaper ("Female murderer sentenced to twelve years"), he visits her in prison. The court has ruled that her son should be sent to an orphanage, but the principal promises that he will adopt the boy and provide for his education. As the film ends, the camera shows us her response: hope for her son and gratitude for the principal's kindness mixed with the pain she feels at the loss of her child.

Although *Goddess* has sometimes been considered a "leftist classic", the film does not necessarily advocate radical social change, but instead places hope for transforming the lives of people like Ruan on people like the principal.<sup>8</sup> *Goddess* is thus far more than a simple story of class oppression, something to keep in mind as we interpret its depiction of the court and its personnel. After the prostitute strikes the gangster, he crashes to the floor and she too seems to sway. The next shot shows her in court, standing in the dock and flanked by two policemen, apparently still in shock and uncomprehending of her plight. On a high dais above her sit the same three judicial officers shown in the other two films; they

<sup>7</sup> See Lee (n 3 above), p 95.

<sup>8</sup> Zhang (n 2 above), p 68. Jubin Hu, *Projecting a Nation: Chinese National Cinema Before 1949* (Hong Kong: Hong Kong University Press, 2003), p 105.

seem remote and impassive as they listen to the argument and consider her case.<sup>9</sup> Another robed figure is shown arguing and gesturing towards the defendant, but this is a silent film and we do not know what he is saying. Shortly thereafter, the judge stands to read the decision and sentence is pronounced.

In contrast to the two films discussed above, the accused in this movie seems to have a lawyer at her trial. After the adoption of the first lawyers' regulations in 1912, lawyers were allowed to represent the accused at all trials held in modern courts. By the mid-1930s, when *Goddess* was filmed, the Shanghai Bar Association had established a legal aid division, and in any event the court was required to appoint a lawyer for defendants accused of the most serious crimes.<sup>10</sup> Oral argument was also a part of many trials.<sup>11</sup> Our possible advocate wears the lawyer's plain black robe, and he does not, as one might expect a prosecutor to do, stand and read the charges, but instead argues in an animated fashion. An accusing prosecutor might seem more in keeping with the emotional tone of the film: then the prostitute would stand alone and defenceless in court, just as she does in life. Shouldn't a lawyer have convinced the judges that she acted in the heat of the moment and with justifiable provocation, which might have reduced her sentence even further?<sup>12</sup> She did not receive the severest sentence possible. But she has lost her child forever, and (as in *Song of the Fisherman*) it is the overall social and political system, not simply the legal system, that has failed her.

## 2. Lawyers Good and Bad

Given the relative newness of the Chinese legal profession,<sup>13</sup> lawyers make a surprising number of appearances in these early films, where they

<sup>9</sup> At least one reviewer of the time noticed the distance the film created between the accused and the court she faced. Kristine Harris, "The Goddess: Fallen Woman of Shanghai", in Chris Berry (ed), *Chinese Films in Focus II* (London: Palgrave Macmillan, 2<sup>nd</sup> ed 2008), p 134.

<sup>10</sup> From the 1920s on the Shanghai bar association had at least informal arrangements with the courts to provide some representation for defendants. During the 1930s, the Jiangsu high court continued to call on attorneys to represent defendants in court, and in 1934 four permanent "designated defenders" were appointed. Xiaoqun Xu (n 6 above), p 103.

<sup>11</sup> Ch'ien Tuan-sheng (Qian Duansheng), *The Government and Politics of China* (Cambridge, Mass: Harvard University Press, 1950), p 255.

<sup>12</sup> Chao-yuen C Chang (trans), *The Criminal Code of China* (Shanghai: Kelly & Walsh, 1935). She has apparently been convicted of ordinary homicide, the penalty for which ranged from 10 years' imprisonment up to a possible death sentence (Art 271). But if the homicide was committed in the heat of the moment with justifiable provocation, then the penalty could have been less than seven years' imprisonment (Art 272).

<sup>13</sup> The first Provisional Regulations on Lawyers (Lüshi Zhanxing Zhangcheng 律師暫行章程), which officially recognised private lawyers and provided for their rights and duties, were adopted in 1912. *Zhengfu Gongbao* (n 5 above), September 1912 Vol 5 p 109.

act in both criminal and civil cases. In some films we see easy access to lawyers, but in others – whether for financial or political reasons – a lawyer’s help is out of reach.

### 3. A Mercenary Lawyer in *Street Angel*

In *Street Angel* (*Malu Tianshi* 馬路天使 1937), written and directed by Yuan Muzhi 袁牧之, two would-be clients consult a lawyer about a civil case, though they never make it to court. This tragicomic film starring Zhou Xuan 周璇 and Zhao Dan 趙丹, two well-known actors of the day, combines humour with a sentimental story to provide a vivid portrayal of the urban underclass of the 1930s. Depending on one’s viewpoint, the film may be seen as a “classic leftist film”, a “melodrama”, a “social-ethical drama”,<sup>14</sup> or a realistic movie that highlights the “cruel and dark side of old China”.<sup>15</sup> In any event, *Street Angel* is widely recognised as one of the best films of the era, perhaps one of the best Chinese films ever made. The action takes place in 1935 and according to the opening titles it is set in the “world of Shanghai’s underclass”.

This film tells the story of four young people living on the city’s margins: Xiao Chen, an itinerant trumpet player; his friend Lao Wang, a newspaper vendor; and the two sisters they love. The elder sister, Xiao Yun, has been forced into prostitution, and Xiao Hong, the younger sister, is a singsong girl in a local teahouse. When the teahouse owners decide to sell Hong to a wealthy patron, she seeks help from Chen and Wang, who try to think of a way to save her. Initially, they are both stumped, but Wang, who has been reading the newspapers pasted to his wall, suddenly spots a headline on the front page: “‘Daughter’ Sues Madam, with Client as Backer.” “We could sue too!” he exclaims. But they have no idea how to do it, until Wang spots advertisements for lawyers in another newspaper, and he and Chen resolve to go and see one right away.

The next long scene, depicting their visit to Lawyer Fang’s office, combines humour with sharp social criticism. Fang’s office is on a very high floor of a modern skyscraper: as the scene opens, Wang and Chen arrive at his suite of rooms and look out the window at the Shanghai houses far below them.

<sup>14</sup> See Zhang (n 2 above), p 78; Chris Berry and Mary Farquhar, *China on Screen: Cinema and Nation* (New York: Columbia University Press, 2006), p 83. Lee (n 3 above), p 91.

<sup>15</sup> Xu Naixiang 徐迺翔 (ed), *Ershi Shiji Zhongguo Wenyi Tuwenzhi Dianying Juan* 二十世紀中國文藝圖志 電影卷 (*Illustrated Essays on Twentieth-Century Chinese Literature and Art: Movies* (Shenyang: Shenyang chubanshe, 2002), pp 57–59.

Chen: "Look, we're already standing above the clouds!"

Wang: "This is really heaven."

More comic byplay follows as they explore the lawyer's splendid office: a good-sized room with potted plants on stands, drinking water with a glass cup dispenser on the wall, a large desk for the lawyer, and a servant who announces his arrival.

Lawyer Fang sweeps in, a trim figure in a tailored suit, with his hair slicked back, a small moustache and wire-rimmed glasses, and a cigarette in his hand. Chen is still playing with a drinking cup and Wang is gluing holes in his jacket together with the lawyer's glue bottle. "Please sit down. What do you have to say? Have you come to file a complaint (qisu 起訴)?" "No," says Chen. "We've come to bring a lawsuit (*da guansi* 打官司)." Wang whispers behind his hand that bringing a lawsuit is actually the same thing. "Yes, yes, we've come to bring a lawsuit." The two friends then struggle to recount their story, but just as they may be getting to the point, Fang interrupts them.

"I'm sorry, but according to our established practice, we charge five ounces of silver for an hour of consultation, fifteen for a legal document, one hundred to arrange for a hearing in court, and five hundred for an appearance in court to represent a case. I think perhaps you should reconsider."

When he rises from his desk and sweeps out of the office, Chen and Wang are left to marvel at such charges: "It costs money to bring a lawsuit! Damn!" "I never expected it."

The next scene finds them back in Wang's room, where Chen is still expressing surprise at the lawyer's high fees. The four friends decide to flee to another part of Shanghai, but a gangster hired by the teahouse owner tracks them down, and Yun, the older sister, is fatally stabbed. Her death occurs in a tableau in a dark room and is seen through a "barred window that symbolises entrapment".<sup>16</sup> Although Hong has been saved from the immediate fate of being forced into prostitution, it is hard to find a happy ending for anyone here. Despite its humour, this film, like Yuan's other films, is darker and less nuanced than *Goddess*: at least the prostitute knew that her son would receive the education she sacrificed for, but in such a system what hope is there for any of them?

*Street Angel* provides a detailed portrait of a Shanghai lawyer and, more generally, a view of the legal system from Chen's and Wang's perspective. Fang is mercenary and impatient to dismiss people who plainly cannot pay his fees; their charade could never have fooled

<sup>16</sup> See Berry and Farquhar (n 14 above), p 87.

him. His modern office is in a gleaming high-rise, doubtless in the International Settlement, complete with heat, drinking water and servants – and high above ordinary Shanghai, where the two friends reside. In person, the lawyer is also slick and foreignised: he wears a three-piece suit and gold watch chain, not the robe of the 1930s intellectual, and he uses a fountain pen. Fang is a modern lawyer with all the trappings of the profession and not the litigation trickster of old imperial China, but all his success and professionalism definitely do not make him good. The message of *Street Angel* is clear but it is repeated several times for the viewer's benefit: you need money to get a lawyer and therefore have access to justice. Without it you have no recourse to the legal system. Perhaps law can be found in heaven, but that is far beyond the reach of Shanghai's underclass: "any justice except revolutionary justice is denied to China's poor".<sup>17</sup>

#### 4. Lawyer for the Defence?

Other movie characters turn to lawyers when arrested, with varying degrees of success.<sup>18</sup> *Crows and Sparrows* (*Wuya yu Manque* 烏鴉與麻雀 1949), one of the last movies made during this era, includes a telling scene in a lawyer's office, where a woman seeks help in a criminal case. The ideological content of this film, which was directed by Zheng Junli 鄭君里, is exceptional; it presents one of the sharpest and most open attacks on the system to be found in any Chinese movie of this era. Filmed in the chaotic last days of the Nationalist government, the movie was not actually released until after the Communist victory.<sup>19</sup> *Crows and Sparrows* depicts the struggle between the residents of a Shanghai lane house and their landlord, a powerful and corrupt official who has

<sup>17</sup> *Ibid.*, p 88. Indeed, lawyers' fees are an issue in other movies of the time. In Cai Chusheng's *Dawn Over the Metropolis* (*Duhui de Zaochen* 都會早晨 1933), for example, a poor cart puller must work extra hours to pay the legal fees when his adopted son is wrongly thrown in jail – and then dies of exhaustion. Yingjin Zhang and Zhiwei Xiao, eds, *Encyclopedia of Chinese Film* (London, New York: Routledge, 1998), p 138.

<sup>18</sup> In *Flourishing Like This* (*Rici Fanhua* 如此繁華 1937), for example, we learn that two political activists have sought a lawyer's services after their arrest. One classmate tells a friend that they went to see a lawyer but had no money. "Can you think of a way?" he asks her. Indeed she can: she steals the cash from his older brother's safe and later joins him when he runs off to devote himself to the revolution. In *Spring River Flows East* (*Yijiang Chunshui xiang Dong Liu* 一江春水向東流 1947), the epic melodrama directed by Cai Chusheng and Zheng Junli, an arrested man also seeks a lawyer – though in this movie he is one of the villains (a collaborator with the Japanese). When his wife appears at the jail to visit him, she is outraged to find him talking with his mistress through the bars, and they begin a loud quarrel. But then he asks, "Have you arranged for my lawyer?" and his wife becomes even angrier. "Now you want me to engage a lawyer for you? Why don't you ask that woman to get you a lawyer?"

<sup>19</sup> Jay Leyda, *Dianying: An Account of Films and the Film Audience in China* (Cambridge, Mass: MIT Press, 1972), p 175.

confiscated the house from its true owner and is trying to sell it before he flees the approaching Communist forces. As the residents try to deal with the housing problems they face – will they be evicted, can they somehow keep their rooms? – as well as with the political chaos around them, their characters are revealed, along with the corruption and moral bankruptcy of the dying Nationalist government.

Thus one of the residents, Teacher Hua, is portrayed as a weak and somewhat cowardly intellectual. Two colleagues at the secondary school where he teaches have been arrested for political reasons, but he is afraid to sign a petition protesting their illegal detention, and does so only when more active teachers back him into a corner. Although he tries to curry favour with the new principal and presents himself as apolitical, school officials misread his actions and suspect him of being the ring-leader of faculty protests. When the school authorities summon the police, Hua is roughly arrested, and with glasses and gown askew, he is dragged down the school corridors and shoved into the police van along with the other teachers.

When Mrs Hua learns of her husband's arrest, she first seeks help from lawyer Feng Ping. "Please help him," she pleads, as they sit together in his large office. "I'm sorry, but actually we don't dare handle cases like this," he tells her, and she begins to cry. After a fruitless visit to the education department ("we don't handle cases like this"), Mrs Hua goes to police headquarters, where she begs the officer in charge for information about her husband. When she prostrates herself and kowtows before a brutal officer, he denies any knowledge of her husband's whereabouts ("I told you, no one has been arrested") and steps over her to leave the room. These scenes are brief but terrifying, and the arbitrary and unchecked power that the police wield over ordinary people like the Huas is an important aspect of the corrupt system the film attacks.

The appearance of Lawyer Feng in *Crows and Sparrows* is of special interest, despite – or perhaps because of – his inability to act. A lawyer is Mrs Hua's first resort when she learns of her husband's arrest, and she turns to him before she approaches anyone else. In contrast to the lawyer visit in *Street Angel*, the scene in Feng's office is brief, but it leaves a deep impression: although the lawyer's large desk is visible behind them, he and Mrs Hua are seated together at a small table where tea has been served. In this informal setting, Mrs Hua is anxiously clutching her handbag and she may be leaning slightly towards him. For his part, Lawyer Feng is earnest and scholarly in appearance, he seems genuinely sympathetic and he speaks with regret. But he does not take the case and the scene's message is clear: the law can provide no protection and no lawyer can save you.

*Crows and Sparrows* has a happy ending, but only because the arrival of the Communist troops in Shanghai saves this group of neighbours. The corrupt landlord flees the city, and with the house now returned to its rightful owner, the “sparrows” are left in their homes. Although Teacher Hua has been badly beaten and two of his colleagues have been executed, he is released and returns to his family. The tenants celebrate a joyous New Year together, and Hua speaks for all of them when he declares that, “This time the New Year brings a new society.”

## 5. The Shanghai Divorce Lawyer

A different picture of the legal system – and also of lawyers – emerges from Chinese comedy-dramas of the 1930s and 1940s. In these movies, we meet lawyers who, though not always ideal advisers, seem readily accessible, especially in divorce proceedings.<sup>20</sup> In *Don't Change Your Husband* (*Qinghai Chongwen* 清海重吻), for example, a 1929 silent movie, a young couple meet with a lawyer to arrange a divorce. Xie Lijun, a young married woman, is bored with her husband Wang Qiping and attracted to Chen Mengtian, a superficially more appealing and apparently richer man. Mengtian tells Lijun not to worry if her husband discovers their involvement: he will simply have a lawyer friend handle divorce proceedings. Lijun's husband reluctantly agrees to the divorce and the parties meet at the offices of Lawyer Tsai – the husband with his mother in tow, and the wife accompanied by both her mother and Chen Mengtian.

Lawyer Tsai has prepared the divorce agreement and summons the husband to his desk to sign it. Qiping picks up the brush, but he cannot bring himself to sign and returns to his seat. His mother immediately rushes up to sign in his stead. Despite pressure from the lawyer, Lijun also finds herself unable to sign the agreement; bursting into tears, she too rushes back to her seat. Chen is only too happy to sign in her place, and the divorce is accomplished. That evening, Qiping sits alone, smoking and reflecting on the end of his marriage. He tearfully recalls his courtship of Xie Lijun and relives the scene in Lawyer Tsai's office. “This is a lawyer's office and not a recreation club!” he imagines Tsai declaring. Meanwhile, Lijun finds that she cannot enjoy her new freedom and she too regrets the divorce, and by movie's end the two are happily reunited.

<sup>20</sup> In other movies, such as *Classic for Girls* (*Nüer Jing* 女兒經 1934) and *Modern Girl* (*Modeng Nüxing* 摩登女性 1945), the characters discuss consulting a lawyer as soon as divorce is mentioned.

*Don't Change Your Husband* features a close-up of a lawyer in action, although the portrait it paints is far from admiring. Lawyer Tsai presides over a formal, semi-westernised suite of offices, and he himself wears a western suit. His hair is slicked back and he sports a thin little moustache, which he all but twirls in the manner of old-movie villains. He apparently cares little for the feelings of the divorcing parties, though they (and not his friend Chen) are actually his clients. Thus, Tsai urges both to sign despite their obvious reluctance, and when they refuse, he allows someone else to sign in their stead, advancing Chen's interests over those of his clients. The motive for the lawyer's actions is all too clear: once the agreement is signed, Chen hands him a thick wad of bills, which Tsai is counting with relish in our last view of him.

Another, and no more admirable, divorce lawyer appears in *The Light of Maternal Instinct* (*Muxing zhi Guang* 母性之光 1933), a silent film by the well-known director Bu Wancang 卜萬蒼. In this movie, Lin Xiaomei, a talented young singer, marries Huang Shulin, a wealthy young man whose father owns tin mines in Malaya. Xiaomei accompanies her new husband to Southeast Asia after the wedding, but her initial happiness turns to despair when her husband proves to be a dissolute playboy and her father-in-law, a cruel capitalist who mistreats his workers. When Xiaomei becomes seriously ill after the birth of her daughter, her mother travels from China to help her and soon learns the whole story. Mother and daughter visit Lawyer Wu so that Xiaomei can get a divorce, and we see him seated behind his desk, while the two women, one of them holding the baby, stand as supplicants before him. "How much support do you expect?" he asks Xiaomei, while he plays with his pen. When she shakes her head to indicate she wants nothing, the lawyer looks puzzled. "I only want this child," she tells him.

"I'll have to discuss it," he replies, and steps out to the waiting room, where Huang Shulin and his father are seated side by side on a sofa, with arms folded. "Her only demand is the Huang family's flesh and blood!" he reports to them, suggesting where his sympathies lie. At first the husband sulkily refuses, but his father, who is undoubtedly footing the bill, nods his consent ("What difference does it make if we give her a girl-child?") and the matter is settled. In the next scene we read an announcement in the Shanghai newspapers that Xiaomei and her husband have indeed divorced (and she has kept her child).<sup>21</sup>

<sup>21</sup> A review of film encyclopedia plot summaries suggests that the divorce scene in the lawyer's office was not uncommon. Stanley Kwan's film *Centre Stage* (阮玲玉 1992), based on the life of 1930s star Ruan Lingyu, includes a scene reminiscent of these pre-1949 movies: the actress and her husband meeting with a lawyer to get a divorce.

## 6. The Lawyer as Friend: *Long Live the Missus*

The lawyer is portrayed very differently in *Long Live the Missus* (*Taitai Wansui* 太太萬歲 1947), directed by Sang Hu 桑弧 with a screenplay by Eileen Chang (Zhang Ailing 張愛玲), one of China's best known modern writers. This highly entertaining comedy-drama has a modern setting in Shanghai of the late 1940s, but is generally apolitical in theme and tone: the film's characters are all middle-class and comfortable, not sharply divided into rich and poor. The film centres on Chen Sizhen, a pretty and very charming wife who is also somewhat manipulative in her management of her family, though mostly for their own good. Sizhen's stratagems can backfire, however, especially when they are discovered, but on the whole she seems successful. Her husband, Tang Zhiyuan, has become the general manager of a new company, and in the first flush of success, he succumbs to temptation and has an affair with a greedy mistress. Then a disaster strikes. The company's assistant manager absconds with the company's funds and the husband's business is threatened with lawsuits. Sizhen also discovers Zhiyuan's affair just as he is beginning to regret his behaviour. Although she is hurt by his betrayal, she agrees to help her husband rid himself of his increasingly troublesome mistress if he will promise to give her whatever she asks in return. Zhiyuan agrees, and Sizhen manages, through her usual clever methods, to extricate him from the relationship. When she returns home from her meeting with the mistress, her husband is dismayed to find that her only request is for a divorce. She packs her bags and insists that they leave immediately for the lawyer's office to sign the divorce papers.

*Long Live the Missus* also features a visit to the lawyer's office to arrange a divorce, but the contrast with similar scenes (and lawyers) in the films discussed above could hardly be greater. Lawyer Yang is a friend of the family, and we first meet him when he and Mrs Yang arrived at the Tang home to play mahjong. Indeed, Yang's actions are generally portrayed as positive in this film, especially when he acts as counsellor to his clients. When he has prepared the divorce agreement for Sizhen and Zhiyuan to sign, for example, he asks them if they really want this divorce. Tang demurs, but then reluctantly agrees to it after Sizhen reminds him of his promise. The lawyer warns her that divorce is hard on women and suggests that she should reconsider. Sizhen insists on going forward, but twice she cannot bring herself to sign the document, so Yang rips it up and tells the couple that he is no longer willing to act for them in this matter. He asks them to reconsider carefully and then invites them to lunch; as a lawyer, he says, he rarely sees such a happy result and wishes to celebrate. Zhiyuan declares that he should be the

host because he is really the one at fault, and when his wife quickly agrees, the three of them repair to the fancy restaurant the lawyer has proposed. In the movie's final scene, the camera shows us (but not the three friends) that the mistress too is dining there, with her latest conquest. The ending in *Long Live the Missus* can thus be seen as happy, even if the wife is stuck in a patriarchal system in which husbands may stray and must be controlled indirectly.

The setting for this and other divorce movies is a world away from that of *Street Angel* and its lack of access to justice for those who cannot ascend to heaven. Here the lawyer meets the central characters on an equal footing; he is more than accessible, he is their friend. Like his friends and clients, Lawyer Yang is solidly middle class. And like their homes, his suite of offices is comfortable and pleasant, furnished with chintz sofas and chairs for the clients as well as his large modern desk. Indeed, his office bears a striking resemblance to their home, and we see an identical Shanghai skyline from the windows of both venues. Yang is educated and westernised, but so are his clients: all the men wear suits, though everyone signs with Chinese brushes. They are at ease with lawyers and familiar with the lawyer's roles: they are completely at home in his world.

Perhaps we should not be surprised that lawyers appear in so many of these movies. The 1930s Chinese Civil Code gave individuals, including women, a great deal of liberty to arrange their own affairs. They were free to marry in any ceremony they chose, so long as they declared themselves married in the presence of two witnesses. To meet this requirement, the parties often signed a document at the lawyer's office, which also served as evidence of the marriage. In this movie, Yang serves as a witness to the wedding of Chen's brother and sister-in-law, and he is just congratulating them on the happy occasion when Chen and Tang arrive, seeking a divorce. The code also permitted divorce by mutual consent if it was effected in writing and carried the signatures of at least two witnesses.<sup>22</sup> Though a lawyer's services were not required in either case, legal assistance allowed the parties to arrange their own affairs and to document their agreements. These movies thus illustrate the characters' ready access to lawyers – and the positive role that law could play in their lives.

<sup>22</sup> The Civil Code of China (Zhonghua Minguo Minfa 中華民國民法), adopted 1929–1931, Articles 982 (marriage) and 1049–50 (divorce by mutual consent).

## 7. The Lawyer as Activist: *Bright Day*

In another famous movie made the same year, a different sort of model lawyer is the central, most important character, and his dramatic appearance in court, though not as an advocate, marks the high point of the film. *Bright Day* (*Yanyang Tian* 艷陽天 1947) was written and directed by Cao Yu 曹禺, China's foremost modern playwright, and starred the actor Shi Hui 石揮 as its righteous lawyer-hero.<sup>23</sup> The film was praised for its acting and production, as well as for Cao's creation of a flesh-and-blood character in its hero; on its release the movie "resonated strongly with China's cultural and artistic world".<sup>24</sup>

*Bright Day* tells the story of Yin Zhaoshi, a man who is outraged by injustice and who is always ready to defend the poor and weak. For that reason, many people are grateful to him, but others detest or fear him. Yin negotiates with landlords on behalf of old ladies and he stands up for rickshaw pullers; because he does most of his work *pro bono*, he earns little money from his practice. He lives plainly, in a modest house with a small courtyard, next to an orphanage headed by his friend Wei Zhuoping, and he works from his study at home. Yin is good-natured and optimistic, but also cynical and a bit unconventional. Not for him the impeccable tailoring of Lawyer Fang: he pays no attention to his appearance and is casual about trivial matters. At age 40, he may appear thin and weak, but he is actually very sturdy. Yin is a hero who cannot be intimidated; though he is threatened and hooligans break into his house and attack him, he never wavers in his determination.

Yin's most important battle occurs when he learns from his friend Wei that two rich merchants are actually traitors: they collaborated with the enemy during the Sino-Japanese War and profited by hoarding goods. Yin immediately drops his fee-paying work and devotes himself to drafting a legal complaint against them. Criminal procedure rules of the day permitted persons with information about a crime as well as those injured by it to initiate and pursue a criminal suit as the complainant (*gaofaren* 告法人).<sup>25</sup> Yin names his friend Wei as the chief witness and files the complaint with the court; as a result of his investigation, the gang is arrested. Wei is threatened and Yin's house is surrounded by thugs, but Yin is determined that he and Wei will both appear in court to pursue the action.

<sup>23</sup> Cao's screenplay, on which my discussion is based, was published in 1948. *Cao Yu Quanji* 曹禺全集 (*Complete Works of Cao Yu*) (Beijing: Renmin wenzue chubanshe, 1978).

<sup>24</sup> See Xu Naixiang (n 15 above), pp 82–83.

<sup>25</sup> See Ch'ien (n 11 above), p 256.

By 8 am the next day, the courtroom is already full of eager spectators. Soon afterwards the five judicial officers – the chief judge, two associate judges, the prosecutor and the clerk – enter the court, all clad in black robes. When the defendant, Jin, enters the courtroom through a small door, all eyes turn to him, and the chief judge calls on the prosecutor to read out the charges. He then calls for the complainant Yin Zhaoshi and the witness Wei Zhuoping, but their places are empty. The defendant smiles as the judges consult the time; it is now 8:59 am. To the disappointment of the courtroom crowd, the chief judge announces that they will have to postpone the hearing because the complainant and witness are absent.

Meanwhile, earlier that morning we see Yin, his niece and Wei as they prepare to leave for court. They hurry down side streets and manage to reach the main road, where they are accosted by threatening hoodlums. Suddenly voices are heard on the street and rickshaw pullers arrive to escort them safely to the court. They arrive, fearing it is too late, but Yin calls out in a loud voice, “Chief Judge! It’s Yin reporting,” and he and Wei take their places in court in the nick of time. Yin addresses the judge: “I have many facts to prove all kinds of evil deeds committed by Mr Jin and his henchmen. I want to accuse them! No, not I, but the many people who have been harmed now justly accuse them!” In the final court scene, Yin stands at the plaintiff’s railing, with the two defendants in the dock, to hear the judgment: Jin is sentenced to life imprisonment and Yang to 12 years, and the property of both men will be confiscated. When reporters ask Yin for a statement, he replies, “I’m just happy!”

*Bright Day* ends on a high note. Although Yin is attacked again after the court’s decision, in the final scenes he has recovered from his injuries and his spirit remains undaunted. He will continue his work, and indeed his niece, the crusading reporter, has already brought him another injustice to right. As the film ends, Yin and his niece walk down a broad road together. She slows her steps and then stops to ask him, “Are we almost there?” Yin looks ahead, shielding his face against the sun. The sky is a brilliant blue, the road stretches far ahead of them and there is sunlight everywhere. “It’s not far,” he replies, and the two of them stride off into the future.

In *Bright Day*, Lawyer Yin is portrayed as an admirable character in every respect. He is a man of the people who cares passionately about justice: he champions the powerless and is unafraid to denounce evildoers, however powerful they may be. Contemporary critics recognised that Yin is a lawyer who fights for the oppressed and against injustice.<sup>26</sup> Does this make him a revolutionary? In fact it does not: Yin is

<sup>26</sup> Xu Naixiang (n 15 above), p 83.

an activist who believes in the law and seeks justice in court – and his faith in the legal process is vindicated by the result. According to a contemporary critic, Cao “firmly believed that justice is bound to triumph. Because of this belief, the just characters struggle with the evil and try to open the way to a new future. When we hold the truth, we cannot be subdued by force.”<sup>27</sup> Upon seeing the film, the president of the Shanghai Drama Institute stated, “Let’s pray that outside the screen, too, a bright day will come to the Chinese people.”<sup>28</sup>

## Conclusion

Viewed together, these early movies provide a fascinating glimpse of the legal world – or worlds – of pre-1949 China. Of course, as a Chinese friend once reminded me, these are “only movies”, not historical documents, but their images of judges and lawyers still offer much food for thought. Thus three movies show us modern courts and professional judges; all wear the robes of their office, though their cinematic image is mixed. *The Two-Mao Note* sharply attacks judges who are blind to the struggles of ordinary people and deaf to their pleas for mercy. Yet other movies suggest a different, perhaps even a positive view. *Song of the Fisherman*, for example, dramatises the great distance separating judge and judged: that judge looms high above all who appear in his court. But the judge finds no evidence against Xiao Mao and Xiao Hou, and on his orders they are set free. In *Goddess*, a far subtler film, the judge may at first seem remote and impassive, but perhaps he is simply professional: he hears the prostitute’s case impartially, according to law. She has a trial, after all, she seems to have a lawyer, and her sentence could have been longer.

Film portrayals of lawyers also reflected political points of view, as well as the realities of their day. Thus in two clearly leftist movies, the lawyers’ actions only serve to highlight the shortcomings of the legal system. The prosperous Lawyer Fang in *Street Angel* brusquely dismisses two would-be clients who seek his help, showing how those without money lack access to lawyers and therefore to justice. In *Crows and Sparrows*, Lawyer Feng may be sympathetic to Mrs Hua, but he does not dare to act; he is powerless to protect her from an unjust political order.

<sup>27</sup> Hu (n 8 above). Cao believed in the importance of the law, even if the law of his day was not completely just. Chen Jingliang 陳景亮 and Zou Jianwen 鄒建文, eds, *Bainian Zhongguo Dianying Jingxuan* 百年中國電影精選 (*The Best of Centennial Chinese Cinema*) 1905–2005 (Beijing: Zhongguo shehui kexue chubanshe, 2005), Vol 1 Part 2 p 270.

<sup>28</sup> See Hu (n 8 above), p 174.

*Bright Day*, however, illustrates the view that lawyers can be righteous (and effective) after all, at least if they represent those who need *and* deserve justice. In that movie, Lawyer Yin works hard for his clients and is willing to challenge the rich and powerful in court. When he is threatened or set upon by thugs, he remains steadfast and undaunted – and he is vindicated by the outcome.

In *Long Live the Missus*, Lawyer Yang, too, is a model lawyer, though of a very different sort from Yin. His services are important and necessary to his clients, and he meets his professional obligations by representing them. Without Yang's advice, they could not take full advantage of the freedom the law has granted them to order their lives. When he advises them, he plays a morally worthy social role, both as friend and counsellor. Yang thus represents another version of the ideal movie lawyer: someone who is the equal of, and helpful friend to, his clients.<sup>29</sup> At least on film, it seems, members of the Shanghai middle class were no strangers to the legal profession; they had ready access to lawyers – and therefore to justice – even if some of them (eg Lawyers Tsai and Wu) cared too much for money,

The relevance of these movies to Chinese life today is striking, at least to an outsider's eye. China's economic reforms have once again produced an urban middle class, whose members can enjoy comedy-dramas like *Long Live the Missus* – and who might seek out their own Lawyer Yang from a recently privatised legal profession. Yet China's economic reforms have also created tremendous disparities between rich and poor and between city and country, and official corruption is rife; urban Chinese may have access to lawyers but rural Chinese especially do not. Thus the old leftist movies, which might otherwise have seemed outdated or preachy, can speak to us with a fresh voice, now that social-justice issues are once again a central concern. Is justice meted out equally to all Chinese regardless of wealth or connections, or is access to justice easier than it was?

These cinematic depictions of lawyers and judges, in particular, bring to mind the difficulties China's legal professions now face, when their independence as well their professionalism is under significant attack. The judges (and prosecutors) in these films all sit removed from those who appear before them, and – like Chinese judges today – they all wear

<sup>29</sup> See Charles Fried, "The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation", (1976) 85 *Yale LJ* 1060, 1067. This vision of lawyers and their duties might seem outdated given the realities of legal practice today (ie, lawyers are now viewed as business people instead of as friends), but the "friend" model seems to find favour with Chinese law students and lawyers today. Eli Wald, "Notes from Tsinghua: Law and Legal Ethics in Contemporary China", (2008) 23 *Conn J Int'l L* 369, 378.

robes. But will judges now be forced to abandon this attire, as part of a campaign for “democratisation” of the judiciary?<sup>30</sup> Like Lawyer Feng of *Crows and Sparrows*, Chinese lawyers are also pressured by the authorities to turn down “political” cases, both civil and criminal, and they may be punished if they do not.<sup>31</sup> But perhaps Lawyer Yin might remind us of today’s upright rights defender (*weiquan* 維權) lawyers, who risk everything to defend people and advance causes they believe in, and who suffer the consequences all too often.<sup>32</sup> Read more broadly, *Bright Day* also suggests that before 1949 China still needed to establish “a stable and just legal system before it [could] become a just and modern society.”<sup>33</sup> Isn’t this still the most fundamental issue now? These early films thus reflect many contemporary concerns, even though they were directed at perceived failures of Republican era justice – which in theory were ended on the Chinese mainland some 60 years ago.

<sup>30</sup> With attacks on “professionalism” really directed at ideas of judicial independence and procedural justice. See Jerome A. Cohen, “People’s Justice”, *South China Morning Post*, 25 June 2009.

<sup>31</sup> “Citing Need for Unity, Beijing Urges lawyers to avoid rioting cases”, *South China Morning Post*, 14 July 2009. Many other examples could be given.

<sup>32</sup> Jerome A. Cohen, “Rough Justice”, *South China Morning Post*, 9 July 2009. See also Human Rights Watch reports of harassment, deprivation of licenses to practice, even beating by thugs. Eva Pils, “Asking the Tiger for his Skin: Rights Activism in China”, 30 *Fordham Int’l L J* 1209 (2007). Human Rights Watch, “China: Rights Lawyers face Disbarment Threats”, report issued on 30 May 2008. This continues, for example with the July 2009 closing of the Open Constitution Initiative (*Gongmeng*) and the apparent arrest of its founder, Xu Zhiyong. Vivian Wu, “Civil rights activist detained in Beijing”, *South China Morning Post*, 31 July 2009.

<sup>33</sup> See Hu (n 8 above), 174.