

## **Courtroom Drama With Chinese Characteristics: A Comparative Approach to Legal Process in Chinese Cinema**

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*While previous “law and film” scholarship has concentrated mainly on Hollywood films, this article examines legal themes in Chinese cinema. It argues that Chinese films do not simply mimic Western conventions when portraying the courtroom, but draw upon a centuries-old, indigenous tradition of “court case” (gong’an) melodrama.*

*Like Hollywood cinema, gong’an drama seizes upon the dramatic and narrative potential of legal trials. Yet, while Hollywood trial films turn viewers into jurors, pushing them back and forth between the competing stories that emerge from the adversarial process, gong’an drama eschews any recognition of opposing narratives, instead centering on the punishment of decidedly guilty criminals. The moral clarity and punitive sense of justice that characterize gong’an drama are manifest in China’s modern-day legal system and in Chinese cinema.*

*An analysis of Tokyo Trial, a 2006 Chinese film about the post-World War II war crimes trial in Japan, demonstrates the lasting influence of gong’an drama. Although Tokyo Trial resembles Hollywood courtroom drama in many respects, it remains faithful to the gong’an model. This highlights the robustness of China’s native gong’an tradition and the attitudes underlying it.*

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I.	INTRODUCTION .....	2
II.	LAW AND FILM IN HOLLYWOOD .....	3
III.	CHINESE COURT CASE DRAMA .....	6
	A. <i>China's Gong'an Tradition</i> .....	6
	B. <i>Theatrics in China's Modern Legal System</i> .....	7
IV.	ONE GENRE, TWO TRADITIONS: CHINESE AND AMERICAN TRIAL DRAMA .....	9
	A. <i>Punitive Justice</i> .....	9
	B. <i>A Single Narrative</i> .....	12
V.	JUDGMENT AT TOKYO: GONG'AN DRAMA IN MODERN CHINESE CINEMA .....	14
VI.	CONCLUSION.....	19

## I. INTRODUCTION

Studying courtroom drama in Chinese cinema is akin to studying Peking opera in Hollywood cinema: just as Peking opera emerged from the unique milieu of nineteenth century Beijing, the archetypal courtroom drama originated in the United States' notoriously legalistic culture. As Rennard Strickland observes, “[l]aw dominates American life and culture in ways not even imaginable to our founding fathers and certainly not comprehensible to the vast majority of our fellow inhabitants of this planet.”<sup>1</sup> Unsurprisingly, for the past century Hollywood has been the world’s dominant producer of law-themed popular media.<sup>2</sup>

So, what should one make of the courtroom when it appears in Chinese films? This article argues that, far from being borrowed tropes from Hollywood cinema, courtroom scenes in Chinese films frequently draw upon a long tradition of Chinese melodrama, which differs from American courtroom drama in important respects. Namely, the Chinese tradition reflects a highly punitive sense of justice, which is not achieved through presumptions of innocence, guarantees of due process, adversarial litigation, or jury verdicts, but through the swift punishment of criminals at the hands of authoritarian judges. This orientation eschews any acknowledgement of conflicting narratives, instead favoring the moral clarity that comes with a single story—that of guilt.

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<sup>1</sup> Rennard Strickland, *Bringing Bogie Out of the Courtroom Closet: Law and Lawyers in Film*, in SCREENING JUSTICE—THE CINEMA OF LAW: SIGNIFICANT FILMS OF LAW, ORDER AND SOCIAL JUSTICE xxi, xxiii (Rennard Strickland et al. eds., 2005).

<sup>2</sup> See KATHY LASTER ET AL., *THE DRAMA OF THE COURTROOM* 2-3 (2000) (referring to the “American dominance of the genre” and “the now globally dominant American style of procedure and adjudication” seen in film).

Relatively little has been written on legal themes in Chinese cinema.<sup>3</sup> This article takes a modest step toward filling this gap. It describes the origins, defining characteristics, and modern manifestations of Chinese courtroom drama, and concludes with an analysis of the 2006 film *Tokyo Trial*, which illustrates the lasting influence of this dramatic tradition and the attitudes underlying it.

## II. LAW AND FILM IN HOLLYWOOD

The “law and cinema movement,” as one scholar has dubbed it,<sup>4</sup> is still relatively nascent. Scholarship on legal cinema began in the late 1980s with a series of pieces on representations of law in popular culture.<sup>5</sup> Literature on law and film developed throughout the 1990s and early 2000s, with several volumes on the topic being published in recent years.<sup>6</sup> While earlier scholarship drew upon the well-established “law and literature” field,<sup>7</sup> recent work has taken a more cinematic approach.<sup>8</sup>

The “recent genesis”<sup>9</sup> of law and film scholarship may seem surprising, given that law has played a perennial role in American cinema since its inception.<sup>10</sup> The first American trial film, *Falsely Accused!*, was released in

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<sup>3</sup> Scholarship on law in Chinese cinema is growing, however. Allison W. Conner’s masterful article on pre-1949 Chinese cinema represents a major step forward in the literature. See generally Alison W. Conner, *Movie Justice: The Legal System in Pre-1949 Chinese Cinema*, 12 *ASIAN-PAC. L. & POL’Y J.* 1 (2010); see also *CINEMA, LAW, AND THE STATE IN ASIA* (Corey K. Creekmur & Mark Sidel eds., 2007) (discussing legal themes in East Asian cinema, including Chinese films).

<sup>4</sup> Norman Rosenberg, *Young Mr. Lincoln: The Lawyer as Super-Hero*, 15 *LEGAL STUD. F.* 215, 215 (1991).

<sup>5</sup> Stefan Machura & Peter Robson, *Law and Film: Introduction*, in *LAW AND FILM* 1, 3-8 (Stefan Machura & Peter Robson, eds., 2001).

<sup>6</sup> E.g., Screening Justice—The Cinema of Law: Significant Films of Law, Order and Social Justice, *supra* note 1; Law’s Moving Image (Leslie J. Moran et al. eds., 2004); ANTHONY CHASE, *MOVIES ON TRIAL: THE LEGAL SYSTEM ON THE SILVER SCREEN* (2002).

<sup>7</sup> See Norman Rosenberg, *Looking for Law in All the Old Traces: The Movies of Classical Hollywood, the Law, and the Case(s) of Film Noir*, 48 *UCLA L. REV.* 1443, 1444 n.5 (2000–01) (films discussed in much of the early work on law and film “might just as well have been novels”).

<sup>8</sup> See, e.g., ORIT KAMIR, *FRAMED: WOMEN IN LAW AND FILM* xvii (2006); see generally CHASE, *supra* note 6.

<sup>9</sup> Machura & Robson, *supra* note 5, at 1.

<sup>10</sup> David Ray Papke, *Law, Cinema, and Ideology: Hollywood Legal Films of the 1950s*, 48 *UCLA L. REV.* 1473, 1473 (2001). That “law and film” scholarship emerged only after decades of law-themed cinema probably owes, at least in part, to the fact that the proliferation of interdisciplinary “law and” fields is itself a modern phenomenon. See Marc Galanter & Mark Alan Edwards, *The Path of the Law Ands*, 1997 *WIS. L. REV.* 375, 375-76 (1997) (“‘Law and society’ and ‘law and economics’ scholarship emerged in the 1960s, to be joined later by critical legal studies, feminist legal theory, law and literature, critical

1907.<sup>11</sup> MGM's first all-talking film, *The Trial of Mary Dugan*, which was released in 1931, was also a courtroom drama.<sup>12</sup> The ubiquity of legal themes in American cinema, which persists to this day, could be a function of this country's highly legalistic culture, as Rennard Strickland's characterization of American society suggests<sup>13</sup>—but then, this explanation does not adequately account for the international dominance of American legal cinema. Several foreign scholars contributed to Machura and Robson's compilation *Law and Film*, but, “[i]nvariably,” the editors write, “the concentration within most of the essays is . . . on the dominant cultural products of Hollywood.”<sup>14</sup> The cultural influence of American legal cinema is indeed far-flung: in continental Europe, for instance, people have reported that they are more familiar with the American trial system than with their own countries' legal regimes.<sup>15</sup> Stefan Machura and Stefan Ulbrich have suggested that law-themed productions in Germany often mirror those in the United States, despite the countries' contrasting legal systems.<sup>16</sup>

This suggests that there is something about the American trial system that lends itself to the cinematic form. Academics have noted the “natural fit between trials and movies.”<sup>17</sup> The American trial is unique: its adversarial nature gives rise to highly contentious, polarized conflicts, which often take on a “mythic” quality.<sup>18</sup> Lawyers become “professional wizards”<sup>19</sup> who skillfully engineer courtroom norms so as to conquer their opponents. As Norman Rosenberg reminds us, “[w]e must never forget that it is a movie we are seeing,”<sup>20</sup> and that a

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race theory and other schools of thought that attempt to understand law through social scientific or literary scholarship.”).

<sup>11</sup> Jessica Silbey, *A History of Representations of Justice: Coincident Preoccupations of Law and Film*, in REPRESENTATIONS OF JUSTICE 131, 140 (Antoine Masson & Kevin O'Connor eds., 2007).

<sup>12</sup> Carol J. Clover, “*God Bless Juries!*”, in REFIGURING AMERICAN FILM GENRES: THEORY AND HISTORY 255, 259 (Nick Browne ed., 1998).

<sup>13</sup> See Strickland, *supra* note 1.

<sup>14</sup> Machura & Robson, *supra* note 5, at 1.

<sup>15</sup> See, e.g., Carol J. Clover, *Law and the Order of Popular Culture*, in LAW IN THE DOMAINS OF CULTURE 97, 97-98 (Austin Sarat & Thomas R. Kearns eds., 1998) (“Robin Lakoff tells how students in a class she taught at the University of Barcelona were hard pressed to explain how a Spanish trial worked but could describe an American one in detail. A Stockholm newspaper recently began a review of a new television series by noting, ‘The average Swedish tv-viewer [sic] knows more about the American justice system than the Swedish one.’”).

<sup>16</sup> See generally Stefan Machura & Stefan Ulbrich, *Law in Film: Globalizing the Hollywood Courtroom Drama*, in LAW AND FILM, *supra* note 5, at 117.

<sup>17</sup> Clover, *supra* note 12, at 257.

<sup>18</sup> Nicole Rafter, *American Criminal Trial Films: An Overview of Their Development, 1930–2000*, in LAW AND FILM, *supra* note 5, at 15.

<sup>19</sup> *Id.*

<sup>20</sup> Rosenberg's statement is a riff on *McCulloch v. Maryland*, in which Chief Justice John Marshall implored, “we must never forget that it is a constitution we are expounding.” *McCulloch v. Md.*, 17 U.S. 316, 407 (1819).

fundamental goal of commercial films is audience-maximization.<sup>21</sup> Courtroom theatrics effectively achieve that goal: as filmmaker John Waters has observed, “trials are the most entertaining of all American spectacles.”<sup>22</sup> The excessive media attention given high-profile celebrity trials, such as the O.J. Simpson murder trial of the mid-1990s and the more recent manslaughter trial of Conrad Murray, support Waters’ assessment.

However, according to Jessica Sibley, the “inherent affinity” between law and film runs deeper than theatrics.<sup>23</sup> Films and trials are both narratives and share a strikingly similar structure:

As with film, the trial process is based on the believability of observable phenomena, on seeing, bearing witness and judging. Much like stories told on film, the story that evolves in a courtroom and through the evidentiary process is emboldened with the privileged status of truth because of its basis in observation and the integrity of the testifying witness.<sup>24</sup>

A film weaves its version of the truth through the successive presentation of visual images, or “observable phenomena,” which are considered authoritative because of their graphic nature.<sup>25</sup> In the same manner, the parties to a trial each tell a story through the presentation of tangible evidence and eyewitness testimony. Underlying both trial and film is the assumption that seeing is believing.

However, as Sibley continues, films and trials are both “self-reflexive and recursive in nature.”<sup>26</sup> Just as film does not “reveal the world, but merely constructs it,” the adversarial trial explicitly acknowledges “the possibility of multiple and conflicting stories.”<sup>27</sup> One side tells the story of innocence and the other tells the story of guilt. Although both law and film purport to narrate objective truth, they can only communicate versions of the truth that are more or less persuasive to their respective audiences. Ultimately, the spectators of a film or trial must judge the competing narratives with which they are presented.

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<sup>21</sup> Rosenberg, *supra* note 7, at 1453, 1471.

<sup>22</sup> JOHN WATERS, *SHOCK VALUE: A TASTEFUL BOOK ABOUT BAD TASTE* 114 (1981), *quoted in* Strickland, *supra* note 1, at xxiii.

<sup>23</sup> Sibley, *supra* note 9, at 131-32.

<sup>24</sup> *Id.* at 133.

<sup>25</sup> See Jennifer L. Mnookin & Nancy West, *Theaters of Proof: Visual Evidence and the Law in Call Northside 777*, 13 *YALE J.L. & HUMAN.* 329, 329 (2001) (“[T]he power of sight may be . . . the most effective rhetorical mode of persuasion.”).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 132-33.

This implicit need for a judgment from the audience points to the most compelling explanation for law's lasting appeal in Hollywood: the American jury system. The jury, the quintessential courtroom audience, must judge the conflicting narratives that emerge as each party presents its case. Likewise, trial film viewers are not "passive spectators, but . . . active ones, viewers with a job to do."<sup>28</sup> Viewers identify with the diegetic jury, weigh the parties' evidence, and assess the witnesses' credibility as the trial unfolds on screen.<sup>29</sup> This is frequently the result of the filmmakers' prompting: the jurors are "oddly invisible" in trial films, which leaves "a kind of necessary blank space in the text, one reserved for us."<sup>30</sup> Carol Clover observes that the presence of multiple competing stories "delivers [the film audience] into the most characteristic experience of the adversarial trial: of being pulled rhythmically back and forth . . . between two positions."<sup>31</sup>

Therefore, the recurrence of legal themes in American cinema cannot be attributed to America's legalistic culture. Rather, there is a natural affinity between trials and films that inheres in their narrative structures. The adversarial process and the jury system are the defining features of the American trial film tradition: the jury system invites viewers into a film, and the adversarial process presents them with conflicting narratives that must be assessed.

### III. CHINESE COURT CASE DRAMA

#### A. *China's Gong'an Tradition*

Although less ubiquitous in Chinese cinema than in U.S. cinema, the legal trial has long been seen as a form of dramatic narrative in China. During the Yuan dynasty (1271–1368), a theatrical genre that has since been named "court case" (公案/*gong'an*) drama emerged. The tradition is diffuse but, according to George A. Hayden, *gong'an* dramas have three essential ingredients: a crime, the solution and punishment of the crime in a courtroom situation, and a judge (or, less frequently, a court clerk) who solves the crime and punishes the guilty party.<sup>32</sup>

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<sup>28</sup> Clover, *supra* note 12, at 256-57.

<sup>29</sup> *See id.* at 257-59 (providing historical examples from early films illustrating instances where the audience implicitly is asked to decide as if they themselves are part of the jury, such as where a witness in the film is asked to stare into the film audience as if they are the jury that is being addressed).

<sup>30</sup> *Id.* at 265.

<sup>31</sup> Clover, *supra* note 15, at 107. Tellingly, Machura and Ulbrich identify the jury system as a significant reason for the use of American legal procedure in German law-themed media. Machura & Ulbrich, *supra* note 16, at 123, 126-27.

<sup>32</sup> George A. Hayden, *The Courtroom Plays of the Yuan and Early Ming Periods*, 34 HARV. J. ASIATIC STUD. 192, 200 (1974).

The central character in *gong'an* plays is usually a judge modeled on the historical figure Bao Zheng, who was a “clever and virtuous . . . detective and avenger” personifying law and justice.<sup>33</sup> In the typical *gong'an* play, the crime’s facts and the criminal’s identity are known from the start. Thus, as Hayden writes, the drama “center[s] on justice, rather than mystery,”<sup>34</sup> and whether the criminal will “get what he deserves” or escape unpunished.<sup>35</sup>

Inevitably, the Judge Bao character investigates and solves the crime, sentences the criminal, and inflicts punishment to achieve justice in the courtroom.<sup>36</sup> This final confrontation is a “universal property of the [*gong'an*] plays.”<sup>37</sup> As Jeffrey C. Kinkley explains, Judge Bao’s “law does not bring joy but functions as a terrible sword of justice.”<sup>38</sup> Sentencing and punishment are fundamental to *gong'an* drama because they show that the criminal will not “get away with it” after the crime is solved. These scenes gratify the audience, which “gets a chill—an enjoyable one—when horrible torture instruments are trotted out.”<sup>39</sup>

#### B. *Theatrics in China’s Modern Legal System*

The theatrical view of the courtroom is reflected in China’s modern criminal justice system. Nowhere is this more evident than in the phenomenon of public trials. In the People’s Republic of China (PRC), the state has used public trials for both educational and propagandistic purposes.<sup>40</sup> As Klaus Mühlhahn writes, “when staged as public theater, the drama of a trial [can] be used to rally popular sentiment behind the party’s course and direct indignation toward targeted opponents.”<sup>41</sup> Like *gong'an* plays, public trials are meticulously choreographed to unite the audience against the defendant. Zhu Mingshan, former vice-president of the Supreme People’s Court, has written that the courtroom must be utilized in public trials as a “stage for propaganda.”<sup>42</sup> Everything from the case itself to the courtroom furniture is pre-selected to communicate a specific message.<sup>43</sup> Thus, the public trial is “not presented as a judicial contest played out between equal

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<sup>33</sup> JEFFREY C. KINKLEY, CHINESE JUSTICE, THE FICTION: LAW AND LITERATURE IN MODERN CHINA 29 (2000).

<sup>34</sup> Hayden, *supra* note 32, at 200.

<sup>35</sup> KINKLEY, *supra* note 33, at 56-57.

<sup>36</sup> Hayden, *supra* note 31, at 209.

<sup>37</sup> *See id.* (“In contrast to the optional mistrial, [the final confrontation] scene is a universal property of the [*gong'an*] plays.”).

<sup>38</sup> KINKLEY, *supra* note 33, at 60.

<sup>39</sup> *Id.* at 58.

<sup>40</sup> KLAUS MÜHLHAHN, CRIMINAL JUSTICE IN CHINA: A HISTORY 186 (2009).

<sup>41</sup> *Id.* at 199.

<sup>42</sup> SUSAN TREVASKES, COURTS AND CRIMINAL JUSTICE IN CONTEMPORARY CHINA 36 (2007).

<sup>43</sup> *Id.* at 38-39.

parties,”<sup>44</sup> but is instead a public drama that both educates the populace and satisfies its sense of justice.

One of the most significant public trials in modern Chinese history is that of Jiang Qing, wife of Mao Zedong and leader of the Gang of Four.<sup>45</sup> Jiang Qing’s nationally televised trial has been described as a “nation-wide media event directed by the Party” and “scripted history-fiction.”<sup>46</sup> The trial was pre-taped instead of broadcast live, and members of the Politburo carefully selected short segments of the trial for public consumption.<sup>47</sup> Through this process, the Party ensured that only one message was communicated to the public: Jiang Qing was guilty.<sup>48</sup> To this end, her lengthy defense, in which she intimated that she had acted on Mao’s instructions, was entirely omitted from the broadcast.<sup>49</sup> In reopening the wounds of the Cultural Revolution while denying Jiang Qing a voice with which to defend herself, the courtroom became a “theatre of catharsis and revenge.”<sup>50</sup> When the judge announced Jiang Qing’s death sentence, the courtroom erupted in celebration.<sup>51</sup>

Like the courtroom scenes in *gong’an* plays, public trials are not complete in and of themselves. The fulfillment of justice, through punishment, is indispensable. As Susan Trevaskes explains, “two judicial actions, the courtroom trial (*shen*) and sentencing (*pan*), comprise the complete judicial event *shenpan* [审判].”<sup>52</sup> Together with public trials, sentencing rallies assured the public that those who defied the social order would receive their just deserts.<sup>53</sup> In the PRC, sentencing rallies have been held in stadiums and other huge venues because they attract thousands of spectators.<sup>54</sup> As “elaborately robed judges read out the criminals’ fates,” the crowd erupts in applause.<sup>55</sup> The entire judicial spectacle, both *shen* and *pan*, is orchestrated to evoke this very response: the public is convinced of the defendant’s guilt, demands punishment, and celebrates the criminal’s sentence. After the rally, the criminals are carted out by motorcade and may be paraded through the streets before meeting their fates.<sup>56</sup>

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<sup>44</sup> *Id.* at 42.

<sup>45</sup> Mary Farquhar & Chris Berry, *Speaking Bitterness: History, Media and Nation in Twentieth Century China*, 2 HISTORIOGRAPHY EAST & WEST 120, 128 (2004).

<sup>46</sup> *Id.* at 128, 130.

<sup>47</sup> *Id.* at 130.

<sup>48</sup> *Id.* at 129.

<sup>49</sup> *Id.* at 130.

<sup>50</sup> *Id.* at 131.

<sup>51</sup> *Id.*

<sup>52</sup> TREVASKES, *supra* note 42, at 59.

<sup>53</sup> *Id.* at 61.

<sup>54</sup> *E.g., id.* at 67 (describing a 2001 mass sentencing rally in Sichuan province).

<sup>55</sup> *Id.* at 63.

<sup>56</sup> *Id.* at 64-5.



Even though China's legal culture has always been different from that of the United States, the trial process serves a narrative and dramatic function in Chinese society like it does in U.S. culture. In the Chinese tradition, courtroom drama does not focus on questions of guilt or innocence, but on whether the accused will face punitive justice. Facts do not emerge through an adversarial process, but through the instrumentality of a virtuous judge. While there is no jury, spectators must be persuaded by the narrative presented so that they not only accept, but expect and even celebrate, the judge's inevitably guilty verdict and sentence.

#### IV. ONE GENRE, TWO TRADITIONS: CHINESE AND AMERICAN TRIAL DRAMA

In both the United States and China, the trial process has traditionally served a narrative and dramatic purpose. However, the *gong'an* tradition differs from the American tradition in two major respects: first, the Chinese trial process almost exclusively represents justice as punitive; and second, it downplays the existence of competing narratives.

##### A. Punitive Justice

In the *gong'an* tradition, justice hinges on whether the criminal "gets what he deserves."<sup>57</sup> *Gong'an* plays, for instance, always culminate in the criminal's sentencing and punishment. Notwithstanding China's considerable advances in recent decades, its legal system retains a highly punitive character and criminal defendants continue to enjoy only meager protections.<sup>58</sup> Through the mid-1990s, criminal trials were not scheduled until the judges believed the defendant was guilty, and at trial the defendant was referred to as "the criminal."<sup>59</sup> Between 1997 and 2005, China's criminal conviction rate exceeded 99%.<sup>60</sup> Appropriately, the term "legal system" (法制/*fazhi*) has at times been used as a euphemism for punishment.<sup>61</sup> William Blackstone's famed statement that it is "better that ten guilty persons escape than that one innocent suffer"<sup>62</sup> has little influence in China's legal and dramatic traditions.

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<sup>57</sup> KINKLEY, *supra* note 33, at 56.

<sup>58</sup> See CONGRESSIONAL-EXECUTIVE COMM'N ON CHINA, ANNUAL REPORT 2012 69-77 (2012), available at <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf> (discussing shortcomings in Chinese criminal justice system).

<sup>59</sup> KINKLEY, *supra* note 33, at 94.

<sup>60</sup> Donald C. Clarke ed., *China's Low Acquittal Rate*, Chinese L. Prof Blog (Nov. 23, 2006), [http://lawprofessors.typepad.com/china\\_law\\_prof\\_blog/2006/11/chinas\\_low\\_acqu.html](http://lawprofessors.typepad.com/china_law_prof_blog/2006/11/chinas_low_acqu.html).

<sup>61</sup> KINKLEY, *supra* note 33, at 296.

<sup>62</sup> WILLIAM BLACKSTONE, 4 COMMENTARIES ON THE LAWS OF ENGLAND, 1743 (William Draper Lewis ed., Rees Welsh & Co. 1902).

Likewise, Chinese film tends to portray the courtroom narrative as part-and-parcel of a larger punitive spectacle. China's first full-length film recounts the true story of Yan Ruisheng, a gambler who murdered a well-known prostitute in Shanghai.<sup>63</sup> After Yan was tried and convicted, he was publicly executed before a crowd of at least 5,000 people.<sup>64</sup> Yan's story was quickly converted to opera repertoires, both on stage and in film.<sup>65</sup> Like the *gong'an* plays, the film depicts Yan's crime, trial, conviction, and execution at length.<sup>66</sup> And, like Yan's actual execution, the film's conclusion would have been "most gratifying to Chinese audiences."<sup>67</sup>

Even the "progressive or social conscience films" of the 1930s and 1940s, which were generally critical of the prevailing legal and political systems,<sup>68</sup> portrayed punishment as integral to the legal process.<sup>69</sup> Alison Conner uses *The Goddess* (神女/*Shen Nü*) as an example of how "Chinese filmmakers used courtroom scenes to great dramatic effect."<sup>70</sup> As in *gong'an* drama, the film climaxes in the courtroom, where the protagonist, a virtuous prostitute played by renowned Chinese actress Ruan Lingyu, is tried for killing an abusive gangster during a physical altercation.<sup>71</sup> Conner writes that "[e]verything about the courtroom setting underscores her lowly position and the inevitability of her conviction, as did the magistrate's court in the traditional Chinese system."<sup>72</sup> Flanked by policemen, the protagonist looks up hopelessly at three stoic judicial officers seated above her in a tall dais.<sup>73</sup> The central officer pronounces her guilty and sentences her to twelve years in prison,<sup>74</sup> and the film concludes with the protagonist crying in a dark prison cell.

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<sup>63</sup> Virgil Kit-yiu Ho, *Butchering Fish and Executing Criminals: Public Executions and the Meanings of Violence in Late Imperial and Modern China*, in MEANINGS OF VIOLENCE: A CROSS CULTURAL PERSPECTIVE 141, 153-54 (Göran Aujmer & Jon Abbink eds., 2000); see also *The First Docudrama: Yan Ruisheng (1921)*, CHINESE MIRROR (May 2007), [http://www.chinesemirror.com/index/2007/05/the\\_first\\_docud.html](http://www.chinesemirror.com/index/2007/05/the_first_docud.html).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *The First Docudrama*, *supra* note 62.

<sup>67</sup> *Id.*

<sup>68</sup> Conner, *supra* note 3, at 6.

<sup>69</sup> See *id.* at 17 (analyzing the courtroom scene in *The Goddess*, which has been described as a "leftist classic").

<sup>70</sup> *Id.*

<sup>71</sup> See *id.* ("After the prostitute strikes the gambler, he crashes to the floor and she too seems to sway. The next shot shows her in court, apparently still in shock and uncomprehending of her plight.")

<sup>72</sup> *Id.* at 18.

<sup>73</sup> *Id.* at 17.

<sup>74</sup> *Id.*



Figure 1: The final trial scene in *The Goddess*.

The punitive conception of justice is similarly reflected in the development of *The White-haired Girl* (白毛女/*Bai mao nü*), one of modern China's most well-known operas.<sup>75</sup> The revolutionary opera tells the story of the peasant girl Xi Er, whose father is forced to sell her to their landlord, Huang Shiren, in satisfaction of outstanding debts.<sup>76</sup> Huang Shiren abuses and rapes Xi Er, who flees to the hills and takes shelter in a cave after she becomes pregnant.<sup>77</sup> Eventually, a former love interest, who is a member of the Eighth Route (Red) Army, rescues her.<sup>78</sup> According to the original script, "Huang is not killed immediately, but is arrested 'for public trial according to proper legal procedure,'" <sup>79</sup> and the opera ends with Xi Er testifying against him at trial.<sup>80</sup>

<sup>75</sup> J. Norman Wilkinson, "The White-Haired Girl": From "Yangko" to Revolutionary Modern Ballet, 26 *EDUC. THEATRE J.* 164, 164 (1974).

<sup>76</sup> *Id.* at 169.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 170.

<sup>80</sup> SHEILA MELVIN & JINDONG CA, *RHAPSODY IN RED: HOW WESTERN CLASSICAL MUSIC BECAME CHINESE* 169 (2004).

When the drama was publicly rehearsed for its 1945 opening in Yan'an, many audience members—including Mao Zedong himself—were dissatisfied with this finale and said the landlord should be shot.<sup>81</sup> The writers ultimately added an execution scene,<sup>82</sup> in recognition of the perceived incompleteness of a trial without punishment. When Wang Bin and Shui Hua filmed *The White-haired Girl* in 1950, they also concluded with Huang Shiren's execution. In the film, Huang Shiren's punishment all but eclipses his "trial."<sup>83</sup> An unruly mob forces Huang to kneel on the ground while Xi Er, with finger outstretched, recounts her grievances against him.<sup>84</sup> The film cuts to a close-up of a written proclamation listing Huang's crimes and condemning him to death. After a local official signs the document, the crowd drags Huang off-screen to be executed.

### B. *A Single Narrative*

The second major feature of Chinese courtroom drama derives from the punitive conception of justice: while the audience does not decide guilt as a jury would, it must believe that the criminal is guilty and that the punishment is justified. Unlike American courtroom drama, which pulls the audience-jury "rhythmically back and forth" between conflicting narratives,<sup>85</sup> Chinese courtroom drama presents audiences with a single narrative of guilt. The dramatic structure of *gong'an* plays, for instance, did not focus on whether the accused actually committed the crime, but on whether he would face justice.<sup>86</sup> Because guilt was clear from the outset, the audience expected and eagerly anticipated the criminal's punishment.

Similarly, in order for public trials to serve their propagandistic function—demonstrating right and wrong or "moral legibility"<sup>87</sup>—and in order to guarantee that the ensuing sentence and punishment enjoyed public support, the ambiguity inherent in the adversarial process must be eschewed. For this reason, the Politburo edited the televised clips of Jiang Qing's trial to convince the public that Jiang Qing was guilty.<sup>88</sup> Televising her defense would have conflicted with the trial's purpose, for the public may not have celebrated her death sentence had there

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> BAI MAO NÜ (白毛女) [THE WHITE-HAIRED GIRL] (Changchun Film Studio 1950).

<sup>84</sup> *Id.*

<sup>85</sup> Clover, *supra* note 15, at 107.

<sup>86</sup> KINKLEY, *supra* note 33, at 56-57.

<sup>87</sup> See LINDA WILLIAMS, PLAYING THE RACE CARD: MELODRAMAS OF BLACK AND WHITE FROM UNCLE TOM TO O.J. SIMPSON 19 (2002) ("Whether we look at [American] novelistic romances . . . popular theater . . . silent films . . . [or] sound films . . . the most common thread running through them is not simply a lack of realism or an 'excess' of sentiment, but the combined function of realism, sentiment, spectacle, and action in effecting moral legibility.").

<sup>88</sup> Farquhar & Berry, *supra* note 45, at 129-30.

been any doubt that she deserved it.

Such unwillingness to acknowledge an alternative telling of events serves a melodramatic purpose. As Ben Singer writes, classic melodrama features “a truly evil villain that victimizes an innocent, purely good soul.”<sup>89</sup> By portraying moral injustice, especially by physical violence, melodrama “arouse[s], and morally validate[s], a kind of primal bloodlust, in the sense that the villain is so despicable, hated so intensely, that there [is] no more urgent gratification than to see him extinguished.”<sup>90</sup> Nuance simply cuts against that purpose, and consequently is avoided.

Viewers of *The White-haired Girl* experience this intense hatred for Huang Shiren. As they witness him abuse Xi Er throughout the film, they demand justice in the form of revenge. In fact, when the stage opera was performed in the late 1940s, audience members frequently erupted in cries to “avenge Xi’er,”<sup>91</sup> and many soldiers carved those words into the stocks of their rifles.<sup>92</sup> Predictably, in the film, Huang Shiren does not receive an opportunity to defend himself at trial; neither the film, nor the ad hoc “court” within the film, acknowledges the possibility of a counter-narrative. As a result, Xi Er’s story, the only story, makes both the film audience and the diegetic crowd cry out for vengeance. The unruly crowd at Huang’s trial acts as a proxy for viewers: convinced of his guilt, the mob converges on Huang in a fit of outrage and carts him off to be executed, to the gratification of the audience.



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<sup>89</sup> BEN SINGER, MELODRAMA AND MODERNITY: EARLY SENSATIONAL CINEMA AND ITS CONTEXTS 39 (2001).

<sup>90</sup> *Id.* at 40.

<sup>91</sup> Xiaomei Chen, Acting the Right Part: Political Theater and Popular Drama in Contemporary China 80 (2002).

<sup>92</sup> “*The White-Haired Girl*” Restaged, PEKING REV., Mar. 18, 1977, at 31, available at <http://www.massline.org/PekingReview/PR1977/PR1977-12.pdf>.

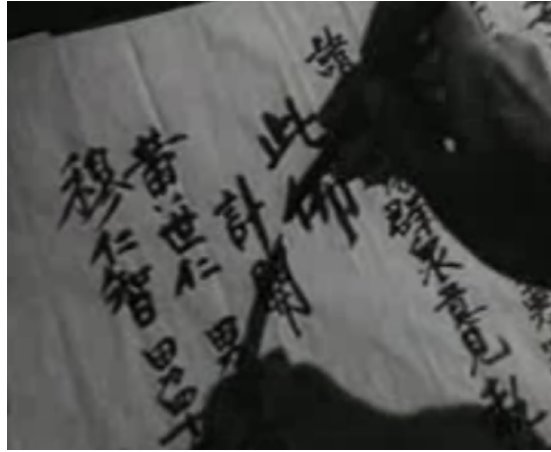


Figure 2: Huang Shiren is tried and sentenced to death in *The White-haired Girl*.

Although the trial has long served as a form of dramatic narrative in both China and the United States, the countries' cultural and institutional orientations are nonetheless significant. Like actual public trials in modern China, Chinese legal drama reflects a punitive sense of justice and an unwillingness to acknowledge competing narratives.

#### V. JUDGMENT AT TOKYO: GONG'AN DRAMA IN MODERN CHINESE CINEMA

The robustness of China's *gong'an* tradition is evident in the 2006 film *Tokyo Trial* (东京审判/*Dongjing Shenpan*).<sup>93</sup> The film, directed by Gao Quanshu, recounts the post-World War II trial of several Japanese officials and military leaders in the International Military Tribunal for the Far East.<sup>94</sup> The film's protagonist is Mei Ru'ao, a respected Chinese jurist and one of the eleven judges that presided over the tribunal.<sup>95</sup> While the film borrows generously from American courtroom cinema—especially *Judgment at Nuremberg*, which depicts the trial of German judges following World War II<sup>96</sup>—it remains faithful to the *gong'an* tradition. *Tokyo Trial* was released in 2006 to mark the 75th anniversary

<sup>93</sup> DONGJING SHENPAN (东京审判) [TOKYO TRIAL] (China Radio & Television Publishing House 2006).

<sup>94</sup> "Tokyo Trial" Recalls Post-War Justice, CHINA DAILY, Sept. 18, 2006, available at [http://www.chinadaily.com.cn/china/2006-09/18/content\\_691163.htm](http://www.chinadaily.com.cn/china/2006-09/18/content_691163.htm).

<sup>95</sup> *Id.*

<sup>96</sup> JUDGMENT AT NUREMBERG (United Artists 1961).

of Japan's invasion of China.<sup>97</sup> It was successful at the Chinese box office, and beat out the American film *X-Men III* during its opening weekend.<sup>98</sup>

*Tokyo Trial* bears a number of similarities to American trial films. Unlike traditional *gong'an* dramas, the trial extends throughout the entire film, such that the drama unfolds (and does not simply reach its climax) in the courtroom. Because the International Military Tribunal for the Far East was conducted according to Anglo-American legal norms, *Tokyo Trial* features an adversarial trial. Gao Quanshu relishes the American-style trial format, treating the viewer to a number of heated and suspenseful exchanges between attorneys and witnesses. The film takes great care to call attention to American courtroom norms and procedure: as a confident Chinese prosecutor reminds us, "Don't forget you're in a courtroom; only the evidence matters."<sup>99</sup>

While the film bears some superficial similarities to U.S. courtroom cinema, under closer scrutiny, *Tokyo Trial's* faithfulness to the *gong'an* model is evident. The film begins by establishing Judge Mei as a Judge Bao figure. When Australian Judge William Webb, the president of the tribunal, announces that he would like the British and American judges to sit beside him, Mei ardently protests. He reminds Webb that China "suffered the most, the longest, and the hardest" in Japan's "war of aggression," and argues that China should not be subjugated to the Western countries. Mei's demand is at first met with resistance, but ultimately he prevails and Webb and the other judges concede.<sup>100</sup> This scene establishes that Mei is unbending, fiercely patriotic, and committed to avenging Japan's crimes against China. Like Judge Bao, Judge Mei personifies "justice" in the Chinese sense.<sup>101</sup>

Where American trial films rely on the adversarial process to develop facts that prove guilt or innocence, *Tokyo Trial* employs a seemingly omniscient narrator, Judge Mei, to establish the defendants' guilt. The film sets off Judge Mei's revelations from the courtroom scenes, intermittently cutting away to documentary footage from the war as Mei's voice describes Japan's crimes directly to the viewer. These sequences purport to communicate objective reality; the use of documentary footage, which enjoys "privileged status as [a source] of unimpeachable authority,"<sup>102</sup> along with Mei's unquestioned assertions of fact, gives the viewer a sense of being privy to *the* truth, not merely one version of it.

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<sup>97</sup> "Tokyo Trial" Recalls Post-War Justice, *supra* note 93.

<sup>98</sup> *Tokyo Trial Film Enjoys Big Success*, PEOPLE'S DAILY, Sept. 19, 2006, available at [http://english.people.com.cn/200609/19/eng20060919\\_304080.html](http://english.people.com.cn/200609/19/eng20060919_304080.html).

<sup>99</sup> DONGJING SHENPAN, *supra* note 93.

<sup>100</sup> *Id.*

<sup>101</sup> KINKLEY, *supra* note 33, at 58.

<sup>102</sup> JEFFREY SHANDLER, WHILE AMERICA WATCHES: TELEVISIONING THE HOLOCAUST 2 (2000). Similarly, Lawrence Douglas writes that documentary footage purports to provide



Figure 3: Judge Mei Ru'ao narrates Japan's atrocities while the film plays documentary footage from the war in *Tokyo Trial*.

As such, *Tokyo Trial* uses the adversarial process very differently from American trial films. Since the film, like Judge Mei himself, assumes the defendants' guilt from the outset—and declares their guilt through documentary footage—the trial sequences do not reveal competing narratives to be judged, but serve only to reinforce the conviction that the defendants deserve to be punished. Like a public trial, courtroom scenes are carefully choreographed so as to “rally popular sentiment . . . and direct indignation toward targeted opponents.”<sup>103</sup> At no point does the film, or the trial within the film, permit a serious counter-argument to the defendants' presumed guilt. In fact, like Jiang Qing's televised trial, the film omits the defendants' case: while the prosecution makes an impassioned closing argument, the defense's response is conspicuously absent. Instead of pulling viewers “rhythmically back and forth . . . between two positions,”<sup>104</sup> the film pulls viewers in one direction from start to finish.

The defense team's presence in the courtroom serves but one purpose: to stoke the viewer's moral outrage. Hirose Itiro, the lead defense attorney, serves as a lightning rod for this disgust. Unlike Hans Rolfe, the honorable and skillful defense attorney in *Judgment at Nuremberg*,<sup>105</sup> Hirose spends his time on camera

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“a more complete and transparent window upon the ‘real’” than would be possible through a mere verbal retelling. Lawrence Douglas, *Film as Witness: Screening “Nazi Concentration Camps” Before the Nuremberg Tribunal*, 105 *YALE L. J.* 449, 452 (1995).

<sup>103</sup> MÜHLHAHN, *supra* note 40, at 199.

<sup>104</sup> Clover, *supra* note 15, at 107.

<sup>105</sup> See Julian Levinson, *The Maimed Body and the Tortured Soul: Holocaust Survivors in American Film*, 17 *YALE J. CRITICISM* 141, 146 (2004) (discussing the “surprisingly



doing little to further his clients' case, but repeatedly provokes the ire of the judges, the prosecution, and, undoubtedly, the film audience. In his opening statement, he casts aspersions upon the judges' qualifications and expresses mock sorrow for the "dignity of law." After an early Japanese witness for the prosecution affirms that the Huanggutun Incident was "planned, instigated, and carried out by Japan," Hirose's cross-examination consists only of the biting question, "Are you even Japanese?" When a Chinese man testifies that Japanese soldiers forced him, at gunpoint, to rape a Chinese woman, Hirose insinuates that the man had acted voluntarily. The viewer's outrage is mirrored in the witness, who goes berserk at Hirose's suggestion and must be physically restrained.

The film could not portray the defendants themselves less sympathetically. Their inhumanity and lack of remorse are most evident when Japanese Prime Minister Hideki Tojo takes the stand near the end of the film. In response to evidence that the Japanese army killed over two million Chinese people between 1937 and 1941, Hideki flatly states that it was "the fault of China's leaders." He denies wrongdoing altogether, declaring that he would start more wars if he were acquitted. This admission provokes a chorus of gasps from the courtroom audience and, presumably, from film viewers. In stark contrast to Ernst Janning, the remorseful defendant in *Judgment at Nuremberg*, Hideki is depicted as an unrepentant, emotionless murderer, worthy of the "very purest . . . kind of hatred."<sup>106</sup> Like the enraged mob in *The White-Haired Girl*, the film audience demands Hideki's swift demise.

The only instance in which documentary footage is embedded into the trial process also serves this melodramatic purpose. In an allusion to *Judgment at Nuremberg*, the prosecution in *Tokyo Trial* shows "surreptitiously filmed" footage of the Nanjing Massacre. The brief but graphic clip shows fires raging, Japanese soldiers marching through streets, and dozens of corpses strewn on the ground. However, Judge Mei had already declared the Nanjing incident a "massacre" during an earlier narrative sequence, which featured actual footage of Japanese soldiers attacking the city. As a result, this self-referential trope<sup>107</sup> is not necessary to convince viewers of the defendants' guilt or the veracity of the massacre. The graphic footage merely shocks the conscious and provokes anger, such that the film audience calls out for retribution.

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sympathetic" defense attorney who "manage[s] to complicate the moral questions facing the tribunal").

<sup>106</sup> SINGER, *supra* note 89, at 40.

<sup>107</sup> The use of film evidence within a trial film dates back to the 1907 film *Falsely Accused!* As Carol J. Clover writes, *Falsely Accused!* "spells out the natural fit between trials and movies," in that it "turns the courtroom into a movie theatre and the jury into a film audience." Clover, *supra* note 12, at 257.

Since the defendants' guilt is a non-issue in *Tokyo Trial*, the film "center[s] on justice, rather than mystery."<sup>108</sup> The film omits the judges' consideration of guilt and innocence at the trial's conclusion because guilt is a foregone conclusion. Consistent with the *gong'an* model, the suspense instead centers on whether Hideki Tojo should be hanged. It is not enough to pronounce him guilty because, without any assurance of punishment, the viewer's sense of justice would be left ungratified. The judges are initially split on the sentencing question, with a majority opposing the death penalty. However, before the judges vote, Mei gives a fervent speech in which he implores his colleagues to send Hideki to his death.

Here, more than ever, the film's punitive conception of justice shines through. Judge Mei begins by stating that those who died in the war "can only rest in peace when these criminals are punished by the death penalty." As Mei addresses the judges, the camera slowly pans across the table at which they sit, revealing that each is listening intently. The film intermittently cuts to a close-up of Judge Webb, who nods in agreement with Mei's arguments. Judge Mei asks pointedly, "What is law? What is its function?" Answering his own question, he declares that "the law lays down clearly what we should not do, or we will be punished." In other words, the essence of law inheres in the punishment that it provides. After an excruciatingly tedious vote-counting sequence,<sup>109</sup> Judge Webb announces that Hideki will be hanged. Since Judge Mei has made his case successfully, the audience can breathe easily knowing that Hideki will face a severe punishment.

Despite its outward similarity to a Hollywood trial film, *Tokyo Trial* adheres closely to the *gong'an* model. The film's overriding concern is not the determination of guilt or innocence, but rather the administration of retributive justice. Notwithstanding the tribunal's adversarial format, the film does not acknowledge the existence of multiple, competing narratives. Rather, a virtuous judge declares the criminals' guilt as a matter of objective truth, and the trial scenes give the impression that no other conclusion is possible. Instead of asking viewers to be jurors and judge between competing claims to the "truth," the film stokes their moral outrage such that they not only accept, but demand, the defendants' punishment. The film's dramatic tension derives from the possibility that the criminals will escape the gallows.

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<sup>108</sup> Hayden, *supra* note 32, at 200.

<sup>109</sup> In melodramatic fashion, *Tokyo Trial* teases out the vote-counting process. Melodrama entails "a give and take of 'too late' and 'in the nick of time.'" In order to create anxiety as to whether a desired outcome will be achieved, melodrama deliberately prolongs suspenseful scenes. Often the anticipated "rescue" comes just as disaster seems imminent—that is, "in the nick of time." WILLIAMS, *supra* note 87, at 30-33.

## VI. CONCLUSION

China's *gong'an* tradition is remarkably robust. Despite the international dominance of American trial films and China's increased exposure to Western media, the punitive conception of justice and morally unambiguous courtroom narrative have endured. *Tokyo Trial*'s conclusion, and indeed the *gong'an* tradition as a whole, calls to mind the concluding scene in Lu Xun's satirical masterpiece "The True Story of Ah Q."<sup>110</sup> In that scene, armed militiamen apprehend the unsuspecting protagonist Ah Q in the dead of the night, and drag him to a "dilapidated yamen" to face judgment for robbing a prominent local family—a crime he did not commit.<sup>111</sup> The magistrate claims that he "know[s] everything already" and orders Ah Q to confess his crime.<sup>112</sup> Two days later, the guards dress Ah Q in white, hang a placard around his neck,<sup>113</sup> bind his hands, and parade him on an uncovered cart in front of "crowds of gaping spectators."<sup>114</sup> The captain of the guards cries, "Punish one to awe one hundred!"<sup>115</sup> Just as Ah Q realizes his fate, he is shot dead in front of the cheering crowd.<sup>116</sup> All agreed that Ah Q was guilty; that was a foregone conclusion.<sup>117</sup> But the crowd was nonetheless dissatisfied, for "a shooting [is] not such a fine spectacle as a decapitation."<sup>118</sup>

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<sup>110</sup> Lu Xun, *The True Story of Ah Q*, in *SELECTED STORIES OF LU HSUN* 65, 106 (Yang Hsien-yi & Gladys Yang trans., W.W. Norton & Co. 2003).

<sup>111</sup> *Id.* at 106-07. In the late Qing dynasty, the era in which this story is set, "[t]he district magistrate's office, or yamen, represented the lowest administrative level where government law directly confronted the population of the empire." Alan W. Lepp, Note, *The Death Penalty in Late Imperial, Modern, and Post-Tiananmen China*, 11 *MICH. J. INT'L L.* 987, 993 (1989-1990).

<sup>112</sup> Lu, *supra* note 110, at 108.

<sup>113</sup> In sentencing rallies and public executions during the late Qing, the criminal was often adorned with a placard stating the nature of his or her crimes. See MÜHLHAHN, *supra* note 40, at 34.

<sup>114</sup> Lu, *supra* note 110, at 110.

<sup>115</sup> *Id.* at 109.

<sup>116</sup> *Id.* at 112.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*