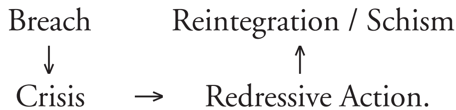
Qiu Ju Goes to Court: Relating Cinematic Art to Juridical Reality

As an attempt to investigate how an ethnography of legal discourse dictates cinematic and theatrical figuration, this paper centres on a Chinese contemporary film directed by Yimou Zhang, *Qiu Ju Goes to Court* (*The Story of Qiu Ju*). Since its public release in 1992, this film has garnered awards at numerous international film festivals, including the prestigious Golden Lion Award from the 49th Venice Film Festival. Together with his counterparts like Kaige Chen and Zhuangzhuang Tian, Zhang is one of the Fifth Generation filmmakers, a group whose emergence is conventionally considered a sign of the post-Cultural Revolution booming of aesthetic experimentation. By placing astutely the centre of interest on the Chinese bureaucracy and legal system in its construction of the female protagonist, Qiu Ju, the film illustrates how social and cultural concerns, at various moments in recent Chinese history, wrestle with each other for an ideologically figurative genesis. In this case, Zhang's film contains a plot that serves as an ideal case study for Turner's "social drama" model:



The film is based upon Chen Yuanbin's novella, *The Wan Family's Lawsuit*. [1] Chen is an author self-described as

1. Chen, Yuanbin. *The Story of Qiu Ju (The Wan Family's Litigation)*.

interested in plots "woven around legal themes."[1] The film fiction contains mediation, arbitration and litigation, each embodying a narrative that shapes, orders and controls the meaning of the Wan-Wang dispute. Thus, *Qiu Ju Goes to Court* justifies Jerome Bruner's theory: narrative is the primary means through which humans explain breaches, violations, or deviations from a norm.[2]

What lies at the heart of the film's theme is China's installation of a judicial code during its post-Tiananmen era, a reform practice that in theory allows individuals restitution against government abuse. The exposition of this cinematic parable presents us its principal personage, Qiu Ju: a pregnant peasant woman with her injured husband in a cart. They are travelling a long, arduous journey to visit a Chinese doctor in another small town. In the words of film critic, Sibergeld:

> Qiu Ju serves as a kind of modern Don Quixote tilting with undersized weaponry against the hypocrisy of the contemporary judicial system, questing for justice in an all-male world of authority where legal absolutism, despite its many masks, prevails today as much as it always has.[3]

Qiu Ju's trip to the doctor becomes an odyssey in pursuit of justice, each step of her journey taking the film viewers higher up the judicial ladder. Her husband, Wan Qinglai is a chilli farmer who had come into a verbal and physical

Trans. Anna Walling. Beijing, 1995. 8.
2. Bruner, Jerome S. "The Narrative Construction of Reality." *Critical Inquiry*. 1:11, 1991.
3. Silbergeld, Jerome. *China Into Film: Frames of Reference in Contemporary Chinese Cinema*. United Kingdom: Reakton, 1999. 120-121.

clash with the village head, Chief Wang Shantang. Qiu Ju's family intends to build a new drying shed for the chilli peppers they raise, but Chief Wang rejects their proposal flatly. He justifies his decision by pointing out that the land Wan wants to use is meant for growing peppers, not drying them. A heated argument ensues when Wan insults Chief Wang for having only daughters, and no son ("You only raise hens!"). Aggravated, Chief Wang fights with Wan and kicks him in the crotch. As a result, Wan suffers from a swollen left testicle and bruises on his right chest wall, injuries that handicap him for a month.

Turner believes that a breach occurs when "a person or subgroup breaks a rule deliberately or by inward compulsion in a public setting." [4] In this instance, both Wan and Chief Wang are responsible for causing a breach: both resort to verbal and physical abuse. The crisis escalates as the verbal fight eventually turns into physical violence that results in injuries. Redressive action sets in when Constable Li arranges mediation between both parties after the crisis.

As generally defined by Moore:

> Mediation… is the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute. In addition to addressing a substantive issue, mediation may also establish or strengthen relationships of trust and respect between parties or terminate relationships in a manner that minimizes costs and psychological harm. [5]

4. Turner, Victor. *On the Edge of the Bush: Anthropology as Experience*. Tucson: University of Arizona Press, 1985. 291-292.
5. Moore, Christopher. *The Mediation Process: Practical Strategies for*

Constable Li uses mediation because he thinks that it is a pragmatic, cheap and fast [6] way to resolve conflicts between Chief Wang and Wan. As Rubinson points out:

> Mediation is pragmatic: mediators facilitate the resolution of differences through strategies that have the potential to facilitate the resolution of differences, and very often such a resolution may entail the recognition of an adversary's perspective, not the obliteration of it as false. [7]

True enough, Constable Li is aware that Qiu Ju is entitled to feel victimised, and that Chief Wang is wrong in misusing his authority as an officer by kicking Wan's genitals. However, the ideas of "fault" and even "responsibility" do not exist during mediation. As a mediator, Constable Li does not presume that Qiu Ju's narrative has an exclusive claim to "truth. " He does not believe that knowing "what exactly happened during the fight between Chief Wang and Wan" can help to resolve the conflict. Rather, he instructs Qiu Ju, "Both parties should make self-criticism," and reminds her, "Chief Wang has his difficulties as the head of village." As a mediator, Constable Li concentrates on what needs to be done to resolve disputes in light of present and future interests, instead of revisiting past events. Confident, he even assures Qiu Ju that after experiencing a conflict and its resolution (mediation), Chief Wang and her family will be

Resolving Conflict. Jossey-Bass Inc., 2003. 15.

6. Riskin, Leonard. *Mediation and Lawyers*. 43 Ohio Street, L.J. 29, 1983. 34.

7. Rubinson, Robert. *Abstract: Client Counseling, Mediation and Alternative Narratives of Dispute Resolution*. Baltimore: University of Baltimore School of Law. 1.

able to reconcile and foster a closer relationship within the closely knitted village community. The mediation therefore concludes with both parties' consent to a settlement that specifies that Chief Wang compensates Wan for his medical costs and lost wages: a total of 200 *yuan*.

Ideally, Constable Li is prescribed to act "neutrally" or impartially, since "neutrality provides the theoretical cornerstone for the legitimisation of mediation." [8] However, Constable Wang's neutrality is weak and problematic. He acts in a manner that might be understood in terms put by Sara Cobb and Janet Rifkin:

> Neutrality is both "transparent" and "opaque": transparent because it operates on the basis of widely held assumptions about power and conflict, and opaque because it is exceedingly difficult to raise questions about the nature and practice of neutrality from within this consensus. [8]

It is an irrefutable truth that Constable Li holds power as a government officer from the Municipal Bureau. Much as Qiu Ju trusts Constable Li, she is naturally dubious of and ambivalent towards him. She fears that he will act in the best interests of bureaucrats, since he is one of them. On the other hand, Li also faces a paradox as a mediator: being impartial and partial. Cobb and Rifkin propose that by convention, neutrality is embraced in the mediation practice as incorporating two contradictory qualities that the mediator must possess: impartiality and equidistance. By the word "impartiality," one understands the practice of

8. Deener, Elisa T. *A Mediation Tale: A Reading from the Contextual Legal Criticism Perspective*. October 25, 1994 (Draft). 14.

neutrality in that “the mediator is required to avoid coercion and maintain an unbiased relationship with the disputants.”[9] Equidistance, on the other hand, refers to “the mediator’s obligation to ensure that the disputants do not coerce each other.”[10] It requires the mediator’s partiality to balance power. In this case, Li struggles between assuring Qiu Ju of his unbiasedness (precisely because he is an officer), and exerting pressure upon Chief Wang to accept the terms of the settlement (because he is more senior in professional rank).

A crisis takes place again when Chief Wang throws the *yuan* bills into Qiu Ju’s face, refusing to apologise even though he has previously agreed to the monetary terms of the settlement. Qiu Ju, on the other hand, is not really concerned with a financial compensation. Instead, all that she asks for is “an explanation” from Chief Wang. In reality, she wants Chief Wang to admit his error, to “lose face,” to be humiliated. From her perspective, no justice prevails when a government officer acts like a bully and compounds his error by refusing to admit his wrong.

Consequently, mediation does not lead to a reintegration. Rather, a schism takes the form of Qiu Ju’s search for further redress from higher authorities. This is Turner’s notion of an expanding circle of complications. Qiu Ju is seeking “reintegration,” but at a higher level of authority, a system of appeals that ascends the judicial ladder of authority. First she relies on newly instituted mechanism of

9. *Ibid*, 15.

10. Turner, Victor. *Dramas, Fields and Metaphors: Symbolic Action in Human Society*. Ithaca: Cornell University Press, 1990. 41.

mediation, later she initiates a suit under the new legislation permitting citizens to challenge their public officials. In other words, she is testing the limits of the "New China." Turner remarks, "When redress fails, there is usually regression to crisis." [10] The fact that mediation fails to provide redress in Qiu Ju's case also means that her subsequent appeals constitute another level of the crisis.

Qiu Ju's odyssey begins at the village's Public Security Bureau, before proceeding to the province where she appeals at the District Bureau, the Municipal Bureau, and finally the State Bureau. At each stage of appeal, she is offered a money settlement, each costing fifty *yuan* more than the monetary compensation offered by Chief Wang. Rebuffed, Qiu Ju "forges" even upwards in the system. She considers it a redress insufficient without a formal apology from Wang, and an official clarification that addresses the limits of a public official in his exercise of authority.

When Qiu Ju has tried all levels of appeal, a sympathetic and kind-hearted government officer of the State Bureau, Director Yan introduces to her the Western notion of civil law and litigation. Alien to such procedures, she hires an attorney, who eventually assists her in taking the suit to the Intermediate People's Court. A mediation and arbitration now becomes an ordinary agnostic process of civil litigation.

Examining a rules-relationship continuum, Conley and O'Barr note:

> In conceptualising a dispute, interpreting rights, and allocating responsibility for events, relational litigants focus heavily on status and social relationships. [11]

11. Conley, John M. and O'Barr, William M. *Rules versus Relationships:*

By this definition, Qiu Ju is an apt exemplar of a relational litigant. As a semi-educated woman and the wife of a poor farmer, she is aware of her low social standing. As such, she never seeks to overstep social demarcations, nor questions the social entitlements of Chief Wang, Constable Li or Director Yan. Her gestures of purchasing snacks for Officer Li and gifts for Director Yan, as well as inviting Village Chief Wang to the feast for celebrating her baby's one-month birthday at the end of the film illustrate her notion of society as a network of relationships. Being simple-minded and ignorant, she even obeys all red tape naively when she seeks redressive action from the various authorities. The fact that she articulates to Director Yan her fear of Constable Li being a biased mediator ("You're all officers. How would I know if you'll all band together?") further underlines her belief that "the law is empowered to assign rewards and punishments according to broad notions of social need and entitlement." [1] As Conley and O'Barr elaborate:

> This belief appears to be associated with a general social experience in which the individual lacks autonomy and is instead a passive victim or beneficiary of decisions that he or she is powerless to influence. [11]

By contrast, the policemen from the Provincial Public Security Board, Director Yan, Qiu Ju's lawyer, the judge and jury members of the trial are rule-oriented litigants who interpret the Wan-Wang dispute in terms of "rules and

ships: The Ethnography of Legal Discourse. Chicago: The University of Chicago Press. 58.

principles that apply irrespective of social status."[2] Unlike Qiu Ju, they perceive the society as a network of "contractual opportunities that each individual has the power to accept or reject on a case-by-case basis."[12] For instance, the Provincial Judge of the court trial informs Qiu Ju, "If you are not satisfied with the verdict, you always have the right to appeal to the Intermediate People's Court." Thus, such individuals assist Qiu Ju out of their own accord for appealing to higher courts each time her appeals are not being redressed adequately to her wishes. Qiu Ju, uneducated about the proceedings of a court trial, refuses to enter the court hall because she sees Director Yan on the defendant's stand, and thinks that she is suing him. She misunderstands that all defendants who appear in court trials are villains, and has thought that her winning of the case will harm Director Yan's reputation. In her opinion, Director Yan is not at all a villain, for he is "a good man with a good heart."Qiu Ju agrees to proceed with the trial, only after Director Yan assures her that his court apperance is part of his job. (Qiu Ju is filing against his bureau's decision.) Yan also tells Qiu Ju not to worry because legal doctrines have strict neutrality, and do not resolve the dispute as a problem in social relations. By this, he regards the law as "a system of precise rules for assessing responsibility and rejecting as irrelevant everything not circumscribed within these rules."[11]

During the trial, Qiu Ju's inability to define "justice" (despite her repetitive but firm requests of the Judge

12. *Ibid*, 59.

adjudicating "social justice") validates Jerald Auerbach's assertion:

> Conceptions of justice that rest almost entirely upon legal procedure still trouble ordinary citizens who have difficulty defining justice but know injustice when they receive it. [13]

Felman would describe Qiu Ju's difficulty as an abyss, a language gap that reveals the trial "as a paradoxical symbolic representativity because it deals profoundly and obscurely with 'something that cannot even be adequately represented either in legal terms or in political terms.'" [14] Therefore, Qiu Ju's difficulty in explicating her concept of "justice" during the trial uncovers an abyss between legality and justice, noting the trial's irreducibility to the legal concepts that define it.

Her embarrassment and hesitation in providing details about her husband's injuries also supports Felman's claim:

> Something that could not be seen and that in fact was not seen by the court was at the centre of the trial; something that the trial could not see was at the story's heart. [15]

Qiu Ju is embarrassed about speaking of her husband's injured genitals in public because this pretext to the conflict is sexual. Traditionally, the Chinese society considers any public discourse on sex a taboo. Moreover, the possibility that the Wan family will not be able to have

13. Auerbach, Jerald. *Justice Without Law?* Oxford: Oxford University Press, 1983. 143-144.
14. Felman, Shoshana. *The Juridical Unconscious: Trials and Traumas in the Twentieth Century*. Cambridge: Harvard University Press, 2002. 65.
15. *Ibid*, 79.

a son to continue its family line (if Qiu Ju gives birth to a daughter) implies the Chinese sensitivity towards the nation's "one-child policy." As such, part of the final verdict (i.e. terms from the previous settlement should remain unaltered) results from a "culture's blind spot,"[15] i.e. the invisible relation between the crisis and its sexual pretext.

While Qiu Ju is in town, awaiting an audience with the municipal police, she happens to witness a public decapitation of a convicted murderer. A passer-by informs her that the victim had previously lost a trial case, and was found guilty. Onlookers are admitted to the scene to be taught a lesson and be intimidated by the death of one of them. But many do not regard the execution as a warning. Instead, they perceive the public decapitation as free entertainment, rushing eagerly to be its audience. They are a crowd that derives sadomasochistic pain or pleasure from the thrill of being a crowd. Traumatised by such bloodiness and cruelty, Qiu Ju whispers to her sister-in-law, Meizi, "I never knew that law is so powerful!" Implicit in her fright and trauma is her immediate association of law with an inherent power hierarchy: an identity of law and power (i.e. law = power).

Featuring a public exhibition of bodily punishment in his film indicates subtly Zhang's attraction to the social and literary implications of decapitation. Zhang agrees with Michel Foucault that classical punishments were often designed with a strong theatrical dimension.[16] Through public spectacle of punishment, authorities achieve more

16. Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. Trans. Alan Sheridan. New York: Pantheon, 1977. 24-95.

than merely inflicting humiliation and torture upon the convicted victim: they also exert their power and control over those who are viewing the execution innocently. From Foucault's perspective, however, there always lurks a threat in public corporal punishment. Other than fear, the bloody spectacle brings its spectators an unanticipated (though inevitable) thrill that undermines the solemnity of the execution, even turning it into a festive occasion. At its extreme, the audience's deviant response to public corporal punishment may threaten the authorities, since it suggests either an indifference or a rebellious consciousness of the power exhibited by the mutilated body.[17]

As an artist, Zhang sees in the severed body and the congregation of bodies around it a representational organism of signs, an organism that voices meanings about the Chinese character and society: barbaric, callous, and emotionless. The head and its mutilated body becomes Bakhtin's "public obscene body." Literally and metaphorically, modern China becomes a headless country, her people spiritually decapitated. For Zhang, decapitation is not only about a cruel form of punishment performed and watched by the uncivilized Chinese. It also embodies the Chinese state of spiritual dehumanisation, signifying the mutilated condition of the meaning system that makes reality what it is not. This argument, as Zhang presents it, is figurative. It dramatises his anxieties and uncertainties about the questionable implications of such a legal setup.

17. *Ibid*. For a more in-depth study of Foucault's concept of discipline and punishment, refer to: Lentricchia, Frank. *Ariel and the Police*. Madison: University of Wisconsin Press, 1988. 29-102.

If Foucault is right about the mixed ideological and psychological outcomes of public corporal mutilation, one can locate a "crisis" (Turner) in Zhang's cinematic portrayal of the decapitation. Insofar as he desires his film audience to decipher a layered meaning of the execution trial by being more aware of the tyrannical power at work behind the scene, Zhang recapitulates better than anyone else the representational meaning that the authorities imposed on the body. On one hand, he shares an identical moral and penal episteme (albeit conceptually) against the legal system that legitimises the violent execution trial. On the other hand, he allies indirectly with the emotionally charged spectators whom he condemns openly. He condemns them by indulging his contradictory fascination with the theatrical turmoil and spectacular bloodshed of public beheadings. Implying Zhang's cynical knowledge that whatever happens, social conditions remain as *status quo*, the execution scene also foretells the futility of Qiu Ju's appeals.

Divided between these two paradoxical yet complementary roles, Zhang calls for a reconsideration of "realism." His benign yet poignant presentation of life in such an execution scene illustrates a realist's discourse. This discourse exposes an abyss: it prefigures its own formal and ideological gap. Zhang has explored a discursive form in which the gaps between a cinematic text and the world, the self and others, narrated truth and truth in reality are supposedly bridged. In demonstrating the mimetic power of realism, he also confirms social abuses and inertia that soon proves to be a vicious circle, making him just as much a critic as an accomplice of the forces he hopes to redress.

I argue that Zhang structures his art in such a way that it does not really reveals what he thinks regarding coherent social and epistemological systems. Rather, it reveals how he feels about the ruptures (breaches and crises) within those systems. An imaginative encounter with a primordial emptiness (an abyss) underlies the emotional anguish that Qiu Ju suffers at the scene of decapitation. Unravelling to his viewers a scene in which the Chinese audience witness a public beheading, where does Zhang situate himself? Does a public execution render the legal system more visible? How should Zhang's film audience modulate their moral and intellectual distance from the narrated subject?

Such a vertiginous interplay between Zhang and his audience's detachment from "reality" manifests the metaphorical existence of an abyss: "an abyss between contradictory experiences of the significance of law enforcement, and between conflicting views of the use, or the abuse of the power yielded to the justice system and to the agents of the law." [18]

Pregnant throughout her entire pursuit for justice, Qiu Ju finally bears a son. Due to an excessive loss of blood, she almost dies during her difficult labour. Chief Wang turns out to be the Wan family's saviour when he gathers four other men to carry Qiu Ju on a stretcher in the middle of the night, transporting her across rough terrains to the hospital. In the end, the indebted and grateful Wan household decides to bury the hatchet, and patches up with Chief Wang. On her boy's birthday, Qiu Ju receives the

18. Felman, Shoshana. *The Juridical Unconscious: Trials and Traumas in the Twentieth Century*. Cambridge: Harvard University Press, 2002. 90.

news from Constable Li that the Intermediate People's Court is reviewing her case. The court has received Wan's X-rays results from the hospital, confirming a broken rib injury. Police arrives to take away Chief Wang, who is eventually jailed for fifteen days. Distressed by the outcome, Qiu Ju never obtains the clarification of official authority that she pursues so compulsively. Ultimately she feels violated by its punitive terms. Such an ending hints that the legal system knows all too well how to punish, but is not capable of engendering humane engagement or conceptualising its own limits.

The film ends with the image of Qiu Ju chasing after the police car. Panting, she has a blank look on her face. The effect of such an ending, just as the previous court verdict of her case, is not that of an intellectual or an emotional catharsis, but an anticlimax. It leaves Qiu Ju, as well as many of the film audience emotionally empty, in an abyss.

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